

OKLAHOMA STATE BOARD OF OSTEOPATHIC EXAMINERS

FOR THE PERIOD
JANUARY 1, 2006 THROUGH
JUNE 30, 2008

OPERATIONAL AUDIT



Oklahoma State Auditor
& Inspector

**Audit Report of the
Oklahoma State Board
of Osteopathic Examiners**

**For the Period
January 1, 2006 through June 30, 2008**

STATE AUDITOR AND INSPECTOR

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State Auditor

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June 30, 2009

TO THE OKLAHOMA STATE BOARD OF OSTEOPATHIC EXAMINERS

Following is the audit report for the Oklahoma State Board of Osteopathic Examiners for the period January 1, 2006 through June 30, 2008. The Office of the State Auditor and Inspector is committed to serving the public interest by providing independent oversight and by issuing reports that serve as a management tool to the State. Our goal is to ensure a government that is accountable to the people of the State of Oklahoma.

We wish to take this opportunity to express our appreciation to the agency's staff for the assistance and cooperation extended to our office during the course of our engagement.

Sincerely,

A handwritten signature in blue ink that reads "Steve Burrage".

STEVE BURRAGE, CPA
STATE AUDITOR & INSPECTOR

Mission Statement

The Oklahoma State Board of Osteopathic Examiners protects the public by regulating the practice of osteopathic medicine in Oklahoma through education and licensing requirements as well as ensures that each licensee practices osteopathic medicine within the provisions of the Osteopathic Medicine Act.

Board Members

Thomas R. Pickard, D.O. President
Catherine C. Taylor, J.D. Vice-President
B. Frank Shaw, Jr., D.O. Secretary/Treasurer
Cheryl A. Vaught Member
Paul F. Benien, Jr., D.O. Member
Gordon P. Laird, D.O. Member
Carl B. Pettigrew, D.O. Member
Jay D. Cunningham, D.O. Member

Key Staff

Deborah Bruce, J.D. (January 2008 through present) Executive Director
Gary R. Clark (through September 2007) Executive Director
Barbara Shepherd Executive Secretary
Pam Cook Administrative Programs Officer

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Background

The Oklahoma State Board of Osteopathic Examiners was established by the Legislature in 1921 to license applicants for the practice of osteopathic medicine and adoption of rules and regulations governing enforcement of laws relating to the profession.

The agency's operations are governed by 59 O.S. § 620 through 645 as well as Title 510 of the Oklahoma Administrative Code.

Oversight is provided by eight examiners (board members) appointed by the Governor. Each examiner serves a term of seven (7) years. The agency pays for its operations primarily through license fees.

Table 1 summarizes the agency's sources and uses of funds for fiscal years 2007 and 2008.

Table 1-Sources and Uses of Funds for FY 2007 and FY 2008

Sources:	2007	2008
Osteopathy Board - License/Fees	<u>\$455,795</u>	<u>\$436,749</u>
Total Sources	<u>\$455,795</u>	<u>\$436,749</u>
Uses:		
Personnel Services	\$368,398	\$337,888
Professional Services	71,841	46,849
Travel	10,542	9,786
Miscellaneous Administrative	26,110	24,857
Rent Expense	28,074	23,038
Other	<u>16,593</u>	<u>7,565</u>
Total Uses	<u>\$521,558</u>	<u>\$449,983</u>

Source: Oklahoma CORE Accounting System (unaudited; for informational purposes only)

**Authority,
Scope, and
Sample
Methodology**

This audit was conducted in response to 62 O.S. § 212, which requires the State Auditor's Office to audit the books, records, and accounts of all self-sustaining boards created by statute to regulate and prescribe standards, practices, and procedures in any profession, occupation or vocation.

The audit period covered was January 1, 2006 through June 30, 2008.

Our samples were selected in such a way that whenever possible, they are representative of the populations and provide sufficient evidential matter. Sample methodologies can vary and are selected based on the audit objective and whether the total population of data was available. Random sampling is the preferred method; however, we may also use haphazard sampling (a methodology that produces a representative selection for non-statistical sampling), or judgmental selection when data limitation prevents the use of the other two methods. We identified specific attributes for testing each of the samples. When appropriate, we projected our results to that population.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This report is a public document pursuant to the Oklahoma Open Records Act (51 O.S. § 24A.1 et seq.), and shall be open to any person for inspection and copying.

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Objective 1 - Determine if the agency's internal controls provide reasonable assurance that revenues and expenditures were accurately reported in the accounting records, and financial operations complied with 62 O.S. § 7.1.C.2.a, 62 O.S. § 7.1.E., 62 O.S. § 211, 74 O.S. § 3601.2, and Oklahoma Administrative Code 510:1-3-7.

Conclusion

The agency's internal controls do not provide reasonable assurance that revenues and expenditures were accurately reported in the accounting records and should be strengthened.

Compliance procedures were performed with regards to four laws and one regulation:

- The agency appears to be in compliance with 62 O.S. § 7.1.C.2.a - adequate safekeeping of receipts awaiting deposit;
- The agency does not appear to be in compliance with 62 O.S. § 7.1.E - monthly transfers from the agency's clearing account;
- The agency does not appear to be in compliance with 62 O.S. § 211 - 10% transfer of all gross fees charged, collected and received to the state general revenue fund;
- The agency appears to be in compliance with 74 O.S. § 3601.2 - limitation of executive director's salary;
- The agency does not appear to have the statutory authority to compensate board members as outlined in the Oklahoma Administrative Code 510:1-3-7.

Methodology

To accomplish our objective, we performed the following:

- Documented internal controls related to the receipting and expenditure processes;
- Reviewed a sample of 60 claims, totaling \$14,407.08, to determine:
 - Expenditure claims were supported by an invoice;
 - The correct account code was used;
 - The expenditure was reasonable given the agency's mission.
- Discussed with personnel and observed location where funds are retained prior to deposit to ensure they are adequately safeguarded as required by 62 O.S. § 7.1.C.2.a;
- Selected a sample of 60 license applications and renewal forms and traced payment to deposit slip;
- Recalculated the amount transferred to the state's general revenue fund to ensure 10% of all the fees charged, collected and received by the agency were transferred as required by 62 O.S. § 211;
- Reviewed nine months of payroll information in the CORE accounting system to ensure the executive director's annual salary did not exceed the maximum limit set forth in 74 O.S. § 3601.2;
- Reviewed four months of travel reimbursements to board members to determine if compensation was being received as outlined in OAC 510:1-3-7, and reviewed 59 O.S. § 620 to 645 for statutory authority of the compensation.

Observation

Inadequate Segregation of Duties related to the Receipts and Expenditures

To safeguard against possible loss or misuse of funds, internal control systems should provide reasonable assurance transactions are properly accounted for and assets are adequately safeguarded by adequately segregating duties of employees.

The inadequate segregation of duties relating to receipts is as follows:

For the period of February 1, 2008 to June 30, 2008

Due to an illness, the administrative programs officer (APO) was absent from the office for extended periods of times. On these days, the executive secretary was responsible for receiving the funds, preparing the deposit, posting the deposit to CORE, and issuing the licenses. Although the current executive director does review the deposit and supporting documentation prior to deposit, this does not appear to reduce the risk that possible loss or misuse of funds could occur when only one person is responsible for these duties.

The inadequate segregation of duties related to expenditures is as follows:

For the period January 1, 2006 to June 30, 2008

The administrative programs officer is responsible for:

- Posting disbursements to CORE;
- Receiving warrants from the Office of State Finance (OSF);
- Mailing warrants to vendors.

Recommendation

We recommend the agency review job duties when the administrative programs officer or the executive secretary is going to be absent for an extended period of time to ensure duties are properly segregated. This assignment should still allow for the preparation of the deposit and the issuance of licenses to be performed by two different employees.

We also recommend someone other than the administrative programs officer receive the warrants from OSF and mail the warrants to vendors. If another employee is not available, the executive director should receive the warrants and, at a minimum, review the warrant register for reasonableness.

Views of Responsible Officials

It is, of course, impossible to determine or predict when any employee will experience health problems or injury. For that reason, the process related to cross-training of all employees in financial matters began in June 2008 and continues. Some recommendations made in the audit were implemented prior to the audit. Additionally, the Executive Director will provide the necessary back-up as well as continued oversight.

Auditor Response

It should be noted that the cross-training management refers to did not begin until the last month of our 30 month audit period. In addition, the administrative programs officer was absent several days during that time due to her illness. Although employees may have been cross-trained, one person was still responsible for receiving the funds, preparing the deposit, posting the deposit to CORE, and issuing the licenses.

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Observation

State General Revenue Fund Transfer

62 O.S. § 211 states in part:

Unless otherwise provided by law, all self-sustaining boards created by statute to regulate and prescribe standards, practices, and procedures in any profession, occupation or vocations, shall. . . . pay into the General Revenue Fund of the State ten percent (10%) of the gross fees so charged, collected and received by such board. (emphasis added)

The August 2007 transfer amount was understated by \$3,667.23 due to a mathematical error. The July 2008 transfer excluded certain fees from the calculation. The fees excluded were:

- Dispensing permit fees;
- Late penalty fees;
- Miscellaneous administrative fees (includes, but not limited to: copy fees, verification of licensure, returned check fees, hand grading examination fees);
- Administrative recovery costs (fees for reimbursement of the cost of the investigation, and administrative fines imposed by the Board for each count or separate violation).

The 10% transfer was understated by \$6,105.48.

Recommendation

We recommend:

- The agency decide if they want to obtain an Attorney General’s opinion on what fees, if any, can be excluded from the 10% transfer;
- The agency review the calculation for the August 2007 transfer and make a correcting transfer for any shortage that occurred;
- The agency recalculate the July 2008 and any other transfers that may have occurred since, and make a correcting transfer for any shortage that occurred;
- An independent review of the 10% calculation is performed to minimize the risk of mathematical errors occurring.

Views of Responsible Officials

Certainly, the agency will comply with state law. It is the agency’s legal opinion that monies collected which represent recovery or reimbursement of already expended funds is not “gross fees”. Additionally, it is our opinion we have already paid the 10% on such fees when they were first received by the agency as gross revenue. To pay again would constitute a 20% payment. Over-payment would appear to violate the statute as much as under-payment.

Section 211 requires the agency to remit only “ten percent (10%) of the gross fees charged, collected and received.” Section 211 does not require the agency to remit ten percent (10%) of all funds received from any source for any purpose.

Several prior Oklahoma Attorney General Opinions have limited the application of § 211 to include only “gross fees” as set forth in statutory language, and not ten percent (10%) of all fees received by a Board from any source for any purpose, to-wit:

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2003 OK AG 19 “The Oklahoma Real Estate Commission is not required to pay ten percent (10%) of gross fees it collects to the State’s General Revenue Fund, as specified in Title 62, §211, but must only pay ten percent (10%) of its license fees to the State’s General Revenue Fund, pursuant to Title 59, § 858-207.” (emphasis added)

1990 OK AG 19 “The Board of Public Accountancy is not required to transfer ten percent (10%) of its gross fees to the General Revenue Fund to the State annually as specified by statute but must only transfer ten percent (10%) of its registration fees to General Revenue Fund annually presented to statute governing disbursement of fees and monies.” (emphasis added)

1972 OK AG 286 “All monies received from federal, state, county or private funds, grants, or appropriations which shall be used to award scholarships to qualified persons to study chiropractic in an approved college pursuant to 59 Ok. St. Ann. § 170 are not subject to the ten percent (10%) assessment required of state boards pursuant to this section.” (emphasis added)

Auditor Response

We concur the Attorney General’s office has issued opinions limiting the application of 62 O.S. § 211. However, the agencies specified in the above opinions have agency specific statutes which limit the application of 62 O.S. § 211. The statutes regulating the Board of Osteopathic Examiners do not include such limitations.

- 59 O.S. § 858-207 states in part, “The Commission (Oklahoma Real Estate Commission) shall pay into the General Revenue Fund of the State Treasury ten percent (10%) of the license fees collected and received during the fiscal year” (emphasis added).
- 59 O.S. § 15.7 states in part, “...The Board (Oklahoma Accountancy Board) shall pay into the General Revenue Fund of the state ten percent (10%) of all annual registration fees so charged, collected and received, and no other portion shall ever revert to the General Revenue Fund or any other fund of the state....” (emphasis added).

We recommend the agency seek an Attorney General’s Opinion regarding the agency’s interpretation of the statute.

Through verbal discussions with management while conducting the audit, they concurred some of the above listed fees should have been included in the transfer calculation. The revenues in question specifically relate to the “administrative fees” the agency receives from doctors as a result of violations of the Osteopathic Medicine Act to recoup the cost of the investigation(s). We still recommend a correcting transfer be made to correct the August 2007 error, and to adjust for fees previously excluded from the July 2008 and any other transfers that have occurred since. In addition, an independent review of the 10% calculation should be performed to minimize the risk of errors occurring.

Observation

Revolving Fund Transfer

62 O.S. § 7.1.E. states in part:

At least once each month each state agency shall transfer monies deposited in agency clearing accounts to the various funds or accounts, subdivisions of the state, or functions as may be provided by statute and no money shall ever be disbursed from the agency clearing account

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for any other purpose, except in refund of erroneous or excessive collections and credits. . . .

CORE records indicate the last transfer from the agency's clearing account in our audit period occurred in August 2007. Agency personnel indicated the transfers were held until the previous executive director determined which fees should be included in the transfer to the state general fund (see state general revenue fund transfer observation).

Recommendation We recommend the agency make monthly transfers from the clearing account to the agency's revolving fund on a monthly basis as required by statute.

Views of Responsible Officials The agency has already begun to comply with this recommendation.

Observation

Payments to Board Members

Oklahoma Administrative Code (OAC) 510:1-3-7 states:

Members of the Board may be compensated at a per diem rate of fifty dollars (\$50.00) per day in addition to the reimbursement for expenses provided for in the Oklahoma Travel and Reimbursement Act, 74 O.S., Section 500.1 et seq.

OSF Procedures Manual Chapter 300, Section 387 states in part:

A. Payments to Board and Commission Members

Payments to board and commission members which are of a compensatory nature are subject to tax reporting and the withholding of applicable income and employment taxes. The label given to the payment is immaterial, thus, "compensation", "meeting payment" and "per diem" are all considered wages. This does not include per diem payments which are made pursuant to the State Travel Reimbursement Act.

Such payments must be paid through the payroll process . . .

Claims paid to some board members in January and February 2008 included a "per diem" amount of \$50.00 (a total of \$700). Documentation included with the travel claims and through discussion with management, it was determined these payments were made in accordance with OAC 510:1-3-7. It appears these payments were not properly coded nor processed through the payroll process.

In addition, the state statutes regulating this agency, 59 O.S. § 620 through 625, do not appear to authorize this compensation.

Recommendation We recommend the agency consult their legal counsel to determine what actions, if any, they should take regarding the potential tax implications associated with the inaccurate reporting of compensation to board members. In addition, we recommend the agency discontinue the "per diem" compensation to the board members, or have the statute revised to allow for the compensation. If the statute is revised, the payments should be reported through the payroll process as required by the OSF Procedures Manual.

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Views of Responsible Officials

Statutory authority to compensate Board Members is found in several places in the Oklahoma Osteopathic Medicine Act, 59 O.S. § 620 *et seq.*

- 59 O.S. § 626.A.4 states in part, “. . . It shall be the duty of the Secretary/Treasurer to receive and care for all monies coming into the hands of the Board and to pay out same upon orders of the Board.” (emphasis added)
- 59 O.S. § 626.A.4.C states in part, “The State Board may expend such funds as are necessary for implementing the duties of the Board....” (emphasis added)
- 59 O.S. § 643 states in part, “The funds received pursuant to the Oklahoma Osteopathic Medicine Act shall be deposited to the credit of the State Board of Osteopathic Examiners Revolving Fund and may be expended by the State Board of Osteopathic Examiners and under its direction in assisting in the enforcement of the laws of this State prohibiting the unlawful practice of osteopathic medicine. . . .and such other expenses as is necessary to properly carry out the provision of the Oklahoma Osteopathic Medicine Act.” (emphasis added)
- 59 O.S. § 644 states in part, “All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Board for the purpose of enforcing the laws of this State which prohibit the unlawful practice of osteopathic medicine for the dissemination of information to prevent the violation of such laws, and for the purchase of supplies and such other expenses as is necessary to properly implement the provisions of the Oklahoma Osteopathic Medicine Act....” (emphasis added)

All of these statutes clearly authorize the Board to “expend such funds as necessary in implementing the duties of the Board.”

Present compensation of Board members is specifically authorized by OAC 510:1-3-7. That rule provides for compensation at a “per diem rate of \$50.00 per day” in addition to expense reimbursement. That rule was lawfully promulgated and passed review by the Governor, President Pro-Tem of the Senate and the Speaker of the House of Representatives.

The aforesaid statutes of the Oklahoma Osteopathic Medicine Act clearly authorize expenditures of per diem for Board members. The aforesaid provisions of the Act authorize such expenditure in the amount lawfully established in the rulemaking process.

If the legislature desired to deny the Board the power to make such per diem payments, the legislature could make that in a statute. As an example, the Oklahoma Board of Chiropractic Examiners is statutorily prohibited from making per diem payments. “Members of the Board (of Chiropractic Examiners) shall serve without compensation but shall be reimbursed for all actual and necessary expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act.” 59 O.S. Supp. 2008, §161.5(H) (Emphasis added)

Under the aforesaid provisions of the Oklahoma Osteopathic Medicine Act, 59 O.S. Supp. 2008, § 626, § 643 and § 644 and OAC 510:1-3-7, the Board of Osteopathic Medical Examiners is authorized to compensate Board members at the per diem rate of \$50.00 per day in addition to expense reimbursement.

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We are unaware of any requirement for per diem to have withholding or other taxes withheld. However, we have referred this withholding question to the Office of State Finance to determine if a Federal Form 1099 will be required for calendar year 2008 for each such compensated Board Member. If so, beginning in 2009, when the next Board Meeting occurs, this compensation will be processed by the Office of Personnel Management [OPM] Payroll Division.

Auditor Response

We do not concur with management's interpretation that these statutes authorize the agency to pay its board member compensation in addition to expense reimbursement. It is our understanding the state statutes should specifically authorize any additional compensation received and the absence of language prohibiting such payments does not authorize the payments. We recommend the agency seek an Attorney General's opinion on the authority to provide for the per diem to board members by rule, or have the statute revised to specifically allow for the compensation.



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