
LEGAL DIVISION

FY2001 SIGNIFICANT ACCOMPLISHMENTS

1. Division staff accomplished or partially accomplished all of the Division's Objectives for FY2001 (17 objectives were accomplished and 1 objective was partially accomplished).
2. The Division sent more Preliminary Notice Letters in FY2001 as compared to FY2000, with the Division increasing the number of PNLs mailed to 197 in FY2001 from 178 in FY2000 (10.7% increase). The Division dramatically decreased the number of days to mail PNLs after the case review date to 112.5 days in FY2001.
3. The Division began FY2001 with all cases entered into the new case management software, which tracks and monitors the cases assigned to the Division. The system allows the attorneys to use automated tracking of cases assigned and has increased accuracy and efficiency in managing caseloads.
4. General Counsel, in cooperation and conjunction with Executive Director and other Division Directors, and with input from Division staff, formulated uniform objectives for employee evaluations, in compliance with the requirements of the Texas Human Rights Commission, standardized job descriptions and performance measures, and implemented a procedure to ensure equity in determining merit awards.
5. Division staff assumed the additional task of drafting briefing notes for all cases appearing at Informal Conferences. The briefing notes were standardized and streamlined to assist panel members by providing relevant information in a clear and concise format.
6. Division staff completed the compilation of shells for common types of Preliminary Notice Letters (PNL) to serve as sample PNL forms for attorneys drafting PNL statements of allegations and alleged violations.
7. Division staff worked with Westlaw to replace CD-ROM based Premise system with Internet-based Westlaw.com for legal research, which provides attorneys with more up-to-date cases and statutes and will save expenditures for the agency.
8. The Division implemented new telephone extensions, which include a direct number for the Division and access by Legal Assistants to the attorneys' phones, to improve accessibility to the Division by licensees and the public.
9. Five contested administrative hearings were conducted. One case was settled during the administrative hearing. The other four hearings resulted in Proposals for Decisions (PFD) issued by the Administrative Law Judges. All cases were decided in favor of TSBP, and in each case, the Board adopted a Board Order accepting the PFD.
10. TSBP entered more disciplinary orders in FY2001 than in FY2000. As indicated in the chart below, 97% of the disciplinary cases were settled through the entry of Agreed Board Orders, which resulted in significant efficiencies, both in terms of complaint resolution time and costs.

Fiscal Year	Number of Board Orders (BOs)	Number of Agreed Board Orders (ABOs)	Number of Disciplinary Orders (BOs & ABOs)	% ABOs of Total Orders
FY97	2	132	134	98.5%
FY98	5	179	184	97.3%
FY99	0	108	108	100%
FY00	0	126	126	100%
FY01	4	141	145	97%
TOTAL	11	686	697	5 YR. AVG. 98.4%

LEGAL DIVISION
FY2001 SIGNIFICANT DISAPPOINTMENTS/CONSTRAINTS

1. The Legal Division lost a Legal Assistant, who transferred to the Enforcement Division, on December 15, 2000, and replaced the position within a six-week period. Division staff spent a significant amount of time and effort advertising for the vacant position, evaluating applications, interviewing applicants, and orienting/training the new employee. The new Legal Assistant did not begin employment until February 20, 2001, which left one Legal Assistant to do the work for two Assistant General Counsel and the General Counsel in the interim. Therefore, work was somewhat delayed by the vacant position.

LEGAL DIVISION
FY2001 ANNUAL REPORT

GOAL

To prosecute violations of the laws and rules related to the practice of pharmacy. To provide adjudicative information to agency customers. To provide legal services and guidance to the Board and the agency staff relating to the regulation of the practice of pharmacy and the administration of the agency.

Objectives (New)

1. To assist the Executive Director, in cooperation with other Divisions, in:
 - A. preparing testimony, attending public hearings, reviewing legislation and providing any fiscal or technical information as required by the 77th Texas Legislature; and
 - B. reviewing all legislation introduced by the 77th Texas Legislature that has an impact on the practice of pharmacy or agency operations and monitor the progress of this legislation throughout FY2001.

Status: ACCOMPLISHED

- Comment:**
- A. General Counsel reviewed and offered comment on approximately one hundred bills relating to pharmacy and legal issues.
 - B. General Counsel assisted Executive Director during an initial meeting with the pharmacy lobbyists to present proposed legislative changes.
 - C. General Counsel provided information and assistance to attorney from Legislative Council regarding changes/corrections to the codification of the Texas Pharmacy Act.
 - D. General Counsel assisted Executive Director by attending meetings with staff of Representative Maxey, Senator Nelson, and Senator Moncrief regarding legislation on automated dispensing systems and pharmacist profiling.
2. To assist the Executive Director, in cooperation with other Divisions, in the implementation of the new program to register and regulate pharmacy technicians.

Status: PARTIALLY ACCOMPLISHED

- Comment:** General Counsel assisted Executive Director in drafting an amendment to the agency's Legislative Appropriation Request, requesting reduction from 16 to eight staff needed to register/regulate pharmacy technicians for the biennium FY2002-03, with the intent of asking for the remaining eight staff for FY2004-05, if needed.

However, during the 77th Texas Legislature, no additional staff or funding was appropriated to TSBP to register/regulate technicians. General Counsel, in cooperation with Executive Director and other Division Directors, discussed several options for how the agency could implement a program to register technicians, without additional funding. The Executive Director discussed the matter with the Board at its business meeting on August 7-8, 2001, at which time the Board determined to establish a task force to study the issue.

3. To assist Executive Director, in cooperation with other Divisions, in accomplishing any initiatives or objectives related to technology which impact the agency or pharmacy practice, including e-commerce initiatives, Health Professions Council imaging system, and HIPDB.

Status: ACCOMPLISHED

- Comment:**
- A. General Counsel assisted Director of Administrative Services and Licensing with the implementation of imaging system by meeting with representatives of imaging vendor to develop implementation procedures.
 - B. General Counsel provided input for an article on HIPDB for the TSBP Newsletter.

Objectives (Ongoing)

1. To coordinate and monitor throughout FY2001 the receipt, assignment, and resolution of all cases accepted by the Division.

Status: ACCOMPLISHED

Comment: This objective was accomplished through the following activities:

TOTAL ORDERS

Date of Orders	Summary Suspensions	Board Orders	Agreed Board Orders		Total Number of Orders
			Public	Confidential	
Nov. 14-15, 2000	0	0	52	9	61
Feb. 6, 2001	0	0	12	13	25
May 22-23, 2001	0	2	34	7	43
July 21, 2001	0	0	1	0	1
Aug. 7-8, 2001	0	2	6	7	15
TOTAL FY2001	0	4	105	36	145

**SANCTIONS IMPOSED BY ENTRY OF
DISCIPLINARY ORDERS**

			Pharmacist	Pharmacy	Total	
Licenses Removed	9	(6%)				
Revoke			4	0	4	(3%)
Retire			5	0	5	(3%)
Suspensions	42	(29%)				
Summary Suspension			0	0	0	(n/a)
Suspension			6	1	7	(5%)
Suspension/Fine			0	0	0	(n/a)
Suspension/Probation			5	2	7	(5%)
Suspension/Probation w/Conditions			19	5	24	(17%)
Suspension/Probation/Fine			1	1	2	(1%)
Suspension/Probation/Fine w/Conditions			0	2	2	(1%)
Restrictions	3	(2%)	3	0	3	(2%)
Other	77	(53%)				
Fine			12	8	20	(14%)
Fine with Conditions			12	12	24	(17%)
Fine and Reprimand			1	3	4	(3%)
Fine, Reprimand with Conditions			2	2	4	(3%)
Reprimand			2	6	8	(6%)
Reprimand with Conditions			11	6	17	(12%)
Issuance of License	3	(2%)				
Grant with Probation			1	0	1	(<1%)
Grant with Probation and Conditions			0	1	1	(<1%)
Grant with Conditions			1	0	1	(<1%)
Deny			0	0	0	(n/a)
Reinstatements	4	(3%)				
Grant			0	0	0	(n/a)
Grant with Probation/Conditions			3	0	3	(2%)
Deny			1	0	1	(<1%)
Modifications	7	(5%)				
Grant			5	1	6	(4%)
Deny			1	0	1	(<1%)
TOTAL FY2001:	145	(100%)	95	50	145	(100%)

FY2001 Orders Entered Against Pharmacist Licenses	95	66%
FY2001 Orders Entered Against Pharmacy Licenses	50	34%
FY2001 Total Disciplinary Orders	145	100%

LEGAL

NATURE OF VIOLATIONS*

CONTESTED CASES	RPh	Phcy	Total	Total %
Illegal Delivery (CS)	1	0	1	--
Unauthorized Refills (CS)	2	1	3	2%
Audit Discrepancies	15	7	22	15%
Drug	4	7	11	
Continuing Education	11	0	11	
Dispensing Errors	6	14	20	14%
Dispensing Errors/No Counseling	1	1	2	1%
Counseling/DUR	6	5	11	8%
Convictions	5	2	7	5%
Felony	2	2	4	
Alcohol-Related	2	0	2	
Deferred Adjudication/CSA	1	0	1	
Action by Other Boards	4	0	4	3%
Non-Compliance with ABO	10	1	11	8%
Other	31	18	49	34%
Delinquent License	3	3	6	
No Annual or PIC Inventory	3	2	5	
Falsify Response to W/N	2	2	4	
Non-Therapeutic Dispensing	1	2	3	
Fraud	2	0	2	
Triplicate Rx	1	1	2	
Recordkeeping Error	0	1	1	
Unprofessional Conduct	1	0	1	
Theft	4	0	4	
Created False Rx	3	0	3	
Unauthorized Substitution	3	3	6	
Probable Cause	7	1	8	
Possession of Samples	1	3	4	
SUB-TOTAL:	81	49	130	90%
Request for Retirement	4	0	4	3%
Modification	6	1	7	5%
Reinstatement	4	0	4	3%
TOTAL FY2001:	95	50	145	101%**

C Board Orders/Agreed Board Orders may contain more than one type of violation. However, for purposes of this list, only one type of violation has been identified. The identified violation was selected by the Division Director as the major violation.

*** Due to rounding.*

The Division met on a weekly basis to discuss the status of pending cases, to assess workload allocation, and determine the most effective strategies to complete cases in a timely and efficient manner.

The Division maintained a database system to track the current status of all cases, which has increased efficiency in monitoring cases.

2. To review all cases referred to the Division for potential disciplinary action; and if sufficient evidence exists to warrant action, to institute disciplinary proceedings against licensees within an average of 150 days of the date of the case review, in accordance with priorities established for the Enforcement Division, throughout FY2001.

Status: ACCOMPLISHED

Comment: This objective was accomplished through the following activities:

- A. During FY2001, Division staff participated in 25 case and/or complaint review meetings. These meetings were held approximately twice a month with participation by Executive Director and Legal and Enforcement Division staff.
 - B. Division staff mailed 197 Preliminary Notice Letters (PNLs) in FY2001, in accordance with the priorities established for the Division, as compared to FY2000, when the Division mailed 178 PNLs (10.7% increase). The Division dramatically decreased the number of days to mail PNLs in FY2001 to 112.5 days and significantly reduced the backlog of disciplinary cases.
3. To plan and conduct a minimum of 15 days of informal conference sessions in FY2001 to adjudicate violators of pharmacy laws/rules.

Status: ACCOMPLISHED

Comment: During FY2001, the Division conducted 16.5 days (8 sessions) of informal conferences for 139 licensees, as indicated in the chart below. As compared to FY2000, the number of conference days increased by 10%.

INFORMAL CONFERENCES

Dates of Informal Conferences	Number of Days	Number of Licensees	Number of Licensees Dismissed	Board Member Participant
Sept. 13-14, 2000	2	24	4	Oren Peacock, R.Ph.
Oct. 25-26, 2000	2	13	1	Wicki Erickson
Dec. 5-6, 2000	2	12	2	Doyle High, R.Ph.
Jan. 17-18, 2001	2.5	26	2	Roger Anderson, R.Ph.
1st & 2nd Qtrs.	8.5	75	9 (12%)	
Feb. 28 - Mar. 1, 2001	2	13	4	Rosemary Combs
April 18-19, 2001	2	15	2	Bill Pittman, R.Ph.

Dates of Informal Conferences	Number of Days	Number of Licensees	Number of Licensees Dismissed	Board Member Participant
June 13-14, 2001	2	17	3	Kim Caldwell, R.Ph.
July 11-12, 2001	2	19	4	Roger Anderson, R.Ph.
3rd & 4th Qtrs.	8	64	13 (20%)	
TOTAL FY2001:	16.5	139	22 (16%)	

4. To refer disciplinary cases to the State Office of Administrative Hearings (SOAH) throughout FY2001, and file a complaint with SOAH within an average of 120 days of the date that the agency determines the case cannot be settled with an Agreed Board Order.

Status: ACCOMPLISHED

Comment: This objective was accomplished through the following activities:

- A. At the onset of FY2001, three cases were ongoing at the State Office of Administrative Hearings (SOAH). The Division filed formal Complaints at SOAH, within 120 days that the case failed to settle with an Agreed Board Order, for nine additional cases in FY2001.
- B. Four cases were resolved without a full contested administrative hearing at SOAH. One of these cases was settled during the administrative hearing. Another case was settled by Agreed Board Order following a Mediated Settlement Conference. The other two cases were resolved by Agreed Board Order prior to the hearing being conducted.
- C. Five contested administrative hearings were conducted. One case was settled during the administrative hearing, as mentioned above. The other four hearings resulted in Proposals for Decisions (PFD) issued by Administrative Law Judges. All cases were decided in favor of TSBP, and in each case, the Board adopted a Board Order accepting the recommendation of the PFD.
- D. Two cases were dismissed based on lack of jurisdiction (i.e., license expired) and/or lack of sufficient evidence to proceed.

The other two cases were planned for hearing in FY2002.
- E. SOAH performed 95.08 hours of work for the TSBP in FY2001 at an hourly rate of \$90 per hour, totaling \$6823.81. Since the allowable number of hours of SOAH work for the TSBP was 102.8, no additional expenditure was required by TSBP.

5. To research legal issues and when necessary, to draft requests for Attorney General Opinions throughout FY2001; to serve as liaison for the Board to the Office of the Attorney General (OAG); to monitor and assist with appeals, injunctions, or civil litigation handled by the OAG against pharmacists or non-pharmacists; to provide technical assistance and maintain liaison with appropriate local, state, and federal prosecutors, legal divisions, and enforcement agencies involved in the investigation or prosecution of Board licensees, in conjunction with the Enforcement Division, throughout FY2001; and to provide legal advice regarding the administration of the agency.

Status: ACCOMPLISHED

Comment: This objective was accomplished through the following activities:

A. Liaison with the Office of Attorney General (OAG)

(1) Assistant Attorney General Assigned to TSBP

Division staff continued to serve as liaison with the OAG throughout FY2001. Assistant Attorney General, Courtney Newton, left employment with the Administrative Law Section of the OAG on August 10, 2001, and no replacement was named by the Administrative Law Section to represent TSBP.

(2) Appeals; Injunctions; Civil Litigation

- (a) No disciplinary cases were appealed and no injunctions were filed during FY2001.
- (b) General Counsel, in consultation with the General Litigation Division of OAG, responded to a subpoena in a lawsuit filed against the Texas Alcohol and Beverage Commission for reverse discrimination.
- (c) General Counsel assisted OAG in investigations and in lawsuits against internet pharmacies. Division staff and other agency staff met with an Assistant Attorney General to discuss and develop options for settlement of civil litigation against Class E pharmacies operating on the internet, including an agreed judgment and permanent injunction.
- (d) One administrative appeal existed at the beginning of FY2001. General Counsel coordinated with an Assistant Attorney General in the Administrative Law Section for the hearing in the appeal of the reinstatement case, which was heard in Travis County District Court in November 2000. The TSBP Board Order was affirmed, and the District Court decision was not appealed.
- (e) General Counsel coordinated OAG representation on the matter of a bankrupt pharmacy owing an administrative penalty to TSBP.

(3) Requests for AG Opinions

- (a) The Honorable Toby Goodman, Chair of the Committee on Juvenile Justice and Family Issues of the Texas House of Representatives, requested an AG opinion regarding whether a TSBP rule specifying that no drugs shall be included on a list of narrow therapeutic index

drugs is consistent with section 562.014 of the Texas Occupations Code, which requires the Board, by rule, to "establish a list of narrow therapeutic index drugs." General Counsel responded in a brief supporting TSBP's position to adopt a null list of NTI drugs. The OAG issued an opinion that the rule was valid and consistent with legislative intent.

- (b) General Counsel drafted a letter to assist OAG regarding an opinion request on the issue of whether federal law preempts regulation by the Texas Department of Health relating to certain drugs shipped to foreign countries.
- (c) Division staff requested an open records decision in response to a request for investigative information.

B. Legal Research and Advice on Agency Administration

- (1) General Counsel reviewed the following contractual issues:
 - (a) contract with the National Association of Boards of Pharmacy for NAPLEX and MPJE examinations;
 - (b) contract with peer assistance provider;
 - (c) service level agreement with KPMG to provide on-line renewal for pharmacy and pharmacist licensure renewals; and
 - (d) professional service agreement with DrugTest, Inc.
- (2) General Counsel reviewed Internet Privacy Policy for publication on TSBP web site.
- (3) General Counsel researched issue of TSBP's authority to adopt a null list of narrow therapeutic index (NTI) drugs and drafted a brief in response to the AG Opinion request regarding the mandate for TSBP to adopt a list of NTI drugs.
- (4) Division staff researched the following issues:
 - (a) use of expert witness testimony and requirements for overcoming challenges to expert testimony
 - (b) mandatory collection of Social Security numbers by state licensing agencies to assist in child support enforcement and suspension of license for failure to pay child support
 - (c) record retention of imaged files
 - (d) federal equivalent to chapter 567 of the Occupations Code for labeling requirements
 - (e) Texas legislative process
 - (f) Food and Drug Administration restrictions on compounding by pharmacists
 - (g) procedures for Board member election

- (h) possession of a concealed weapon by employees and non-employees
 - (i) crimes of moral turpitude
 - (j) internship requirements for foreign pharmacy graduates
 - (k) effect of deemed admissions in an administrative proceeding
 - (l) passive inhalation studies on marijuana
- (5) Division staff researched and prepared a memorandum to agency staff regarding the legal issues involving the Tort Claims Act and the liability of the agency and the employee for suit against individual employees involved in automobile accidents while on agency business.
 - (6) General Counsel provided assistance to the Director of Administration and Licensing regarding TSBP response to an audit conducted by the Texas Commission on Human Rights (TCHR) on personnel policy and procedural systems and updated performance guidelines to incorporate TCHR requirements.
 - (7) General Counsel drafted Goals and Objectives for the Legal Division for FY2002.

C. Technical Assistance to Local/State/Federal Prosecutors

- (1) General Counsel provided information regarding licensee to Assistant District Attorney in Dallas County to assist with prosecution.
- (2) General Counsel successfully appealed decision by Department of Veterans Affairs to withhold name of pharmacist subject to a pending TSBP investigation.
- (3) General Counsel provided information on registration of pharmacy technicians to attorney from Kansas Board of Pharmacy.
- (4) General Counsel provided information and drafted a letter regarding the law on Internet prescribing to assist investigator with the Food and Drug Administration.
- (5) General Counsel provided information on Texas law regarding NTI drugs to the Director of the Arkansas Pharmacy Board.
- (6) Division staff coordinated and participated in an interagency meeting to discuss Internet pharmacy practice, which was attended by representatives of the Texas State Board of Medical Examiners, Food and Drug Administration, Drug Enforcement Agency, and TSBP.

- (7) Division staff coordinated with the Oklahoma State Board of Pharmacy, United States Attorney's office, and Food and Drug Administration in the prosecution of Internet pharmacies.
- (8) General Counsel provided information at the request of the United States Department of Health and Human Services Office of the Inspector General regarding disciplinary action taken against licensees based on criminal actions.

6. To review and monitor the *Texas Register* for Attorney General opinions.

Status: ACCOMPLISHED

Comment: Division Staff reviewed new opinions of the Office of the Attorney General and the Texas Ethics Commission for applicability to TSBP on a weekly basis by using the Internet to check the respective web sites of the agency publishing the opinions.

7. To assist with open records requests throughout FY2001, in accordance with the procedures set forth in the Texas Public Information Act.

Status: ACCOMPLISHED

Comment: Division staff were responsible for answering all telephonic open records requests on licensees subject to disciplinary action. Division staff responded to an average of approximately 10 verbal requests per month for complaint and disciplinary information. General Counsel reviewed numerous TSBP responses to open records requests for legal compliance with the Public Information Act.

8. To provide verbal and written information to Board staff and customers, including responses to surveys and questionnaires, as needed and required throughout FY2001.

Status: ACCOMPLISHED

Comment: This objective was accomplished through the following activities:

A. Surveys/Questionnaires and Other Correspondence

- (1) Division staff completed the Survey of Organizational Excellence from the University of Texas and a survey on continuing legal education for attorneys from the State Bar of Texas.
- (2) Division staff prepared responses to requests for information from Indian Health Services regarding the applicability of Texas pharmacy laws to a tribally operated health clinic on reservation land.

B. Technical Assistance to Board Members and Board Staff

- (1) Division staff assisted Board Members by conducting legal research on several issues (see Ongoing Objective #9).
- (2) Division staff drafted subpoenas to assist with the investigative work of the TSBP investigators.
- (3) General Counsel provided legal advice and consultation on numerous personnel issues during FY2001, including:
 - (a) ADA employment issues
 - (b) requests for medical examination of employee
 - (c) disciplinary actions
 - (d) FMLA requests for medical certification
 - (e) request for extended medical leave
 - (f) parental leave

(g) performance evaluations and job description standards

- (4) General Counsel assisted in the review/drafting of proposed rules and preambles for rules, and the review of rule submissions to the *Texas Register*, including rules regarding electronically produced signatures on prescriptions, definition of "inpatient," pharmacy technician training programs, pharmacist certification programs, and agency vehicle procedures.
- (5) General Counsel continued to serve as the agency's Ethics Advisor and continued to assist Board Members and staff with ethical issues.
- (6) Division staff handled numerous legal questions from all staff regarding a myriad of issues.
- (7) General Counsel reviewed numerous complaint files to verify accuracy of information and citations in letters drafted by Enforcement Division staff.
- (8) Division staff prepared and conducted orientations of all new TSBP employees during FY2001 regarding the Legal Division, the legal process, ethics, Public Information Act and Open Meetings Act.
- (9) Division staff made presentations at all Board meetings held in FY2001. Presentations included information about proposed Agreed Board Orders and proposed Board Orders following a SOAH proceeding.
- (10) General Counsel assisted in the review and preparation of minutes of four regularly scheduled Board meetings and a special Board meeting in July 2001.
- (11) Division staff assisted TSBP's Licensing Division, with respect to eligibility for licensure and internship (from individuals who had checked "yes" on the attest questions on the TSBP application) by either verifying accuracy of letters or by handling the cases through the legal process.
- (12) General Counsel assisted Director of Administrative Services and Licensing with the implementation of imaging system.
- (13) General Counsel provided a training session to Enforcement Officers regarding the use of business records affidavits and authorizations for release of information and the referral of cases following a compliance inspection.
- (14) General Counsel coordinated a training session by the Texas Ethics Commission for the TSBP staff and developed ethics hypotheticals for use by the trainer.

- (15) General Counsel handled a conflict of interest issue involving Board member participation on task force to develop pharmacy technician training program for a community college.
- (16) Division staff prepared memo to advise Board members of new developments in Open Meetings Act.
- (17) General Counsel developed modifications to the peer assistance contract for confidentiality provision.
- (18) General Counsel drafted e-mail disclaimer for use by agency personnel in sending e-mails outside TSBP.
- (19) Division staff drafted TSBP Newsletter article informing of policy changes regarding administrative penalties for failure to obtain the required continuing education hours and assisted in preparing an article on pharmacist response to subpoenas.
- (20) General Counsel participated in committee meetings to suggest and implement improvements to the TSBP web site.
- (21) Division staff researched and prepared handout for Board Business meeting regarding requirements for internship hours for foreign pharmacy graduates in other states.
- (22) Division staff assisted investigator by drafting deposition on written questions of a physician for use during investigation of whether harm resulted from a dispensing error.
- (23) Division staff participated on a committee to develop articles for the TSBP Newsletter.

N. Technical Assistance to Other Agencies and Organizations

- (1) Division staff met with representatives of the Texas Pharmacy Association Pharmacy Recovery Network (PRN) to discuss and provide input regarding ongoing goals and activities. General Counsel provided input regarding PRN mission statement and business plan.
- (2) General Counsel provided legal assistance to an attorney from Texas Department of Health on statutory requirements that prohibit pharmacists from shipping unused drugs from a long-term care facility to a foreign country.

- (3) Division staff gave the following presentations during FY2001:
 - (a) Lori Tullos coached a University of Texas mock trial team in preparation for mock trial competition.
 - (b) Lori Tullos taught legal writing at the University of Texas Legal Assistant program.
- (4) General Counsel coordinated with the Texas State Board of Medical Examiners to provide a response to Senator Van de Putte regarding pharmacists filling prescriptions from physicians with a suspended license.
- (5) General Counsel responded to a request for information from the Texas State Board of Optometry regarding restrictions on dispensing prescriptions for practitioners' families.
- (6) General Counsel assisted Executive Director and Director of Administrative Services and Licensing in meeting with representatives of HEB regarding change of ownership applications for change in corporate entities.

9. To assist the Executive Director in developing and implementing the objectives of the Health Professions Council pertinent to Division activities throughout FY2001.

Status: ACCOMPLISHED

Comment: This objective was accomplished as follows:

- A. General Counsel was selected by Executive Director to serve on the HPC Legal Committee, along with attorneys from other agencies.
- B. General Counsel attended HPC meeting presentation by the United States Department of Health and Human Services Office of the Inspector General regarding Medicare/Medicaid exclusion.

10. To maintain a staff development program by encouraging Division staff to participate in professional and interpersonal development seminars, cross training, and on-the-job training throughout FY2001.

Status: ACCOMPLISHED

Comment: In FY2001, Division staff attended several general staff meetings, including training session on ethics by the Texas Ethics Commission, and in-house training sessions on employee benefits (e.g., "Planning Your Retirement Seminar" and insurance benefits). In addition, Division staff attended the following programs, seminars, and events:

Kerstin Arnold, J.D. General Counsel	
9/30/00	Training on Access Database

Kerstin Arnold, J.D. General Counsel	
10/6/00	Employment Litigation
11/20/00	Multidisciplinary Practice conducted by American Inns of Court
01/2/01	Telicon 2001 Legislative Seminar
1/4/01	Travis County Bar Association Guide to 2001 Legislature
1/23/01	Austin Health Lawyers Seminar on 2001 Legislative Issues
2/1-2/01	Advanced Employment Law (Houston, TX)
3/20/01	Legal Ethics conducted by Austin Inns of Court
07/18-21/01	TPA Annual Meeting (Houston, TX)
08/13-17/01	Governor's Management Development Program

LEGAL

Julie Hildebrand, J.D. Assistant General Counsel	
10/6/00	State Bar Fall 2000 Technology Fair
11/28/00	Office of the Attorney General Privacy Forum and Open Government Conference
1/2/01	Telicon 2001 Legislative Seminar
1/4/01	Travis County Bar Association Guide to 2001 Legislature
1/23/01	Austin Health Lawyers Seminar on 2001 Legislative Issues
2/10/01	Central Texas High School Mock Trial Judge
3/29/01 and 5/08/01	Westlaw Training
7/18-21/01	TPA Annual Meeting (Houston, TX)

Lori Tullos, J.D. Assistant General Counsel	
10/26-27/00	Advanced Administrative Law Conference
11/28/00	Office of the Attorney General Privacy Forum and Open Government Conference
1/4/01	Travis County Bar Association Guide to 2001 Legislature
1/23/01	Austin Health Lawyers Seminar on 2001 Legislative Issues
2/10/01	Central Texas High School Mock Trial Coordinator and Judge
5/4/01	TCIC/NCIC Training
6/16-22/01	University of Utah School on Alcoholism and Drug Addiction

Janelle Natri Legal Assistant	
9/29/00	Training on BCS Imaging System
11/3/00	Austin Conference for Women
12/15/00	Transferred to Enforcement Division

Cheryl Sepulveda Legal Assistant	
11/3/00	Austin Conference for Women
5/4/01	TCIC/NCIC Training

Georgienne Nassauer Legal Assistant	
2/20/00	Employment began
2/00	TSBP Orientation
3/5/01	Excel Training
5/4/01	TCIC/NCIC Training
7/01	Motivate Yourself and Others, National Management Institute Tapes
8/01	How to Delegate Effectively, National Management Institute Tapes

11. To conduct periodic reviews and annual evaluations of all employees under the supervision of this Division during FY2001.

Status: ACCOMPLISHED

Comment: Formal performance reviews were conducted as follows:

Employee	Date of Evaluation	Evaluation By
Julie Hildebrand, J.D.	June 15, 2001	General Counsel
Lori Tullos, J.D.	June 15, 2001	General Counsel
Janelle Nastri	Transferred to Enforcement Division on 12/15/00	
Cheryl Sepulveda	November 7, 2001 and May 31, 2001	Assistant General Counsel
Georgienne Nassauer	Employment began on 2/20/01	

Other activities related to Division personnel are listed below:

- A. Division posted and filled a Legal Assistant position (employed February 2000).
- B. Division staff developed orientation schedules/orientation manuals and/or conducted orientations for all new staff hired by TSBP during FY2001.
- C. General Counsel updated job descriptions and performance measures for all employees in Legal Division to reflect changes made by the Management Team.
- D. General Counsel conducted weekly team meetings with Division staff.

12. To destroy records in accordance with the agency's record retention plan throughout FY2001; to update the Division's *Policies and Procedures Manual* as needed and submit any substantive revisions to the Executive Director for approval throughout FY2001.

Status: ACCOMPLISHED

Comment: This objective was accomplished as follows:

A. **Records Management**

During FY2001, Division staff destroyed records, in accordance with the TSBP record retention schedule. In addition, Division staff prepared all FY2001 Board Orders and Agreed Board Orders for microfiche by the State Library.

B. **Policies and Procedures**

General Counsel provided extensive assistance to the Director of Administrative Services and Licensing and Director of Enforcement with the revision of the TSBP Employee Handbook, which was distributed to all employees in December 2000, in compliance with the directives of the Texas Human Rights Commission.

13. To recommend policies and procedures to the Executive Director which will enhance the efficiency and effectiveness of the agency throughout FY2001.

Status: ACCOMPLISHED

Comment: This objective was accomplished through the following activities:

- A. General Counsel recommended changes to the agency's computerized complaint tracking system to improve messages to the user and to make the system easier to understand, and met with representatives of Department of Information Resources to discuss implementation of the changes.
- B. Division staff implemented a computer tracking system for cases referred for adjudication in FY2001, and beginning September 1, 2000, all active legal cases were entered into the system and accurately tracked.
- C. Division staff modified standard business records affidavit forms for use during the investigative process to assist investigators in preparing affidavits.
- D. General Counsel provided extensive consultation and developed written policies and procedures for the complete revision of TSBP Employee Handbook and associated personnel forms in compliance with the directives of the Texas Human Rights Commission.

- E. Division staff assumed the additional task of drafting briefing notes for all cases appearing at Informal Conferences. The briefing notes were standardized and streamlined to assist panel members by providing relevant information in a clear and concise format.
 - F. General Counsel participated on the Task Force to Develop Guidelines for Establishing Pharmacists Peer Review Committee and provided input and legal advice in the drafting and publication of the guidelines, including confidentiality provisions of the guidelines.
 - G. General Counsel participated in the task forces to implement (1) S.B. 768, Acts of the 77th Legislature, relating to Emergency Medication Kits; (2) S.B. 98, Acts of the 77th Legislature, relating to Automated Pharmacy Systems; and (3) S.B. 65, Acts of the 77th Legislature, relating to Telepharmacy Systems. General Counsel assisted Executive Director and Director of Professional Services in development of rules to implement these statutes.
 - H. General Counsel modified attestation questions for pharmacy and pharmacist licensure applications to improve agency's disciplinary procedures.
14. To recommend changes to the Texas Pharmacy Act and rules, which will enhance the agency's ability to protect the public health, safety, and welfare, or will improve the efficiency and effectiveness of the agency's operations, and forward the recommendations to the Executive Director throughout FY2001.

Status: ACCOMPLISHED

Comment: This objective was accomplished through the following activities:

A. **Texas Pharmacy Act**

General Counsel or Division staff made the following recommendations to amend the Texas Pharmacy Act as follows:

- (1) Modify the procedure for temporary suspensions of pharmacists to allow a panel of the Board to hear the suspension proceedings and then allow the case to be heard at SOAH for approval by the Board.
- (2) Add pharmacies to the temporary suspension provisions.
- (3) Add the Texas Food, Drug and Cosmetics Act to §565.001(9) of the Pharmacy Act.

B. **TSBP Rules**

- (1) General Counsel or Division staff made the following recommendations to amend the Board rules as follows:

- (a) Change reinstatement procedures that a pharmacist must meet all requirements for initial licensure after 10 years without an active license, and that any reinstatement may impose a requirement for an internship by the pharmacist;
- (b) §291.34(c)(3)(G): modify to include list of all prescription drug orders dispensed to the patient by any pharmacy;
- (c) §291.34(h)(4): include dangerous drugs in the requirement to verify and initial receipt;
- (d) §281.7(a): include in the definition of *unprofessional conduct* "violating the provisions of a contract with a board approved peer assistance program to aid impaired pharmacists and pharmacy students";

- (e) §295.2: add provision for relief pharmacists to notify Board of name and address of relief pharmacy company and authorize the company to provide the current place of employment when requested by a representative of the Board;
- (f) §281.19: add section regarding collection process as follows: "The board shall seek to collect damages by following the procedures for the collection of delinquent obligations established by the Office of the Attorney General in the Uniform Guidelines and Referral of Delinquent Collections set forth in 1 TAC §59.2"; and
- (g) §281.57: add peer review guidelines as a factor for mitigation of disciplinary action.

(2) General Counsel worked with the Executive Director to draft the following proposed rules:

- (a) Requirement for valid practitioner-patient relationship prior to dispensing prescriptions
- (b) Automated pharmacy systems
- (c) Emergency medication kits
- (d) Telepharmacy
- (e) Posting of pharmacy technician certificates

C. **Proposed Legislation**

General Counsel provided legal advice in the drafting process of proposed legislation during the 77th Legislative Session.

15. To prepare and submit a report on the accomplishment of Division objectives, for incorporation into the agency's *FY2000 Annual Report* to be presented to the Board by its May 2001 Board meeting.

Status: **ACCOMPLISHED**

Comment: The Division's first draft of the FY2000 Annual Report was submitted to the Executive Director by the due date. The final draft of the TSBP Annual Report was presented to and approved by the Board at its meeting held in May 2001.