

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

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John Sylvia
Director

July 22, 2019

The Honorable Greg Boso
Room 217W, Bldg. 1
1900 Kanawha Blvd. E.
Charleston, WV 25305

The Honorable Gary G. Howell
Room 213E, Bldg. 1
1900 Kanawha Blvd. E.
Charleston, WV 25305

Dear Chairmen:

This letter-report is in response to your request that the Performance Evaluation and Research Division (PERD) review whether the Board of Physical Therapy (Board) is adhering to its procedural rule, *West Virginia CSR §16-8*, which requires the Board to receive and investigate complaints against registered athletic trainers, as well as, to administer discipline when warranted. It should be noted that as of 2019, the regulation of athletic trainers is licensure, not registration.

Athletic Trainers Are Required to Apply for Licensure With the Board of Physical Therapy to Practice Within the State of West Virginia.

During the 2010 regular session, the Legislature approved House Bill 3152, which created title protection for athletic trainers within the state of West Virginia. Under the bill, no person may represent himself or herself as an athletic trainer unless he or she is registered by the Board of Physical Therapy or practicing as an athletic trainer in a school setting under a West Virginia Board of Education Athletic Certification. The bill placed the responsibility on the Board to establish procedures for submitting, approving and denying applications for registration. On June 16, 2011, the Board began accepting applications for athletic trainers, with registration becoming effective July 1, 2011. According to *West Virginia CSR §16-6-2*, applicants must submit to the

Board an application, pay required fees (\$125) and provide documentation of certification from the National Athletic Trainers' Association Board of Certification (NATABOC). Athletic Trainers registration is renewed every two years at a cost of \$75. There are currently 351 active registered athletic trainers in the state.

The Board also has the responsibility to receive complaints and determine disciplinary action if necessary with respect to athletic trainers. According to *West Virginia CSR §16-8-5.1*, “Any person, firm, corporation, member of the Board, or public officer may make a complaint to the Board which charges a Registrant or Applicant with a violation of West Virginia Code §30-20A-a et seq. The Board may provide a form for that purpose, but a complaint may be filed in any written form.” By rule, the Board is to maintain a complaint log that records the receipt of each complaint, its nature and disposition. The Board is also required by rule to maintain a separate file on each complaint received and be assigned a case number.

The Board Has Not Received Any Complaint Against Licensed Athletic Trainers Since It Has Had Oversight of Athletic Trainers.

PERD reviewed the calendar years 2011-2019 complaint logs, pulled a sample of complaints and questioned the Board regarding the complaint process. Since 2011, there have been 67 complaints filed against either physical therapists or physical therapist assistants, but none filed against athletic trainers. On January 25, 2012, the Board did consider a cease and desist letter be filed against an athletic trainer, but on May 9, 2012 it determined the term “athletic trainer” was not violated and on August 15, 2012 the Board did not find cause for the letter and thus a case file was not created. The Board stated to PERD that before the 2019 regular legislative session, it would have adjudicated complaints made against athletic trainers, but it would have been difficult as there was no scope of practice in place. However, Senate Bill 60, passed during the 2019 regular session, amended the previous code section (*West Virginia Code §30-20A-1*) pertaining to the registration of athletic trainers. Effective 90 days from the March 6, 2019 passage, it will now be unlawful for any person to practice or offer to practice athletic training in this state without a Board-issued license. Athletic trainers who are registered by the Board prior to January 1, 2020 will be considered licensees under the new article.

Senate Bill 60 includes a scope of practice for athletic trainings. This was not included in the previous athletic trainer act. When asked if the Board feels this will help in the future regarding complaints filed against athletic trainers, the Board replied, “*With the passing of SB 60 which does contain a scope of practice for athletic trainers the Board feels this will allow for a set criteria to adequately adjudicate complaints that come in made against athletic trainers.*” The Board also mentioned that while there is a procedural rule pertaining to the handling of complaints made, “*...additions will more than likely need to be made to the legislative [procedural] rule.*”

The West Virginia Department of Education Provides Authorization for Licensed Athletic Trainers to Serve During Senior High School Football Practices and Games.

The West Virginia Department of Education (WVDE) provides authorization of athletic trainers within the school system to improve the health care of student athletes in the public schools of West Virginia. The WVDE provides authorization to a West Virginia licensed athletic trainer and, in the event a licensed athletic trainer cannot be obtained, a licensed health care provider or Limited Football Trainer may be employed. Employment of athletic trainers is done on the county level. According to the State Board of Education's procedural rule *CSR §126-118-2.1*, each county board of education is to employ a licensed athletic trainer or an individual with limited football trainer authorization to serve during high school football practices and games. Limited football trainers are either a physician, registered nurse, licensed practical nurse, chiropractor, physical therapist, occupational therapist, physician assistant, paramedic, or emergency medical technician. According to *CSR §126-118-2.2*, "*Each county board of education is encouraged to employ an athletic trainer for middle and junior high school football practices and games.*" The WVDE also allows for individuals who were issued Student Support Certificates for Athletic Trainers prior to July 1, 2011 and First Class/Full-Time Permits in effect as of July 1, 2010, to be renewed in accordance with renewal requirements. County superintendents are encouraged to assign an athletic trainer to work other school athletic programs. During the 2018-19 school year, the WVDE issued authorizations to 37 licensed athletic trainers, 46 limited football trainers and 2 student support professionals. Complaints concerning WVDE-authorized licensed athletic trainers are addressed at the county level. According to the WVDE's Office of Certification and Professional Preparation, "*If there was an issue with any of these individuals, those complaints would be directed to the school principal first and the next level would be the central office of the county.*" **There are no references in the WVDE procedural rule that recognizes the Board of Physical Therapy as the regulatory authority over authorized licensed athletic trainers, nor is there any reference that complaints against licensed athletic trainers should also be referred to the Board of Physical Therapy.**

There Is Potential That Complaints Filed Against Licensed Athletic Trainers in a School Setting Would Not Be Submitted to the Board.

According to Senate Bill 60 and amended statute (*W. Va. Code §30-20A-13*), the Board has the responsibility to investigate and adjudicate all written complaints it receives against licensed athletic trainers. Since many athletic trainers are employed and authorized by the WVDE for high school football games and practices, there is concern that complaints against WVDE-authorized licensed athletic trainers filed at the county level may not be forwarded to the Board. The Board has indicated that although it has not received any complaint against a licensed athletic trainer from the WVDE, it "*...would still adjudicate a complaint in the event it was filed against an AT that works for the Department of Education. The normal complaint process would still be followed to determine if any statute or rules of the Board were violated.*" Therefore, the Board considers all licensed athletic trainers, regardless of their work setting in the state, to be under the Board's jurisdiction. However, given that licensed athletic trainers are authorized by the WVDE

and employed in the public school system, county school officials may not be aware of the Board's jurisdiction concerning licensed athletic trainers, and thus may not refer complaints against them to the Board.

According to *W. Va. Code §18A-3-6(b)*, if a county superintendent knows of any act on the part of any teacher or school personnel for which a certificate may be revoked, the county superintendent shall report this to the state superintendent. According to the WVDE, since 2011 there have been no complaints against licensed athletic trainers holding authorizations by the WVDE that have reached the WVDE for adjudication. However, since 2011 there could have been complaints on the county level that were not forwarded to the state superintendent due to the lack of severity of the complaint. According to the WVDE, "*It is a possibility that a complaint was made to an ATs employer that did not rise to the level of reporting to the WVDE and thus we are unaware of the complaint.*"

It is the Legislative Auditor's opinion that to adequately inform the Board of complaints against its licensees, it should be made clear to county school systems that a complaint against a licensed athletic trainer employed by the county should also be forwarded to the Board. Currently, neither the State Board of Education's procedural rule *CSR 126-118, Athletic Trainers in the Public Schools of West Virginia*, nor the *CSR 126-136, Minimum Requirements for the Licensure of Professional/Paraprofessional Personnel and Advanced Salary Classifications*, require that a complaint against a registered athletic trainer should be forwarded to the Board for additional adjudication. When asked if there was a statutory responsibility of the WVDE to report complaints to the Board of Physical Therapy, the WVDE indicated that there is nothing in state code that specifically mandates the WVDE report a complaint to the Board of Physical Therapy. The WVDE reported that it "*...notifies other licensing entities when a dual credentialed person is under investigation by the WVDE (i.e., nursing boards, etc.).*" However, it should be noted that the general provisions of regulatory boards (*W. Va. §30-1-5d*) require each board and regulated person to timely report violations of individual practice acts contained in Chapter 30 of West Virginia Code to the respective board that regulates the individual. **Therefore, it is the Legislative Auditor's opinion that the State Board of Education should amend procedural rule *CSR 126-118* to include a requirement that each county forward any complaint filed against a licensed athletic trainer to the Board of Physical Therapy.**

In addition, the Board's procedural rule on disciplinary and complaint procedures, *CSR 16-8*, does not mention that the Board has jurisdiction over licensed athletic trainers in the state, including those who are authorized by the WVDE and employed within the public school system. Although the Board verbally indicated it would adjudicate complaints sent to it from the WVDE, it should also be identified in its procedural rule. Also, as with the State Board of Education, if by chance the Board receives a complaint regarding an athletic trainer in a school setting from the public prior to the county that employs the athletic trainer receiving it, the Board should review and adjudicate the complaint and forward it to the respective county board of education for possible adjudication. **Therefore, it is the Legislative Auditor's opinion that the Board's procedural rule on disciplinary and complaint procedures for athletic trainers should be amended to include language that identifies the Board has jurisdiction over all licensed athletic trainers in the state including those employed by individual county boards of education and if a**

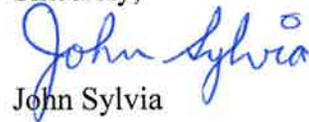
complaint is received on a WVDE-authorized athletic trainer, it will be adjudicated and forwarded to the appropriate county board of education.

The Board Should Update Its Website and Complaint Form for Those Who May Have a Complaint Against an Athletic Trainer.

During the evaluation, PERD reviewed the Board’s website and current complaint form for public user-friendliness. The complaint form is found under the public tab on the Board’s website. However, the description of the complaint questionnaire informs the public to “*Click here if you suspect your practitioner is in violation of WV’s physical therapy practice act and you want to file a complaint.*” The lack of any reference to athletic trainers in the description may deter a member of the public from going to the next page to fill out the complaint form. Also, the complaint form itself does not mention athletic trainers as a possible practitioner that a complaint can be filed against. Instead, it indicates that the complainant can be anonymous, but the name of the physical therapist or physical therapist assistant is required. **Therefore, it is the Legislative Auditor’s opinion that the Board should consider making modifications to its website and complaint form to clearly indicate that complaints can be filed against athletic trainers as well as physical therapists and physical therapy assistants.**

I hope this addresses your inquiry of the Board of Physical Therapy and its complaint process against athletic trainers. If we can be of further assistance, please let us know.

Sincerely,

A handwritten signature in blue ink that reads "John Sylvia". The signature is written in a cursive style with a small circle above the letter 'i' in "Sylvia".

John Sylvia

Tabitha Clendenin

From: Ramsey, Nonnie S <Nonnie.S.Ramsey@wv.gov>
Sent: Friday, June 7, 2019 3:16 PM
To: Brandon Burton
Subject: RE: Letter Report/Draft and Transmittal Letter

Brandon,

The Board has reviewed the letter and they see no changes that need to be made to the report.

Thank you,

Nonnie S. Ramsey

Executive Director

WV Board of Physical Therapy
2 Players Club Drive Suite 102
Charleston, WV 25311
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Disclaimer:

Please note that all responses the West Virginia Board of Physical Therapy (hereinafter "Board") gives to individual questions are based solely upon WV Code § 30-20-1 et seq. and the Code of State rules 16-1-1 et seq. These Statutory and Regulatory provisions govern the jurisdiction of the Board, and its sole purpose of regulating the practice of Physical Therapy and the protection of the public. Moreover, a provider should consult with his/her legal counsel and insurance payers for questions pertaining to billing for Physical Therapy services.

From: Brandon Burton <brandon.burton@wvlegislature.gov>
Sent: Friday, May 31, 2019 10:34 AM
To: Ramsey, Nonnie S <Nonnie.S.Ramsey@wv.gov>
Subject: Letter Report/Draft and Transmittal Letter

Nonnie:

Attached is the letter report/draft for you to review. The exit conference is optional but we are requesting a written request, everything is detailed in the letter.

Brandon

Sent from [Mail](#) for Windows 10



1900 Kanawha Boulevard, East, Building 6 • Charleston, WV 25305
wvde.us

June 6, 2019

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

Dear Mr. Sylvia:

Thank you for the opportunity to submit a response to the draft copy of the Letter Report regarding the Board of Physical Therapy's adjudication process of complaints filed against athletic trainers sent to me on May 31, 2019.

As communicated to your staff during the formation of the report, and as noted in the report itself, while there is no specific reference in West Virginia Board of Education (WVBE) policy it is routine practice for the West Virginia Department of Education (WVDE) to notify other licensing entities when a dual credentialed person is under investigation by the WVDE. Notwithstanding this routine practice, the WVDE has no objection to recommending to the WVBE for inclusion in policy a specific statement recognizing the jurisdiction over professionals holding certain dual credentials, athletic trainers or otherwise, and the necessity for complaints made against such professional, whether at the state or county level, be reported to the appropriate licensing board.

Again, I appreciate the efforts of you and your office in preparing this report. Should you need any additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Steven L. Paine".

Steven L. Paine, Ed.D.
State Superintendent of Schools

SLP/HLH/sas/mp