

ADMINISTRATOR'S STATEMENT
 82nd REGULAR SESSION, AGENCY SUBMISSION, VERSION 1
 Automated Budget and Evaluation System of Texas

Agency Code: 515	Agency Name: Board of Pharmacy
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Board Member	Dates of Term	Hometown
Buford T. Abeldt, Sr., R.Ph.	05/09/08 - 08/31/13	Lufkin
Rosemary F. Combs	11/10/99 - 08/31/11	El Paso
W. Benjamin Fry, R.Ph., FIACP, FACS	04/14/04 - 08/31/15	San Benito
L. Suzan Kedron	05/09/08 - 08/31/13	Dallas
Alice G. Mendoza, R.Ph.	08/10/06 - 08/31/11	Kingsville
Joyce Tipton, R.Ph., MBA	01/06/10 - 08/31/15	Houston
Jeanne D. Waggener, R.Ph.	08/10/06 - 08/31/11	Waco
Charles F. Wetherbee	01/06/10 - 08/31/15	Boerne
Dennis F. Wiesner, R.Ph.	05/09/08 - 08/31/13	Austin

The Texas State Board of Pharmacy (TSBP) is the agency responsible for the protection of the citizens of the state through the regulation of the practice of pharmacy in Texas, including the licensing/registration of pharmacists, pharmacist-interns, pharmacy technicians & the licensing of pharmacies engaged in dispensing or distribution of prescription drugs & devices.

One key factor that continues to affect the ability of the agency to serve & protect the public interest is the increased demand for agency services in every area of its operation as indicated below.

Licensing - Since FY04, the agency has experienced a 202% increases in the number of licensees/registrants. This increase is directly related to the registration of pharmacy technicians & pharmacy technician trainees as can be seen by comparing the number of licenses in FY03, the year before the agency began registration of pharmacy technicians (28,064), with the number in FY09 (84,689).

Enforcement – The increase in number of licensees is directly related to the number of complaints received & resolved & the number of disciplinary orders entered. In FY03, the agency received 1,893 complaints, resolved 1,850 complaints, & entered 213 disciplinary orders while in FY09, the agency received 5,226 complaints (a 176% increase), resolved 6,120 complaints (a 231% increase) & entered 737 disciplinary orders (a 246% increase).

The agency supported the registration of these individuals & we continue to believe that pharmacy technicians must be regulated in part because we have data to show that pharmacy technicians are responsible for a large percentage of the diversion of prescription drugs from pharmacies.

Another key factor that affects the agency's ability to serve & protect the public interest is the growing abuse of prescription painkillers & other prescription drugs. On July 17, 2010, the Center for Disease Control (CDC) & the Substance Abuse & Mental Health Services Administration (SAMHSA) co-released a study titled: *Substance Abuse Treatment Admissions Involving Abuse of Pain Relievers: 1998 & 2008*. This report compared emergency room admission data for non-medical use of narcotic pain relievers in 1998 & 2008. In the report, R. Gil Kerlikowske, Director of National Drug Control Policy stated that the "abuse of prescription drugs is our country's fastest growing drug problem."

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A 2009 study highlights the problem in Texas. This study used data from the Harris County Medical Examiner's Office (HCME) and looked at deaths directly caused by either prescription drugs, illegal narcotics or both. This study indicated that in Houston, prescription drugs killed more people than cocaine (66% of the deaths from prescription drugs & only 44% of the deaths from cocaine). A July 19, 2010, Houston Chronicle article included an analysis of the HCME data. This analysis indicated that the drugs associated with the most deaths were: Hydrocodone (Vicodin®, Lorcet®, Narco®), Alprazolam (Xanax®) & Carisoprodol (Soma®). The cocktail of these three drugs is often called "The Trio" or "The Trinity." The problem is so bad in Houston the Director of the National Drug Control Policy, R. Gil Kerikowske, recently told a U.S. Senate committee that Houston, along with Los Angeles & South Florida, has been identified as one of three "major hubs" for drug diversion operating in the US.

The Board of Pharmacy has & continues to investigate & discipline pharmacist & pharmacy owners who operate "pill mills" that primarily operate to dispense prescriptions for these three drugs from physicians who operate illegal "pain clinics." We believe these pharmacists & pharmacies are essentially "drug dealers" & we are working daily with the federal Drug Enforcement Administration, Federal Bureau of Investigation, local, county & state law enforcement agencies to close these pharmacies & discipline & criminally prosecute the pharmacists & pharmacy owners. However, because the problem in the Houston area is so immense, the agency is overwhelmed by the number of cases. The agency is challenged not only by the large numbers of these types of cases, but also by the complexity of the cases which increases the time to investigate and successfully prosecute the cases.

As you review our exceptional item request, we ask that you consider the two key factors indicated above & recognize that they are having a huge impact on this agency. The 5% budget reduction for the FY10 & FY11 biennium & the possible future decreases for FY12-13 will hamper the agency's ability to provide quality customer service & information, & protection to the citizens of Texas will be severely tested.

The members of the Board have voted to approve the entire supplemental budget request & understand that additional revenue may need to be generated, if the exceptional items are funded. The TSBP generates all of its revenue through fees & we have the authority & mechanisms necessary to generate the revenue needed to support this request.

I. TECHNOLOGY (REPLACEMENT & NEW) (\$169,418)

Information Resource Technologies Replacement

This exceptional item request will replace aged & obsolete technology. The agency replacement schedule is in compliance with DIR's life cycle guidelines. Technology that is not replaced at the end of its life cycle becomes a liability to the agency due to frequent down time, increased support requirements & compatibility issues.

New Technology

The agency is requesting funds to purchase wireless internet access cards for agency field staff. The wireless access will increase the efficiency of the field staff by allowing them to access TSBP email, file & database systems, remotely in real-time. In addition, the agency is requesting funds for a Scan Station to convert paper documents into electronic files that will be stored in our existing imaging system.

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Shared Regulatory Database

In FY10-11, the agency was awarded funding along with 5 other agencies to purchase a Shared Regulatory Database system. This exceptional item is requesting an increase in funding for the ongoing annual maintenance costs of the Shared Regulatory Database System described in Article VIII, Sec. 7. This increase is due to increased Data Center costs & an increased cost for system maintenance.

II. VEHICLES REPLACEMENT (\$67,273)

TSBP has the authority to purchase vehicles under the Occ. Code, Sec. 554.009. Vehicles are routinely purchased & replaced when necessary, generally at 100,000 miles. The agency currently has 15 vehicles, & 6 of that number will reach estimated mileages between 127,000 & 188,000 in the next biennium and need to be replaced. The total cost for these 6 vehicles is \$117,000. The current funding budget includes \$49,727. Therefore, this exceptional item request is for \$67,273 which is the difference in the total cost of the vehicles less the amount included in the current funding budget.

If the vehicles are not replaced, field investigators would not be able to conduct investigations of complaints alleging serious violations of pharmacy laws & rules, such as diversion of controlled substances & dispensing errors causing harm or injury to Texas patients.

In addition, if the vehicles are not replaced, field compliance staff will not be able to conduct inspections of pharmacies, resulting in fewer Texas pharmacies being inspected. TSBP has only a minimal number of staff (7 FTEs) to inspect the 6,084 pharmacies located in Texas. With this number of staff, TSBP is able to inspect only one-third of the in-state pharmacies each year. Having inoperable vehicles will decrease the number of inspections and lengthen the time between inspections.

III. RECLASSIFICATION OF CHIEF INVESTIGATOR (\$17,492)

This exceptional item request would allow the TSBP to reclassify its Chief of Investigations to a level that is commensurate with his duties. The TSBP Chief Investigator is required to be a commissioned peace officer. He manages, trains, directs, & oversees the day-to-day work of a staff of 12 investigators, including 7 field investigators (who are required to be a commissioned peace officer) & 5 in-house investigators who conduct criminal background investigations of applicants and licensees. In addition, the Chief Investigator personally conducts field investigations, particularly the more complex investigations & joint investigations with federal & other state law enforcement agencies.

Investigators conduct complex investigations of complaints alleging serious violations of pharmacy laws & rules, such as diversion of controlled substances & dispensing errors causing harm or injury to Texas patients. According to the World Health Organization, prescription drugs are now the drug of choice for first time abusers of drugs. Because of this demand, the number of schemes & the complexity of those schemes to divert drugs from pharmacies have increased dramatically and the diversion of drugs from pharmacies is an increasing problem. In order for TSBP to help prevent drugs from being sold on the streets of Texas cities, TSBP must have a competent Chief Investigator to manage the investigative case load.

Recent market data shows that the salaries of Chief Investigators of other Health Regulatory Boards are in a range of \$59,000 to \$74,000. This reclassification would bring the Chief Investigator to an annual salary of \$70,000.

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IV. ADDITIONAL STAFF TO MAINTAIN SERVICES (\$624,198)

This exceptional item will fund the following 6 positions:

- 1 Administrative Assistant;
- 2 Field Investigators;
- 1 Network Specialist;
- 1 Attorney; &
- 1 Legal Assistant

In order for the Board to continue to protect the citizens of Texas, it must be adequately funded & staffed. As indicated in the opening statement, the agency has been dramatically affected by the unprecedented growth of registrants as a result of legislation requiring the registration of pharmacy technicians & pharmacy technician trainees. Since FY03, the licensee population has increased 202%. In addition, since FY03, the agency has experienced an explosive growth in the number of complaints received with a 176% increase in the number of complaints, and a 246% increase in the number of disciplinary orders.

Also, as indicated in the opening of the Administrator's statement, the problem of drug diversion in the Houston area is so immense; the agency is overwhelmed by the number of cases.

To address this problem, we are requesting 6 FTE's,

Without these additional staff, & given the current & anticipated growth in the licensee population and increasing numbers of drug diversion cases, we expect the TSBP to experience critical slowdowns in the areas of complaint resolution/prosecution, issuance of licenses & a deterioration of services to our customers & the citizens of Texas. Ultimately, this will have a detrimental impact on the health & safety of the public.

Investigations/Disciplinary Actions

4 FTEs are requested in the Enforcement area (2 field investigators, 1 attorney, and 1 legal assistant). As indicated in the opening of this Administrator's Statement, the agency has seen a drastic increase in criminal activity involving the illegal diversion of prescription drugs from pharmacies.

In addition, health care providers & insurers have forecasted that pharmacies will be dispensing more prescriptions each year given the large segment of the US population that take more prescriptions as they grow older. As a result, the state will continue to see an increase in the numbers of pharmacies, pharmacists & technicians. As the number of licensees increase the number of complaints filed against these licensees will increase.

Growth in Requests for Agency Records

1 Administrative Assistant is requested to assist with the growing number of Open Record requests. The agency experienced a 40% increase in the number of open record requests in FY09 when compared to FY08. In addition, since FY05 there has been a 124% increase in the number of requests for agency

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records. With the ongoing increase in requests for records, additional personnel is needed for the agency to continue to provide timely & accurate responses in compliance with the Open Records Act.

Technology Growth

1 Network Specialist is requested to assist in supporting the growing number of computers and devices used by agency personnel. The total number of devices supported by our I.T. Staff has increased by 62% since 2001. In addition, security concerns with hackers and attempts to infect the systems with a virus have increased dramatically. For example, in FY09 a total of 3,182,780 spam & bad mail was blocked. Increased use of technology by the field staff and management of their connectivity issues has also dramatically increased the demands on our current I.T. support staff. Additional personnel are necessary for the agency to maintain a secure and efficiently operating I.T. system.

V. EXECUTIVE DIRECTOR'S SALARY (\$0)

This request does not ask for any additional funding. The members of the Board of Pharmacy are asking to be able to set the salary of the Executive Director within the range for a Group 4 position within the Schedule of Exempt Positions. The range for Group 4 is currently \$106,500-\$167,500. The salary for the ED of the Board of Pharmacy, who has 28 years experience with the agency, including 13 years as ED, is set at the minimum level for Group 4 or \$106,500. The members currently conduct a formal performance review of the ED annually and they ask to be able to set the Salary of the ED at a level appropriate for her experience and performance.

If the agency is to accomplish its mission & be *proactive* rather than *reactive* in its mission to protect the public health, it must be funded at an adequate level. Failure to receive this funding will severely impact the agency's ability to provide quality customer service, information, & protection to the citizens of Texas.

IMPACT ON THE AGENCY OF AN ADDITIONAL 10% BUDGET REDUCTION (\$1,077,475)

To achieve an additional 10% cut in the agency's baseline budget, the agency would have to reduce spending by \$1,077,475. The majority of this cut can be achieved with the elimination of the remaining \$482,899 budgeted to the agency for implementation of a shared regulatory database in FY10-11. It's important to note that if the 10% reduction does not occur, this appropriation (\$482,899) can be used to fund a portion of the exceptional item listed above.

If the 10% budget is adopted, the remaining amount of \$594,576 will be achieved by the reduction of the following:

1. Per Diem of Board Members (\$6,000)

The per diem of state board members currently consists of compensatory per diem of \$30 per day for each day a board member conducts the business of the board. This amount has been reduced due to a corresponding reduced travel budget of the board.

2. Printing/Postage Newsletter (\$19,802)

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The agency will no longer be able to publish a paper newsletter. Prior to the budget cuts of FY03, the agency published four annual paper Newsletters, which were mailed to all licensees (pharmacists & pharmacies). As a part of those cuts, TSBP began publishing & printing only two paper issues of the Newsletter & mails these issues to pharmacies only. Comments received from the agency's customer service survey indicate that even though the Newsletter is available online, licensees prefer a printed version.

The Newsletter is a valuable educational tool for pharmacists, pharmacy technicians, & pharmacy owners. The TSBP Newsletter provides information such as updates to the rules, articles regarding practice issues, & disciplinary actions taken against licensees & registrants. Without this educational tool, pharmacists & pharmacy technicians may not be aware of new rules or changes to the rules & thus be more likely to not be in compliance with the rules & laws.

3. Educational Brochure (Printing & Postage) \$28,917

This budget reduction would eliminate the publication of an Educational Brochure aimed at Pharmacy Technicians & Technician Trainees. The Brochure will provide education regarding the Technician's role as a member of the health care team, their training & registration requirements, compliance with pharmacy drug laws & rules, & most importantly, their responsibilities to the public. The TSBP has no funding for a formal education program – this Educational Brochure was a modest attempt to fill this gap.

4. Peer Assistance Program (\$19,690)

The establishment of a peer assistance program is authorized by Chapter 564 of the Texas Pharmacy Act. Currently, TSBP contracts with the Professional Recovery Network (PRN) to provide program services to pharmacists & eligible pharmacy students who are impaired by chemical abuse, or mental or physical illness.

SAMHSA statistics show during the last year 7.3% of all individuals 12 years & older are either diagnosed as impaired by drugs or alcohol. A loss of income in the peer assistance program will lessen PRN's ability to provide intervention, referral & monitoring of recovering pharmacists since staff resources will be further stretched to monitor & provide support to individuals in the program.

A cut to the budget might also mean a reduction in the quality & a less intensive level of evaluations by addiction professionals. In light of the current economic status of our country, the cost of evaluations is increasing due to the added expenses the practitioners are incurring. The ability to provide skilled, highly qualified clinicians is one of the assurances that participants are receiving not only the best evaluations to address their issues but also protecting the public by recognizing subtleties which might go unrecognized by less expensive & less qualified practitioners.

Put very simply, this budget reduction would reduce the ability of PRN to provide the level & quality of monitoring needed to assure the public safety is protected.

5. Additional Printing (\$10,640)

This reduction reduces the agency's contracted amount with its imaging document vendor. If the agency is unable to image its anticipated documents,

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additional file and/or storage space will become necessary.

6. Testing of Compounded Products (\$100,000)

Testing of pharmacy compounded products was authorized by the SB 492 passed by the 79th session. The agency was appropriated funding in FY08-09 & additional funding in FY10-11 to carry-out the legislation. The impact of a 10% reduction reduces the amount necessary for the testing of compounded products by 50%.

The term "compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device. These drugs or devices are compounded pursuant to a prescription for administration to a patient. Compounded products often include injectable sterile products – again, for the ultimate administration to a patient. The agency believes it is imperative that we randomly test these compounded products for potency & that we test sterile compounded products for pyrogenicity & sterility. Any problem with these products could have a dramatic & potentially life threatening effects on the patient.

7. Training/Registration Fees (\$30,046)

One key factor influencing employee motivation & retention is the opportunity to continue to grow & develop job & career enhancing skills. The 10% reduction plan reduces education & training for board and staff by 50%. As a result, board and staff would not be able to receive the necessary ongoing training &/or education needed to help them improve their skills.

8. Conference Travel Board & Staff (\$37,200)

Conference travel for board members & staff was reduced by 50%. The impact on the agency will be a reduction in required continuing education for staff pharmacists, attorneys, & pharmacy technicians that can be obtained at professional meetings. The agency generally conducts Board Forums attended by several Board members and staff to educate licensees, an agency educational exhibit, & representation at the annual National Association of Boards of Pharmacy meetings. The NABP meeting allows members to discuss and learn methods to better operate the agency and protect the public and to continue its national leadership role in progressive pharmacy regulation.

9. Testing of Compounded Products (\$100,000)

As noted in Item #7, this reduction reduces the amount necessary for the testing of compounded products by the remaining 50%, resulting in the 100% elimination of the funding necessary for the testing of compounded products.

10. Training/Registration Fees (\$30,046)

As noted in Item #8, this cut reduces training and registration fees for board and staff by the remaining 50%, resulting in the 100% elimination of this budget item.

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11. Conference Travel Board & Staff (\$37,200)

As noted in Item #9, this cut reduces conference travel for board and staff by the remaining 50%, resulting in the 100% elimination of this budget item.

12. Merit Increases (\$175,035)

This reduction will eliminate 100% of merit increases for eligible employees. TSBP was appropriated funds by the 81st Leg Session to support a merit increase system which rewards high-performing employees. Without this legislative funding the agency will not be able to provide employees a merit based on an evaluation of the employee's performance.