REPORT OF THE
DEPARTMENT OF HEALTH PROFESSIONS
BOARD OF HEALTH PROFESSIONS

STUDY OF THE MERIT OF AN INDEPENDENT BOARD OF PHYSICAL THERAPY

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 10

COMMONWEALTH OF VIRGINIA
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COMMONWEALTH of VIRGINIA

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October 13, 1999

TO: The Honorable James S. Gilmore, III
Governor of the Commonwealth of Virginia

The Members of the General Assembly of Virginia

It is our privilege to present this report which constitutes the response of the Board of Health Professions to the request contained in House Joint Resolution 504 of the 1999 Session of the General Assembly.

The report provides the findings of the board from its Study of the Merit of an Independent Board of Physical Therapy and its recommendation that by statutory action an independent board should be established. The final report is available to the public on the website for the Department of Health Professions at http://www.dhp.state.va.us/.

The Board acknowledges the work of an Ad Hoc Committee on Independent Boards and the staff who conducted the research and prepared the final report.

John W. Hasty
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Executive Director
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VIRGINIA BOARD OF HEALTH PROFESSIONS
DEPARTMENT OF HEALTH PROFESSIONS

Study of the Merit of an Independent Board of Physical Therapy Pursuant to HJR 504 (1999)

Members of the Board of Health Professions
1999

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Acknowledgements

The members of the Board of Health Professions gratefully acknowledge the work of the Ad Hoc Committee on Independent Boards, chaired by Janice Golec, for their diligence in studying the issues, hearing testimony and developing policy options for consideration. The Board also acknowledges the contributions of the Virginia Physical Therapy Association and the American Physical Therapy Association for providing information and assisting the Ad Hoc Committee in its deliberations.

Final Recommendation of the Board

In response to House Joint Resolution 504, the Board of Health Professions has recommended the establishment of an independent board of physical therapy.

TABLE OF CONTENTS

Executive Summary

Background for the Study

House Joint Resolution 504, patroned by Delegate Jay DeBoer and passed by the 1999 Session of the General Assembly, requested the Virginia Board of Health Professions to examine the merit of establishing an independent board of physical therapy. Physical therapists and physical therapist assistants are currently licensed and regulated by the Board of Medicine. By statute, an Advisory Board on Physical Therapy is appointed by the Governor to "assist the Board of Medicine in carrying out the provisions of this chapter regarding the qualification, examination, licensure and regulation of physical therapists and physical therapist assistants." (§ 54.1-2944 of the *Code of Virginia*) Issues expressed in the body of the resolution refer to the lack of authority for the Advisory Board to be involved in the decision-making on matters of credentials and disciplinary cases involving physical therapists and physical therapist assistants. The resolution further notes that there are more physical therapy licensees than the number of persons regulated by 8 of the 12 independent boards within the Department of Health Professions and that there are almost twice as many physical therapists and physical therapist assistants as any other profession regulated by the Board with the exception of physicians.

In a 1998 Joint Legislative Audit and Review Commission (JLARC) study of the effectiveness of Virginia's health regulatory boards, recommendation #7 of the interim report stated that "The General Assembly may wish to consider directing the Board of Health Professions to evaluate the merit of establishing an independent board of physical therapy for the purpose of regulating physical therapists and physical therapist assistants and present its findings to the General Assembly prior to the 2000 General Assembly session."

The Ad Hoc Committee on Independent Boards of the Board of Health Professions functioned for the purpose of reviewing background information on the regulation of physical therapy in Virginia and other states, gathering data on the feasibility of an independent board, receiving public comment, and bringing recommendations to the Board. The Regulatory Boards Administrator for the Department, Elaine J. Yeatts provided staff and research assistance for the Committee.

Findings of the study by the Joint Legislative Audit and Review Commission (JLARC) regarding the governance of physical therapy (1998).

In its "Interim Report: Review of the Health Regulatory Boards", released in November of 1998, JLARC reviewed the advisory board structure and concluded that it may need to be modified. The report took note of the large number of physical therapists and the dissatisfaction with the current regulatory structure expressed by members of the Advisory Board on Physical Therapy. Members of the Advisory Board cited two recent examples of the limitations on their role in the regulatory and disciplinary process: (1) The recommendations of a task force of physicians and

physical therapists appointed to resolve a scope of practice issue involving the use of electromyography were rejected by the Board in favor of a legislative proposal that physical therapists view as more restrictive; and (2) The decision of a Board panel on a disciplinary case involving a physical therapist, in which there was no authority for a member of the advisory board to participate directly in the case.

The JLARC report also cited opinion from staff of the Department and the Board who expressed concern that the current system does not work effectively because the Board members don't give adequate attention to the allied health professions. The workload, both regulatory and disciplinary, of the Board is considerable, and in the opinion of some staff and board members, the Board should focus on its central mission of regulating physicians.

Major Findings of this Study Report

- **Physical therapy is a separate and distinct profession with different accreditation and education from medicine, and it has grown significantly in numbers since the initial regulation and creation of an Advisory Board.**

Of the nine allied health professions regulated by the Virginia Board of Medicine, physical therapy is the oldest. In 1957, there was consideration of an independent board, but with only about 170 physical therapists in the Commonwealth, the number of licensees may have been too small to warrant an independent board or to justify positions on the Board. Therefore, an Advisory Board on Physical Therapy under the Board of Medicine was created. In addition, the American Medical Association was, at that time, the accrediting agency for physical therapy education, so it may have seemed logical for physical therapy to come under the authority of the medical board. Physical therapy education is now accredited by the Commission on Accreditation in Physical Therapy Education of the American Physical Therapy Association, and the total of licensed physical therapists and physical therapist assistants numbers over 4,900.

- **The current system of an Advisory Board on Physical Therapy provides inadequate representation and governance structure for a profession with a large number of licensees.**

The Code of Virginia provides for an Advisory Board to be consulted on examinations and regulations for the profession, but all decisions on regulations governing the practice and licensure of physical therapy, credentials of applicants for licensure, and disciplinary matters involving licensees in physical therapy must be made by the Board. While the Board often voluntarily consults with a member of the Advisory Board on a question of credentialing or discipline, consultation is not required and the physical therapist is not included as a voting member of the committee nor included in any discussion or decision made in Executive Session.

- **Virginia is only one of nine states that regulates physical therapy under a medical board; 24 states have an independent board of physical therapy.**

There are currently 24 states that have independent boards of physical therapy. In 12 states and the District of Columbia, physical therapy is regulated under a joint licensing board or as a part of an umbrella board; and in five states, there is an advisory board or committee to a regulatory agency or another type of board. There are only nine states, including Virginia, in which physical therapy is regulated under a medical board with an advisory board or committee.

According to the Federation of State Boards of Physical Therapy, which collects various sorts of data from boards of all 50 states, there is no valid correlation between board structure and disciplinary action against physical therapists. Among the 24 boards that are independent boards of physical therapy, the rate per 1,000 for 1997 was 0.896; among the 14 states in which physical therapy has an advisory committee to a medical board or another type regulatory agency, the rate per 1,000 for 1997 was 0.738.

- **An independent board of physical therapy would be the sixth largest board of the 13 boards within the Department of Health Professions.**

As compared with the 12 independent boards of the Department of Health Professions, it would appear that an independent board of physical therapy would likely have one of the lowest rate of disciplinary cases. Over the past four biennia, the overall rate of complaints for physical therapists for the years 1991 through 1998 was 3.30 with the rate of cases closed as "no violation" at 2.58. The rate of violations was 0.18 per 1,000 licensed physical therapists; the rate of sanctions was 0.22 per 1,000. Over the past four biennia, only the Board of Audiology and Speech-Language Pathology has had a lower rate of complaints filed for 2.54 per 1000 licensees; none of the other boards has had a lower rate of sanctions per 1000 licensees.

- **An independent board of physical therapy would be feasible with sharing the services of an Executive Director, office space, and support staff for the licensing and disciplinary requirements of the profession**.

There would not be a high demand on the time of an Executive Director for reviewing investigative files or managing informal conferences and formal hearings. The examination in physical therapy is now a national examination provided by the Federation of State Boards of Physical Therapy and administered by the Professional Examination Service. While staff of the Board of Medicine must review and approve applicants to sit for the examination, the development, administration and grading of the licensure examination is no longer a board function.

In analyzing the fiscal impact of an independent board with the potential implication on fees charged to licensees, it would appear that the current fees for physical therapists and physical therapist assistants would be sufficient to sustain an independent board if staff and office space were shared with one or more other boards.

- **There would be little if any additional costs for the appointment of members to an independent board.**

The *Code of Virginia* (§ 54.1-2944) prescribes an Advisory Board on Physical Therapy, comprised of five members who are licensed physical therapists, to be appointed by the Governor. Since there is already a "board" related to physical therapy with gubernatorial appointments who meet at least three times a year and are paid per diem and expenses, there would be minimal impact on the number of appointees or the costs associated with their meetings. However, as an independent board, it should include consumer membership and should be enlarged to include at least one and preferably two citizen members for a maximum of seven members.

- **The creation of an independent board of physical therapy would have little impact on the staffing needs of the Board of Medicine but could have a very slight impact on the fees of remaining licenses.**

There would be little impact on the current employment level for the Board of Medicine. It is likely that only one FTE could be transferred from the Board to an independent board of physical therapy. While the profession of physical therapy now has the services of the Executive Director, the Deputy Director for Licensing, and other staff within the Board of Medicine, the percentage of their time dedicated to physical therapy is too small to warrant any other decrease in employment. Likewise, the space needs for the Board of Medicine would not be substantially changed with the loss of physical therapy.

Since the income derived from all fees attributable to physical therapy exceeds the expenditures that could be deducted from the Board of Medicine budget, the creation of an independent would either necessitate a modest fee increase for the remaining 41,000 licensees or prompt the need to find other areas of its budget in which to reduce expenditures.

Final Recommendation of the Board of Health Professions:

The Board of Health Professions recommends the establishment of an independent board of physical therapy as being in the best interest of the health, safety and welfare of the patients who are consumers of physical therapy services in Virginia.

VIRGINIA BOARD OF HEALTH PROFESSIONS
DEPARTMENT OF HEALTH PROFESSIONS

Study of the Merit of an Independent Board of Physical Therapy Pursuant to House Joint Resolution 504 (1999)

Background and Authority

House Joint Resolution 504, patroned by Delegate Jay DeBoer and passed by the 1999 Session of the General Assembly, requests the Virginia Board of Health Professions to examine the merit of establishing an independent board of physical therapy. Physical therapists and physical therapist assistants are currently licensed and regulated by the Board of Medicine. By statute, an Advisory Board on Physical Therapy is appointed by the Governor to "assist the Board of Medicine in carrying out the provisions of this chapter regarding the qualification, examination, licensure and regulation of physical therapists and physical therapist assistants." (§ 54.1-2944 of the *Code of Virginia*) Issues expressed in the body of the resolution refer to the lack of authority for the Advisory Board to be involved in the decision-making on matters of credentials and disciplinary cases involving physical therapists and physical therapist assistants. The resolution further notes that there are more physical therapy licensees than the number of persons regulated by 8 of the 12 independent boards within the Department of Health Professions and that there are almost twice as many physical therapists and physical therapist assistants as any other profession regulated by the Board with the exception of physicians.

Approved by the 1998 General Assembly, House Joint Resolution 139 and Item 16H of the Appropriation Act directed the Joint Legislative Audit and Review Commission (JLARC) to study the effectiveness of Virginia's health regulatory boards. Recommendation #7 of the interim report, released in November of 1998, stated that "The General Assembly may wish to consider directing the Board of Health Professions to evaluate the merit of establishing an independent board of physical therapy for the purpose of regulating physical therapists and physical therapist assistants and present its findings to the General Assembly prior to the 2000 General Assembly session." House Joint Resolution 504 follows that recommendation made in the Interim Report: Review of the Health Regulatory Boards (House Document No. 31, 1999).

Study Task Force of the Virginia Board of Health Professions

The Chairman of the Board of Health Professions has appointed an Ad Hoc Committee on Establishing Independent Boards. To advise the Ad Hoc Committee, the Advisory Board on Physical Therapy and the Virginia Physical Therapy Association have been notified of every meeting and invited to participate in the finding of facts and the deliberation of recommendations. The Ad Hoc Committee functioned for the purpose of reviewing background information on the regulation of physical therapy in Virginia and other states, gathering data on the feasibility of an independent board, receiving public comment, and bringing recommendations to the Board. Members of the Ad Hoc Committee (with the position they hold or the regulatory board they represent on the Board of Health Professions in parenthesis) are as follows:

Janice S. Golec, (citizen member) *Chair*
Charles M. Bristow (Funeral Directors)Sonny Currin, Jr. (Pharmacy)
Barbara A. Cebuhar (citizen member)

The Regulatory Boards Administrator for the Department, Elaine J. Yeatts, provided staff and research assistance for the Committee.

Public hearings and solicitation of public comment

The Board solicited comment on the issues addressed in the resolution and on the merit of establishing an independent board of physical therapy. In addition to the required notices given to the Register and to those interested parties on the Board of Health Professions Public Participation Guidelines list, notices were sent to the patron of the legislation, to the Advisory Board on Physical Therapy and the Virginia Physical Therapy Association (VPTA) to request information and participation in meetings and hearings.

At its initial meeting on April 20, 1999, the Advisory Board on Physical Therapy and the Virginia Physical Therapy Association were requested to present to the Ad Hoc Committee a statement of the issues and problems to be addressed in the study. The public was also invited to make any comments at that meeting and at the meeting of the full board that same day. Winston Pearson, chairman of the Advisory Board on Physical Therapy, stated that the Advisory Board lacks authority under the *Code of Virginia* to create rules and regulations for the profession and to participate in deliberations made in executive session during which disciplinary decisions are made on the practice of physical therapists and physical therapist assistants. The Advisory Board also lacks authority to receive investigative reports, to recommend sanctions, and to make decisions on the credentials of an applicant. The statement concurred with comments of some staff and board members in the JLARC report that the current system is not as effective or efficient because of the number of allied health professions being regulated by one board.

In a statement from the Virginia Physical Therapy Association, President Bill Whiteford noted that the Advisory Board has taken seriously its responsibility to ensure the safe, competent practice of physical therapy in the Commonwealth, but that it was frustrated by the advisory board structure and the enormous workload of the Board of Medicine in attempting to regulate 13 professions. Further, he noted that there is no statutory requirement that the Board consult with

the Advisory Board on disciplinary actions involving physical therapists. While the current Board has chosen to do so, there is no assurance that will always be the case. In addition, physicians who may or may not have any expertise in physical therapy are making the final determination without the input of physical therapists.

In his statement, Mr. Whiteford said, "There are public policy precedents and common sense reasons for physical therapists to determine whether or not physical therapists are practicing in accordance with the laws and regulations that govern them...And, like other health professions, physical therapists know best when a physical therapist's practice is appropriate and safe. Scope of practice disputes have been particularly frustrating to resolve in a satisfactory manner. The Board of Medicine has the final authority on these issues, and invariably decides them in a way that is more restrictive to physical therapists and may or may not be related to public safety and welfare. We do not believe that a separate Board of Physical Therapy will prevent these disputes, or resolve them to the satisfaction of physical therapists all the time. We do believe, however, that a separate Board would give physical therapists a greater sense of self-regulation and fairness, and allow the Board of Health Professions to better fulfill its statutory responsibility to coordinate the work of the various regulatory boards."[1]

Subsequent to the meeting on April 20, 1999, there was a public comment period on issues addressed in the resolution and other policy and administrative issues related to the establishment of an independent board; written comment was received until July 20, 1999. On July 27, 1999, the Ad Hoc Committee met to review information and develop policy options and recommendations. On August 24, 1999, the Ad Hoc Committee will conduct a hearing on draft policy options to be presented to the Board of Health Professions for findings and final recommendations at its meeting scheduled for September 21, 1999.

Study Content

A. Laws and regulations on the practice of physical therapy in Virginia

Overview of the history of regulation of physical therapy as a background for the current system of regulation.

Of the nine allied health professions regulated by the Virginia Board of Medicine, physical therapy is the oldest. In January of 1957, bills were drafted that would provide for the regulation of physical therapy with three different options: (1) the creation of an independent board under the Department of Professional and Occupational Registration (the Department of Health Regulatory Boards did not exist), and the Board of Medical Examiners was an independent agency with its offices in Portsmouth); (2) the addition of three physical therapists to the Board of Medical Examiners; and (3) the creation of an Physical Therapy Advisory Committee under the Board of Medical Examiners. The three regulatory schemes were presented to the Virginia Advisory

[1] Public comments presented by Bill Whiteford, President of the Virginia Physical Therapy Association, to the Ad Hoc Committee on Independent Boards, Board of Health Professions, April 20, 1999.

Legislative Council, which voted on March 7, 1957 to recommend licensure under the Virginia State Board of Medical Examiners. (The name was changed in 1973 to the Virginia State Board of Medicine). While the rationale for that decision is unknown, it can be speculated that the number of physical therapists (approximately 170) may have been too small to warrant an independent board or to justify positions on the Board. In addition, the American Medical Association was, at that time, the accrediting agency for physical therapy education, so it may have seemed logical for physical therapy to come under the authority of the medical board. Physical therapy education is now accredited by the Commission on Accreditation in Physical Therapy Education of the American Physical Therapy Association, and the total of licensed physical therapists and physical therapist assistants numbers over 4,900.

The 1958 Session of the General Assembly passed the legislation establishing licensure for physical therapists and creating the Advisory Committee. The requirements for examination and licensure of physical therapist assistants were added in 1968. In 1974, the Advisory Committee on Physical Therapy was invited to send a non-voting representative to Board meetings in an unofficial capacity, a tradition that has continued. In 1977, the Department of Health Regulatory Boards was created with the Virginia Board of Medicine as one of its boards.

The practice of physical therapy is currently governed under Chapter 29 of Title 54.1 of the *Code of Virginia*, which provides the statutory authority for "Medicine and Other Healing Arts." The *Code of Virginia* makes it unlawful for any person who is not licensed to use certain titles (§ 54.1-2942) or to engage in the practice of physical therapy except as a licensed physical therapist, upon the referral and direction of a licensed doctor of medicine, osteopathy, chiropractic, podiatry or dental surgery. Any person licensed as a physical therapist assistant must practice under the direction and control of a licensed physical therapist and the patient's physician (§ 54.1-2943).

Governance of physical therapy; role of the Advisory Board on Physical Therapy

Physical therapists and physical therapist assistants are licensed and regulated under the Board of Medicine, which is comprised of seventeen doctors including one medical physician from each congressional district, one osteopathic physician, one podiatrist, one chiropractor, one clinical psychologist (a profession no longer regulated under the Board of Medicine), and two citizen members. (Throughout this report, the "Board" will refer to the Board of Medicine.) All decisions on regulations governing the practice and licensure of physical therapy, credentials of applicants for licensure, and disciplinary matters involving licensees in physical therapy must be made by the Board.

Nine professions licensed by the Board, including physical therapists and physical therapist assistants, are regulated with the assistance of six advisory boards or committees. (Legislation passed by the 1999 General Assembly added to the Board an additional profession to regulate and another advisory board on athletic trainers.) An Advisory Board on Physical Therapy assists the Board in "carrying out the provisions of this chapter regarding the qualification, examination, licensure and regulation of physical therapists and physical therapist assistants" (§ 54.1-2944 of the *Code of Virginia*). The five members of the Advisory Board are appointed by the Governor and serve for a term of four years; each of the members must have been a physical therapists who

has practiced for not less than three years prior to his appointment. (Throughout this report, the "Advisory Board" will refer to the Advisory Board on Physical Therapy.)

In practice, the Advisory Board meets three times a year immediately preceding a meeting of the Legislative Committee of the Board which precedes a meeting of the full board. Matters of interest to physical therapists may be presented to the Board through the report of the chair of the Advisory Board, but that individual does not participate in discussions or decision-making on issues relating to physical therapy, unless specifically requested by the Board to provide information on an agenda item. The Executive Committee of the Board has full authority to act on behalf of the Board, but the chair of the Advisory Board does not give a report to that Committee nor is he or she specifically invited to attend.

Functions of the Advisory Board.

Licensing examinations. Although the Code of Virginia (§ 54.1-2946) specifies that the Advisory Board "administer and grade" the examinations in physical therapy, the Board currently recognizes national examinations provided by the Federation of State Boards of Physical Therapy and administered in Virginia by Professional Examination Service (PES). Applicants submit their qualifications to the Board staff which has the authority and responsibility for review and determination of eligibility to sit for the examination to be licensed as a physical therapist or a physical therapist assistant. A list of qualified candidates is then submitted to PES for the next scheduled examination. Examinations are scored by the testing service with a passing scores determined by the Board in regulation.

Regulations. The Advisory Board is also authorized to assist the Board in matters pertaining to the regulation of physical therapists and the practice of physical therapy. It would typically review any regulatory issues, recommend publication of a Notice of Intended Regulatory Action, develop the proposed regulatory language to be adopted by the Board, receive public comment, and advise the Board on adoption of final regulations. While the Board normally consults with the Advisory Board on regulations for physical therapy, there is no requirement that it do so. The Board has the authority to set fees, determine qualifications for licensure, and act on rules regarding standards of practice without the consultation of the Advisory Board or physical therapists, except as mandated by the Administrative Process Act or Executive Orders.

Credentialing. Again, the *Code* does not specify a role for the Advisory Board in determining the qualifications of applicants for licensure other than it is to assist the Board in carrying out the provisions of law and regulation. Therefore, the involvement of physical therapists on the Advisory Board is dependent on the desires of members of the Board to include them in the credentialing process. Currently, if there is a question of qualification on an application for licensure, the Deputy Executive Director for licensing consults with a member of the Advisory Board who is invited to attend the meeting of the Board's Credentials Committee or provides advice by phone or fax. The physical therapist who is consulted is not included as a voting member of the committee and is not included in any discussion or decision made in Executive Session.

Discipline. Since the licensure of physical therapists, there have been questions raised about the appropriate role of the Advisory Board in disciplinary matters involving physical therapists or physical therapist assistants. The law specifies that a decision on a investigative case referred to the Board has been for the Executive Director and the President of the Board to review the file and make a determination as to whether to notice the practitioner for an informal conference or to close the case as a finding of "no violation." If there was some question about a standard of practice issue or other ambiguity, the Chairman of the Advisory Board would be consulted prior to making that determination. If a case involving standard of care was to be heard in an informal conference or formal hearing, the Chairman was often invited to attend. If the case involved impairment or other issues unrelated to standard of care, the Advisory Board was typically not consulted. From the perspective of physical therapists, there was a persistent question about a pre-determination that the advice of a physical therapist was not needed in a case involving a licensee in physical therapy.

In an attempt to respond to the lack of specificity and certainty about the role of the advisory boards in disciplinary cases involving one of their licensees, the Board adopted a policy at their meeting on October 8, 1998. Guidelines entitled, **"Procedure for Advisory Board or Committee Member Review of Cases for Administrative Proceedings"**, are as follows:

- The Executive Director receives and reviews application file or investigation report.
- If the Executive Director recommends that an administrative proceeding be convened (i.e., appearance before the Credentials Committee for applications or appearance before an informal conference on disciplinary charges), the file will be referred to a member of the Advisory Board.
- The Advisory Board member may review the file and make a non-binding recommendation whether grounds exist to warrant further proceedings or whether additional information is needed.
- The Advisory Board member may be present at the administrative proceeding. Notice of the attendance of the member will be provided to the respondent. The role of the Advisory Board member is to assist and/or provide professional input to the committee in its fact-finding mission. The Advisory Board member will not remain in Executive Session for deliberations.

As a guidance document for the Board of Medicine, the procedures for involvement of advisory board/committee members in administrative proceedings may be amended at any meeting of the board.

Findings of the study by the Joint Legislative Audit and Review Commission (JLARC) regarding the governance of physical therapy.

In its "Interim Report: Review of the Health Regulatory Boards", released in November of 1998, JLARC reviewed the advisory board structure and concluded that it may need to be modified. The report took note of the large number of physical therapists and the dissatisfaction with the current regulatory structure expressed by members of the Advisory Board on Physical Therapy. In its survey on the issue of advisory board structure, JLARC reported that 50% of advisory board

members who responded (including all five of the members of the Advisory Board on Physical Therapy) disagreed that the structure allows adequate input into the Board of Medicine's decisions. In contrast, 100% of the Board of Medicine members who responded agreed that the structure allows adequate input into decisions. There is an apparent difference of opinion as to whether the current system allows for adequate representation in regulating these professions.

Members of the Advisory Board cited two recent examples of the limitations on their role in the regulatory and disciplinary process: (1) The recommendations of a task force of physicians and physical therapists appointed to resolve a scope of practice issue involving the use of electromyography were rejected by the Board in favor of a legislative proposal that physical therapists view as more restrictive; and (2) The decision of a Board panel on a disciplinary case involving a physical therapist, in which there was no authority for a member of the advisory board to participate directly in the case.

The JLARC report also cited opinion from staff of the Department and the Board who expressed concern that the current system does not work effectively because the Board members don't give adequate attention to the allied health professions. The workload, both regulatory and disciplinary, of the Board is considerable, and in the opinion of some staff and board member, the Board should focus on its central mission of regulating physicians.

The interim JLARC report recommended that an independent board of physical therapy be considered and also suggested other options for modifying the current system of regulating physical therapy and other allied health professions, such as: (1) establishing a separate board of allied health profession, (2) creating one or more positions on the Board of Medicine for the allied professions, or (3) giving these professions an increased role in the credentialing and disciplinary processes. [2]

At a December 4, 1998 meeting of the Board, called in order to respond to the interim JLARC report, a member of the Advisory Board on Physical Therapy, speaking on that group's behalf, requested that the Board support a study on the merit of establishing an independent board of physical therapy. The Advisory Board also supported a system in which it would have additional authority to make rules for physical therapy, to receive investigative reports, and to take part in disciplinary cases, including participation in executive sessions of the Board in which decisions are made to deny, suspend or revoke a license. In its discussion of the JLARC report, some members of the Board spoke in favor of an independent board for physical therapy, others expressed the opinion that the regulatory and disciplinary scope of the Board should include the practice of medicine and osteopathy, the practice of physician assistants, and jointly with Nursing, the regulation of nurse practitioners. The opinion was also expressed that since the paradigm for health care has changed, it may be time to change the composition and structure of health regulatory boards. The Board supported an increase in the number of citizen members but no action was taken on the issue of an independent board.[3]

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[2] Pages 20-23, Joint Legislative Audit and Review Commission, Interim Report: Review of the Health Regulatory Boards, House Document No. 31, 1999.

[3] Pages 5-6, Minutes of the Called Special Meeting of the Virginia Board of Medicine, December 4, 1998.

B. Regulatory systems in other states.

In 1997, the Federation of State Boards of Physical Therapy adopted a Model Practice Act for Physical Therapy which is recommended as a model for adoption of laws and regulations regarding physical therapy. In each of the eleven key areas, the Model Practice Act provides language for statutes governing physical therapy, a thorough discussion of the recommended language, and additional legal considerations. The Act also provides guidelines for the adoption of rules governing each of the eleven key areas. The eleven areas include: legislative intent or statement of purpose, definitions, board of physical therapy, licensure and examination, practice of physical therapy, use of titles, supervision, grounds for disciplinary action, discipline: actions/procedures, unlawful practice, and consumer advocacy.

It is recommended in the Model Practice Act that the practice of physical therapy be governed by an independent Board of Physical Therapy with five members appointed by the Governor. A model board would consist of three members who are physical therapists who have been practicing in the state for no less than five years and two members who are citizens of the state who are not affiliated with or have a financial interest in any health care profession. Powers and duties of the board would be those now reserved for the Board of Medicine in Virginia.

Requirements for licensure in Virginia are very similar to those recommended in the model act, but there are significant other differences. For example, the definition of the "practice of physical therapy" in § 54.1-2900 of the *Code* includes a requirement for "medical referral and direction" which is not recommended in the model act. In addressing the issue of direct access to a physical therapist for services, the model act recommends the state law include a positive statement to the effect that "Physical therapists licensed under this act shall be fully authorized to practice physical therapy as defined herein." [4]The intent is that no additional qualification or restriction is necessary other than full licensure to protect the public. While there are many variations on the model proposed by the Federation, most states have adopted statutes and regulations that follow the pivotal recommendations of the Model Practice Act.

According to information provided by the Federation of State Boards of Physical Therapy in its 1998 State Licensure Reference Guide, there are 24 states that have independent boards of physical therapy; in12states and the District of Columbia, physical therapy is regulated under a joint licensing board or as a part of an umbrella board; in 9 states, including Virginia, there is an advisory board or committee under a medical board; and in 5 states, there is an advisory board or committee to a regulatory agency or another type of board. Minnesota has recently passed legislation changing its advisory board to an independent board (effective July 1, 1999). In our bordering states of North Carolina, West Virginia, Kentucky, and Maryland, physical therapy is governed by an independent board. In Tennessee, physical therapy and occupational therapy are regulated under a joint board.

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[4] *The Model Practice Act for Physical Therapy: A Tool for Public Protection and Legislative Changes*, Federation of State Boards of Physical Therapy, 1997.

According to the Federation, which collects various sorts of data from boards of all 50 states, there is no valid correlation between board structure and disciplinary action against physical therapists. Information on rates of discipline per 1,000 is self-reported; there is no independent verification of the data nor is there always consistency in what is reported. Among the 24 boards that are independent boards of physical therapy, the rate per 1,000 for 1997 was 0.896; among the 14 states in which physical therapy has an advisory committee to a medical board or another type regulatory agency, the rate per 1,000 for 1997 was 0.738.

There are too many variables which may affect board effectiveness to be considered - such as size and funding for staff (including investigative and legal), varying thresholds for findings of violation and sanction, public awareness of the complaint and discipline process, and differing scopes of practice for physical therapists. From the information provided by the Federation in 1997, it is possible to say that disciplinary rates for physical therapy are low in all states regardless of the governance structure in existence. For that year, the rates range from 3.55 to 0.00 per 1,000.

A chart of the systems of governance for physical therapy in all 50 states and the District of Columbia is provided as follows:

States	Independent board	Part of umbrella board or joint licensing board	Advisory to a medical board	Advisory to an agency or another type of board
Alabama	✓			
Alaska		✓		
Arkansas	✓			
Arizona	✓			
California		✓		
Colorado				✓
Connecticut	✓			
Delaware	✓			
D. C.		✓		
Florida	✓			
Georgia		✓		
Hawaii		✓		
Idaho			✓	
Illinois			✓	
Indiana			✓	
Iowa		✓		
Kansas			✓	
Kentucky	✓			
Louisiana	✓			
Maine	✓			
Maryland	✓			
Massachusetts		✓		
Michigan		✓		
Minnesota	✓			
Mississippi				✓
Missouri			✓	
Montana	✓			
Nebraska		✓		
Nevada	✓			
New Hampshire				
New Jersey	✓			
New Mexico		✓		
New York		✓		
North Carolina	✓			
North Dakota	✓			
Ohio		✓		
Oklahoma			✓	
Oregon	✓			
Pennsylvania	✓			
Rhode Island				✓
South Carolina	✓			
South Dakota			✓	
Tennessee		✓		
Texas	✓			
Utah				✓
Vermont				✓
Virginia			✓	
Washington	✓			
West Virginia	✓			
Wisconsin	✓			
Wyoming	✓			
51	24	13	9	5

C. Policy issues related to governance of the profession of physical therapy by the Board of Medicine.

Illustrative of the lack of representation for physical therapy on the Board of Medicine are the policy issues which have arisen in the past few years in which the positions taken by the Board of Medicine have been in opposition to those of the Advisory Board and the profession of physical therapy.

The Practice Act for Physical Therapy - The issue which consistently divides the profession of physical therapy from the Board of Medicine is that of the practice act for physical therapy which requires referral and direction. In § 54.1-2900 of the *Code of Virginia*, the *"Practice of physical therapy"* is defined as meaning: "upon medical referral and direction, the evaluation, testing, treatment, reeducation and rehabilitation by physical, mechanical or electronic measures and procedures of individuals who, because of trauma, disease or birth defect, present physical and emotional disorders, but does not include the use of Roentgen rays and radium for diagnostic or therapeutic purposes or the use of electricity for shock therapy and surgical purposes including cauterization."

While there is no evidence of direct correlation between the regulatory scheme structure for the profession of physical therapy and limitations on the scope of practice, it is known that **45 states and the District of Columbia permit direct access to physical therapy evaluation without referral from a physician**. Of the five states that do not allow direct access, three have systems in which the profession is governed by a medical board; in one state, there is an independent board of physical therapy, and in one state, physical therapy is regulated under a joint board. Clearly, Virginia is one of the most restrictive states with the profession regulated under a medical board that has no representation for physical therapy and with a prohibition in law against direct access to physical therapy services. Attempts to propose legislation which would modify that requirement have been supported by physical therapists but consistently opposed by the Board.

The creation of an independent board could have no impact on modification of the practice act or on a change in the requirement for referral and direction, since that is prescribed in law and therefore an issue for the General Assembly. The only effect of an independent board would be the opportunity for the perspective of the profession to be represented in the discussion.

Practice of electromyography - Within the past few years, perhaps the most divisive issue between physical therapists and the Board of Medicine has been the issue of electromyography (EMG). Electromyography may be broadly defined as encompassing the observation, recording, analysis, and interpretation of bioelectric muscle and nerve potentials, detected by means of surface or needle electrodes, for the purpose of evaluating the integrity of the neuro-muscular system. The question of whether physical therapists can perform EMG dates back a decade or more when there were three opinions issued by the Attorney General issues stating that performing the needle electrode portion of EMG is outside the scope of practice for a physical therapist because a physical therapist cannot diagnose. However, those opinions are not binding on the Board and are limited to specific facts in the requests for the opinions.

From 1992 to 1997, the Board received several complaints alleging practice of medicine by physical therapists who perform EMGs; those complaints were investigated but the cases remained open. In an attempt to resolve the issue of whether it is without the scope of practice, the Board sought permission to issue a Pre-NOIRA regarding EMG and referred the matter to Legislative Committee to define the parameters of electrodiagnostic medicine, and determine what education, training and other qualifications are necessary to perform such procedures by all professions regulated by the Board of Medicine. To accomplish that task, the Board appointed a multidisciplinary task force subcommittee regarding EMG, comprised of an equal number of physicians and physical therapists. The Task Force met several times from September of 1997 to March of 1998 and received a voluminous amount of information on the pathways or training and qualifications of the professions which currently perform EMG's.

Physical therapists proposed that the basic criteria for performance of EMG by a PT should be licensure to practice, documentation of performance of 100 needle EMG examinations under supervision and evaluations with peer review. If those criteria were unacceptable to the Board, the physical therapists were willing to propose that the criteria for physical therapists would also include certification as an electrophysiologic specialist certified by the American Board of Physical Therapy Specialties. While no state currently has such a requirement, that alternative was preferable to any restriction on the practice of physical therapy.

A majority point of disagreement also centered on whether EMG was a test requiring a physical therapist to make a diagnosis or a diagnostic tool by which the therapists provides data to a physician for a diagnosis. In the end, the Task Force was unable to come to a consensus on a recommendation for its report but agreed to submit both pathways for physicians and physical therapists to the Legislative Committee of the Board.

At the Legislative Committee in May, the chairperson of the Task Force made a motion that both certification pathways be recommended to the full board as the criteria to perform EMB; the motion failed. Instead, the Committee recommended that physical therapists may perform EMG in collaboration with a physician who has specialty certification in electrodiagnostic medicine. It was noted that such a requirement would have be set out in statute, and legislative action would be necessary.

At a meeting of the full board, a legislative proposal was adopted to state that "It shall be unlawful for a physical therapist to conduct electromyography procedures until the Board has approved a practice protocol which specifies direction and supervision by licensed doctor of medicine or osteopathy and sets forth the manner in which the physical therapist will implement electromyography procedures for the evaluation of patients, which shall include, but is not limited to, a requirement for collaboration by the physical therapist with a licensed doctor of medicine or osteopathy who has been approved by the Board." The proposal was circulated for comment prior to the 1999 Session but was not included in the Governor's legislative package. Again in 1999, the Board has voted to propose the amendment and has circulated the draft legislation for possible introduction in the 2000 Session of the General Assembly.

The Advisory Board on Physical Therapy and the Virginia Physical Therapy Association cite the EMG controversy as an example of the lack of understanding by the Board of Medicine of the

appropriate training and scope of practice of physical therapists in providing safe, effective patient care in the Commonwealth.

D. Feasibility of an independent board

In addition to the policy issues related to the feasibility of an independent board, there are issues of fiscal viability, related to direct costs for board meetings, staffing needs, office accommodations, and allocated costs for investigations, administrative proceedings, data, personnel and other functions of the Department. To analyze the potential impact on the Department, the Board of Medicine and the fees of licensed physical therapists and physical therapist assistants, a comparison of the numbers of licensees is provided.

Numerical comparison of professions regulated under the Board
(Persons licensed as of June 7, 1999)

Doctors of medicine and surgery	27,231
Physical therapists and physical therapist assistants	**4,915**
Radiologic technologists and radiologic technologist-limited	2,880
Respiratory therapists	2,688
Interns and residents	2,356
Occupational therapists	1,821
Chiropractors	1,500
Osteopathic physicians	767
Podiatrists	503
Physician assistants	463
Physician acupuncturists	233
Licensed acupuncturists	59

In addition to doctors of medicine and surgery, doctors of osteopathy, podiatry and chiropractic hold one seat each on the Board of Medicine; the combined total of licensees from those three professions is 2,770. The combined total of physical therapists and physical therapist assistants exceeds that number by more than 2,000 licensees for a total of 4,915.

Numerical comparison of professions regulated under other boards within the Department
(Number of licensees as of June 7, 1999)

Board of Nursing	145,537
Board of Medicine (without physical therapists and physical therapist assistants)	41,320
Board of Pharmacy (practitioners and facilities)	11,219
Board of Dentistry	8,161
Board of Professional Counselors, Marriage and Family Therapists, and Substance Abuse Treatment Professionals	6,019
Physical therapists and physical therapist assistants	**4,915**
Board of Veterinary Medicine (practitioners and facilities)	4,213

Board of Social Work	4,152
Board of Funeral Directors and Embalmers (practitioners and facilities)	2,365
Board of Audiology and Speech-Language Pathology	2,232
Board of Psychology	1,933
Board of Optometry (practitioners and registered trade names)	1,383
Board of Nursing Home Administrators	908

From an analysis of the number of regulated entities, an independent board of physical therapy would be the **sixth largest board of the 13 boards** within the Department of Health Professions. Seven of the currently independent boards regulate fewer numbers of entities (licensees or facilities) than would an independent board of physical therapy.

Disciplinary caseload

The Biennial Report of the Department for 1996-98 listed complaints, violations and sanctions for each board within the agency; those statistics are broken down into and listed by occupation for each board and a rate per 1000 licensees established.

Rate of Complaints. For fiscal year '96-'97, there were seven complaints filed against physical therapists; two were not investigated and five were investigated for a rate of 2.18 per 1000 licensees. In the same year, there were two complaints and investigated against physical therapist assistants for a rate of 1.89 per 1,000 licensees. By comparison, there were 932 complaints filed against doctors of medicine and surgery for a rate of 35.90, 23 against podiatrists for a rate of 47.13, and 61 against chiropractors for a rate of 44.49.

For fiscal year '97-'98, there were nine complaints filed against physical therapists; four were not investigated and five were investigated for a rate of 2.63 per 1000 licensees. In the same year, there were three complaints against physical therapist assistants; two were not investigated and one was investigated for a rate of 2.56 per 1,000 licensees. By comparison, there were 889 complaints filed against doctors of medicine and surgery for a rate of 33.02, 34 against podiatrists for a rate of 68.97, and 42 against chiropractors for a rate of 29.35.

Rate of Violations. For fiscal year '96-'97, there were ten findings on physical therapists; nine were findings of "no violation" and one was a finding of a violation for a rate of 0.31 per 1000 licensees. In the same year, there were no findings against physical therapist assistants. By comparison, there were 635 findings on doctors of medicine and surgery; 549 were findings of "no violation" and 86 were findings of violations for a rate of 3.31. There were 16 findings of "no violation" against podiatrists. There were 42 findings against chiropractors; 38 were findings of "no violation" and 4 were findings of violations for a rate of 2.92.

For fiscal year '97-'98, there were no findings on physical therapists and only one finding of "no violation" on a physical therapist assistant. By comparison, there were 555 findings on doctors of medicine and surgery; 490 were findings of "no violation" and 65 were findings of violations for a rate of 2.41. There were 22 findings on podiatrists with only one finding of a violation for a rate of

2.03. There were 32 findings against chiropractors; 27 were findings of "no violation" and 5 were findings of violations for a rate of 3.49.

Rate of Sanctions. For fiscal year '96-'97, there was one sanction on physical therapists for a rate of 0.31; no physical therapist assistants were sanctioned. By comparison, there were 112 sanctions against on doctors of medicine and surgery for a rate of 4.31; there were 3 sanctions against podiatrists for a rate of 4.50; and there were 2 sanctions against chiropractors for a rate of 1.46.

For fiscal year '97-'98, there was one sanction on physical therapists for a rate of 0.29; no physical therapist assistants were sanctioned. By comparison, there were 67 sanctions against on doctors of medicine and surgery for a rate of 2.49; there was one sanction against a podiatrist for a rate of 2.03; and there were 2 sanctions against chiropractors for a rate of 1.40.

Rates of the past four biennia

Over the past four biennia, the rates per 1,000 licensees have been similar to this past biennium. For physical therapists, the overall rate of complaints for the years 1991 through 1998 was 3.30 with the rate of cases closed as "no violation" at 2.58. The rate of violations was 0.18 per 1,000 licensed physical therapists; the rate of sanctions was 0.22 per 1,000. For physical therapist assistants, the overall rate of complaints was 2.28 with the rate of cases closed as "no violation" at 1.95. The rate of violations for the years 1991 through 1998 was 0.16 per 1,000 licensed physical therapist assistants; the rate of sanctions was 0.65 per 1,000.

Over the past four biennia, the Board of Audiology and Speech-Language Pathology has had the lowest rate of complaints filed for 2.54 per 1000 licensees; the Board of Social Work has had the lowest rate of sanctions for 1.00 per 1000 licensees (Audiology and Speech-Language Pathology followed closely with a rate of 1.16 per 1000).

As compared with the 12 independent boards of the Department of Health Professions, it would appear that an independent board of physical therapy would likely have one of the lowest rate of disciplinary cases.

Potential structure of an independent board within the Department with possible implications for staffing and physical space needs.

There are two potential options for the staffing of an independent board within the Department:

1. **Establish an independent board with its own Executive Director, office space, and support staff dedicated to the licensing and disciplinary requirements of the profession.** The four largest boards within the Department (Nursing, Medicine, Pharmacy and Dentistry) fit that model. To have an independent board with its own Executive Director, a board of physical therapy would require personnel and costs similar to the smallest such board -which is Dentistry - in the number of regulated entities, in size of budget, and in staff. The Board of Dentistry has three full-time and one part-time employees for the 8,161 licensees and the budget for the '98-'00 biennium of $1,553,330. Of the allocated costs charged to the Board of Dentistry (departmental

activities shared by all boards), those costs which are attributable to discipline would include enforcement, administrative proceedings, approximately half of data operations and equipment and the Office of the Attorney General. Of the direct costs for the Board, approximately one-third of the budget is estimated to be attributable to the disciplinary functions of the Board. All together, the disciplinary aspect of the Board's activities accounts for approximately half of its total budget. Renewal fees, which primarily support the budget of the board, are $100 per year for dentists and $40 per year for dental hygienists with revenue from all sources expected to be approximately $1,683,950.

Since the disciplinary costs of a board of physical therapy would be expected to be significantly less than that of boards such as Dentistry, its budget would be smaller. However, certain fixed costs associated with a full-time Executive Director and staff, data operations, and office expenses would remain. Most allocated costs would be identical for an independent board with or without an Executive Director and staff dedicated to that board. It is estimated that biennial costs for an independent board with a full-time Executive Director would be approximately $665,000. Without a modest increase in fees, the revenue for physical therapy would not be expected to be sufficient to support an independent board without sharing office space, an Executive Director and staff.

2. **Establish an independent board with sharing the services of an Executive Director, office space, and support staff for the licensing and disciplinary requirements of the profession.**

Eight boards, including the Board of Professional Counselors, Marriage and Family Therapists, and Substance Abuse Treatment Professionals which now has a larger number of licensees than does physical therapy, share the services of an Executive Director, offices, and staff with one or two other boards. For those boards, there is typically one staff person in the board office responsible for a profession and other staff whose time is divided and shared as needed.

For a profession such as physical therapy, that option would be more reasonable - if a decision was made to create an independent board. There would not be a high demand on the time of an Executive Director for reviewing investigative files or managing informal conferences and formal hearings. The examination in physical therapy is now a national examination provided by the Federation of State Boards of Physical Therapy and administered by the Professional Examination Service. While staff of the Board of Medicine must review and approve applicants to sit for the examination, the development, administration and grading of the licensure examination is no longer a board function.

While the budget of the Board of Medicine is not differentiated by profession, it is possible to estimate that the revenue attributable to physical therapy for the current biennium to be approximately $591,100. If physical therapy was regulated under an independent board with staff and other costs allocated as they are for eight of the current boards within the Department, it is estimated that its budget for the 1998-00 biennium would be $585,235. Calculation of that amount was performed by using the expenditures of the Board of Veterinary Medicine, which is comparable in the number of licensees (4,915 for physical therapy and 4,213 for veterinary medicine) for the allocated charges and limited allocated charges for the Board attributable to licensure. Direct charges for staff, contractual services, office supplies and equipment, and office

space would be similar to the Board of Veterinary Medicine if an independent board of physical therapy divided those costs with one or two regulatory boards. There would be one staff person directly allocated to the profession of physical therapy with the services of an executive director and other staff shared with one or two other boards.

Disciplinary costs would not be comparable. The Board of Veterinary Medicine regulates veterinary facilities which must be periodically inspected, and its rate of discipline during the past biennium ('96-'98) was higher than that of physical therapy. For the Board of Veterinary Medicine, the average rate of complaints per 1000 licensees for the biennium was 23.57 and the rate of sanctions was 6.80. For physical therapists, the average rate of complaints per 1000 for the biennium was 2.40 and the rate of sanctions was 0.30. For physical therapist assistants, the rate of complaints per 1000 was 2.23 and the rate of sanctions was 0.00.

The board which is closest to physical therapy in its disciplinary rate is the Board of Audiology and Speech-Language Pathology. For audiologists and speech-language pathologists, the average rate of complaints per 1000 for the biennium was 2.76 and the rate of sanctions was 0.97. There are more than twice the number of licensees for physical therapy (4,915 versus 2,232 licensees under the Board of Audiology and Speech-Language Pathology), but the actual number of complaints and investigations does not differ substantially. In the past biennium, there was an average of 5 complaints per year and 3.25 of those were investigated for the combined professions of physical therapists and physical therapist assistants. During the same period there was an average of 6 complaints per year and 2.5 of those were investigated for the combined professions of audiologists and speech-language pathologists. Also during the past biennium, there was an average per year of 2 sanctions for the combined professions of physical therapists and physical therapist assistants and an average of 2 sanctions per year for the combined professions of audiologists and speech-language pathologists. Therefore, the calculation of disciplinary costs for an independent board of physical therapy have been based on the costs allocated for enforcement, administrative proceedings, practitioner intervention program, and the Attorney General's Office for the Board of Audiology and Speech-Language Pathology.

In analyzing the fiscal impact of an independent board with the potential implication on fees charged to licensees, it would appear that the current fees for physical therapists and physical therapist assistants would be sufficient to sustain an independent board if staff and office space were shared with one or more other boards.

Other factors in the establishment of an independent board.

- **Impact of creation of a new board with appointment of board members** - The *Code of Virginia* (§ 54.1-2944) prescribes that an Advisory Board on Physical Therapy, comprised of five members who are licensed physical therapists, be appointed by the Governor. The Board of Medicine has approved a legislative proposal to increase the size of the Advisory Board to six members with the addition of citizen member. The Advisory Board regularly meets once each quarter. Its chairperson is also expected to report to the meetings of the full board of Medicine and often attends meetings of the Legislative Committee and Executive Committee of the Board.

If an independent board were to be established, it would not necessarily entail the appointment of additional board members. The Advisory Board on Physical Therapy could become the independent board with the same number of members and meetings per year. However, as an independent board, it should include consumer membership and should be enlarged to include at least one and preferably two citizen members with a maximum of seven members.

Since there is already a "board" related to physical therapy with gubernatorial appointments who meet at least three times a year and are paid per diem and expenses, there would be minimal impact on the number of appointees or the costs associated with their meetings.

- **Impact on employment levels** - There would be little impact on the current employment level for the Board of Medicine. It is likely that only one FTE could be transferred from the Board to an independent board of physical therapy. While the profession of physical therapy now has the services of the Executive Director, the Deputy Director for Licensing, and other staff within the Board of Medicine, the percentage of their time dedicated to physical therapy is too small to warrant any other decrease in employment. Likewise, the space needs for the Board of Medicine would not be substantially changed with the loss of physical therapy.

  There could be a modest impact on the maximum employment level (MEL) for the Department, because there are no positions available within the MEL to transfer to an independent board. If the creation of an independent board necessitated the hiring of additional staff, including an Executive Director, those positions would have to be carved out of the current employment level and taken from some other board or function within the Department.

- **Impact on workload of an Executive Director** - The assignment of an independent to any of the current Executive Directors within the Department would be problematic. Three Executive Directors now have responsibility for three boards each; four others are responsible for larger boards with significant licensing and disciplinary activity. It would be difficult to arrange for one of the current Executive Directors to find the additional time to plan and attend more meetings, prepare budgets, review credentials and disciplinary cases and perform the other duties required of an executive director.

- **Impact on fees for the Board of Medicine** - The loss of the professions of physical therapist and physical therapist assistant from the group of entities regulated under the Board of Medicine could have an impact on the fees of other professions under that Board. Most of the expenses of the Board are fixed and would not be reduced by the reduction in regulants. For example, the Board has an Executive Director, a Deputy Executive Director for Licensing and a Deputy Executive Director for Discipline. While their workloads may be slightly reduced, none of those positions could be eliminated. Among the departmental charges allocated to the Board, there would be very modest reductions in expenditures, which would be based on actual usage of the resources or on a percentage of licensees. For example, charges for finance and director's office would be reduced by approximately 10%. The allocated costs for enforcement and administrative proceedings would be reduced by approximately 1%, based on the percentage of the disciplinary load of the Board attributable to physical therapy.

From its analysis of allocated and direct charges, the Finance Office of the Department estimates that Board of Medicine expenditures could only be reduced by approximately $242,000 per biennium with the loss of physical therapists and physical therapist assistants. Since the income derived from all fees attributable to physical therapy is approximately $590,000 per biennium, it may necessitate a modest fee increase for the remaining 41,000 licensees or the Board would need to find other areas of its budget in which to reduce expenditures.

Discussion of policy options

1) Establish an independent board of physical therapy:

In its review of health regulatory boards, JLARC noted that "physical therapists have enough licensees to justify an independent board". In the 1998 report, that number was reported to be 4,598, which would make a board of physical therapy larger than seven of the 12 boards within the Department of Health Professions. As of June 1999, the number of physical therapists and physical therapist assistants had grown to 4,915 and is expected to continue a modest growth pattern as the need for services increases.

JLARC noted that the "establishment of a separate board would appear to have several advantages. It would reduce the workload of the Board of Medicine. In addition, it would enable the physical therapists to regulate their own profession. Finally, it would give physical therapists a stronger role in resolving scope of practice disputes between physical therapists and physicians."[5]

2) Establish additional statutory authority for the Physical Therapy Advisory Board.

An alternative to the current system or the creation of an independent board which was discussed in the JLARC report was to increase the statutory role of the Advisory Board in the credentialing and disciplinary processes. Such an alternative would require legislative action to specify in the *Code* that the president of the Advisory Board has authority to act (or designate another member to act) as a full voting member in any credentials or disciplinary proceeding involving a physical therapist or physical therapist assistant. While the addition of one physical therapist to the proceedings would not significantly impact the overall authority of the Board, it would give physical therapy a voice at every level of decision-making involving the profession.

3) Establish a physical therapy position on the Board of Medicine.

Another alternative to an independent board would be the creation of a physical therapy position on the Board of Medicine. While that would give physical therapy a voice and a vote on the Board, it could result in the elimination of the Advisory Board. For those professions with a single representative on the Board - chiropractic, podiatry, and osteopathy - there have not been advisory committees or boards established the law. Legislation was introduced in 1996 to create an advisory panel of five doctors of chiropractic to make non-binding recommendations on the Board in disciplinary matters, but that effort failed.

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[5] Pages 23-24, Joint Legislative Audit and Review Commission, Interim Report: Review of the Health Regulatory Boards, House Document No. 31, 1999

Following the release of the 1998 interim JLARC report, in which the possibility of positions for allied health professions on the Board was mentioned, the Advisory Board on Physical Therapy discussed that alternative and voted to oppose the addition of a PT position on the Board if that would necessitate the loss of the Advisory Board.

4) Establish provisions for powers and membership for the Physical Therapy Advisory Board consistent with other advisory boards.

While there are similarities in the functioning of the advisory boards or committees for health professions regulated under the Board of Medicine, there are distinct differences in their authority as created in statute and in the method for appointing new members. For the professions of physical therapy, occupational therapy, respiratory therapy, there are advisory boards created in statute with members appointed by the Governor.

Statutory provisions are also inconsistent in setting out the powers and duties of the advisory boards or committees. Section 54.1-2956.4 of the *Code of Virginia* specifies that the Advisory Board of Occupational Therapy, under the authority of the Board, shall recommend regulations for establishing criteria for licensure and standards of professional conduct, assess the qualifications of applicants and recommend issuance or denial of licensure, and receive investigative reports of professional misconduct and unlawful acts and recommend sanctions for board imposition. The Advisory Board on Physical Therapy, on the other hand, is authorized to "assist the Board of Medicine in carrying out the provisions of this chapter regarding the qualification, examination, licensure and regulation of physical therapists and physical therapist assistants" (§ 54.1-2944 of the *Code of Virginia*). There is no specific provision for the Advisory Board to receive investigative reports or to recommend sanctions.

In statute there is disparity among the powers and duties of the six (soon to be seven including athletic trainers) advisory groups; in practice, they have been regarded as playing similar roles in assisting the Board in its regulatory and disciplinary functions. To ensure that the Advisory Board on Physical Therapy and other advisory boards/committees under the Board of Medicine have the necessary statutory authority to perform their presumed duties and responsibilities, Chapter 29 of Title 54.1 of the *Code* would need to be amended to provide explicit authority as is expressed in the powers and duties of the Advisory Board of Occupational Therapy, as stated in § 54.1-2956.4 of the *Code of Virginia*, which includes provisions for the advisory board to have a specific role in the credentialing and disciplinary activities of the Board.

5) Establish a board of allied health professions.

If the *Code of Virginia* was amended to create a Board of Allied Health Professions regulating the professions of physical therapy, radiologic technology, occupational therapy, respiratory therapy, and acupuncture, that board would numerically be the third largest board within the Department of Health Professions. Combining 4,915 physical therapists and physical therapist assistants, 2,880 radiologic technologists and radiologic technologists-limited, 2,688 respiratory care practitioners, 1,821 occupational therapists, and 59 licensed acupuncturists, the board would regulate a total of 12,363 licensees (Figures as of June, 1999). That number would increase if the certification of

athletic trainers was also placed under the board. Without the allied professions, the Board of medicine would continue to be the second largest board with a total of 33,053 licensees, including doctors of medicine and surgery, interns and residents, chiropractors, podiatrists, physician assistants, and physician acupuncturists.

The merit and feasibility of establishing a board of health professions was beyond the scope of the mandate for this report and has not be calculated or discussed in this study. Therefore, the policy recommendation relating to establishment of a board of allied health professions should not be considered without ample consideration of the composition of such a board and an opportunity for involvement by professions that would be affected.

6) Recommend against the creation of an independent board and make no changes in the statutory responsibilities and structure of the Advisory Board.

Circulation of Policy Options and Opportunities for Comment

Based on the information reviewed, public comment received, and data analyzed, the Ad Hoc Committee on Independent Boards developed this draft report with policy options. The draft report was circulated to interested parties and posted on the website of the Department of Health Professions. The Ad Hoc Committee heard public comment on the report and options at a Public Hearing on August 24, 1999 at 9:00 a.m. at the Department of Health Professions. Written comment on the draft report was received until 5:00 p.m. on September 3, 1999.

Summary of Comment received on the Draft Report

The Chair of the Advisory Board on Physical Therapy reported unanimous support from that body for an independent board. In his view, the Board of Medicine cannot adequately provide consumer protection and quality assurance for a profession with no representation in its membership. Physical therapists need to be involved in the entire disciplinary process and have authority to take appropriate and timely action; he cited one case in which the complaint was filed in 1993 and the case was heard in 1996. He noted that one physical therapy member of the Board would be insufficient to protect the public and represent approximately 6,000 licensees. He also commented that there is insufficient consensus on the composition of an allied health board but is supportive of rule-making authority for the physical therapy board and for authority to act as a full voting member of any credentials or disciplinary proceeding involving physical therapists.

A physical therapist from Fredericksburg spoke on behalf of the Virginia Physical Therapy Association and supported an independent board. He offered information about a case in which the Board has failed to adequately investigate or discipline a practitioner in physical therapy. In other incidences, there have been misunderstandings based on a lack of knowledge about the profession. He also noted that the profession has changed dramatically over the last 30 years and has become more specialized.

The legislative chair of the Virginia Physical Therapy Association also commented about the options in the draft report. Keeping the status quo is not supported; adoption of options two, three and four would be inadequate to address the needs. Option five, the creation of an allied health board, is more attractive but also problematic. He reiterated the Association's support for an independent board and noted that the issue of direct access or physician referral is unrelated.

Written comments included:

A group of physical therapists who operate clinics in the Hampton Roads area support an independent board. Noting an increase in the demand for services, the writer states that an independent board is necessary to ensure the quality of licensing, regulation, discipline and credentialing of physical therapists.

The Medical Society of Virginia opposes an independent board as not justified, but is supportive of enhancements to the existing Advisory Board on Physical Therapy.

The Virginia Athletic Trainers Association fully supports an independent board of physical therapy. It would also support the establishment of an allied health board provided athletic trainers had equal representation with other professions.

The Virginia Orthopaedic Society and an orthopedist in Richmond oppose the independent board and contend that the purpose would be to expand the scope of practice of physical therapy.

A former Chair of the Advisory Board on Physical Therapy and a member of the current Advisory Board support an independent board. They do not support a physical therapy member of the Board of Medicine in lieu of the Advisory Board.

The Virginia Physical Therapy Association commented that an allied health board would be preferable to the current advisory board structure but strongly support the creation of a separate board for physical therapy based on the number of licensees and the need for self-governance.

Adoption of a Final Recommendation:

On September 21, 1999, the Board of Health Professions considered the information contained in the study, the comments on the draft report, and the suggested policy options. In response to House Joint Resolution 504, the Board voted to recommend to the Governor and the General Assembly that policy option #1 be adopted for the establishment of an independent board of physical therapy.

GENERAL ASSEMBLY OF VIRGINIA -- 1999 SESSION

HOUSE JOINT RESOLUTION NO. 504

Requesting the Board of Health Professions, in cooperation with the Department of Health Professions and other state agencies as may be appropriate, to evaluate the merit of establishing an independent board of physical therapy for the purpose of regulating physical therapists and physical therapist assistants.

Agreed to by the House of Delegates, February 5, 1999
Agreed to by the Senate, February 18, 1999

WHEREAS, physical therapists and physical therapist assistants currently constitute one of 13 professions presently regulated by the Board of Medicine; and

WHEREAS, the Advisory Board on Physical Therapy may engage in fact-finding and advise the Board of Medicine on credentialing and disciplinary cases involving physical therapy licensees, but its members do not have the authority to participate in Board of Medicine executive session deliberations, informal conference committees, or in decision-making related to credentials; and

WHEREAS, the Advisory Board on Physical Therapy may advise the Board of Medicine on the development and amendment of regulations for the practice of physical therapy, but its members cannot vote on proposed or final regulations; and

WHEREAS, there are 4,598 physical therapist and physical therapist assistant licensees, more than the number regulated by 8 of the 12 independent health regulatory boards; and

WHEREAS, there are almost twice as many physical therapist and physical therapist assistant licensees as any other profession regulated by the Board of Medicine with the exception of physicians; and

WHEREAS, a recent study of the Department of Health Professions by the Joint Legislative Audit and Review Commission noted a Department of Health Professions staff concern that members of the Board of Medicine do not give adequate attention to the matters involving many of the other health professions the Board is responsible for regulating; and

WHEREAS, physical therapists and physical therapist assistants are regulated by an independent board in at least 31 other states; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Board of Health Professions, in cooperation with the Department of Health Professions and other state agencies as may be appropriate, be requested to evaluate the merit of establishing an independent board of physical therapy for the purpose of regulating physical therapists and physical therapist assistants. In its evaluation, the Board of Health Professions shall invite participation from members of the Advisory Board on Physical Therapy and the Virginia Physical Therapy Association. The Board of Health Professions shall consider the way other states regulate physical therapist professionals.

The Board of Health Professions shall complete its work in time to submit its findings and recommendations to the Governor, the Joint Legislative Audit and Review Commission, and the General Assembly by November 1, 1999, as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

	1991	1992	1993	1994	1995	1996	1997	1998	Total	Rate per 1000 Lic
Chiropractors										
# of Licensees	783	846	918	983	1,051	1,260	1,371	1,431	8,643	
# of Complaints Received	64	40	41	27	37	14	61	42	326	37.72
# of Complaints Closed	40	18	37	48	34	8	23	14	222	25.69
# of Violations	4	3	5	1	7	3	4	5	32	3.70
# of Sanctions	7	4	6	3	11	4	2	2	39	4.51
Physical Therapist										
# of Licensees	2,277	2,391	2,524	2,695	2,902	3,021	3,214	3,427	22,451	
# of Complaints Received	11	12	9	7	14	5	7	9	74	3.30
# of Complaints Closed	5	6	12	12	11	6	2	4	58	2.58
# of Violations	2	1	0	0	0	0	1	0	4	0.18
# of Sanctions	2	0	0	0	1	0	1	1	5	0.22
Physical Therapist Asst										
# of Licensees	437	504	592	680	795	916	1,058	1,171	6,153	
# of Complaints Received	1	4	1	2	1	0	2	3	14	2.28
# of Complaints Closed	2	2	2	1	2	1	0	2	12	1.95
# of Violations	0	1	0	0	0	0	0	0	1	0.16
# of Sanctions	0	3	0	1	0	0	0	0	4	0.65

PROPOSED BOARD OF PHYSICAL THERAPY
PROJECTED BIENNIUM BUDGET
Prepared: September 1999

Allocated Charges	Budget Year 1	Budget Year 2	Total Biennium Budget
DP - Operations & Equipment	$90,550	$64,100	$154,650
Administration & Finance	13,975	14,430	28,405
Director's Office	8,000	8,270	16,270
Human Resources	6,710	6,800	13,510
Enforcement Division	1,185	1,220	2,405
Administrative Proceedings	1,110	1,150	2,260
Practitioner Intervention	710	1,485	2,195
Attorney General's Office	3,090	3,150	6,240
Board on Health Professions	3,025	3,045	6,070
General Fund Assessment	420	420	840
Total Allocated	$128,775	$104,070	$232,845
Direct Charges: Physical Therapist			
Personal Services	$133,425	$136,845	$270,270
Contractual Services	67,920	67,920	135,840
Supplies and Materials	1,805	1,805	3,610
Transfer Payments	100	100	200
Continuous Charges	9,740	10,050	19,790
Equipment	1,150	1,150	2,300
Total Direct	$214,140	$217,870	$432,010
TOTAL PROJECTED BUDGET	**$342,915**	**$321,940**	**$664,855**

Assumptions:

Comparable to Board of Veterinary Medicine in support staff size & Licensee #'s (with full time Board Exec).

(DP, Administration & Finance, Director's Office, Human Resources, BHP & GFA Allocated Cost).

Comparable to Board of Audiology & Speech Lang Pathology in Discipline load/costs (Enforcement, APD, Practitioner Intervention & Attorney General Allocated Cost).

Budget amounts based on 1998-2000 Biennium (Jan 1999).

PROPOSED BOARD OF PHYSICAL THERAPY
PROJECTED BIENNIUM BUDGET
Prepared: June 1999

Allocated Charges	Budget Year 1	Budget Year 2	Total Biennium Budget
DP - Operations & Equipment	$90,550	$64,100	$154,650
Administration & Finance	13,975	14,430	28,405
Director's Office	8,000	8,270	16,270
Human Resources	6,710	6,800	13,510
Enforcement Division	1,185	1,220	2,405
Administrative Proceedings	1,110	1,150	2,260
Practitioner Intervention	710	1,485	2,195
Attorney General's Office	3,090	3,150	6,240
Board on Health Professions	3,025	3,045	6,070
General Fund Assessment	420	420	840
Total Allocated	$128,775	$104,070	$232,845
Limited Allocated Charges	$39,370	$40,250	$79,620
Direct Charges: Physical Therapist			
Personal Services	$54,685	$56,345	$111,030
Contractual Services	67,920	67,920	135,840
Supplies and Materials	1,805	1,805	3,610
Transfer Payments	100	100	200
Continuous Charges	9,740	10,050	19,790
Equipment	1,150	1,150	2,300
Total Direct	$135,400	$137,370	$272,770
TOTAL PROJECTED BUDGET	**$303,545**	**$281,690**	**$585,235**

Assumptions:

Comparable to Board of Veterinary Medicine in staff size (Limited and Direct cost) and Licensee #'s (DP, Administration & Finance, Director's Office, Human Resources, BHP & GFA Allocated Cost).
Comparable to Board of Audiology & Speech Lang Pathology in Discipline load/costs (Enforcement, APD, Practitioner Intervention & Attorney General Allocated Cost).
Budget amounts based on 1998-2000 Biennium.

F:Bgt:Proposed Brd of Physical Therapy:0699