



Texas State Board of Pharmacy

Annual Report FY2009

W. Benjamin Fry, R.Ph., FIACP, FACA
President (9/01/07-1/5/10)

Gay Dodson, R.Ph.
Executive Director/Secretary

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Board Mission

The statutory mission of the Texas State Board of Pharmacy is to promote, preserve, and protect the public health, safety, and welfare by fostering the provision of quality pharmaceutical care to the citizens of Texas, through the regulation of: the practice of pharmacy; the operation of pharmacies; and the distribution of prescription drugs in the public interest.

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Board Members

W. Benjamin Fry, R.Ph., FIACP, FACA
President (8/07/07-8/31/08)
San Benito
4/14/04-8/31/09

Kim A. Caldwell, R.Ph.
Vice President
McKinney
10/27/97 – 8/31/09

Jeanne D. Waggener, R.Ph.
Treasurer (8/08/07-8/31/08)
Waco
8/10/06 - 8/31/11

Buford T. Abeldt, Sr., R.Ph.
Lufkin
5/9/08-8/31/13

Rosemary Forester Combs
Public Member
El Paso
11/10/99 – 8/31/11

L. Suzan Kedron
Public Member
Dallas
5/9/08-8/31/13

Marcelo Laijas, Jr.
Public Member
Floresville
4/14/04 – 8/31/09

Alice G. Mendoza, R.Ph.
Kingsville
8/10/06 - 8/31/11

Dennis F. Wiesner, R.Ph.
Austin
5/9/08-8/31/13

Office of the Executive Director**Executive Director**

Gay Dodson, R.Ph.

Executive Assistant

Kay Wilson, C.P.S.

Receptionist

Debra Dukes

Administrative Services & Licensing**Division Director**

Cathy Stella, P.H.R.

Chief Accountant

Jane Bennett

Accountant II

Lisa Earl

Accountant III

Sandra Morton

Staff Services Officer II

Robbi Dana

Purchaser

Darlene Guthrie

Information Resources Manager

Steve Rapp

Network Specialist

Todd Hayek

Licensing Administrator

Carol Willess

Licensing Specialists

Estella Casarez

Lisa Ake

Rachel Glass

Diana Ruedas

Melinda Uballe

Misty Whitcomb

Professional Services**Division Director**

Allison Benz, R.Ph., M.S.

Senior Administrative Assistant

Sherry Stevenson, C.P.S.

Legal

General Counsel

Kerstin Arnold, J.D.

Litigation Counsel

Julie Hildebrand, J.D.

Staff Attorney

Mitra Woody, J.D.

Caroline Hotchkiss, J.D.

Legal Assistants

Cheryl Sepulveda

Tabatha Lowden

Legal Assistant

Hearings Coordinator

Ann Driscoll

Technician Program Coordinator

Sharanya Rao

Enforcement

Division Director

Carol Fisher, R.Ph., M.P.A.

Assistant Dir. Of Enforcement

Paul Holder, Pharm.D., R.Ph.

Chief of Investigations

Robert Ebrom

Chief of Compliance

Ben Santana, R.Ph.

Program Specialist

Janelle Nastri

Enforcement Specialists

Annette Porterfield

Becky Damon

Elaine Naivar

Brandy Plummer

David Gomez

Enforcement Officers

George Redmond

Linda Yazdanshenas

Enforcement Technicians

Debra Beall

Yvette Muniz

Noreen Trevino

Sr. Staff Investigator

Melissa Weeden

Investigative Case Manager

Amanda Huerta

Enf. Program Administrator

Robert Rivera, Ph.T.R.

Enf. Program Officer

Nelma Sanchez, Ph.T.R.

Investigators (6)

Senior Compliance Officers

Mike Ethridge, R.Ph.

Iona Grant, R.Ph.

Compliance Specialist

Jessica Rodriguez, Ph.T.R.

STAFF

Compliance Inspectors

Sharon Dimmick, Ph.T.R.
Karen Guenther, Ph.T.R.
David Meryman, Ph.T.R.
Adrienne Bauer, Ph.T.R.

Administrative Assistants

Kelly Clark
Demetria Williams

Note: The organizational structure reflects the organization as of August 31, 2009.

Board Mission

The statutory mission of the Texas State Board of Pharmacy is to promote, preserve, and protect the public health, safety, and welfare by fostering the provision of quality pharmaceutical care to the citizens of Texas, through the regulation of: the practice of pharmacy; the operation of pharmacies; and the distribution of prescription drugs in the public interest.

Board Philosophy

The Texas State Board of Pharmacy will assume a leadership role in regulating the practice of pharmacy and act in accordance with the highest standards of ethics, accountability, efficiency, effectiveness, and open communication. We affirm that regulation of the practice of pharmacy is a public and private trust. We approach our mission with a deep sense of purpose and responsibility. The public and regulated community alike can be assured of a balanced and sensible approach to regulation.

Board Strategic Goals (FY2009-2013)

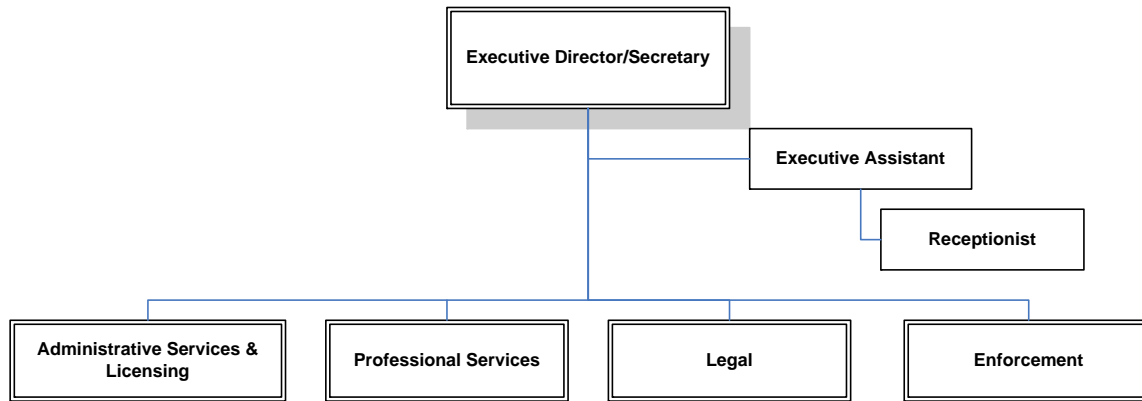
- We will establish and implement reasonable standards for pharmacist and pharmacy technician education and practice, and for the operation of pharmacies to assure that safe and effective pharmaceutical care is delivered to the citizens of Texas [Texas Pharmacy Act (Occupations Code, Sec. 551-566, 568-569)].
- We will assertively and swiftly enforce all laws relating to the practice of pharmacy to ensure that the public health and safety are protected from the following: incompetent pharmacists and pharmacy technicians; unprofessional conduct, fraud, and misrepresentation by licensees; and diversion of prescription drugs from pharmacies; and to promote positive patient outcomes through the following: reduction of medication errors by encouraging or requiring licensees to implement self-assessment programs and continuous quality improvement programs, including peer-review processes; and enforcement of rules relating to patient counseling and drug regimen review, including prevention of misuse and abuse of prescription drugs. [Texas Pharmacy Act (Occupations Code, Sec. 555-569), and Health and Safety Code, Chapter 483, Dangerous Drugs.]
- We will establish and implement policies governing purchasing and public works contracting that foster meaningful and substantive inclusion of historically underutilized businesses (HUBs).

Board Structure

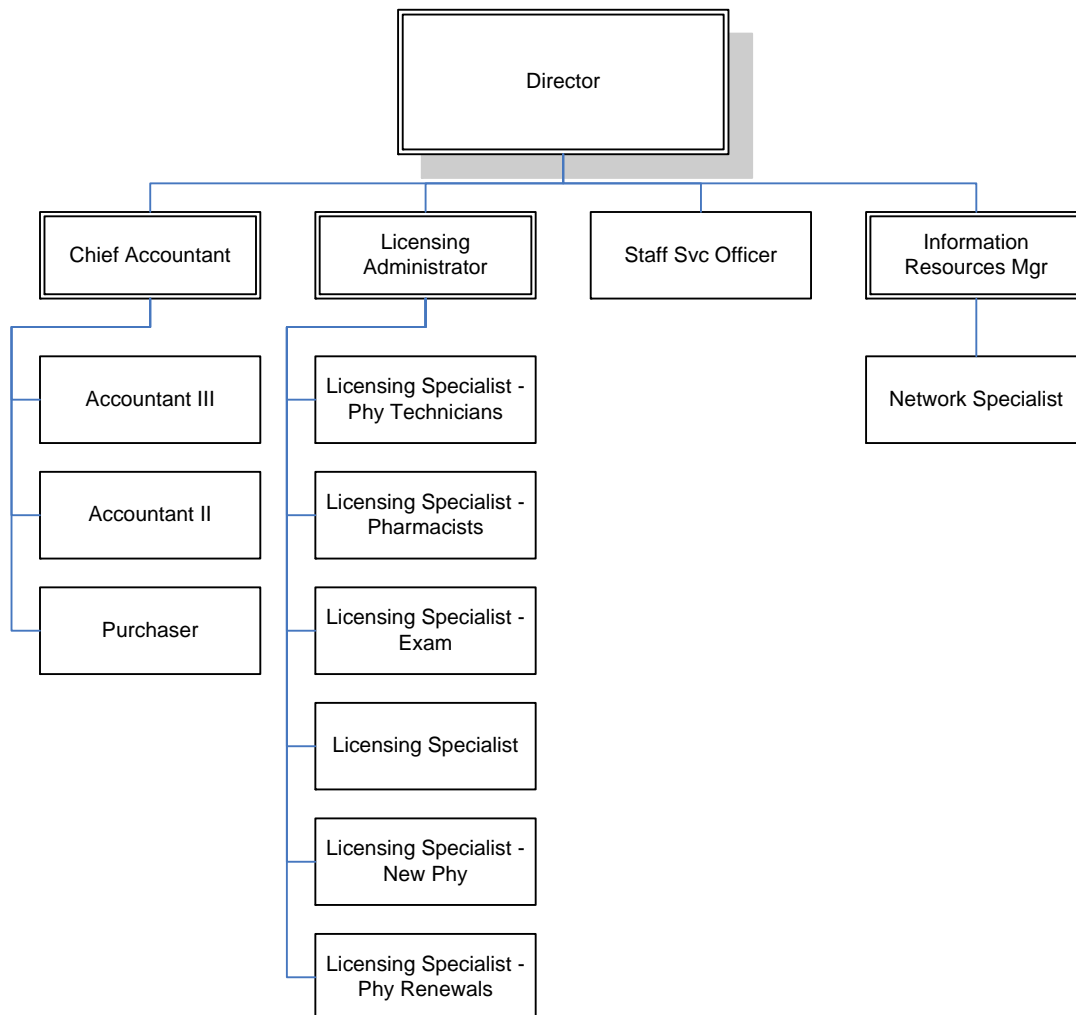
The Board's functional structure at the end of FY2009 was composed of the Office of the Executive Director and four Divisions:

- Division of Administrative Services and Licensing;
- Division of Professional Services;
- Division of Enforcement; and
- Division of Legal Services.

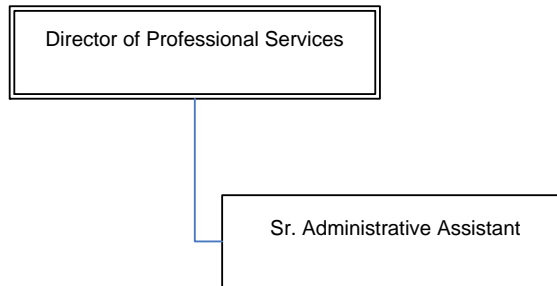
Texas State Board of Pharmacy
Fiscal Year 2009



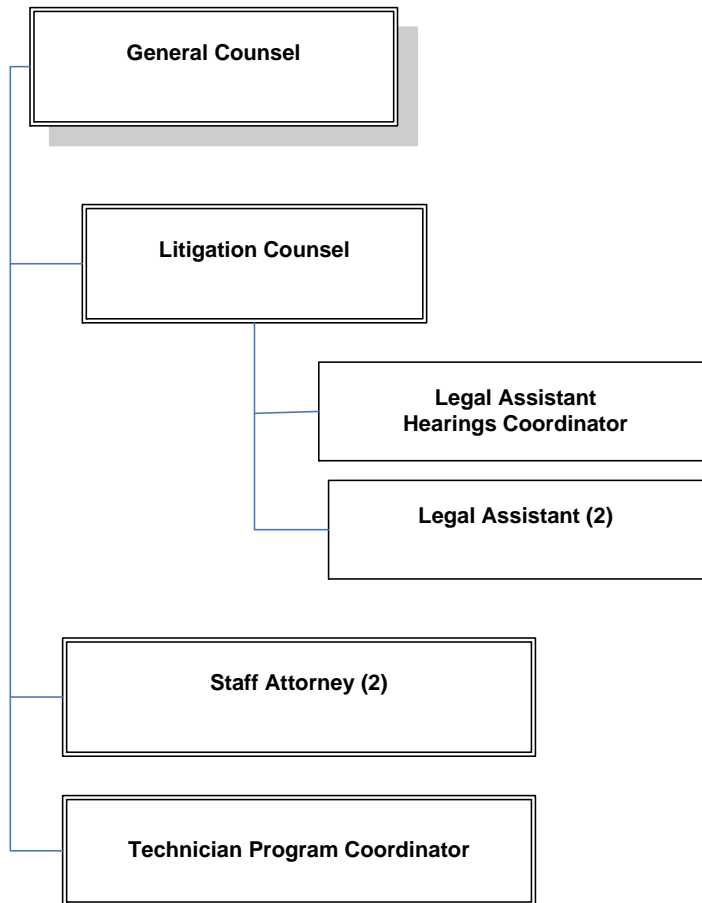
Texas State Board of Pharmacy
Administrative Services & Licensing
Fiscal Year 2009



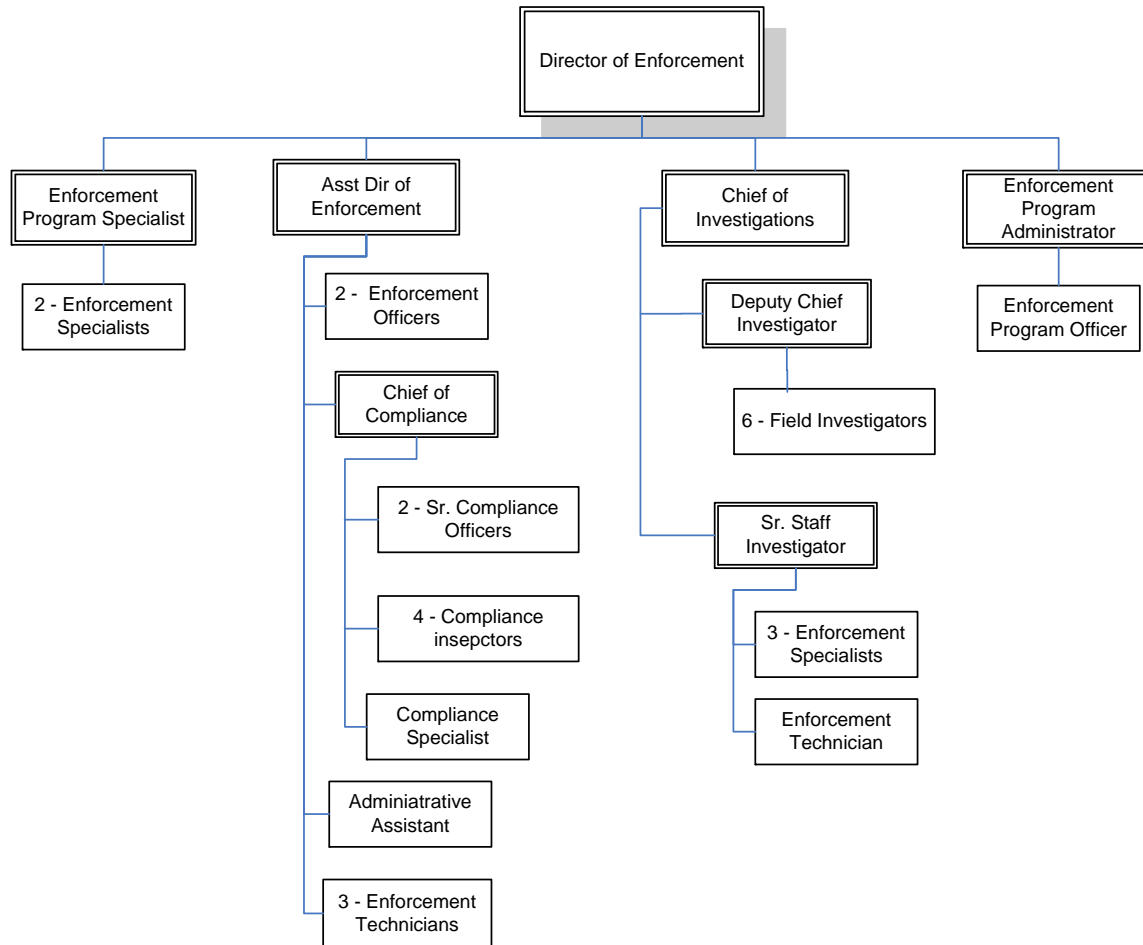
Texas State Board of Pharmacy
Professional Services
Fiscal Year 2009



Texas State Board of Pharmacy
Legal Division
Fiscal Year 2009



Texas State Board of Pharmacy
Enforcement
Fiscal Year 2009



FY2009 Fiscal Report

FY2009 FISCAL REPORT

The attached report represents an unaudited report of the financial activities regarding the internal operating budget for Fiscal Year 2009 (September 1, 2008 - August 31, 2009). A more detailed accounting of the agency's unaudited financial report, which includes all fund types and account groups, a complete statement of revenues and expenditures, and changes in fund balance, can be found in the *"FY2009 Annual Financial Report."*

It is important to note that as of August 31, 2009, the unexpended balance for FY2009 was approximately \$56,667 or 1.33% under budget. The primary source of this unexpended balance was in the testing of compounded products. This item was targeted for reduction as a result of recommendations from the Senate and House leadership that all agencies submit recommendations to achieve a 2.5% budget savings for fiscal year 2009. Recommendations were submitted; however, budgets were never actually reduced, which contributed to the amount of unexpended balance for the year.

**TEXAS STATE BOARD OF PHARMACY
EXPENDITURES - Fiscal Year 2009**

as of August 2009

Code	Description	Budget	Expended	Remaining Budget	Percent Remaining
1008	(a) Professional Fees & Svcs (Other)	50,358.00	27,268.48	23,089.52	45.85%
1010	(b) Professional Fees & Svcs (TPA)	136,719.00	130,706.67	6,012.33	4.40%
3002	Gas, Other Fuels & Lubricants	22,811.00	22,678.43	132.57	0.58%
3003	Vehicles - Maintenance	6,867.77	6,544.47	323.30	4.71%
3004	Consumable Supplies & Materials	31,198.00	31,168.98	29.02	0.09%
3005	Postage	52,400.00	51,985.78	414.22	0.79%
3006	Telephone	34,945.00	34,682.69	262.31	0.75%
3014	Subscriptions	10,232.00	10,151.60	80.40	0.79%
3015	Postage - Newsletter	3,350.00	2,603.05	746.95	22.30%
3018	Travel - Board Members (Service)	30,000.00	29,416.50	583.50	1.95%
3019	Travel - Board Mbr Conference	11,266.81	10,756.37	510.44	4.53%
3027	Travel - State Vehicle	1,048.85	1,048.85	0.00	0.00%
3028	Travel - Staff (Service)	80,584.15	76,424.22	4,159.93	5.16%
3038	Travel - Staff (Conference)	11,400.00	2,801.15	8,598.85	75.43%
3039	Travel - Staff (Conf Out Of State)	6,000.00	2,079.32	3,920.68	65.34%
3516	Membership Fees & Dues	2,111.00	2,111.00	0.00	0.00%
3517	Administrative Support Service & Other	1,400.00	1,380.00	20.00	1.43%
3518	Administrative Support Service	26,357.00	26,063.88	293.12	1.11%
3521	Criminal Investigative Expense	900.00	784.37	115.63	12.85%
3534	Freight & Delivery Service	3,568.00	3,221.82	346.18	9.70%
3535	Maint & Repair - Furn & Equip	8,302.32	8,302.32	0.00	0.00%
3536	Rental of Furn & Equip	10,000.00	9,694.66	305.34	3.05%
3537	Rental of Space	3,408.00	3,283.31	124.69	3.66%
3538	Bonds & Insurance	9,453.00	9,453.00	0.00	0.00%
3539	Maint & Repair - Building	505.00	0.00	505.00	100.00%
3540	Reproduction & Printing	32,287.45	32,094.50	192.95	0.60%
3541	Printing - Newsletter	3,366.92	3,366.92	0.00	0.00%
3545	Computer Expenses	136,647.60	136,588.01	59.59	0.04%
3550	Hearing Expenses	350.00	0.00	350.00	100.00%
3570	Registration Fees	7,018.00	7,018.00	0.00	0.00%
3571	Board Member Registration	5,021.41	4,492.00	529.41	10.54%
3581	F & E - Not Capitalized or Inventoried	9,400.00	5,565.21	3,834.79	40.80%
3586	Cap Bdg Project - F&E - Inventoried	55,615.84	54,530.64	1,085.20	1.95%
3588	Books & Recorded Materials	600.00	558.11	41.89	6.98%
3590	Miscellaneous (HPC Transfer and Fees)	21,598.03	21,598.03	0.00	0.00%
3595	Awards	1,238.08	1,238.08	0.00	0.00%
7001	Exempt Salaries	105,000.00	105,000.00	0.00	0.00%
7002	Classified Salaries - Full Time	2,906,630.05	2,906,630.05	0.00	0.00%
7017	Performance Bonus	103,632.39	103,632.39	0.00	0.00%
7020	Hazardous Pay	2,600.00	2,600.00	0.00	0.00%
7021	Overtime Pay	9.67	9.67	0.00	0.00%
7022	Longevity	58,840.00	58,840.00	0.00	0.00%
7023	Lump Sum Termination Payment	11,163.92	11,163.92	0.00	0.00%
7025	Compensatory Per Diem	6,043.50	6,043.50	0.00	0.00%
7219	Texas Online Fee	221,880.00	221,880.00	0.00	0.00%
7947	State Office of Risk Management Refund	5,113.70	5,113.70	0.00	0.00%
7984	Unemployment Compensation	1,483.00	1,483.00	0.00	0.00%
TOTAL ADMIN, LIC & ENF		4,250,724.46	4,194,056.65	56,667.81	1.33%

Office of the Executive Director

This FY2009 Annual Report reflects the objectives accomplished and activities conducted by the agency necessary to implement its *Strategic Plan*. The agency continued to enjoy an excellent reputation with a broad range of customers as a consumer protection advocate and also has the support of its activities by the regulated profession.

The numerous accomplishments achieved by TSBP staff are highlighted at the beginning of each division report. Although specific activities are highlighted under each Division Director's Objectives, TSBP experienced the following major accomplishments and disappointments/constraints in FY2009.

FY2009 SIGNIFICANT ACCOMPLISHMENTS

1. The agency accomplished or partially accomplished all (100%) of its 88 objectives [85 accomplished (96.6%) and 3 partially accomplished (3.4%)]. In addition, the agency also met or exceeded 11 (91.66%) of its 12 key performance measures listed in the Appropriations Act and required to be reported on an annual basis to the Legislative Budget Board (LBB). (See Executive Director Ongoing Objective #1 for additional details).
2. During the 81st Texas Legislative Session a number of significant legislation that affected the agency or the practice of pharmacy was passed including funding for all of the requested items in the agency's legislative appropriation request. (See Executive Director New Objective #1 for additional details.) The funded items included:
 - a. An increase to the executive director's salary of \$3,000;
 - b. Addition of 10 new FTE's to assist in the Pharmacy Technician Trainee Program and ongoing registration of Pharmacy Technicians;
 - c. Increase to the Pharmacy Recovery Network;
 - d. Increase to the testing of compounded products;
 - e. Merit increases to eligible employees;
 - f. Equity increases to eligible employees; and
 - g. One-time funding to implement the Shared Regulatory Database Project.
3. As reflected in the chart below, TSBP closed more complaints in FY2009 than in any prior fiscal year (see Enforcement Ongoing Objective #3 for further information regarding complaints that were closed by TSBP in FY2009).

Year	Complaints Received	% Change Complaints Received Previous Year	Complaints Closed	% Change Complaints Closed Previous Year	% Complaints Closed	Resolution Time (Agency Average)	% Change Time
FY05	3,086	-31%	3,327	+10%	108%	196 Days	+66%
FY06	3,550	+15%	3,387	+2%	95%	207 Days	+6%
FY07	5,849	+65%	4,980	+47%	85%	185 Days	-11%
FY08	5,737	-2%	5,360	+8%	93%	196 Days	+6%
FY09	5,290	-8%	6,182	+15%	117%	211 Days	+8%

OFFICE OF THE EXECUTIVE DIRECTOR

4. Approximately 98% of the disciplinary cases against pharmacists and pharmacies and 100% of the cases against pharmacy technicians were settled through the entry of Agreed Board Orders or default Board Orders, which resulted in significant efficiencies, both in terms of complaint resolution time and expenditures.
5. TSBP entered more disciplinary orders in FY2009 than in any previous year, as reflected in the chart below (See Legal Ongoing Objective #1 for more details).

Numbers of Disciplinary Orders FY2005 – FY2009				
Year	Pharmacists	Pharmacies	Pharmacy Technicians	Total
FY05	119	53	380	552
FY06	144	63	268	475
FY07	213	87	348	648
FY 08	171	82	310	563
FY 09	207	127	403	737
% 5-year Increase (05 – 09)				64%

6. Agency Staff gave 43 presentations to approximately 3,787 individuals during FY2009. (See Enforcement Ongoing Objective #7, Professional Services Ongoing Objective #4, and Executive Director Ongoing Objective #5 for more details).
7. The following TSBP Board Members and staff were appointed to offices, received honors, or received recognition in FY2009.
 - A. Board member Buford T. Abeldt, Sr., R.Ph., was appointed to the National Association of Boards of Pharmacy's Committee on Constitution and Bylaws.
 - B. Board member W. Benjamin Fry, R.Ph., FIACP, FACA, was appointed as a member of the National Association of Boards of Pharmacy's Committee on Law Enforcement and Legislation.
 - C. Board member Alice M. Mendoza, R.Ph. was appointed as a member of the National Association of Boards of Pharmacy's Task Force on Electronic Prescribing Software Standards and Data Storage.
 - D. Board member Jeanne D. Waggener, RPh, was appointed as a member of the National Association of Boards of Pharmacy's Task Force on Pharmacy Technician Education and Training Programs.
 - E. Board member Dennis F. Wiesner, RPh,:
 - was appointed as a member of the National Association of Boards of Pharmacy's Committee on Constitution and Bylaws; and
 - received the Novartis Pharmaceutical Alliance Award at the National Association of Chain Drug Stores Pharmacy and Technology Conference.
 - F. Executive Director/Secretary Gay Dodson, R.Ph. was appointed:
 - to serve as chair of the National Association of Boards of Pharmacy's Task Force on Prescription Monitoring Program Standards; and
 - by Governor Rick Perry to serve a third two-year term on the State Employees Charitable Campaign Policy Committee.

OFFICE OF THE EXECUTIVE DIRECTOR

FY2009 SIGNIFICANT DISAPPOINTMENTS/CONSTRAINTS

1. The Pharmacy Technician Registration Program continues to grow, resulting in the following increases in workload for the agency.

Number of Licensees FY2005 – FY2009						
	FY2005	FY2006	FY2007	FY2008	FY2009	% Increase
Pharmacies	6,107	6,201	6,315	6,424	6,516	7%
Pharmacists	22,661	23,323	23,939	24,586	25,507	13%
Pharmacy Technicians	26,664	30,091	32,106	32,914	33,927	27%
Pharmacy Technician Trainees	--	--	10,399	18,093	17,657	70% (3-yr)
Pharmacist Interns	804	822	886	925	1,052	31%
Totals	56,236	60,437	73,645	82,942	84,659	51%

Year	Complaints Received	% Change Complaints Received Previous Year	Complaints Closed	% Change Complaints Closed Previous Year	% Complaints Closed	Resolution Time (Agency Average)	% Change Time
FY05	3,086		3,327		108%	196 Days	
FY06	3,550	+15%	3,387	+2%	95%	207 Days	+6%
FY07	5,849	+65%	4,980	+47%	85%	185 Days	-11%
FY08	5,737	-2%	5,360	+8%	93%	196 Days	+6%
FY09	5,290	-8%	6,182	+15%	117%	211 Days	+8%
5yr Chg		71%		86%			8%

Numbers of Disciplinary Orders FY2005 – FY2009				
Year	Pharmacists	Pharmacies	Pharmacy Technicians	Total
FY05	119	53	380	552
FY06	144	63	268	475
FY07	213	87	348	648
FY 08	171	82	310	563
FY 09	207	127	403	737
% 5-year Increase (05 – 09)	74%	140%	6%	34%

OFFICE OF THE EXECUTIVE DIRECTOR

FY2009 ANNUAL REPORT

GOAL

To provide policy advice to the Board, implement Board policies, and manage the organization in a manner that will accomplish the stated mission, goals, and objectives of the agency.

Objectives (New)

1. To provide testimony, attend public hearings, and provide any fiscal or technical information, and to review all legislation that has an impact on the practice of pharmacy and agency operations, and monitor the process of this legislation, throughout the 81st Texas Legislative Session.

Status: ACCOMPLISHED

Comment: During this fiscal year, the following was accomplished in regard to this objective.

- A. A total of 8,074 pieces of legislation were introduced in the 81st Regular Legislative Session. The Executive Director reviewed or assigned a staff member to review each of these bills. A total of 387 bills that affected the agency or the practice of pharmacy were tracked and monitored as follows.

81 st TEXAS LEGISLATURE, REGULAR SESSION					
		Session		TSBP Monitored	
		Filed	Passed	Filed	Passed
House					
	Bills	4,836	847	236	45
	Joint Resolutions	140	9	0	0
	Concurrent Resolutions	285	201	3	2
	Resolutions	54	0	0	0
	House Total	5,315	1,057	239	47
Senate					
	Bills	2,583	577	148	36
	Joint Resolutions	50	0	0	0
	Concurrent Resolutions	86	54	0	0
	Resolutions	40	0	0	0
	Senate Total	2,759	631	148	36
Regular Session Total		8,074	1,688	387	83

- B. The Executive Director met with Legislators or others or testified before Legislative committees a total of 34 times as follows.

Date	Subject, Legislator, or Committee
9/8/08	Budget Hearing with the staff of the Legislative Budget Board and the Governor's Budget, Planning and Policy Division
9/8/08	Budget Hearing with the staff of the Legislative Budget Board and the Governor's Budget, Planning and Policy Division for the Health Professions Council
9/15/08	Meeting with Senator Leticia Van de Putte regarding TSBP suggested changes to the Pharmacy Act
9/22/08	Meeting with Representative Vicki Truitt regarding the controlled substance prescription monitoring program
10/16/08	Meeting with the Texas Federation of Drug Stores (TFDS) board regarding TSBP suggested changes to the Pharmacy Act
10/29/08	Orientation of the agency's new Legislative Budget Board analysts, Emily Sentilles and Andrea Cain

OFFICE OF THE EXECUTIVE DIRECTOR

Date	Subject, Legislator, or Committee
12/2/08	Meeting with staff in Senator Van de Putte's office regarding HB 96 and HB 97 (compounding and membership of the TSBP Board) and SB 650 (TSBP peace officer bill)
12/2/08	Meeting with Representative Fred Brown regarding HB 96 and HB 97 (compounding and membership of the TSBP Board)
12/15/08	Meeting with Karen Reagan regarding the agency's suggested changes to the Pharmacy Act
12/16/08	Meeting with the Texas Pharmacy Practice Coalition regarding the agency's suggested changes to the Pharmacy Act
1/8/09	Meeting with Paul Davis and Brad Shields regarding Texas Society of Health-System Pharmacists legislative agenda.
1/16/09	Meeting with Kathy Barber of TFDS regarding legislation
2/20/09	Senate Finance Committee regarding the TSBP budget request
2/24/09	Meeting with David Pearson, Texas Organization of Rural Hospitals (TORCH) regarding pharmacy services in rural hospitals
2/26/09	House Appropriations Subcommittee on Business and Economic Development and Regulatory regarding the TSBP budget request
2/27/09	Meeting with Texas Medical Association and Pharmacy Associations regarding transferring the prescription monitoring program to TSBP
3/9/09	Senate Finance Committee Hearing regarding the TSBP budget request
3/10/09	House Public Health Committee Hearing on HB 19 (prescription labeling)
3/16/09	House Appropriations Committee Hearing on TSBP budget request.
3/16/09	House Public Safety Committee Hearing on HB 1639 (peace officer)
3/17/09	Senate Health and Human Services Committee Hearing on SB 381 (pharmacists signing prescriptions)
3/18/09	Meeting with Senator Tommy Williams regarding SB 911 (transferring the prescription monitoring program from DPS to TSBP)
3/23/09	Senate State Affairs Committee Hearing on SB 888 (pill splitting)
3/24/09	House Public Health Committee Hearing on HB 1409 (pharmacist signing prescriptions) and HB 1924 (pharmacy services in rural hospitals)
3/26/09	Meeting with Representative Byron Cook regarding destruction of drugs
3/31/09	Senate Health and Human Services Committee Hearing on SB 127 (confidentiality of compounding information)
4/2/09	Meeting with the Texas Society of Health-System Pharmacists and the Texas Organization of Rural Hospitals regarding HB 1924 (pharmacy services in rural hospitals)
4/6/09	Meeting with Janice Reinken of Representative Ruth McClendon's office regarding the transfer of the prescription monitoring program from DPS to TSBP
4/13/09	Conference Call with the Texas Pharmacy Practice Coalition regarding legislation
4/14/09	Senate Criminal Justice Committee Hearing on SB 650 (peace officer)
4/21/09	House Public Health Committee Hearing on HB 381 (pharmacist's signing prescriptions)
4/24/09	Meeting with staff of Senator Van de Putte regarding SB 646 (data mining study)
4/28/09	Senate Health and Human Services Committee Hearing on SB 646 (data mining) and SB 1853 (technician discipline)
5/29/09	Meeting with Representative McClendon regarding HB 1504 (distribution of prescription drugs)

- C. During the 81st Session, the following significant legislation that affected the agency or the practice of pharmacy was passed.

(1) S.B. 1 by Ogden/Pitts (Effective Date: 9/1/09)

This bill established the TSBP budget for FY2010-2011 that includes funding for:

- a. A new Shared Regulatory Database;
- b. Merit and equity increases for certain staff;
- c. An annual increase to the salary of the ED of \$1,500;
- d. 10 additional staff (two in the field);
- e. Testing additional compounded products; and
- f. Leveling the funding for Professional Recovery Network.

OFFICE OF THE EXECUTIVE DIRECTOR

(2) H.B. 19 by Lebowitz/Zaffirini (Effective Date: 9/1/09)

The Texas Pharmacy Act was amended to require the Board to adopt rules that require:

- a. a "beyond-use date" on the prescription label or on a "flag" label attached to the dispensing container. The Board must adopt rules by January 1, 2010; and
- b. pharmacists, when dispensing certain drugs, to include on the prescription label or on information provided with the prescription, the statement "Do not flush unused medications or pour down a sink or drain." The Board must adopt rules by July 1, 2010.

(3) H.B. 963 by Guillen/Whitmire (Effective Date: 6/19/09)

Chapter 53 of the Occupations Code was amended to:

- a. Require all regulatory agencies to conduct a preliminary evaluation of person's eligibility to be licensed. An agency has 90 days to respond to this request and a fee may be charged for the evaluation; The Board is required to adopt rules by September 1, 2010;
- b. Specify that a regulatory agency may discipline a licensee for an offense that does not directly relate to practice only if the offense was committed less than five years ago; and
- c. Require certain regulatory agencies to issue a license or provisional license to a person who is otherwise eligible for licensing and who has a conviction for certain types of offenses. TSBP is exempted from this provision.

(4) H.B. 1357 by Isett/Duell (Effective Date: 9/1/09)

- a. The Health and Safety Code was amended to add a new Chapter 254 for the licensing and regulation of "Freestanding Emergency Medical Care Facilities" by the Department of State Health Services. Included in the rules that DSHS must adopt by March 1, 2010, are rules for the distribution and administration of drugs and controlled substances.
- b. The bill did not amend the Controlled Substances or Dangerous Drug Acts to allow these facilities to possess drugs. Therefore, TSBP must adopt rules for a new class of pharmacy in these centers.

(5) H.B. 1409 by Hopson/Nichols (Effective Date: 9/1/09)

This bill amended the Texas Pharmacy Act to allow a pharmacist to administer an influenza vaccination to a patient over seven years of age.

(6) H.B. 1924 by Heflin/Seliger (Effective Date: 6/19/09)

- a. The Texas Pharmacy Act was amended to define a "rural hospital" as a hospital with 75 beds or fewer that is located in a county with a population of 50,000 or less; or has been designated by the Centers for Medicare and Medicaid Services as a critical access hospital, rural referral center, or sole community hospital.
- b. The Texas Pharmacy Act was also amended to allow pharmacy technicians in a "rural hospital" to perform certain duties when a pharmacist is NOT on duty if:
 - the pharmacy technician was registered and meets the training requirements specified by the Board;
 - a pharmacist is accessible at all times to respond to any questions and needs of the pharmacy technician or other hospital employees;or

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- a nurse or practitioner or a pharmacist by remote access verifies the accuracy of the actions of the pharmacy technician.
- c. The Board was required to adopt rules for pharmacy technicians performing duties without direct supervision.
- d. H.B. 1924 also amended the Texas Pharmacy Act to allow hospitals that have ongoing “clinical pharmacy programs” to allow pharmacy technicians to verify the accuracy of work performed by another pharmacy technician relating to the filling of floor stock and unit dose distribution systems if the patient’s orders have previously been reviewed and approved by a pharmacist (tech-check-tech).

(7) H.B. 2730 by Kolkhorst/Hinojosa (Effective Date: 9/1/09)

- a. This bill was the Department of Public Safety’s Sunset bill. One provision of the bill establishes an “Interagency Council” composed of the:
 - Texas Department of Public Safety;
 - Texas State Board of Pharmacy; and
 - Texas Medical Board.
- b. The “Interagency Council” is required to develop a transition plan for the orderly transfer from the Department of Public Safety to the Texas State Board of Pharmacy of records and regulatory functions relating to dispensing controlled substances by prescription including the Prescription Monitoring Program. The council is required to make a report to the Legislature by January 1, 2011.

(8) S.B. 381 by Van de Putte/Hopson (Effective Date: 9/1/09)

- a. This Bill amended the Medical Practices Act to allow a physician to delegate the implementation or modification of a patient’s drug therapy under a protocol, including the authority to sign a prescription for dangerous drugs, if the delegation follows a diagnosis, initial patient assessment, and drug therapy order by the physician. A pharmacist may sign the prescription if the:
 - pharmacist practices in a hospital, hospital-based clinic, or an academic health care institution;
 - hospital, hospital-based clinic, or academic health care institution has bylaws and a medical staff policy that permit a physician to delegate to a pharmacist the management of a patient's drug therapy; and
 - pharmacist provides a copy of the protocol to the Texas State Board of Pharmacy; and the name, address, and telephone number of the pharmacist and of the delegating physician on each prescription signed by the pharmacist.
- b. TSBP was required to:
 - publish on its Website a list of pharmacists who are authorized to sign a prescription drug order, including the name of the delegating physician; and

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- with the advice of the Texas Medical Board, to adopt rules that allow a pharmacist to implement or modify a patient's drug therapy pursuant to a physician's delegation. These rules must be adopted by December 1, 2009.

(9) S.B. 646 by Van de Putte/Kolkhorst (Effective Date: 6/19/09)

The Board is required to conduct a study on the license, transfer, use, and sale of prescription information containing patient-identifiable and practitioner-identifiable information by PBMs, insurers, electronic transmission intermediaries, pharmacies, and other similar entities for the purpose of advertising, marketing, or promoting pharmaceutical products. A report is due by August 1, 2010.

(10) S.B. 650 by Van de Putte/Hopson (Effective Date: 6/19/09)

This bill amended the Texas Pharmacy Act to allow TSBP investigators who are commissioned peace officers to carry weapons and make arrests. The bill also allowed TSBP to share in assets seized by federal agencies when we assist in those cases.

(11) S. B. 904 by Williams/McReynolds (Effective Date: 6/19/09)

This bill amended the Texas Controlled Substances Act to allow a physician to issue multiple prescriptions to one patient authorizing the patient to receive a total of 90-days supply of a Schedule II drug. The physician is required to note on each prescription to be filled at a later date, the earliest date on which a pharmacy may fill the prescription. The bill also made Carisoprodol (Soma®) a Schedule IV controlled substance as of June 19, 2009. This means that all prescriptions for Carisoprodol dispensed after June 19, 2009, must be reported to DPS with other controlled substance prescriptions.

(12) S.B. 911 by Williams/Hamilton (Effective Date: 9/1/09)

This bill amended the Texas Medical Practices Act to require pain management clinics to be certified by the Texas Medical Board. The Medical Board is required to adopt rules by March 1, 2010, and all pain management clinics are required to have a certificate by September 1, 2010.

(13) S.B. 1058 by Uresti/Coleman (Effective Date: 9/1/09)

- a. Chapter 53 of the Occupations Code was amended to require all health licensing agencies to annually report certain activities to the chairs of the House and Senate with primary oversight of the agency.
- b. The Health Professions Council must adopt a standard format for the report by January 1, 2010.

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(14) S.B. 1127 by Van de Putte/Hopson (Effective Date: 6/19/09)

- a. The Texas Pharmacy Act was amended to make reports, records, formulas, and test results of samples of products compounded by pharmacies and obtained by the Board confidential and not subject to the Texas Open Records Act. The Board may create, use, or disclose statistical information from the test results of samples of compounded products. The Board may disclose the information:
 - in a disciplinary hearing before the Board or in a subsequent trial or appeal of a Board action or order; or
 - to a pharmacist licensing or disciplinary authority of another jurisdiction; or
 - under a court order.
- b. The Board must require a pharmacy to recall a compounded product and may release the results of the tests of the samples of the compounded product if the Board determines that:
 - the test results indicate a patient safety problem that may involve potential harm to a patient; and
 - the release of the test results is necessary to protect the public.
- c. If the pharmacy does not recall the product within 48 hours after the request, the Board must release the test results.

(15) S.B. 1853 by Van de Putte/Hopson (Effective Date: 6/19/09)

- a. The Texas Pharmacy Act was amended to specify that the Board may discipline a pharmacy technician if the technician has:
 - performed a duty only a pharmacist may perform;
 - used alcohol or drugs in an "intemperate" manner;
 - engaged in negligent, unreasonable, or inappropriate conduct when working in a pharmacy;
 - violated a disciplinary order;
 - been convicted of a criminal offense that requires registration as a sex offender; or
 - been disciplined by pharmacy or other health regulatory board.
- b. The Texas Pharmacy Act was also amended to:
 - specify that a disciplinary action affecting the registration of a pharmacy technician trainee remains in effect if the trainee obtains registration as a pharmacy technician; and
 - give the Board the authority on probable cause to order a pharmacy technician to submit to a mental or physical evaluation. (Note: This matches provisions currently in the law for pharmacists and interns.)

2. **To direct the submission of, provide testimony for, and monitor the progress of the agency's *Legislative Appropriation Request* and corresponding performance measures for FY2010-2011.**

Status: **ACCOMPLISHED**

Comment: Other than a larger increase in the salary of the Executive Director, the agency was successful in obtaining funding for all of the items requested in the Legislative Appropriation Request as follows:

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- (1) A new Shared Regulatory Database;
- (2) Merit increases for eligible staff and equity increases for certain staff;
- (3) An annual increase to the salary of the ED of \$1,500;
- (4) 10 additional staff (two in the field) bringing the agency total to 72 FTEs.
The 10 additional staff are:
 - a. License & Permit Specialist
 - b. Legal Assistants (three)
 - c. Field Investigator
 - d. Field Inspector
 - e. Administrative Assistant Enforcement
 - f. Enforcement Officer (Program Specialist)
 - g. Investigator III (two in-house)
- (5) Testing additional compounded products; and
- (6) Leveling of the funding for Professional Recovery Network.

Objectives (Ongoing)

1. **To manage and monitor the agency's operation and performance throughout FY2009.**

Status: **ACCOMPLISHED**

Comment: The agency accomplished or partially accomplished all (100%) of its 88 objectives [85 accomplished (96.6%) and 3 partially accomplished (3.4%)]. In addition, the agency also met or exceeded 11 (91.66%) of its 12 key performance measures listed in the Appropriations Act and required to be reported on an annual basis to the Legislative Budget Board (LBB) as indicated below.

Performance Measure		FY09 Projected Performance	FY09 Performance Attained	Projected Target Met?*
A. Goal: Maintain Standards - To establish and implement reasonable standards for pharmacist education and practice, and for the operations of pharmacies to assure that safe and effective pharmaceutical care is delivered to the citizens of Texas.				
	Outcome (Results/Impact)			
	Percent of Licensees with No Recent Violations	95%	95.7%	Exceeded
	Percent of Licensees Who Renew Online	84.58%	89.6%	Exceeded
	A.1.1. Strategy: Licensing - To operate a timely, cost-effective application and renewal licensure system for pharmacies and pharmacists.			
	Output (Volume)			
	Number of New Licenses Issued to Individuals	1,091	1,207	Exceeded
	Number of Licenses Renewed (Individuals)	12,434	13,026	Exceeded
	Efficiencies			
	Average Licensing Cost Per Individual License Issued	\$11.89	\$9.30	Exceeded
	Average Licensing Cost Per Facility License Issued	\$41.09	\$43.05	Met
	Explanatory			
	Total Number of Business Facilities Licensed	6,354	6,516	Exceeded

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Performance Measure	FY09 Projected Performance	FY09 Performance Attained	Projected Target Met?*
B. Goal: Enforce Regulations - To assertively and swiftly enforce all laws relating to the practice of pharmacy to ensure that the public health and safety is protected from the following: incompetent pharmacists; unprofessional conduct; fraud; and misrepresentation by licensees; and diversion of prescription drugs from pharmacies; and to promote positive patient outcomes through the following: reduction of medication errors by encouraging or requiring licensees to implement self-assessment programs and continuous quality improvement programs, including peer review processes; and enforcement of rules relating to patient counseling and drug regimen review, including prevention of misuse and abuse of prescription drugs.			
Outcome (Results/Impact)			
Percent of Complaints Resulting in Disciplinary Action	15.00%	10.80%	Met
B.1.1. Strategy: Enforcement - Emphasize preventative enforcement by conducting compliance inspections of pharmacies; providing technical assistance, licensee information, and educational programs; receiving, investigating, and resolving complaints; and monitoring compliance with disciplinary orders resulting from Board adjudication.			
Output (Volume)			
Number of Jurisdictional Complaints Resolved	3,988	6,120	Exceeded
Efficiencies			
Average Time for Jurisdictional Complaint Resolution	180	211	Not Met
Explanatory			
Number of Jurisdictional Complaints Received	3,500	5,226	Exceeded
B.1.2. Strategy: Peer Assistance - Operate a peer assistance program.			
Output (Volume)			
Number of Licensed Individuals Participating in a Peer Assistance Program	165	157	Met

* Within a 5% variance, TSBP's actual performance was either: equivalent to projected performance ("Met"); better than projected performance ("Exceeded"); or fell below projected performance ("Not Met").

- To coordinate the development of proposed goals and objectives and budget for FY2010 based on the *Strategic Plan* and projected budget, for submission to the Board two weeks prior to the 2009 Annual Policy Meeting.**

Status: **ACCOMPLISHED**

Comment: A proposed budget, including revenue projections, and Goals and Objectives for the agency were presented and approved at the August 2009 Board Business Meeting.

- To direct TSBP's "*lead agency approach*" to help assure coordination of TSBP activities with those of other state and federal agencies involved in the regulation of the practice of pharmacy throughout FY2009.**

Status: **ACCOMPLISHED**

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Comment: The agency's Enforcement, Compliance, Investigations, and Legal staffs worked extensively with federal, state, and local regulatory agencies. (See Enforcement Division's Ongoing Objective #5, Legal Division's Ongoing Objective #8, and Professional Services Division's Ongoing Objective #10 for details of these cooperative efforts.)

- 4. To review all federal statutes, regulations, and policies that may impact the regulation of the practice of pharmacy and make timely recommendations to the Board for implementation of any required Board actions throughout FY2009.**

Status: ACCOMPLISHED

Comment: The Executive Director and agency staff monitored the activities of the federal Food and Drug Administration regarding the illegal importation of prescription drugs, Internet pharmacies, counterfeit prescription drugs, and compounding pharmacies. Notices of these activities were forwarded to the Board Members throughout the year.

- 5. As the Executive Director of the Board, throughout FY2009, to:**
- A. represent Board policies and programs to local, state, and national pharmacy, health-related, and consumer organizations;**
 - B. act as the Board's liaison to the pharmacy professional associations;**
 - C. continue to take a proactive role in the operation of the Health Professions Council; and**
 - D. continue to support and participate in the Texas Pharmacy Congress.**

Status: ACCOMPLISHED

Comment:

- A. The Executive Director:
 - (1) Gave 13 presentations to 1,755 persons, as indicated below.

Date	Name of Association/Location of Meeting	Attendance (Approximate)
9/6/08	West Texas Pharmaceutical Association's Fall Meeting – Lubbock	50
9/11/09	Brazos Valley Pharmacists Association Meeting – Bryan	50
9/27/08	University of Texas Pharmacy Practice Seminar – Austin	500
10/17/08	Texas Federation of Drug Stores Annual Meeting – Bastrop	30
12/3/08	Capitol Area Pharmacists Association – Austin	100
2/12/09	University of Texas Academy of Pharmacy Students – Austin	60
3/7/09	El Paso Area Society of Health-System Pharmacists Annual Frontiers in Pharmacy Seminar Presentation to Pharmacists– El Paso	100

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Date	Name of Association/Location of Meeting	Attendance (Approximate)
3/7/09	El Paso Area Society of Health-System Pharmacists Annual Frontiers in Pharmacy Seminar Presentation to Pharmacy Technicians – El Paso	30
3/30/09	University of the Incarnate Word Feik School of Pharmacy Law Students – San Antonio	75
4/18/09	Texas Society of Health-System Pharmacist's Annual Meeting, Pharmacy Technician Section – Austin	60
4/19/09	Board Update and Forum Texas Society of Health-System Pharmacist's Annual Meeting – Austin	100
4/25/09	West Texas Pharmacy Association's Annual Meeting – Amarillo	100
7/24/09	Board of Pharmacy Update and Forum at the Texas Pharmacy Association's Annual Meeting – San Antonio	500
Total		1,755

- (2) Attended 17 meetings or conferences representing the agency as indicated below. (See New Goal and Objective #1 and the 34 meetings with Legislators, Legislative Committees and Legislative staff.)

Date	Meeting
10/3/08	University of Texas College of Pharmacy Advisory Committee – Austin
10/28/08	Meeting with representatives of the federal General Accounting Office regarding abuse in the Medicaid program – Austin
10/29/08	Orientation of the agency's new Legislative Budget Board analysts, Emily Sentilles and Andrea Cain
10/30/08	TSBP Class C Task Force Meeting – Austin
12/15/08	Meeting with Karen Reagan regarding the agency's suggested changes to the Pharmacy Act
12/16/08	Meeting with the Texas Pharmacy Practice Coalition regarding the agency's suggested changes to the Pharmacy Act
1/8/09	Meeting with Paul Davis and Brad Shields regarding Texas Society of Health-System Pharmacists legislative agenda.
1/30/09	TSBP Class C Task Force Meeting – Austin
2/2/09	Meeting with representatives of the Texas Medical Board regarding physician/patient relationship – Austin
2/9/09	Conference call meeting with representatives of the Department of State Health Services, Bureau of Radiation Control regarding Nuclear pharmacies – Austin
2/11/09	Meeting with Prime Therapeutics regarding remote review of orders – Austin
2/23/09	Conference call meeting regarding licensing of Medtronic Center – Austin
4/27/09	Meeting with psychometrician regarding pharmacy technician examinations – San Marcos
6/2/09	TSBP Class C Task Force Meeting – Austin
7/10/09	Meeting regarding distribution of H1N1 vaccines – Austin

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Date	Meeting
7/13/09	Meeting with representatives of the Texas Department of Insurance regarding HB 4402 – Austin
8/6/09	Meeting with Hunter Pharmacy Services regarding remote supervision – Austin

- B. The Executive Director attended 12 meetings of professional associations and committees of the associations to serve as a liaison for the Board as follows.

Date	Name of Association/Location of Meeting
9/6/08	West Texas Pharmaceutical Association's Fall Meeting – Lubbock
9/10-11/08	National Association of Boards of Pharmacy Task Force on Pharmacy Technician Education – Chicago
9/17-19/08	National Association of Boards of Pharmacy/American Association of Colleges of Pharmacy District 6, 7, and 8 Annual Meeting – Park City, Utah
10/16/08	Meeting with the Texas Federation of Drug Stores (TFDS) board regarding TSBP suggested changes to the Pharmacy Act
10/17/08	Texas Federation of Drug Stores Annual Meeting – Bastrop
3/6-7/09	El Paso Area Society of Health-System Pharmacists Annual Frontiers in Pharmacy Seminar – El Paso
4/16-18/09	Texas Society of Health-System Pharmacist's Annual Meeting – Austin
4/25/09	West Texas Pharmacy Association's Annual Meeting – Amarillo
4/28/09	Meeting with the Joint Committee on Internship Programs – Austin
5/16-19/09	National Association of Boards of Pharmacy's Annual Meeting – Miami
7/23-25/09	Texas Pharmacy Association's Annual Meeting – San Antonio
8/26/09	Conference call meeting regarding NABP Task Force on Prescription Monitoring Programs – Austin

- C. The Executive Director continued to serve as Vice-Chair of the Health Professions Council and attended 13 meetings of the Council as follows:

Date	Activity
9/8/08	Budget Hearing with the staff of the Legislative Budget Board and the Governor's Budget, Planning and Policy Division for the Health Professions Council
9/24/08	Meeting with HPC and the members of the Shared Regulatory Database Project
9/29/08	Meeting with HPC and the members of the Shared Regulatory Database Project
10/2/08	Meeting with HPC and the members of the Shared Regulatory Database Project
12/8/08	Health Professions Council Meeting
12/15/08	Health Professions Council Budget Committee Meeting
12/19/08	Meeting with HPC and the members of the Shared Regulatory Database Project

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Date	Activity
2/20/09	Senate Finance Committee regarding the HPC budget request
3/9/09	Senate Finance Committee Hearing regarding the HPC budget request
3/16/09	House Appropriations Committee Hearing regarding the HPC budget request.
4/13/09	Health Professions Council Meeting
6/18/09	Meeting with HPC and the members of the Shared Regulatory Database Project
8/4/09	Meeting with HPC and the members of the Shared Regulatory Database Project

- D. The Executive Director attended 8 meetings of the Texas Pharmacy Congress as follows:

Date	Activity
11/12/08	Joint Committee on Internship Programs Meeting – Houston
11/12-13/08	Texas Pharmacy Congress Meeting – Houston
2/5/09	Joint Committee on Internship Programs Meeting – Houston
2/5-6/09	Texas Pharmacy Congress Meeting – Corpus Christi
4/28/09	Joint Committee on Internship Programs Meeting – Houston
4/28-29/09	Texas Pharmacy Congress Meeting – Austin
8/31/09	Joint Committee on Internship Programs Meeting – Houston
8/31/09	Texas Pharmacy Congress Meeting – Houston

6. **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 Board for consideration for action throughout FY2009.**

Status: ACCOMPLISHED

Comment: The agenda for each meeting of the Board included discussion of possible suggestions for changes to the Pharmacy Act. In the fall of 2008, the Board finalized a list of 33 suggested changes to the Texas Pharmacy Act for the 81st Texas Legislative Session. In addition each Division has made recommendations for improvements (see Administrative Services Ongoing Objective #15, Professional Services Ongoing Objective #14, Enforcement Ongoing Objective #14, and Legal Ongoing Objective #13).

7. **To maintain a staff development program by encouraging Executive Office staff to participate in professional and interpersonal development seminars, cross training, and on-the-job training throughout FY2009.**

Status: ACCOMPLISHED

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Comment: In FY2009, Division staff attended General Staff Meetings that were held in December 2008, March 2009, June 2009, and August 2009. In conjunction with quarterly General Staff Meetings, Division staff participated in staff training, as listed below:

- 12/04/08 – Ethics Training, “Character: Take it Personally,” and Discrimination and Sexual Harassment Training;
- 03/03/09 – Presentation on Texercise Program;
- 08/25/09 – Workplace Violence – Designing a Safe Workplace; Personal Safety and Situational Awareness (presented by SORM); and
- 08/26/09 – Body Composition and Your Health.

- 8. To conduct periodic reviews and annual evaluations of Division Directors and Executive Office staff and to monitor evaluations of employees in all Board Divisions throughout FY2009.**

Status: PARTIALLY ACCOMPLISHED

Comment: Performance evaluations were completed for the Executive Assistant and Receptionist and for the four division directors during FY2009 but not conducted with the individuals until FY2010.

- 9. To provide the Board information necessary to conduct performance evaluation of the Executive Director by August 31, 2009.**

Status: ACCOMPLISHED

Comment: A self and staff evaluation of the Executive Director were presented to the Board at its May 2009 meeting. The Board conducted the performance evaluation at this meeting.

- 10. To prepare a report on the accomplishments of the Office of the Executive Director and direct the preparation and submission of the agency’s FY2008 Annual Report to be presented to the Board at the May 2009 meeting.**

Status: PARTIALLY ACCOMPLISHED

Comment: The final draft of the *TSBP Annual Report for FY2008* was not presented to and approved by the Board until the August 2009 meeting, approximately three months after the “targeted date” to present the Annual Report to the Board.

Administrative Services and Licensing Division

FY2009 SIGNIFICANT ACCOMPLISHMENTS

1. The Division accomplished 100% of its objectives.
2. Success of the second phase of the joint agency/HPC project to replace the TSBP database system and migrate to a Shared Regulatory Database System. After reaching consensus between five other agencies, the Department of Information Resources, and the Health Professions Council, a vendor was selected and a plan was introduced in each agency's Legislative Appropriations Request for FY2010-2011. The appropriations for the entire project were approved by the 81st Texas Legislature with a projected date of September 1, 2009.
3. The agency was successful in obtaining additional appropriations for all the requested exceptional items during the 81st Legislative session. These included:
 - a. An increase to the executive director's salary of \$3,000;
 - b. Addition of 10 new FTE's to assist in the Pharmacy Technician Trainee Program and ongoing registration of Pharmacy Technicians.
 - c. Increase to the Pharmacy Recovery Network.
 - d. Increase to the testing of compounded products;
 - e. Merit increases to eligible employees;
 - f. Equity increases to eligible employees; and
 - g. One-time funding to implement the Shared Regulatory Project.
4. The Division met or exceeded 100% of the Key Performance Measures required to be submitted to the Legislative Budget Board.
5. Maintained a high level of system availability (nearly 100%) and security in a highly volatile environment. A total of 3,182,780 spam & bad mail diverted. The implementation of 398 anti-virus updates and diligence in reviewing firewall alerts and logs, continue to keep the security of TSBP systems a major accomplishment.

ADMINISTRATIVE SERVICES & LICENSING

FY2009 SIGNIFICANT DISAPPOINTMENTS/CONSTRAINTS

1. The Pharmacy Technician Registration & Enforcement Program continues to grow resulting in the following increases in workload caused by the Pharmacy Technician Registration Program which began in mid FY2004, and the Pharmacy Technician Trainee Program that began in October 2006 (FY2007).

WORKLOAD INCREASES							
Number	FY2004	FY2005	FY2006	FY2007	FY2008	FY2009	Percent Increase since FY04
Licensed Pharmacists	22,111	22,661	23,323	23,939	24,586	25,507	15%
Licensed Pharmacies	6,014	6,107	6,201	6,315	6,424	6,516	8%
Registered Pharmacy Technicians	22,164	26,664	30,091	32,106	32,914	33,927	49%
Registered Pharmacy Tech Trainees	--	--	--	10,399	18,093	17,657	70% (since FY07)
Registered Interns	752	804	822	886	925	1,052	40%
Total Licensees	51,041	56,236	60,437	73,645	82,942	84,659	66%

2. Although the TSBP was successful in obtaining additional appropriations for the requested exceptional items during the 81st Legislative session, the Legislative session also resulted in a number of unfunded mandates. These included:
 - a. Increased per diem for travel and mileage to employees and board members.
 - b. Changes to the State's Position Classification Plan will result in mandatory increased salary adjustments to a number of agency positions.
 - c. Passage of Senate Bill 646 relating to a study regarding the confidentiality of prescription information. A fiscal impact statement was submitted, but was not funded.

The continued increase in demand for services, together with the increase in the complex nature of modern health and pharmaceutical care, is taxing the agency's ability to respond not only to future challenges, but to maintain its current level of service.

ADMINISTRATIVE SERVICES & LICENSING

FY2009 ANNUAL REPORT

GOAL

To administer agency operations including personnel, finance, purchasing, risk management, and information technologies. To conduct a pharmacy and pharmacist licensure system, intern registration program, pharmacy technician registration system, and the ongoing renewal of licenses and registrations.

Objectives (New)

1. **To assist the Executive Director, in cooperation with other Divisions, in the following new objectives:**
 - A **Preparing testimony, attending public hearings, providing any fiscal or technical information, reviewing all legislation that has an impact on the practice of pharmacy and agency operations, and monitoring the process of this legislation, throughout the 81st Texas Legislative Session; and**
 - B. **Monitoring the progress of the agency's Legislative Appropriations Request and corresponding performance measures for FY2010-2011.**

Status: ACCOMPLISHED

Comment:

- A. **81st Texas Legislature** - The Division Director reviewed and analyzed 86 pieces of legislation that had a potential impact on agency operations. Division Director and Chief Accountant also maintained constant contact with the Legislative Budget Board (LBB) and Governor's Office of Budget, Planning and Policy (GBO) to review and discuss the agency *Legislative Appropriations Request* for FY2010-2011. A total of 43 fiscal notes were researched and submitted to the LBB.

The following public hearings were attended by the Division Director in order to provide administrative and technical support to the Executive Director:

LBB/GBO Joint Staff Budget Hearing	September 8, 2008
Senate Finance Committee Budget Hearing	February 20, 2009
House Appropriations Subcommittee on Regulatory Agencies Budget Hearing	February 26, 2009
Senate Finance Committee Markup	March 9, 2009
House Appropriations Committee Markup	March 16, 2009

ADMINISTRATIVE SERVICES & LICENSING

B. Legislative Appropriations Request - A summary of legislative action affecting the agency's FY2010/2011 budget included the following additional appropriations:

1. An increase to the executive director's salary of \$3,000;
2. Addition of 10 new FTE's to assist in the Pharmacy Technician Trainee Program and ongoing registration of Pharmacy Technicians;
3. Increase to the Pharmacy Recovery Network;
4. Increase to the testing of compounded products;
5. Merit increases to eligible employees;
6. Equity increases to eligible employees; and
7. One-time funding to implement the Shared Regulatory Project.

Objectives (Ongoing) – Administrative Services

- 1. To prepare a proposed budget for FY2010 for submission to the Board two weeks prior to the 2009 Annual Policy Meeting.**

Status: ACCOMPLISHED

Comment: A proposed budget, including revenue projections and fee recommendations, was presented and approved at the August 2009 Board Business Meeting. See Comments under Ongoing Objective #3 for additional information.

- 2. To prepare and submit all required accounting and fiscal reports/reconciliations in compliance with all applicable state statutes throughout FY2009.**

Status: ACCOMPLISHED

Comment: The agency submitted the Annual Financial Report (AFR) and the Annual Report of Non-Financial Data, to the Office of the Comptroller for the year ending August 31, 2009, by the due dates. The AFR was reviewed by the Comptroller's Office as part of the statewide annual financial report and found to be in compliance.

All financial reports and reconciliations for the fiscal year were completed and reported on a periodic basis to the Executive Director/Secretary.

- 3. To review and recommend to the Executive Director additional sources of spendable revenue and to assess fees charged for Board services throughout FY2009.**

Status: ACCOMPLISHED

Comment: A quarterly operating budget was presented to the Board at each of the regularly scheduled business meetings and recorded as such in the official minutes of the Board meeting. As a result of additional appropriations approved by the 81st Legislature, an increase to pharmacist, pharmacy and pharmacy technician fees, as well as a new pharmacy technician trainee application fee, was proposed in May 2009 and adopted in August 2009, with an effective date of October 2009.

ADMINISTRATIVE SERVICES & LICENSING

These increases were proposed in light of the passage of the agency's appropriation bill, which included the following:

- (1) an increase to the executive director's salary;
- (2) addition of 10 new FTE's, bringing our total to 72 FTE's:
 - License & Permit Specialist;
 - Legal Assistants (3);
 - Field Investigator;
 - Field Inspector;
 - Administrative Assistant Enforcement;
 - Enforcement Officer (Program Specialist); and
 - Investigator III (2) (in-house).
- (3) an increase to the testing of compounded products;
- (4) merit increases to eligible employees;
- (5) equity increases to eligible employees;
- (6) increased funding for the pharmacist recovery network; and
- (7) one-time funding to implement the Shared Regulatory Project.

4. To assess the material needs of the agency and supervise the purchasing and supply activities in accordance with all Texas Procurement and Support Services rules and procedures throughout FY2009.

Status: ACCOMPLISHED

Comment: No audits of the agency's purchasing activities by oversight government entities were conducted in this fiscal year. The Chief Accountant continued to review all specifications, product tabulations, and purchase requisitions for compliance with agency policies and procedures and CPA rules. This oversight ensured that the appropriate procurement method was identified, the agency received the best value for the product or service purchased, and that funds were always available.

5. To increase the efficiency and productivity of Board office operations by managing and coordinating space needs and on-site maintenance of the Board's office facilities throughout FY2009.

Status: ACCOMPLISHED

Comment: As a result of the passage of the General Appropriations Act, 81st Regular Session, which added ten new positions in FY2009, a project plan was developed to determine the best alternative to accommodate the new FTE's. Alternatives considered included converting existing office space to an open space environment; reconfiguring entire office to better utilize the larger offices and reception area; and moving or adding space in the existing building. Meetings with the Texas Facility Division were initiated as well as discussions with member boards to develop an alternative that was the least disruptive to agency operations.

ADMINISTRATIVE SERVICES & LICENSING

6. To serve as the agency's Human Resource Coordinator in ensuring agency compliance with all applicable state and federal personnel statutes throughout FY2009.

Status: ACCOMPLISHED

Comment: This objective was accomplished through the activities described below:

- A. The TSBP submitted recommendations to the State Auditor's Office (SAO) regarding requests for new classifications to the Position Classification Plan. These changes were approved by the SAO and included in their report to the 81st Legislature.
- B. The TSBP underwent a successful classification compliance audit by the Texas State Auditor's Office of the program specialist position descriptions.
- C. All newly hired and current employees received Equal Employment Opportunity/Sexual Harassment Training as required by state law. Field personnel received a Defensive Driving Course.
- D. Division directors continued to review and revise employee position descriptions, with two resulting reclassifications submitted and approved.
- E. The agency reviewed its Employee Handbook of Personnel Policies and Procedures and distributed revised policies to all employees. One employee complaint was filed, and there were no employment discrimination or other charges initiated with the Texas Commission on Human Rights.
- F. The agency received 520 applications for employment during this fiscal year, which resulted in five new hires and one promotion. (Note: providing EEO information by applicants is strictly voluntary. 45 applicants did not provide the information).
- G. The agency had three employees that terminated employment with the agency, resulting in a turnover rate of 5%. This compares to the overall turnover rate of the state of 14.4%.

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- H. The following table reflects the agency's EEO profile for employees hired, promoted, or terminated during FY2009, as well as an applicant profile report.

Texas State Board of Pharmacy EEO Data as of August 31, 2009

<u>Agency EEO Data</u>		WHITE		BLACK		HISPANIC		OTHER		TOTAL		GRAND	
		M	F	M	F	M	F	M	F	M	F	TOTAL	
Administrators		0	5	0	0	0	0	0	0	0	5	5	
Professional		6	9	0	1	2	1	0	1	8	12	20	
Para-Prof		5	12	1	0	0	5	0	0	6	17	23	
Admin Support		0	6	0	2	0	5	0	0	0	13	13	
TOTALS		11	32	1	3	2	11	0	1	14	47	61	
<u>New Hires</u>		WHITE		BLACK		HISPANIC		OTHER		TOTAL		GRAND	
		M	F	M	F	M	F	M	F	M	F	TOTAL	
Administrators		0	0	0	0	0	0	0	0	0	0	0	
Professional		0	1	0	0	0	0	0	0	0	1	1	
Para-Prof		2	1	0	0	0	1	0	0	2	2	4	
Admin Support		0	0	0	0	0	0	0	0	0	0	0	
TOTALS		2	2	0	0	0	1	0	0	2	3	5	
<u>Promotions</u>		WHITE		BLACK		HISPANIC		OTHER		TOTAL		GRAND	
		M	F	M	F	M	F	M	F	M	F	TOTAL	
Administrators		0	0	0	0	0	0	0	0	0	0	0	
Professional		0	0	0	0	0	1	0	0	0	1	1	
Para-Prof		0	0	0	0	0	0	0	0	0	0	0	
Admin Support		0	0	0	0	0	0	0	0	0	0	0	
TOTALS		0	0	0	0	0	0	0	0	0	1	1	
<u>Terminations</u>		WHITE		BLACK		HISPANIC		OTHER		TOTAL		GRAND	
		M	F	M	F	M	F	M	F	M	F	TOTAL	
Administrators		0	0	0	0	0	0	0	0	0	0	0	
Professional		0	2	0	0	0	1	0	0	0	3	3	
Para-Prof		0	0	0	0	0	0	0	0	0	0	0	
Admin Support		0	0	0	0	0	0	0	0	0	0	0	
TOTALS		0	2	0	0	0	0	0	0	0	3	3	
<u>Applications</u>		WHITE		BLACK		HISPANIC		OTHER		TOTAL		Not	GRAND
		M	F	M	F	M	F	M	F	M	F	Provided	TOTAL
Administrators		0	0	0	0	0	0	0	0	0	0	0	0
Professional		5	43	2	17	7	16	0	2	14	78	9	101
Para-Prof		43	67	9	33	12	38	2	7	66	145	21	232
Admin Support		21	65	5	30	8	35	1	7	35	137	15	187
TOTALS		69	175	16	80	27	89	3	16	115	360	45	520

ADMINISTRATIVE SERVICES & LICENSING

- 7. To manage the information resource needs (data processing, telecommunication, and Web site) of the agency throughout FY2009.**

Status: **ACCOMPLISHED**

Comment: This objective was accomplished through the activities described below:

- A. The project to replace the TSBP database system (originally written in the 1970's and converted to a DEC VAX platform in 1989) and migrate to a Shared Regulatory Database System began in FY2008. A consensus was developed between TSBP and five other agencies, the Department of Information Resources, & the Health Professions Council, to develop a plan to migrate all six agencies to a shared system that can meet the unique requirements of each agency, while at the same time allowing the sharing of expenses. In FY2009, a vendor was selected and the plan was introduced in each agency's Legislative Appropriations Request. The appropriation for this project was ultimately approved by the 81st Legislature with a projected start date of September 1, 2009.
- B. Successful implementation of the Texas Disaster Volunteer Registry Web site, maintained by the Department of State Health Services (DSHS). This Web site was created to identify and link volunteers to those in our Texas communities who need medical help during or after a disaster.
- C. Maintained a high level of system availability (nearly 100%) and security in a highly volatile environment. A total of 3,182,780 spam & bad mail diverted. The implementation of 398 anti-virus updates and diligence in reviewing firewall alerts and logs, continue to keep the security of TSBP systems a major accomplishment.
- D. Highly successful report from the Department of Information Resources regarding their attempted penetration of the agency's firewall. Minor vulnerabilities were identified and were remediated.
- E. Equipment replacement needs were met.
- F. The pharmacist and pharmacy imaging project continued with 82,040 images scanned into the imaging system.
- G. Reporting and tracking of IT expenditures and budgets; Planned Procurement Schedules approved by LBB/DIR; Business Continuity Corrective Action Plan submitted to the State Office of Risk Management.

- 8. To serve as the Agency Records Retention Manager to the Texas State Library, in maintaining a Records Retention Program for the economical and efficient management of agency records throughout FY2009.**

Status: **ACCOMPLISHED**

Comment: Agency staff destroyed 854 cubic feet of records in accordance with the TSBP records retention schedule, and 12 cubic feet of records were sent to the State Library for storage.

ADMINISTRATIVE SERVICES & LICENSING

The agency continued to save valuable square footage by imaging files. The pharmacist and pharmacy technician imaging project continued with 82,040 images scanned into the imaging system. Finally, a new project to image closed technician complaint files resulted in 33,673 images scanned.

- 9. To serve as the Agency Risk Manager by annually assessing areas of agency risk exposures and recommending procedures to control these exposures throughout FY2009.**

Status: ACCOMPLISHED

Comment: The Texas Internal Audit Act requires all agencies to conduct a formal risk assessment and submit an annual Risk Assessment Report to the Office of the State Auditor (SAO). The Agency conducted an assessment of the major programs of the agency (i.e., fiscal, technology, licensing, public information, rule making, peer assistance, enforcement) and submitted the Risk Assessment Report by the due date to the SAO.

Of particular note this FY, was the successful audit of the agency's Risk Management Program Review. Comments by the SORM auditor: "The TSBP did a very thorough job of preparing for this Review. A great deal of time and attention was given in accurately and completely answering the Risk Evaluation and Planning System Questionnaire. This level of effort was found to be reflected in all aspects of the agency's operations."

- 10. To provide verbal and written information to Board staff and customers throughout FY2009 including, by the assigned due dates, the preparation of:**
- A. LBB Performance and Funds Management Report and other special reports as requested by LBB, legislative committees, legislators, and others, in conjunction with other Divisions as necessary; and**
 - B. responses to surveys and questionnaires.**

Status: ACCOMPLISHED

Comment: This objective was accomplished as follows:

A. Statutorily Required Reports

Report Title	Recipient(s)	Division Reporting
FTE State Employees	State Auditor	Administration
Governmental Employees Quarterly Report	Texas Workforce Commission	Administration
Employer's Quarterly Federal Tax Return	Internal Revenue Service	Administration
Retirement Contributions Reconciliation Report	Employees Retirement System	Administration
Annual Financial Report	Governor's Office; Legislative Budget Board; State Comptroller; State Auditor	Administration
Non-Financial Annual Report	Governor's Office; Legislative Budget	Administration

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Report Title	Recipient(s)	Division Reporting
	Board; State Auditor	
Recycled Materials Expenditures	Texas Comptroller of Public Accounts	Administration
Historically Underutilized Business Progress Reports	Governor's Office; Lt. Governor; Speaker of House; Texas Building & Procurement Commission	Administration
Encumbrance Reports	State Comptroller; State Auditor; Legislative Budget Board	Administration
State Use Report	Texas Comptroller of Public Accounts	Administration
EEO Information Report	Texas Workforce Commission	Administration
Minority Hiring Practices	Texas Workforce Commission	Administration
SORM 200	Office of Risk Management	Administration
Performance and Funds Mgmt. Reports	Legislative Budget Board	All
Contract Workforce Report	State Auditor; Legislative Budget Board; Governor	Administration
Open Records Online Monthly Report	Office of Attorney General	All
Resource Efficiency Plan and Updates	Comptroller	Administration
Fleet Management Report	Texas Comptroller of Public Accounts	Administration
FY09 Risk Assessment	Governor's Office; Legislative Budget Board; State Comptroller; State Auditor, Sunset Advisory Commission	Administration
Veterans Workforce Summary Report	Comptroller	Administration
Space Utilization Survey	Texas Facilities Commission	Administration
SORM Report	SORM	Administration
Agency Fee/Revenue Survey	Legislative Budget Board	Administration
Energy Plan	Office of the Governor	Administration
Revenue Projections and Fee Increases	State Comptroller	Administration
Annual Debt Report	Office of Attorney General	Administration

ADMINISTRATIVE SERVICES & LICENSING

- 11. To assist the Executive Director in developing and implementing the objectives of the Health Professions Council (HPC) pertinent to Division activities throughout FY2009.**

Status: ACCOMPLISHED

Comment: Division staff participated in the following activities:

- A. Active participant in the successful vendor selection and funding of the joint agency/HPC project to replace the TSBP database system and migrate to a Shared Regulatory Database System (see Comment A under Objective #7).
- B. Health Professions Council Annual Report - Division Director submitted recommendations and licensing performance data to be incorporated into the HPC Annual Report.
- C. Continued participation in several HPC centralized services, such as the Courier Service; Shared Employee Training; Shared Information Resource Technology staff; posting of position descriptions, and use of the imaging system.
- D. Participation in meetings with the Texas Facilities Commission regarding the lack of space in the William P Hobby Building for HPC agencies.

- 12. 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 FY2009.**

Status: ACCOMPLISHED

Comment: The Licensing Division implemented a new series of orientations to all staff, entitled *"Everything You Wanted to Know about Licensing but were Afraid to Ask."* A total of 5 orientations were presented and focused on the licensing processes of becoming an Intern, initial Pharmacist applicant and ongoing renewal, initial Technician or Trainee and renewal, initial Pharmacy applicant and ongoing renewal. In addition to serving as a learning tool, these sessions also contributed to encouraging staff interaction and communication.

Division staff had the opportunity to participate in the agency's Wellness sponsored workshops. In addition, individual Division staff participated in the following activities:

Cathy Stella	Chair, Division Staff Meetings
	Member, Regulatory Database Workgroup (to replace the agency's aged VAX system)
	Participant in Department of Health & Human Services Emergency System for Advanced Registration of Volunteer Health Professionals
	Participant in meetings relating to additions/modifications to licensing applications & FBI Fingerprint System.
	Participant in Budget Meetings with Management; Executive Committee and Board
	Participant in Focus Group Meetings
	Participant in Business Continuity Planning
	Member of Occupational Licensing Committee

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	Pandemic Training
	Human Resource Institute Conference
	Participant in Office of Attorney General Child Support Procedure Meetings
	Orientation for new employees
	E-Mail and Records Retention Training
	Legislative (Senate & Finance) Budget Hearings
	Auditing the Human Resources Function Workshop
Jane Bennett	Periodic Accounting Staff Meetings
	AFR Training
	USAS User Meeting
	Orientation of new LBB Analysts
	Seminar – When a Personal Emergency Strikes, Will you be Prepared
	Training – Character: Take It Personally (Ethics)
	Participant in Budget Meetings with Management; Executive Committee and Board
	Legislative Budget Hearings
	Pandemic Training
Robbi Dana	Periodic Accounting Staff Meetings
	Summer Enrollment Insurance
	Versa/GL Suites Demos
	Time Management Training
	Pandemic Training
	Training – Character: Take It Personally (Ethics)
Darlene Guthrie	Periodic Accounting Staff Meetings
	NIGP Codes
	Training – Character: Take It Personally (Ethics)
	TX Smart Buy Training
	Contracting for Services
	CMBL Overview
	TCI – TIBH First Choice
	Mail Training for Travel County
	TXMAS Training
	Vendor Performance Reporting Training
	Power to Purchase - DIR
	Surplus Property Program
	HUB Overview
	Workplace Violence (SORM)
Sandy Morton	Periodic Accounting Staff Meetings
	EEO Training
	USPS User Training
Steve Rapp	Member, Regulatory Database Workgroup (to replace the agency's aged VAX system)
	Member, New Hire Workgroup for Regulatory Database Project
	Agency E-Mail Records Retention Team

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	Periodic IT Status Meetings
	Legislative Hearings (Senate and House Finance)
	Pandemic Training
	Participant, Communications Focus Group
	Training – Character: Take It Personally (Ethics)
Todd Hayek	Versa/GL Suites Demos
	Pod Casting
	IBM Mash up
	Web Accessibility Conference
	Phishing Webinar
	Pandemic Flu Preparedness
Lisa Ake	Periodic Licensing Staff Meetings
	State Agency Council
	Training – Character: Take It Personally (Ethics)
	NCIC/TCIC Policy & Procedures Training
	Wellness Seminar
	Texercise – Speaker on Losing Weight
	Seminar – On The Record
	Presentations to Texas Tech, University of Texas, Texas Southern University, University of Houston regarding examination process
	PRN – Hope in Family Recovery
	Violence in the Workplace
	Versa/GL Suites Demos
Estella Casarez	Periodic Licensing Staff Meetings
	Wellness Workshops & Seminars
	Time Management Training Seminar(s)
	Stress Management Skills
	Recognizing Overcoming Adrenal Exhaustion
	Insulin Resistance
	Brain Fuel
	Communication in the Workplace
	Going Green Home/Life
	Training – Character: Take It Personally (Ethics)
	Dealing with Difficult People
	It's a Common Cent\$
	When a Personal Emergency Strikes
	Natural Health Week Seminars
	Versa/GL Suites Demos
	Texercise
	Change your Brain/Change you life
	Wellness Meeting Body Mass Index
Rachel Glass	Periodic Licensing Staff Meetings
	VERSA/GL Suites Demos
	Character: Take it Personally (all staff training)
	Workplace Violence: Designing a Safe Workplace
	Wellness: Body Composition and Your Health

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	Stretching and Breathing Workshop
	When a Personal Emergency Strikes, Will you be Prepared
Diana Martinez-Ruedas	Periodic Licensing Staff Meetings
	Versa/GL Suites Demos
	Stress Management Seminar
	Webinar: Insulin Solution
	Wellness Seminar – It's Common Cent\$
	Workplace Violence Workshop
	Body Composition and Your Health

Melinda Uballe	Periodic Licensing Staff Meetings
	Training – Take It Personally
	Presentations to Texas Southern University, University of Houston, Incarnate Word, Texas A&M Kingsville, regarding intern process
	VERSA and GL Suites Demos
	Time Management & Organizational Skills
	NCIC/TCIC Course
	On The Record
	Wellness – Body Composition and Your Health
	New York Life Money Tips for Kids
Misty Whitcomb	Periodic Licensing Staff Meetings
	Wellness Training
	VERSA/GL Suites Demos
	CPR Training
	Driving Safety Training
	Take it Personally Training
Carol Willess	Periodic Licensing Staff Meetings
	Education via presentations to interns and graduating pharmacists of Texas Tech, University of Houston, Texas Southern University, University of Texas, Incarnate Word and Texas A & M Kingsville Colleges of Pharmacy, regarding the internship and examination process & procedures. These presentations also addressed the FBI fingerprint program.
	Defensive Driving - SORM
	Presentation of a technician educational exhibit at the annual TSHP and TPA conventions
	Wellness Committee Meetings/Workshops/Seminars
	Workplace Violence Workshop
	TSABAA Mid-Year & Annual Conferences
	Chair, TSABAA Web Site Committee
	Orientation to licensing process for agency interns and new employees
	VERSA/GL Suites Demos

ADMINISTRATIVE SERVICES & LICENSING

13. To conduct periodic reviews and annual evaluations of all employees under the supervision of this Division during FY2009.

Status: ACCOMPLISHED

Comment: The Division achieved a 100% completion rate of evaluations scheduled for this fiscal year.

14. To update the Agency Personnel Handbook and the Division's *Policies and Procedures Manual* as needed and submit any substantive revisions to the Executive Director for approval throughout FY2009.

Status: ACCOMPLISHED

Comment: This objective was accomplished by revising the following manuals and distributing to appropriate staff as follows:

- A. Various policies in the Personnel Manual and Employee Handbook;
- B. Board Member Policies & Procedures;
- C. Various Accounting Policies (Purchasing, Cash, Vouchers); and
- D. Licensing Policies & Procedures.

15. To recommend changes to the Texas Pharmacy Act and rules and to recommend policies and procedures that 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 FY2009.

Status: ACCOMPLISHED

Comment: Rules and procedures regarding licensing and registration of pharmacists, pharmacies, interns and pharmacy technicians, are reviewed on a regular basis and recommendations are made as necessary. In particular, division staff contributed to the development of new rules relating to the following:

- §295.8 regarding Continuing Education Requirements
- §§283.4, 283.6 regarding Internship and Preceptor Requirements
- §§291.1, 291.3, 291.129 regarding Lease Agreements
- §§291.6, 295.5, 297.4 regarding Fees

16. To prepare a report on the accomplishment of Division objectives for incorporation into the agency's *FY2008 Annual Report* and submit to the Executive Director by the due date.

Status: ACCOMPLISHED

Comment: The Division's first draft of the FY2008 *TSBP 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 August 2009.

ADMINISTRATIVE SERVICES & LICENSING

Objectives (Ongoing) – Licensing

17. To coordinate the collection of licensing data for *Key Performance Targets* required under the 2008-2009 Appropriations Act and to submit to the Executive Director by specified due dates throughout FY2009.

STATUS: ACCOMPLISHED

Comment: The following chart reflects all year-end data for Licensing Measures required to be reported on an annual basis to the Legislative Budget Board. The statistical data was submitted to the Legislative Budget Board and Governor's Office of Budget, Planning, and Policy by the prescribed due dates, in conjunction with the enforcement performance measures. Within a 5% variance, the division met or exceeded 100% of the Key Performance measures.

PERFORMANCE MEASURES	TARGET FY2009	ACCOMPLISHED FY2009	Key or Non Key (K-NK)	Expectations
Percent of Licensees with No Recent Violations	95%	95.70%	K	Exceeded
Percent of Licenses Who Renew Online	84.58%	89.66%	K	Exceeded
Percent of New Individual Licenses Issued Online	81%	83.59%	NK	Exceeded
Individuals Examined (examinations administered)	1,766	2,656	NK	Exceeded
Number of New Licenses issued to Individuals (Pharmacists)	1,091	1,207	K	Exceeded
Number of Licenses Renewed (Individuals – Pharmacists)	12,434	13,026	K	Exceeded
Number of New Registrations Issued to Individuals (Technician and Trainee)	15,000	12,892	NK	Not Met
Number of Registrations Renewed (Technicians)	12,000	13,975	NK	Exceeded
Average Cost Per Exam Administered	\$70.63	\$51.78	NK	Exceeded
Average Licensing Cost per Individual License Issued	\$11.89	\$9.3	K	Exceeded
Average Licensing Cost per Facility License Issued	\$41.09	\$43.05	K	Met
Average Cost per Individual Technician Registered	\$7.30	\$5.00	NK	Exceeded
Percent of New Licenses Issued within 10 days	98%	100%	NK	Exceeded
Percent of Individual Licenses Issued within 7 days	98%	100%	NK	Exceeded
Total Number of Pharmacists Licensed	25,050	25,507	NK	Exceeded
Total Number of Facilities Licensed	6,354	6,516	K	Exceeded
Total Number of Individuals (Technicians & Trainees) Registered	50,000	51,584	NK	Exceeded
Pass Rate	85%	91.23%	NK	Exceeded

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In addition to the above statistics, the division (Licensing) staff had the following workload statistics (numbers are approximate):

WORKLOAD	STATISTIC
Changes of Address/Employment/Name	16,353
Telephone Calls Received	30,560
E-Mail Inquiries Answered	18,337
Missing Item, delinquent, reminder, general correspondence letters sent	9,187
Customer Service Surveys sent	31,345

- 18. To register all qualified pharmacist-interns within an average of 20 working days of the receipt of all required documents.**

Status: ACCOMPLISHED

Comment: 1,052 new intern registrations were issued within the established timeframe.

A total of 3,431 pharmacist preceptors were certified within one to four days of receipt of required documents. At fiscal year-end, a total of 5,540 pharmacists were active preceptors.

- 19. To determine the eligibility of all pharmacist applicants applying to take the NAPLEX and Texas Pharmacy Jurisprudence Examination for initial licensing or licensing by reciprocity throughout FY2009.**

Status: ACCOMPLISHED

Comment: Staff continued to present the NAPLEX and MPJE Orientation to upcoming graduates of Texas Southern University, University of Houston, Texas Tech University, and University of Texas colleges of pharmacy. In addition, intern presentations were offered to students of the above colleges as well as Texas A&M Health Science Center Irma Lerma Rangel College of Pharmacy and the University of the Incarnate Word Feik School of Pharmacy.

The following statistics relate to all applicants who were determined eligible and received a score for the NAPLEX and MPJE in FY2009.

JURISPRUDENCE (MPJE)	Total Exams Administered
Candidates Passing	1,714 (91.81%)
Candidates Failing	153 (8.19%)
TOTAL EXAMS JURISPRUDENCE	1,867 (100%)

NAPLEX	Total Exams Administered
Candidates Passing	709 (89.86%)
Candidates Failing	80 (10.14%)
TOTAL EXAMS NAPLEX	789 (100%)

ADMINISTRATIVE SERVICES & LICENSING

The total number of new licenses issued to individuals is as follows:

NEW PHARMACISTS LICENSED – FY2009	
Graduates of Texas Colleges of Pharmacy	469 (38.86%)
Graduates of Out-of-State Colleges of Pharmacy	605 (50.12%)
Credentialed by the Foreign Pharmacist Equivalency Committee	133 (11.02)%
Total	1,207 (100%)

Regarding reciprocity (license transfer) in and out of Texas, 351 candidates were licensed by reciprocity in FY2009, and the agency responded to requests from NABP for verification of licensure status of Texas licensees desiring to transfer to other states. The National Association of Boards of Pharmacy reported that among all states in 2009, Texas saw the largest overall number of requests to transfer licenses into the state, with 640 requests. Texas also experienced a large number of license request out of the state, with 420 requests.

- 20. To provide staff support to the *Examination Retake Committee* and any other advisory committee related to licensing issues as required in FY2009.**

Status: ACCOMPLISHED

Comment: Division Director continued to inform applicants who failed the Board licensing examination(s) three times of the committee recommendations to complete college coursework prior to retaking the examination(s).

- 21. To issue a pharmacist license by examination, score transfer, or reciprocity within an average of ten working days after the date the agency receives the examination results throughout FY2009.**

Status: ACCOMPLISHED

Comment: The agency issued 1,207 new pharmacist licenses with an average turnaround time of four business days from the download of the examination results. Examination results were downloaded approximately once every five business days. Barring any other requirements that might be due for initial licensure, candidates received notice of their new licenses within an average of seven business days of their examination date.

- 22. To issue renewal certificates to all pharmacist candidates within an average of four working days of receipt of the required fee and all required documents throughout FY2009.**

Status: ACCOMPLISHED

Comment: The agency renewed 13,026 pharmacist licenses on a biennial basis during FY2009. Approximately 83% of eligible pharmacists renewed their licenses online. The average processing time to issue a renewal license from receipt of a completed application was two business days. The total population of licensed pharmacists for this fiscal year is as follows:

ADMINISTRATIVE SERVICES & LICENSING

PHARMACISTS LICENSED FY2009	
Active Status	23,143
Inactive Status*	1,364**
TOTALS	25,507

* Not practicing pharmacy in Texas and not reporting continuing education credits.

**Of the above number, 429 pharmacists have been practicing in Texas for more than 50 years or are greater than 72 years old, and are classified as "exempt."

- 23. To audit the pharmacists' compliance with continuing education and to initiate complaints on pharmacists who are not in compliance with the rules regarding pharmacists' mandatory continuing education for renewal, in cooperation with the Enforcement team, throughout FY2009.**

Status: ACCOMPLISHED

Comment: A total of 256 continuing education audits were completed and either closed or referred to Enforcement.

- 24. To issue initial certificates to all pharmacy technician trainee candidates within an average of four working days of receipt of the required documents throughout FY2009.**

Status: ACCOMPLISHED

Comment: The agency issued 8,498 new pharmacy technician trainee registrations during FY2009, bringing the total population of active technician trainees for this fiscal year to 17,657. The average processing time to issue a new or renewal registration from receipt of a completed application was two business days.

- 25. To issue initial and/or renewal certificates to all pharmacy technician candidates within an average of four working days of receipt of the required fee and all required documents throughout FY2009.**

Status: ACCOMPLISHED

Comment: The agency issued 4,394 new pharmacy technician registrations, and renewed 13,975 registrations on a biennial basis during FY2009, bringing the total population of active registered technicians for this fiscal year to 33,927. Approximately 91% of eligible applicants and pharmacy technicians applied for or renewed their registrations online. The average processing time to issue a new or renewal registration from receipt of a completed application was two business days.

- 26. To issue an initial and/or renewal certificate to all pharmacy license applicants on receipt of the required fees and all required documents according to the following guidelines throughout FY2009:**

- A. initial certificates to pharmacy license applicants within an average of 21 working days; and**
- B. renewal certificates to pharmacy license applicants within four working days.**

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Status: **ACCOMPLISHED**

Comment: The following chart represents the total number of pharmacy licenses (business or facilities) issued by the agency, and includes five classes of pharmacy licenses.

The average processing time to issue a license from receipt of a completed application was two working days for a pharmacy renewal and two working days for a new pharmacy license. Approximately 21% of pharmacies applied or renewed their registrations online. The total number of active pharmacy licenses at the end of the fiscal year was as follows:

PHARMACIES ACTIVE FY2009	
Class A (Community)	4446
Class B (Nuclear)	35
Class C (Institutional)	1044
Class D (Clinic)	434
Class E (Non Resident)	473
TOTALS	6,432
Remote Pharmacies	1,323

A total of 4,764 documents relating to pharmacy licensure were processed as follows:

PHARMACY APPLICATIONS PROCESSED	
Pharmacy Renewals	2908
Remote (satellite) Licenses Issued	250
New Licenses Issued [new opens (329) and changes of ownership (99)]	428
Change of Location/Name	232
Closings	247
Change of Managing Officers	699
TOTAL	4,764

- 27. In cooperation with the Enforcement Division and in compliance with the agency's policies and procedures, to process criminal background checks on applicants for licensure and registration throughout FY2009, including fingerprint-based criminal background checks; and to conduct criminal background checks on licensees and registrants on a quarterly basis throughout FY2009.**

Status: **ACCOMPLISHED**

ADMINISTRATIVE SERVICES & LICENSING

Comment: Fingerprint-based criminal background checks were implemented on all new pharmacist applicants in October 2008, and all new pharmacy technician and technician trainee applicants in March 2009. Approximately 6,300 FBI histories were received and stored in the TSBP consolidated pool within the Department of Public Safety's (DPS) secured database. In addition, quarterly DPS background checks were run on all individuals, once they were licensed or registered.

FY2009 SIGNIFICANT ACCOMPLISHMENTS

1. Division staff accomplished all of the Division's 16 Objectives for FY2009.
2. Division Director drafted or assisted others in drafting 38 rules and preparing the rules for review by the Board.
3. Division staff, consisting of two individuals, prepared and mailed or emailed 2,708 pieces of information (an average of 225 per month) during FY2009.
4. Division Director gave 12 presentations during FY2009 to over 510 pharmacists, pharmacy students, and pharmacy technicians.
5. The Texas version of the Multi-State Pharmacy Jurisprudence Examination (MPJE) continued to be an effective licensing tool to determine competency with respect to pharmacy law.
6. Division Director worked closely with Network Specialist Todd Hayek to keep the TSBP web page updated.

PROFESSIONAL SERVICES DIVISION

FY2009 SIGNIFICANT DISAPPOINTMENTS/CONSTRAINTS

1. TSBP experienced a 40% increase in the number of requests for records. Over the last five years the number of requests for information has increased 124% (720 requests in FY2005 as compared to 1,615 requests in FY2009) without any additional staff.

PROFESSIONAL SERVICES DIVISION

FY2009 ANNUAL REPORT

GOAL

To facilitate agency operations by providing information services for the agency, including the *Newsletter*, responses to requests for public information, and public speaking engagements to agency customers; serving as liaison to the *Texas Register*, and by providing professional services, including rule development, internship reviews, law exam development, and task force support.

Objectives (New)

To assist the Executive Director, in cooperation with other Divisions, in preparing testimony, attending public hearings and providing any fiscal or technical information as required by the 81st Texas Legislature, and reviewing all legislation that has an impact on the practice of pharmacy and agency operations, and monitoring the progress of this legislation, throughout FY2009.

Status: ACCOMPLISHED

Comment: This objective was accomplished through the following activities:

- A. Attending Public Hearings –
 - 1. Division Director attended or viewed hearings related to the agency's legislative appropriation request.
 - 2. Division Director served as a resource at a Senate Committee hearing regarding S.B. 1127 relating to the confidentiality of test results of samples of compounded products.
- B. Reviewing Legislation –
 - 1. Division Director reviewed numerous bills filed during the 81st Legislative Session that had an impact on the practice of pharmacy and/or agency operations including the following bills:
 - HB 427 relating to delegation of authority to pharmacists;
 - HB 495 relating to distribution of publications and reports;
 - HB 605 relating mileage reimbursement;
 - HB 3326 relating to health risk assessments of state employees;
 - HB 4029 relating to health information authorization;
 - SB 381 relating to delegation of authority to pharmacists;
 - SB 671 relating to public information law;
 - SB 871 relating to health risk assessments of state employees;
 - and
 - SB 1182 relating to public information law.
 - 2. Division Director assisted in the preparation of a fiscal notes for several bills regarding the potential cost to the agency if the agency was required to implement the legislation.
- C. Implementing Legislation – Division Director, with assistance from other Directors, drafted rule language to implement legislation passed by the 81st Texas Legislature.

PROFESSIONAL SERVICES DIVISION

Objectives (Ongoing)

1. To develop rules for consideration by the Board relating to professional issues and assist other divisions with the development of rules pertaining to Board operations.

Status: ACCOMPLISHED

Comment: Division staff accomplished the objective through the following activities:

DRAFTING OF RULES

The Division Director spent a considerable amount of time drafting rules, assisting others in the drafting of rules, and preparing the rules for review by the Board. Changes required by the Board were made quickly to allow final review by the Board in a timely manner, usually during the same Board meeting. The Division Director drafted 19 rules and assisted others in drafting of 19 additional rules as follows:

RULES
Drafted:
§291.33 regarding Prescription Labels and Written Information
§283.6 regarding Intern/Pharmacist Ratio Requirements
§295.8 regarding Continuing Education Requirements
§§303.1-303.2 regarding Destruction of Drugs
§291.28 regarding Fees Charged for Confidential Records
§291.32 regarding Ratio of Pharmacists to Pharmacy Technicians
§291.8 regarding Return of Prescription Drugs
§§291.33, 291.104 regarding Beyond-Use Dates (HB 19)
§§291.72-291.75 regarding Rural Class C Pharmacies (HB 1924)
§§291.31, 291.33, 295.95 regarding Pharmacists Signing Prescriptions Under Protocol (SB 381)
§295.5 regarding Administration of Immunizations (HB 1409)
§291.34 regarding Electronic Prescriptions
Assisted the Legal Division in Drafting:
§281.65 regarding Fines for Allowing Pharmacy Technicians/Trainees to Work Without a Registration
§§281.65, 281.66 regarding Administrative Penalties and Fingerprinting for Reinstatement Applicants
Assisted Licensing Division in Drafting:
§§283.4, 283.6 regarding Internship and Preceptor Requirements
§§291.1, 291.3, 291.129 regarding Lease Agreements
§§291.6, 295.5, 297.4 regarding Fees
Assisted Enforcement Division in Drafting:
§291.3 regarding Notification of Pharmacies Changing Location and Forged Prescriptions
§291.34 regarding Prescriber's Authorization on Original Prescriptions
§§291.72-291.76 regarding Class C Pharmacies
§291.133 regarding Compounding Sterile Preparations

PROFESSIONAL SERVICES DIVISION

2. To act as agency liaison to the *Texas Register*, coordinate and monitor all submissions to the *Texas Register*, to review and monitor the *Texas Register* for activities of other agencies that would impact TSBP or pharmacy practice, and to provide periodic notice of publications to Board Members, staff, and other interested parties.

Status: **ACCOMPLISHED**

Comment: Division staff accomplished the objective through the following activities:

RULE SUBMISSIONS TO THE *TEXAS REGISTER*

During FY2009, 31 submissions to the *Texas Register* were made that proposed, adopted, reviewed, repealed, or withdrew Texas Pharmacy rules. Division staff met all deadlines for submissions to the *Texas Register*, monitored the submissions for action, and notified Board Members, TSBP staff, and other interested parties of the status of rules as follows:

Rules	Type of Action	Published in TxReg as Proposed	Memo to Staff and Others	Published in TxReg as Adopted	Memo to Staff and Others
Chapter 291 (§§291.101 – 291.105) Rule Review	Published	FY2007	FY2007	9/14/07	9/19/07
Chapter 295 (§§295.1-295.9, 295.11-295.13, 295.15) Rule Review	Published	FY2007	FY2007	9/14/07	9/19/07
§§291.2, 291.3, 291.4, 291.7, 291.12, 291.13, 291.15, 291.16, 291.20, 291.21, 291.25, 291.26, 291.27	Repeal	FY2007	FY2007	9/14/07	9/19/07
§§291.2, 291.3, 291.24, 291.27	New	FY2007	FY2007	9/14/07	9/19/07
§§291.6, 291.8, 291.10, 291.18, 291.19, 291.22, 291.23	Amendments	FY2007	FY2007	9/14/07	9/19/07
§§291.37, 291.38	Repeal	FY2007	FY2007	9/14/07	9/19/07
§§291.31, 291.32, 291.33, 291.34	Amendments	FY2007	FY2007	9/14/07	9/19/07
§§281.62, 281.63, 281.64, 281.65	Amendments	FY2008	FY2008	FY2008	9/26/09
§291.15	New	FY2008	FY2008	FY2008	9/26/09
§§291.133	Amendments	FY2008	FY2008	FY2008	9/26/09
§§291.72-291.74	Amendments	FY2008	FY2008	FY2008	9/26/09
§§291.91-291.94	Amendments	FY2008	FY2008	FY2008	9/26/09
§305.2	Amendments	FY2008	FY2008	FY2008	9/26/09
§§309.1, 309.3	Amendments	FY2008	FY2008	FY2008	9/26/09
Chapter 291 (§§291.71-291.76) Rule Review	Published	FY2008	FY2008	FY2008	9/26/09
Chapter 303 (§§303.1-303.3) Rule Review	Published	FY2008	FY2008	FY2008	9/26/09
§281.66	Amendments	9/19/08	9/26/08	12/5/08	1/8/09

PROFESSIONAL SERVICES DIVISION

Rules	Type of Action	Published in TxReg as Proposed	Memo to Staff and Others	Published in TxReg as Adopted	Memo to Staff and Others
§§283.7, 283.8	Amendments	9/19/08	9/26/08	12/5/08	1/8/09
§291.33	Amendments	9/19/08	9/26/08	12/5/08	1/8/09
§295.8	Amendments	9/19/08	9/26/08	12/5/08	1/8/09
§297.3	Amendments	9/19/08	9/26/08	12/5/08	1/8/09
§291.33	Amendments	12/26/08	1/8/09	3/6/09	4/14/09
Chapter 297 (§§297.-297.9) Rule Review	Published	12/26/08	1/8/09	3/6/09	4/14/09
§281.65	Amendments	3/27/09	4/14/09	5/29/09	6/15/09
§§283.4, 283.6	Amendments	3/27/09	4/14/09	5/29/09	6/15/09
§§291.33, 291.34	Amendments	3/27/09	4/14/09	5/29/09	6/15/09
§291.129	Amendments	3/27/09	4/14/09	5/29/09	6/15/09
§291.6	Amendments	6/12/09	6/15/09	FY2009	FY2009
§291.32	Amendments	6/12/09	6/15/09	FY2009	FY2009
§§291.72-291.76	Amendments	6/12/09	6/15/09	FY2009	FY2009
§295.5	Amendments	6/12/09	6/15/09	FY2009	FY2009
§295.8	Amendments	6/12/09	6/15/09	FY2009	FY2009
§297.4	Amendments	6/12/09	6/15/09	FY2009	FY2009
§§303.1, 303.2	Amendments	6/12/09	6/15/09	FY2009	FY2009

OPEN MEETING SUBMISSIONS TO THE *TEXAS REGISTER*

Thirteen notices of open meetings scheduled during FY2009 were submitted by the Division to the *Texas Register* for publication. The submissions were as follows:

Type of Submission	Date Published
Open Meeting 10/30/08 – Task Force on Institutional Pharmacies (Class C)	10/14/08
Open Meeting 11/18/08 – Board Business Meeting	11/04/08
Open Meeting 1/28/09 – Board Committee on Pharmacy Technician Examinations	1/15/09
Open Meeting 1/30/09 – Task Force on Institutional Pharmacies (Class C)	1/21/09
Open Meeting 2/10/09 – Board Business Meeting	1/26/09
Open Meeting 3/12/09 – Disciplinary Panel Hearing	3/6/09
Open Meeting 3/31/09 – Task Force on Institutional Pharmacies (Class C)	3/23/09
Open Meeting 4/03/09 – Disciplinary Panel Hearing	4/2/09
Open Meeting 4/17/09 – Disciplinary Panel Hearing	4/6/09
Open Meeting 5/5/09 – Board Business Meeting	4/22/09
Open Meeting 6/2/09 – Task Force on Institutional Pharmacies (Class C)	5/22/09
Open Meeting 7/24/09 – Board Forum	7/7/09
Open Meeting 8/11 – 8/12/09 Board Business Meeting	7/31/09

Division Director reviewed every issue of the *Texas Register* for items that might have an impact on the Board or profession. The following rules were identified as impacting the agency or pharmacy practice and circulated to appropriate staff as indicated:

Date	Rules from Other Agencies	Action
01/29/2009	State Office of Administrative Hearings	Reported to General Counsel

PROFESSIONAL SERVICES DIVISION

3. To respond to open records requests throughout FY2009, in accordance with the procedures set forth in the Texas Public Information Act.

Status: ACCOMPLISHED

Comment: As indicated in the chart below, TSBP experienced a 40% increase in the number of requests for records in FY2009, as compared to FY2008.

OPEN RECORDS REQUESTS FY05 through FY09

Fiscal Year	Verbal Requests		Written Requests		Total # of Requests		Monthly Average		% Change from Prior Fiscal Year	
	# of Requests	# of Licensees	# of Requests	# of Licensees	# of Requests	# of Licensees	# of Requests	# of Licensees	# of Requests	# of Licensees
FY05	114	114	606	1,010	720	1,124	60	94	+36%	+57%
FY06	154	154	730	1,230	884	1,384	74	115	+23%	+22%
FY07	94	94	856	1,780	950	1,874	79	156	+7%	+35%
FY08	205	205	948	2,398	1,153	2,603	96	217	+22%	+39%
FY09	163	163	1,452	2,466	1,615	2,629	135	219	+40%	+1%

4. To provide information to Board staff and customers, including responses to surveys and questionnaires, oral and written communication, and public speaking engagements, as needed and required throughout FY2009.

Status: ACCOMPLISHED

Comment: Division staff accomplished this objective through the following activities:

- A. During FY2009, the Division sent out 2,708 pieces of written information (an average of 226 per month) including emails, packets of information, and information regarding rules and open meetings. This represents a 505 increase in number of pieces of information sent out as compared to FY2008 (1,807 pieces of written information).
- B. The Division Director gave twelve presentations to approximately 510 individuals as indicated in the following chart:

Date	Group	Attendance (Approx.)
10/2/08	University of Texas College of Pharmacy 1 st Semester class	120
10/16/08	University of Texas College of Pharmacy – Preceptors	25
10/22/08	Texas Tech School of Pharmacy – Update on Pharmacy Laws & Rules, Lubbock	10
10/23/08	Texas Tech School of Pharmacy – Update on Pharmacy Laws & Rules, Abilene	20

PROFESSIONAL SERVICES DIVISION

Date	Group	Attendance (Approx.)
10/29/08	Texas Tech School of Pharmacy – Update on Pharmacy Laws & Rules, Dallas	10
11/3/08	Austin Community College Pharmacy Technician Program, Austin	15
11/5/08	Texas Tech School of Pharmacy – Update on Pharmacy Laws & Rule, Amarillo	30
2/19/09	El Paso Pharmacy Association Meeting – Update on Pharmacy Laws & Rules, El Paso	65
3/27/09	Houston Pharmacy Technicians, Austin	15
4/4/09	Texas Pharmacy Association Consultant Pharmacists Academy	60
8/15/09	University of Texas Annual Preceptor Conference, San Marcos	110
8/29/09	Abilene Pharmacy Association, Abilene	30
TOTAL		510

- C. The Division Director provided training and information to new employees and pharmacist-interns regarding the operation of the Professional Services Division.

Other Activities

- The Division Director routinely answered questions concerning the laws and rules, including their applicability to specific situations, for Enforcement and Licensing staff.
- The Division Director monitored the website for currentness of the information presented. Changes and/or updates were forwarded to Network Specialist Todd Hayek.
- The Division Director served as co-chair on the agency's Wellness Committee in conjunction with the General Counsel. Division Director assisted with and participated in numerous planning meetings and program activities including the following:
 - 3/24/09 Breathing and Stretching Session
 - 4/15/09 When a Personal Emergency Strikes, Will You be Prepared?
 - 6/3/09 National Running Day Run
 - 6/15/09 Blood/Glucose Monitoring
 - 3/09 – 6/09 Texercise Program

PROFESSIONAL SERVICES DIVISION

5. To publish an Internet version of the *Newsletter* during FY2009, in order to promote voluntary compliance with the law by providing information to educate pharmacists about their responsibilities under current law and rules, and to provide information consistent with the responsibilities of the Board.

Status: ACCOMPLISHED

Comment: Two issues of the *TSBP Newsletter* were published during FY2009. Each issue of the *Newsletter* featured a "Complaint Corner" article, Compliance Reminders, and Disciplinary Actions. The *Summer 2009* issue was printed and mailed to licensed pharmacies.

Throughout FY2009, an email subscription to the Newsletter was available on the TSBP website. Individuals were able to subscribe to the Newsletter by providing an email address. Subscribers were notified by email when a Newsletter was available on the website.

6. To work with the National Association of Boards of Pharmacy (NABP) in the ongoing development of the Multi-State Pharmacy Jurisprudence Examination (MPJE); coordinate with the Enforcement Division to review MPJE item pools on an agreed timetable with NABP to determine appropriate questions for Texas; and to provide new questions for the MPJE as appropriate or requested by NABP.

Status: ACCOMPLISHED

Comment: The Division accomplished this goal with the cooperation of agency personnel who assisted in the reviews of the MPJE item pool. The Division Director and agency personnel participated in the following activities in support of the MPJE program:

Date	Activity	Personnel
10/8 -10/11/08	MPJE Texas Item Pool Review and National Item Pool Review, Chicago, IL	Allison Benz Caroline Hotchkiss
May 2009	MPJE Texas Item Writing, Austin, TX	Allison Benz

7. To assist the Board, throughout FY2009, in its review of the Texas colleges of pharmacy degree and internship programs to determine if the programs are adequate to prepare a student for pharmacy practice.

Status: ACCOMPLISHED

Comment: In September 2008, the Division Director requested records from the Texas Southern University College of Pharmacy and Health Sciences and the University of Houston College of Pharmacy. The Division Director conducted on-site reviews of the internship records at the University of Texas College of Pharmacy (October 21, 2008), University of the Incarnate Word Feik School of Pharmacy (October 28, 2008), Texas Tech School of Pharmacy (November 5, 2008), and Texas A&M Health Science Center Irma Lerma Rangel College of Pharmacy (December 16, 2008). Records from all six colleges/schools were reviewed by the Division Director. The results of the review of the internship records were presented to the Board at its February 2009 meeting.

PROFESSIONAL SERVICES DIVISION

A "Questionnaire on Texas Colleges of Pharmacy Internship Programs" was sent to all six colleges/schools of pharmacy. Responses were received and reviewed by the Division Director and subsequently presented to the Board during the February 2009 board meeting, resulting in approval of the internship programs for the 2009-2010 academic year.

- 8. To coordinate the updating of the Texas State Pharmacy Law reference manual and provision of the updates to the publisher of the manual and to NABP for inclusion in NABPLAW during FY2009.**

Status: ACCOMPLISHED

Comment: Law Reference

Although the Texas State Pharmacy Law Reference manual was not published by TSBP, the Division Director worked closely with the publisher, Lexis Nexis, to ensure that the manual met TSBP requirements.

Law Reference Updates

Updates to the law reference in the form of Rule Memos were provided to Board Members and staff on:

- September 26, 2008
- January 8, 2009
- April 14, 2009
- June 15, 2009

NABPLAW Updates

Updates to NABPLAW were not submitted to the National Association of Boards of Pharmacy (NABP) during FY2009. NABP no longer requires updates for NABPLAW.

NABP Survey of Pharmacy Law Updates

The NABP publication, Survey of Pharmacy Law, is updated annually. During FY2009, the update was completed by the Division Director and returned to NABP by the due date.

- 9. To provide professional staff support to Board-appointed task forces and complete other special projects as assigned throughout FY2009.**

Status: ACCOMPLISHED

Comment: The Division's staff assisted in posting four open meetings of the Task Force on Institutional Pharmacy (Class C) with the *Texas Register* during FY2009 as noted in Ongoing Objective #2. In addition, the Division's staff provided professional support for one pilot project during FY2009.

PROFESSIONAL SERVICES DIVISION

- 10. To provide technical assistance and maintain liaison with federal, state, and local regulatory agencies involved in pharmacy practice regulation throughout FY2009.**

Status: ACCOMPLISHED

Comment: Division staff accomplished the objective through the following activities:

- A. Division Director assisted the Texas Department of Public Safety (DPS) in the review and approval of plans from twenty-two Texas pharmacies to dispense prescriptions for Schedule II controlled substances issued by out-of-state practitioners.
- B. Senior Administrative Assistant Sherry Stevenson maintained close contact with *Texas Register* staff as needed to prepare and publish rules in the *Texas Register*.
- C. The Division Director maintained contact with numerous state and federal agencies and other state boards of pharmacy.

- 11. 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 FY2008.**

Status: ACCOMPLISHED

Comment: In FY2009, Division staff attended general staff meetings and in-house training sessions. General Staff Meetings were held in December 2008, March 2009, June 2009, and August 2009. In conjunction with quarterly General Staff Meetings, Division staff participated in all-staff training, as listed below:

- 12/04/08 – Ethics Training, “Character: Take it Personally,” and Discrimination and Sexual Harassment Training;
- 03/03/09 – Presentation on Texercise Program;
- 08/25/09 – Workplace Violence – Designing a Safe Workplace; Personal Safety and Situational Awareness (presented by SORM); and
- 08/26/09 – Body Composition and Your Health.

In addition, Division staff participated in Wellness events and seminars, Driving Safety courses, Licensing Division presentations, and State Agency Council meetings.

- 12. To conduct periodic reviews and annual evaluations of all employees under the supervision of this Division during FY2009.**

Status: ACCOMPLISHED

Comment: Senior Administrative Assistant Sherry Stevenson was evaluated on July 10, 2009, as required by agency policy.

PROFESSIONAL SERVICES DIVISION

13. To destroy records in accordance with the agency's record retention plan throughout FY2009; to update the Division's *Policy and Procedure Manual* as needed and submit any substantive revisions to the Executive Director for approval throughout FY2009.

Status: ACCOMPLISHED

Comment: During FY2009, the Division accomplished this goal as follows:

A. Records Management

Records in the possession of the Division scheduled for destruction during FY2009 under the approved Record Retention Schedule were identified and destroyed.

B. Policies and Procedures

The policies and procedures for handling Open Records Requests, submitting information to the *Texas Register*, and destroying records according to the Record Retention Schedule were reviewed in FY2009.

14. To recommend changes to the Texas Pharmacy Act and rules and to recommend policies and procedures that 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 FY2009.

Status: ACCOMPLISHED

Comment: The Division Director recommended that inpatient hospice units licensed under Chapter 142, Health and Safety Code, be included in the list of facilities authorized to have emergency kits. Division Director made numerous recommendations to keep the TSBP website current and easier to use.

15. To prepare a report on the accomplishment of Division objectives, for incorporation in the agency's FY2008 Annual Report, and submitted to the Executive Director by the due date.

Status: ACCOMPLISHED

Comment: The Division's first draft of the FY2008 *Annual Report* was submitted to the Executive Director by the due date. All Divisions' Annual Reports were compiled and subsequently presented to the Board at its meeting in August 2009.

Enforcement Division

FY2009 SIGNIFICANT ACCOMPLISHMENTS

1. Division staff accomplished or partially accomplished 100% of its 16 Objectives for FY2009 (15 Objectives were accomplished and one Objective was partially accomplished).
2. As reflected in the chart below, TSBP closed more complaints in FY2009 than in any prior fiscal year (see Ongoing Objective #3 for further information regarding complaints that were closed by TSBP in FY2009).

Year	Complaints Received	% Change Complaints Received Previous Year	Complaints Closed	% Change Complaints Closed Previous Year	% Complaints Closed	Resolution Time (Agency Average)	% Change Time
FY05	3,086	-31%	3,327	+10%	108%	196 Days	+66%
FY06	3,550	+15%	3,387	+2%	95%	207 Days	+6%
FY07	5,849	+65%	4,980	+47%	85%	185 Days	-11%
FY08	5,737	-2%	5,360	+8%	93%	196 Days	+6%
FY09	5,290	-8%	6,182	+15%	117%	211 Days	+8%

3. Field Compliance staff conducted 2,016 pharmacy inspections, thereby exceeding the inspection goal for FY2009 (see Ongoing Objective #2 for further details regarding compliance inspections). This number of inspections included 92 pre-inspections of new pharmacies, a process to ensure that TSBP is issuing licenses to valid facilities.
4. During FY2009, Division staff spent significant time and effort assisting others, including the following: answering 15,466 telephone calls received via the Compliance Queue Phone Line; making 19 presentations to approximately 1,522 individuals; making 602 contacts with 226 law enforcement agencies; and providing assistance to the Board and Board staff (see Ongoing Objectives #5 and #7 for further details).
5. Assistant Division Director served as preceptor to nine students from four Colleges of Pharmacy (see Ongoing Objective #8 for further details).
6. Division staff continued the program to sample/test compounded preparations. Although all tested sterile preparations (100%) were sterile and free of endotoxins, some of the preparations demonstrated unacceptable results with regard to potency (see Ongoing Objective #2 for further details).
7. Although the Division began FY2009 with three vacant positions, these positions were quickly filled with excellent employees. In addition, the Division only experienced one resignation and one internal promotion which created another vacancy, for a total of five staffing changes (see Ongoing Objective #12 for further details).
8. Division employees who were classified as Program Specialists were required to undergo a classification audit conducted by the State Auditor. As a result of this audit, no Division employees were reclassified.
9. Division staff continued to implement the program to convert paper complaint files to imaged records. Approximately 1,600 complaint files were scanned during FY2009.

ENFORCEMENT DIVISION

FY2009 SIGNIFICANT DISAPPOINTMENTS/CONSTRAINTS

1. TSBP continued to open a large number of complaints due to criminal background checks on applicants for Registration as a Pharmacy Technician or Pharmacy Technician Trainee.
2. TSBP did not meet, within a 5% variance, the Key performance measure relating to “Average Time for Jurisdictional Complaint Resolution.” The projected target for complaint resolution was 180 days and the performance attained was 197 days (a 9% variance). TSBP was unable to meet the projected target for complaint resolution primarily due to the fact that the agency closed a large number of old complaints in FY2009, which had a negative impact on the agency’s complaint resolution time. Despite this disappointment, TSBP met or exceeded the remaining five Key enforcement-related performance measures and all seven Non-Key enforcement-related performance measures. Accordingly, TSBP met or exceeded 92% of the FY2009 projections for 13 enforcement-related performance measures (see Ongoing Objective #1 for further details).
3. Division staff continued to spend significant time and efforts monitoring compliance with the terms of disciplinary orders that were entered by TSBP in FY2009. Almost all of the disciplinary orders entered in FY2009 required some type of monitoring by Division staff (i.e., 633 Orders, or 86% of the 737 disciplinary Orders that TSBP entered during FY2009, required some type of monitoring; see Ongoing Objective #6 for further details).

ENFORCEMENT DIVISION

FY2009 ANNUAL REPORT

GOAL

To promote voluntary compliance with pharmacy laws and rules. To monitor compliance with pharmacy laws and rules. To enforce pharmacy laws and rules through inspections and investigations of pharmacists and pharmacies. To monitor the complaint process and transfer complaints involving substantive allegations to the TSBP Legal Division for review and potential prosecution. To monitor compliance with Disciplinary Orders. To provide enforcement information and information regarding pharmacy laws and rules to agency customers.

Objectives (New)

1. **To assist the Executive Director, in cooperation with other Divisions, in preparing testimony, attending public hearings, providing any fiscal or technical information, reviewing all legislation that has an impact on the practice of pharmacy and agency operations, and monitoring the progress of this legislation, throughout the 81st Texas Legislative Session.**

Status: **ACCOMPLISHED**

Comment: This objective was accomplished through the following activities:

- A. Attending Public Hearings –
 1. Division Director served as a resource during two hearings related to the agency's legislative appropriation request.
 2. Assistant Division Director served as a resource at a Senate Committee hearing for several different bills (bills related to "pill-splitting"; prescription labeling; and pharmacists conducting vaccinations).
 3. Chief of Investigations served as a resource during the entire legislative process for S.B. 650 which was passed and became effective 9/1/09. This bill amended the Texas Pharmacy Act to allow agency investigators who were commissioned peace officers the authority to carry weapons and make arrests.
- B. Reviewing Legislation –Division Director assisted in the preparation of a fiscal note regarding the cost if the agency was required to fingerprint all individuals who currently hold a license. In addition, Division Director reviewed or assisted with the preparation of fiscal notes for the following bills:
 1. S.B. 1058 relating to a standard format of an annual report;
 2. S.B. 1853 relating to grounds for discipline for technicians;
 3. H.B. 3156 relating to Drug Donation Program;
 4. H.B. 963 relating to eligibility for certain occupations; and
 5. Prescription Drug Monitoring Program.
- C. Implementing Legislation –
 1. Division Director served as the agency's representative to the Health Professions Council with respect to S.B. 1058.
 2. With the review and approval of the Executive Director and General Counsel, Chief of Investigations prepared policies and procedure to implement S.B. 650.

ENFORCEMENT DIVISION

Objectives (Ongoing)

- To submit data regarding enforcement and peer assistance data for Key Performance Targets required under the FY2008 – FY2009 Appropriations Act to the Executive Director by specified due dates throughout FY2009; to assist in the preparation of applicable reports to the Legislative Budget Board and Governor's Budget Office regarding performance measures.**

Status: **ACCOMPLISHED**

Comment: Throughout FY2009, Division staff collected data relating to enforcement and peer assistance performance measures. The statistical data was certified and submitted to the Legislative Budget Board (LBB) and Governor's Office of Budget, Planning & Policy (GBO) by the prescribed due dates, in conjunction with the licensing performance measures. See chart below:

Enforcement Performance Measure	FY09 Projected Performance	FY09 Performance Attained	Key or Non-Key (K/NK)	Projected Target Met?*
Outputs:				
Inspections	1,800	2,016	NK	Exceeded
Jurisdictional Complaints Resolved	3,998	6,120	K	Exceeded
Number of Licensed Individuals Participating in a Peer Assistance Program	165	157	K	Met
Number of Students Participating in a Peer Assistance Program	1	6	NK	Exceeded
Efficiency:				
Average Cost per Jurisdictional Complaint Resolved	\$331.23	\$218.86	NK	Exceeded
Average Time for Jurisdictional Complaint Resolution	180	211	K	Not Met
Outcomes:				
Percent of Jurisdictional Complaints Resolved Resulting in Disciplinary Action	15.00%	11.80%	K	Met
Percent of Licensees (Pharmacists and Pharmacies) with No Recent Violations (Disciplinary Orders)	95.00%	95.70%	K	Met
Recidivism Rate of Those Receiving Disciplinary Action	6.00%	4.20%	NK	Met
Percent of Jurisdictional Complaints Resolved within Six Months	50.00%	59.00%	NK	Exceeded
Recidivism Rate for Participants in Peer Assistance Program	30.00%	15.00%	NK	Exceeded
One-Year Completion Rate for Participants in Peer Assistance Program	75.00%	81.39%	NK	Exceeded
Explanatory:				
Jurisdictional Complaints Received	3,500	5,226	K	Exceeded

* Within a 5% variance, TSBP's actual performance was either: equivalent to projected performance ("Met"); better than projected performance ("Exceeded"); or fell below projected performance ("Not Met").

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Statistics regarding three enforcement-related performance measures (Number of Jurisdictional Complaints Resolved, Average Complaint Resolution Time, and Number of Individuals Participating in a Peer Assistance Program) were reported to the LBB and GBO on a quarterly basis throughout FY2009. The other ten measures were reported to the LBB and GBO at year-end (annual basis).

As indicated in the chart above, TSBP met or exceeded, within a 5% variance, five of six key measures and all seven non-key measures. Accordingly, TSBP met or exceeded 92% of the FY2009 projections for 13 enforcement-related performance measures. Only one enforcement-related performance measure was not met (Average Time for Jurisdictional Complaint Resolution). TSBP was unable to meet the projected target for complaint resolution because the agency closed a large number of old complaints which had a negative impact on the agency's complaint resolution time.

2. **To monitor pharmacy inspections and pharmacists' practice by conducting 2,000 inspections, inspection-visits, and/or visits, including follow-up inspections to "Warning Notices" throughout FY2009. To inspect pharmacies and monitor pharmacists' practice throughout FY2009, according to the following priorities:**
- A. **pharmacists and pharmacies who are the subject of a complaint received by TSBP or a disciplinary order entered by TSBP;**
 - B. **new pharmacies or pharmacies with a recent change of ownership;**
 - C. **pharmacies that have received a "Warning Notice" (follow-up inspections);**
 - D. **requests for inspection by licensee;**
 - E. **pharmacies with a preceptor working in the pharmacy; and**
 - F. **routine inspections.**

Status: **ACCOMPLISHED**

Comment: TSBP Compliance Field Staff conducted 2,016 inspections during FY2009. The term "inspections" includes inspections, pre-inspections, partial-inspections, and inspection-visits. These terms are described below:

- A. Inspections are full inspections of licensed facilities in which Compliance field staff check the facilities for compliance with each of the items on the inspection report form.
- B. Pre-Inspections are partial inspections that occur prior to TSBP issuing the pharmacy license. The Compliance field staff determines if the pharmacy has the necessary items to open and operate a pharmacy in compliance with the laws and rules governing the practice of pharmacy. A pharmacy license is not issued to the facility unless the facility can pass the pre-inspection process.
- C. Partial-Inspections are inspections of licensed facilities in which Compliance field staff check the facility for compliance with a portion of the items on the inspection report form. In addition, partial inspections include follow-up inspections of pharmacies that received a "Warning Notice" to determine if the pharmacies have corrected the discrepancies listed on the "Warning Notice." Follow-up

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inspections are conducted within six months after the pharmacy has notified the Board in writing that the discrepancies have been corrected.

- D. Inspection-Visits are inspections in which Compliance field staff generally do not complete an inspection report form. Inspection-visits include inspections of non-licensed facilities that are operating a pharmacy (e.g., medical supply house), visits made to pharmacies that have closed (and did not notify the Board), and visits to “new” pharmacies that have not opened for business. The last two situations are discovered by Compliance field staff after arriving at the addresses listed in Board records.

Statistics regarding these inspections are set forth below:

Total Inspections by Type	FY2007	FY2008	FY2009	% of FY09	3-Year Average	% of 3-Yr. Average
Inspections	1,761	1,603	1,688	84%	1,684	82%
Pre-Inspections	110	101	92	5%	101	5%
Partial-Inspections	158	142	124	6%	141	7%
Inspection-Visits	51	104	14	1%	56	3%
Attempted Inspections	*	91	90	4%	*	*
Other	1	7	8	0%	5	0%
Audit	2	0	0	0%	1	0%
Total	2,083	2,048	2,016	100%	2,049	100%

* New Inspection code created in FY2007.

Number of Inspections/Visits by Class	FY2007	FY2008	FY2009	% of FY09	3-Year Average	% of 3-Yr. Average
Class A Pharmacies	1,696	1,563	1,604	80%	1,621	79%
Class B Pharmacies	7	4	1	<1%	4	0%
Class C Pharmacies	238	298	273	14%	270	13%
Class D Pharmacies	142	183	138	7%	154	8%
Total	2,083	2,048	2,016	100%	2,049	100%

Number of Warning Notices Issued by Class*	FY2007	FY2008	FY2009	% of FY09**	3-Year Average	% of 3-Yr. Average
Class A Pharmacies	323	300	411	84%	345	82%
Class B Pharmacies	1	0	0	0%	0	0%
Class C Pharmacies	64	44	65	13%	58	14%
Class D Pharmacies	13	30	15	3%	19	5%
Total	401	374	491	100%	422	100%

* A pharmacy may be issued a “Warning Notice” for non-compliance with more than one condition.

** This figure is the number and percentage of pharmacies receiving a “Warning Notice” during an inspection/visit and is based on the number of inspections/partial-inspections/visits conducted for the particular class of pharmacy.

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Conditions Receiving "Warning Notices" FY2009						
Percentages are based on the total number of "Warning Notices" issued to Pharmacies in FY2009. Note - Pharmacies may be issued a "Warning Notice" for non-compliance with more than one condition.						
Type of Violation	FY2007	FY2008	FY2009	3-Year Average	% FY2009	% 3-Year Average
Equipment	80	55	54	63	5%	7%
Balance Failed Inspection	56	42	43	47		
Equipment Inspection Due (Not Balance)	15	12	11	13		
Insufficient Equipment	9	1	0	3		
Pharmacy Technicians	125	133	178	145	17%	17%
No/Incomplete Training	79	100	150	110		
No/Improper Supervision	24	17	20	20		
Improper Registration	16	15	6	12		
Supportive Personnel Name Tags	6	1	2	3		
Inadequate Library	16	26	57	33	5%	4%
Counseling Area	1	0	0	0	0%	0%
Licenses	116	92	133	114	13%	13%
Licenses Not Posted	102	82	130	105		
Delinquent Licenses	14	10	3	9		
Prescriptions	19	27	28	25	3%	3%
Lack Proper Information	5	8	17	10		
Prescription Label Incorrect	7	10	5	7		
Triplicate Non-Compliance	7	9	6	7		
Drug Stock/Environment	110	77	113	100	11%	11%
Improper Environment	58	0	36	31		
Out-of-Date Drug Stock	34	59	47	47		
Security	3	1	10	5		
Unsanitary	4	5	13	7		
Improper Drug Storage	4	4	3	4		
Area for Non-Sterile Compounding	5	3	3	4		
Violation of Limited Formulary	1	2	1	1		
Prohibited Drugs (Class D)	1	3	0	1		
Inventory	75	64	66	68	6%	8%
No Annual Inventory	40	39	43	41		
No Change of Ownership Inventory	2	3	0	2		
No Change of PIC Inventory	13	6	9	9		
Incomplete Inventory	19	16	14	16		
No Perpetual inventory (Class C)	0	0	0	0		
Improper Drug Destruction	1	0	0	0		
Improper Prepackaging Procedures	16	25	38	26	4%	3%

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Conditions Receiving "Warning Notices" FY2009 *Continued*

Type of Violation	FY2007	FY2008	FY2009	3 Year Average	% FY2009	% 3-Year Average
Computer Systems	19	34	58	37	6%	4%
Computer Records Incomplete	17	31	52	33		
Computer Records Non-Compliance	2	3	6	4		
Records	44	45	67	52	6%	6%
Records Not Available	12	16	16	15		
DEA Order Forms Incomplete	0	0	0	0		
Absence of R.Ph. Record	3	2	0	2		
Rx Not Separated	5	5	10	7		
Rx Records not Numerical Order	4	3	11	6		
Improper Transfer of RX copies	1	0	0	0		
Invoices Not Separated/Retrievable	6	3	5	5		
Records for Non-Sterile Compounds	11	9	18	13		
No Written Information on Prescription	2	6	7	5		
Improper Refill Documentation	0	1	0	0		
OBRA Violations	31	54	67	51	6%	6%
Written Information Not Provided	0	0	0	0		
No Patient Counseling	31	52	63	49		
PMR Absent or Incomplete	0	2	4	2		
Sterile Pharmaceutical Violations	93	30	87	70	8%	8%
No/Incomplete QA/QC	5	2	9	5		
No/Incomplete P&P Manual	9	8	20	12		
No/Inadequate Preparation Area	69	14	44	42		
IV Preparation	7	1	7	5		
No DUR	2	1	5	3		
Absence of R.Ph. Pick-Up-Records	1	4	2	2		
Cytotoxic/Bio Procedures	0	0	0	0		
No/Incomplete Non-Sterile Cpd Records	0	9	18	9	2%	1%
Improper Distribution	5	9	2	5	0%	1%
No PIC	5	7	5	6	0%	1%
Dispensing	41	36	29	35	3%	4%
Improper Dispensing	4	6	7	6		
Aiding and Abetting	10	5	2	6		
Illegal Dispensing	4	2	2	3		
Substitution Non-Compliance	1	3	0	1		
Out-of-State Rxs for Controlled Substances	1	0	0	0		
Improper Emergency Room Dispensing	0	1	0	0		
Improper Automated Dispensing Procedures	19	17	18	18		
Improper Provision	2	2	0	1		
Improper Advertising	6	19	9	11	1%	1%

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Conditions Receiving "Warning Notices" FY2009 *Continued*

Type of Violation	FY2007	FY2008	FY2009	3 Year Average	% FY2009	% 3-Year Average
Notification Violation	12	18	24	18	2%	2%
Theft & Loss of C/S Not Reported	5	4	7	5	1%	1%
Gray Market diversion	1	1	0	1	0%	0%
Improper Closing/Change of Ownership	1	2	0	1	0%	0%
Improper Inpatient Procedures (Class C)	1	1	2	1	0%	0%

The total number of inspections, partial-inspections, and inspection-visits by priority are indicated below for the past three fiscal years:

Purpose of Inspection (In Order of Priority)	FY2007	FY2008	FY2009	% of FY09	3-Yr. Avg.	% of 3-Yr. Avg.
Complaint	118	114	123	6%	118	6%
Follow-up to Disciplinary Order	10	6	4	0%	7	0%
Pre-Inspection New	110	101	97	5%	103	5%
New Pharmacies	110	111	95	5%	105	5%
Change of Ownership	47	20	14	1%	27	1%
Preceptor	176	229	278	14%	228	11%
Follow-up to "Warning Notice"	79	31	72	4%	61	3%
Routine Inspections	1,390	1,326	1,205	60%	1,307	64%
Attempted Inspection	21	91	90	4%	67	3%
Other	22	19	38	2%	26	1%
Total	2,083	2,048	2,016	100%	2,049	100%

SUMMARY OF PROGRAM TO SAMPLE AND TEST COMPOUNDED PREPARATIONS

In 2007, the 80th Texas Legislature appropriated \$50,000 per year (\$100,000 for the biennium) for the sampling program. In 2009, the 81st Texas Legislature extended the sampling program and increased appropriations to \$100,000 per year (\$200,000 for the current biennium).

TSBP continued to use the independent testing laboratory that was awarded the contract in FY2008. This vendor performs potency, and/or sterility and endotoxin testing on surrendered samples. If the sample surrendered by a pharmacy is a sterile preparation, it is tested for potency, sterility, and the presence of endotoxins. If the surrendered sample is a non-sterile preparation, it is tested for potency only.

At the close of FY2009, TSBP submitted for testing 46 compounded preparations from 32 different pharmacies. The preparations tested included 33 preparations with only one active medication, and 13 preparations containing 2 to 5 active medications. A total of 72 tests were performed for potency. As in FY2008, testing of all sterile preparations surrendered in FY2009 (100%) revealed that each sample was sterile and free of endotoxins. Testing of 7 of the 46 compounded preparations (15%) demonstrated unacceptable results with regard to potency of the sample. These results represent a 67% reduction in unacceptable results compared to FY2008 when 45% of the tested compounded preparations resulted in unacceptable results. The potency results for tested preparation submitted in FY2009 are described below:

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- (1) Non-Sterile Preparations – Of the 46 samples that were collected, 35 (76%) were non-sterile compounded preparations. Potency problems were determined in 6 of the 35 preparations (17% failed potency test).
- (2) Sterile Preparations – Of the 46 samples that were collected, 11 (24%) were sterile compounded preparations. Potency problems were determined in 1 of the 11 preparations (9% failed potency test).

During FY2009, TSBP submitted fewer compounded preparations for analytical testing than during the previous fiscal year. The reduction in number of samples submitted was a direct result of a request by the Governor's Office for each state agency to institute a 2.5% budget reduction for the fiscal year.

3. **To coordinate and monitor throughout FY2009, the receipt, assignment, and resolution of all complaints filed with the agency and the notification of complainants. To investigate complaints throughout FY2009, according to the following priorities:**
 - A. Continuing threats to the public welfare requiring a temporary suspension;
 - B. Complaints filed against licensees/registrants who have a chemical, mental or physical impairment;
 - C. Complaints involving the diversion of prescription drugs, through the following illegal means:
 - theft of drugs;
 - delivering prescription drugs without a prescription;
 - dispensing prescription drugs pursuant to an invalid prescription, such as forged or fraudulent prescriptions, prescriptions dispensed following an Internet consultation, and unauthorized refills; and
 - failing to keep and maintain accurate records of purchases and disposals of prescription drugs (i.e., audit shortages).
 - D. Complaints against licensees/registrants who have been convicted of a felony involving offenses that involved drug laws or occurred while engaged in pharmacy practice;
 - E. Complaints against licensees/registrants who are registered sex offenders;
 - F. Complaints against licensees/registrants who have been convicted of a felony involving offenses not occurring while engaged in pharmacy practice;
 - G. Complaints involving applicants for licensure or registration (not including applications for reinstatement);
 - H. Complaints involving dispensing errors and malpractice reports;

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- I. Complaints involving violations of rules relating to patient counseling or drug regimen review;
- J. Complaints involving healthcare fraud or fraud, deceit, and misrepresentation in the practice of pharmacy, including aiding and abetting a non-licensed individual in the practice of pharmacy;
- K. Complaints against licensees/registrants who have been convicted of a misdemeanor that involved drug laws or occurred while engaged in pharmacy practice;
- L. Applications involving reinstatement of revoked licensees and registrations;
- M. Complaints involving other violations of the laws and rules relating to the practice of pharmacy (e.g., CE audit shortages; falsification of renewal applications; possession of samples or misbranded/adulterated drugs; working with an expired license or registration; and falsification of response to warning notices);
- N. Complaints against licensees/registrants who have been convicted of a misdemeanor involving offenses not occurring while engaged in pharmacy practice; and
- O. Complaints against licensees/registrants who have been subject to a disciplinary action by another state board of pharmacy.

Status: **ACCOMPLISHED**

Comment: As reflected in the chart below, TSBP closed more complaints in FY2009 than in any prior fiscal year. In addition, TSBP was able to close more complaints in FY2009 than it received. The agency received 8% fewer complaints in FY2009 as compared to FY2008. However, due to the large number of old complaints that were closed in FY2009, TSBP experienced an 8% increase in average complaint resolution time (average number of days to resolve a complaint) from 196 days in FY2008 to 211 days in FY2009, as reflected in the chart below.

Year	Complaints Received	% Change Complaints Received Previous Year	Complaints Closed	% Change Complaints Closed Previous Year	% Complaints Closed	Resolution Time (Agency Average)	% Change Time
FY05	3,086	-31%	3,327	+10%	108%	196 Days	+66%
FY06	3,549	+15%	3,387	+2%	95%	207 Days	+6%
FY07	5,849	+65%	4,980	+47%	85%	185 Days	-11%
FY08	5,737	-2%	5,360	+8%	93%	196 Days	+6%
FY09	5,290	-8%	6,182	+15%	116%	211 Days	+8%

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The following chart indicates the number of dispensing error complaints closed during the past five years:

DATA ON DISPENSING ERROR COMPLAINTS CLOSED FY05– FY09

Type of Dispensing Error	FY05	FY06	FY07	FY08	FY09	5-Year Avg.
Wrong Drug/Strength or Wrong Directions for Use	126	114	152	86	115	119
Mislabeled	11	13	15	13	11	13
Dispensed Wrong Quantity	70	58	58	41	125	70
Dispensed Outdated Drug	3	3	10	4	3	5
Packaging/Delivery Error	14	23	32	25	24	24
Error + No Counseling	7	7	10	2	3	6
Total # Dispensing Error Complaints	231	218	277	171	281	236
Total # Complaints Closed	3,327	3,387	4,980	5,360	6,182	4,647
% Dispensing Error Complaints	7%	6%	6%	3%	5%	5%

The agency's history with regard to complaint data and field investigations during the past five years is reflected in the chart below:

Number of Complaints Handled Through Field Investigations FY2005– FY2009					
Fiscal Year	Compliance Officers	%	Investigators	%	Total
FY05	107	46%	126	54%	233
FY06	128	41%	182	59%	310
FY07	105	26%	299	74%	404
FY08	147	29%	356	71%	503
FY09	151	33%	306	67%	457
5-Year Avg.	128	34%	254	66%	382

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Additional complaint statistics on closed complaints for the past three fiscal years are outlined below:

DATA ON COMPLAINTS CLOSED FY2007 – FY2009

Form of Complaints	FY07	FY08	FY09	% of FY09	3-Yr. Avg.	% of 3-Yr. Avg.
Telephone	66	69	68	1%	68	1%
Letter	219	181	219	4%	206	4%
TSBP Complaint Form	235	152	209	3%	199	4%
HPC 800 #	72	37	31	<1%	47	1%
Fax	90	93	63	1%	82	1%
Visit	7	4	6	<1%	6	<1%
Agency Report	379	539	228	4%	382	7%
Inspection	52	56	71	1%	60	1%
Interoffice Referral	49	18	19	<1%	29	1%
Licensure Application	2,693	3,004	2,802	45%	2,833	51%
Data Bank	5	5	9	<1%	6	<1%
Theft/Loss Report	440	583	636	10%	553	10%
Investigation	254	229	281	5%	255	5%
Intra-Agency Referral	15	10	9	<1%	11	<1%
Malpractice Report	17	2	4	<1%	8	<1%
Press Clip	6	6	14	<1%	9	<1%
Email *	54	44	105	2%	68	1%
Internet *	325	326	583	9%	411	7%
DPS/quarterly **	n/a	n/a	823	13%	n/a	n/a
Other	2	2	2	<1%	2	<1%
TOTAL	4,980	5,360	6,182	100%	5,507	100%

* TSBP accepts complaints via email, as well as through the agency's website (Internet). TSBP makes a distinction between email complaints (where the complainant sends an electronic message/ complaint to a TSBP employee) and Internet complaints (where the complainant completes the on-line TSBP complaint form). TSBP began accepting on-line complaints in the Spring of 2001.

** New code created in FY2009.

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DATA ON COMPLAINTS CLOSED FY2007 – FY2009

Source of Complaints	FY07	FY08	FY09	% of FY09	3-Yr. Avg.	% of 3-Yr. Avg.
Consumer	690	567	876	14%	711	13%
Government Agency	422	571	1,088	18%	694	13%
Pharmacist	76	51	48	1%	58	1%
Pharmacist (Self)	95	81	88	1%	88	2%
Applicant (R.Ph. Self)	159	154	168	3%	160	3%
Technician	12	7	17	<1%	12	<1%
Technician (Self)	90	110	119	2%	106	2%
Applicant (Tech Self)	628	303	295	5%	409	7%
Technician Trainee	0	1	2	<1%	1	<1%
Tech Trainee (Self)	0	2	1	<1%	1	<1%
Applicant (Tech Trainee Self)	1,236	1,796	1,475	24%	1,502	27%
TSBP	845	859	1,031	17%	912	17%
Doctor	73	66	64	1%	68	1%
Other Health Professional	16	14	27	<1%	19	<1%
NABP	6	5	10	<1%	7	<1%
PIC, Pharmacy Manager, or Supervisor	438	595	678	11%	570	10%
Loss Prevention Officer (Corporate)	6	9	7	<1%	7	<1%
Manufacturing Rep.	4	0	2	<1%	2	<1%
Professional Recovery Network (PRN)	16	11	12	<1%	13	<1%
Insurance Company	13	4	1	<1%	6	<1%
Attorney	10	2	8	<1%	7	<1%
Employee/Ex-Employee	17	15	18	<1%	17	<1%
Media	25	9	13	<1%	16	<1%
Drug Screening Co.	92	119	111	2%	107	2%
Other	11	9	23	<1%	14	<1%
TOTAL	4,980	5,360	6,182	100%	5,507	100%

* TSBP began registering Technician Trainees in FY2007.

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DATA ON CLOSED FY2007 – FY2009 COMPLAINTS

Subjects of Complaints *	FY2007	FY2008	FY2009	3-Yr. Average
Licensees (RPh/Pharmacy)	1,742 (35%)	1,604 (30%)	1,990 (32%)	1,779 (32%)
Pharmacist	755	565	762	694
In-State Pharmacy	960	991	1,173	1041
Out-of-State Pharmacy	27	48	55	43
Registrants (Intern/Tech)	645 (13%)	830 (15%)	1,444 (23%)	973 (18%)
Intern	5	5	27	12
Technician	639	669	930	746
Technician Trainee	1	156	487	215
Applicants (Lic & Reg)	2,530 (51%)	2,850 (53%)	2,671 (43%)	2,684 (49%)
Pharmacist	94	72	106	91
Pharmacy	38	36	20	31
Intern	79	97	85	87
Technician	790	399	408	532
Technician Trainee	1,529	2,246	2,052	1,942
Non-Licensees	63 (1%)	76 (1%)	77 (1%)	72 (1%)
Doctor	13	25	42	27
Manufacturer	2	1	0	1
Wholesaler	0	0	0	0
Non-Licensed Facility or Person	33	31	23	29
Insurance Company/ PBM	8	10	5	8
Out-of-State Facility	3	5	6	5
Other	4	4	1	3
TOTAL	4,980	5,360	6,182	5,507

* A complaint may have one or two subjects (i.e., an individual and a facility); however, for data reporting purposes, TSBP selects a single code as the subject of the complaint; for complaints with dual subjects, the complaint is generally coded as being filed against the individual rather than the facility. EXAMPLES:

- (a) a complaint may be filed on both a pharmacist and a pharmacy (e.g., dispensing error committed by a pharmacist at a particular pharmacy); in this event, the complaint is coded as being filed against the pharmacist; and
- (b) a complaint may be filed on both a technician and a pharmacy (e.g., theft of controlled substances by a technician at a pharmacy); in this event, the complaint is coded as being filed against the technician.

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NATURE OF ALLEGATIONS OF COMPLAINTS CLOSED FY2007 – FY2009

Alleged Violation	FY07	FY08	FY09	3-Yr. Avg.	% of 3-Yr. Avg.
Diversion	23	13	21	19	<1%
Controlled Substances (C/S)	18	8	12	13	<1%
Dangerous Drugs (D/D)	2	1	0	1	<1%
Both (C/S & D/D)	3	4	0	2	<1%
Internet Rxs	**	**	9	n/a	n/a
Unauthorized Dispensing	22	29	27	26	<1%
Controlled Substances	5	5	6	5	<1%
Dangerous Drugs	6	14	9	10	<1%
Both (C/S & D/D)	11	10	12	11	<1%
Illegal Delivery	2	0	1	1	<1%
Controlled Substances	0	0	1	0	0%
Dangerous Drugs	0	0	0	0	0%
Both (C/S & D/D)	2	0	0	1	<1%
Illegal Possession	2	4	4	3	<1%
Controlled Substances	1	0	0	1	<1%
Dangerous Drugs	0	4	0	1	<1%
Both (C/S & D/D)	1	0	4	2	0%
Convictions/Criminal Offenses	2,454	2,583	2,480	2,506	41%
Felony	51	87	83	74	1%
Misdemeanor	457	366	363	395	6%
DWI/PI	515	471	501	496	8%
Deferred Adjudication	438	495	625	519	8%
Offense on Application	993	1,164	908	1,022	17%
Dispensing Error	277	171	281	243	4%
Wrong Drug/Strength	152	86	115	118	2%
Mislabeled	15	13	11	13	<1%
Wrong Quantity	58	41	125	75	1%
Outdated Drug	10	4	3	6	<1%
Packaging/Delivery	32	25	24	27	<1%
Dispensing Error and No or Improper Patient Counseling	10	2	3	5	<1%
No or Improper Patient Counseling	17	15	19	17	<1%
No or Improper Drug Regimen Review	16	11	18	15	<1%
Theft/Loss of C/S and/or D/D	457	597	620	558	9%
Aiding & Abetting	46	45	79	57	1%
Action by Other Board	53	44	65	54	<1%
Non-Compliance with Substitution Rules	60	47	57	55	<1%
Non-Compliance with Disciplinary Order	230	234	257	240	4%
Non-Compliance with PRN Contract	4	1	3	3	<1%
Interference with Doctor/Patient Relationship	35	31	105	57	1%
Confidentiality	33	6	24	21	<1%
Failed to Keep Records	6	0	0	2	<1%
Negligence	0	0	0	0	0%
Unsafe Practice	2	6	2	3	<1%
Compounding	3	3	6	4	<1%
Unprofessional Conduct	8	2	4	5	<1%
Gross Immorality	2	6	7	5	<1%
Fraud	502	632	779	638	10%
Fraud, Deceit & Misrepresentation	5	4	3	4	<1%
Falsified Response to Warning Notice	3	2	0	2	<1%
Falsified Application	478	612	759	616	10%
Filled/Passed Forged Prescription	12	12	12	12	<1%
Insurance Fraud	4	0	3	2	<1%
Medicare Fraud	0	2	2	1	<1%

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Alleged Violation	FY07	FY08	FY09	3-Yr. Avg.	% of 3-Yr. Avg.
Impairment	24	35	31	30	<1%
Probable Cause	12	10	7	10	<1%
Drug & Alcohol	1	7	5	4	<1%
Drug	7	9	12	9	<1%
Alcohol	3	4	7	5	<1%
Physical	0	0	0	0	0%
Mental	1	5	0	2	<1%
Changed Prescription	31	13	26	23	<1%
Non-Therapeutic Dispensing	17	22	7	15	<1%
Non-Therapeutic Prescribing (Doctor)	0	9	8	6	<1%
Excessive Purchases of Controlled Substances	1	4	5	3	<1%
Anabolic Steroids	0	0	0	0	0%
Grey Market Diversion	1	1	0	1	<1%
Samples	2	0	0	1	<1%
Technician Violation	9	8	7	8	<1%
Improper Security	1	1	1	1	<1%
Problem with OTC Drug	1	2	6	3	<1%
Closed Pharmacy Improperly	4	2	3	3	<1%
Operating Pharmacy without License	6	11	4	7	<1%
Working Conditions	6	4	10	7	<1%
Delinquent License	19	14	17	17	<1%
Kickbacks	1	3	1	2	<1%
No PIC	2	1	0	1	<1%
Recordkeeping Error	65	50	85	67	1%
Notification Violation	0	0	0	0	0%
No Annual Inventory / No PIC Inventory	0	0	3	1	0%
C-II Rx	3	4	3	3	<1%
Improper Rx's Issued by Doctors	3	0	0	1	<1%
Advertising	17	5	9	10	<1%
Overcharging	3	3	0	2	<1%
Billing Dispute	66	67	99	77	1%
Customer Service	68	88	92	83	1%
Hot Check	14	3	10	9	<1%
Accountability Audit Discrepancies (shortages/overages)	10	16	25	17	<1%
CE Audit	18	7	1	9	<1%
Default on Student Loans	0	0	0	0	0%
Other Allegations	303	464	761	509	8%
Texas Pharmacy Act	71	44	31	49	1%
Texas Dangerous Drug Act	0	2	5	2	<1%
Texas Controlled Substances Act	41	68	73	61	1%
Food Drug & Cosmetic Act	6	6	7	6	<1%
TSBP Rule	70	71	113	85	1%
Other Laws/Rules	115	273	533	307	5%
Request Disciplinary Action	*	15	80	32	<1%
Reinstatement	8	7	6	7	<1%
Modification	23	21	22	22	<1%
TOTAL	4,980	5,360	6,182	5,507	100%

* New violation codes created in FY2008.

** New violation code created in FY2009.

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ACTION TAKEN BY TSBP TO CLOSE COMPLAINTS FY2007 – FY2009

	FY2007	FY2008	FY2009	3-Yr. Avg.	% of 3-Yr. Avg.
Investigations Not Resulting in Disciplinary Action:	3,902	4,079	4,581	4,187	76%
Investigate + Dismissal (Warning) Letter	1,461	1,407	1,420	1,429	30%
Investigate + Complaint Closed with Verbal Warning	282	315	508	368	7%
Investigate + Complaint Closed with No Action Due to Insufficient Evidence to Prove Violation Occurred	1,505	1,544	1,499	1,516	28%
Investigate + Lost Jurisdiction (registration expired)	43	118	210	124	2%
Inspections	41	76	53	57	1%
Inspection + Warning Notice or Dismissal Letter	16	8	13	12	<1%
Application Withdrawn	31	85	122	79	1%
Other *	523	526	756	602	11%
Investigations Resulting in Disciplinary Action:	853	910	1,203	989	18%
Agreed Board Order	572	487	620	560	10%
Board Order	96	77	103	92	2%
Preliminary Notice Letter + Dismissal (Warning) Ltr.	1	0	0	0	0%
PNL + Application Withdrawn (with or without Informal Conference)	159	331	462	317	6%
PNL + Informal Conference + Dismissal Letter	10	7	2	6	<1%
PNL + Informal Conference + Case Dismissed	9	8	13	10	<1%
PNL + Case Dismissed	6	0	3	3	<1%
Referrals To:	25	63	112	67	1%
Medical Board	4	12	5	7	<1%
PRN Program	0	0	0	0	0%
Supervisor	1	1	21	7	<1%
Other Agency	20	50	86	52	1%
No Action Because:	200	308	286	265	5%
No Violation	4	5	11	7	<1%
No Jurisdiction	48	52	137	79	1%
Insufficient Information	13	5	10	9	<1%
Other **	135	246	128	170	3%
TOTAL	4,980	5,360	6,182	5,507	100%

* Represents miscellaneous actions, such as: complainant has withdrawn complaint, multiple actions [e.g., investigation and refer to PRN, complainant will not cooperate with investigation, alleged violation has already been addressed by a previous (recent) compliance inspection or the resolution is not described by the above categories].

** Violation not substantive (e.g., report of theft/loss of small quantity of controlled substance).

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During FY2009, TSBP received 214 reports indicating that pharmacies experienced theft of 562,465 dosage units of controlled substances by 200 individuals. See chart below for additional details employee pilferage reports. The chart below is followed by two additional charts which provide a statistical comparison over the past three fiscal years, with regard to the number of number of suspects identified and the number of dosage units pilfered.

Reports Submitted to the Texas State Board of Pharmacy Regarding Thefts/Losses of Controlled Substances in Texas Pharmacies Due to Employee Pilferage FY2009 (9/1/2008 – 8/31/2009)

CLASSIFICATION OF EMPLOYEE	Class "A"	Class "C"	Hospital Floor Stock	Total	%	DU	%
Registered Pharmacist	8	3	0	11	5%	13,408	2%
Pharmacist Intern	0	0	0	0	0%	0	0%
Registered Pharmacy Technician	45	8	0	53	24%	304,283	54%
Pharmacy Technician-in-Training	29	0	0	29	13%	159,078	28%
Physician	0	0	0	0	0%	0	0%
Registered Nurse	0	0	50	50	23%	2,968	<1%
Certified Registered Nurse Anesthetist	0	0	0	0	0%	0	0%
Licensed Vocational Nurse	0	0	4	4	2%	468	<1%
Delivery – In or Out of Pharmacy	0	0	0	0	0%	0	0%
Pharmacy Cashier – Pharmacy Clerk	4	0	0	4	2%	14,901	3%
Pharmacy Staff – Unidentified	34	0	0	34	15%	64,840	12%
Hospital Staff – Unidentified	0	0	24	24	11%	711	<1%
Hospital Staff – Pharmacy Staff	0	0	2	2	1%	200	<1%
Miscellaneous*	9	0	0	9	4%	1,608	<1%
TOTALS	129	11	80	220	100%	562,465	100%

* Examples: Non-pharmacy employees; contract workers (e.g., repairmen, cleaning crew).

** A total of 214 DEA Reports involving 220 individuals

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Report Submitted to the Texas State Board of Pharmacy Regarding Thefts/Losses of Controlled Substances in Texas Pharmacies Due to Employee Pilferage FY2007 - FY2009 (by Individuals)

CLASSIFICATION OF EMPLOYEE	FY 2007		FY 2008		FY 2009		% Change FY08-FY09
	Total # of Individuals	%	Total # of Individuals	%	Total # of Individuals	%	
Registered Pharmacist	7	6%	17	5%	11	5%	-35%
Pharmacist Intern	0	0%	0	0%	0	0%	0%
Registered Pharmacy Technician	34	29%	83	25%	53	24%	-36%
Pharmacy Technician-in-Training	0	0%	0	0%	29	13%	29%
Physician	0	0%	0	0%	0	0%	0%
Registered Nurse	13	11%	37	11%	50	23%	+35%
Certified Registered Nurse Anesthetist	0	0%	0	0%	0	0%	0%
Licensed Vocational Nurse	1	<1%	9	3%	4	2%	-55%
Delivery – In or Out of Pharmacy	26	22%	51	15%	0	0%	-100%
Pharmacy Cashier – Pharmacy Clerk	2	2%	4	1%	4	2%	0%
Pharmacy Staff – Unidentified	21	18%	49	15%	34	15%	-31%
Hospital Staff – Unidentified	3	3%	26	8%	24	11%	-8%
Hospital Staff – Pharmacy Staff	1	<1%	6	2%	2	1%	-67%
Miscellaneous *	11	9%	52	16%	9	4%	-83%
TOTALS	119	100%	334	100%	220	100%	-34%

* Examples: Non-pharmacy employees; contract workers (e.g., repairmen, cleaning crew).

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Reports Submitted to the Texas State Board of Pharmacy Regarding Thefts/Losses of Controlled Substances in Texas Pharmacies Due to Employee Pilferage FY2007 - FY2009 (by Dosage Units)

CLASSIFICATION OF EMPLOYEE	FY 2007		FY 2008		FY 2009		% Change FY08-FY09
	Total # of Dosage Units	%	Total # of Dosage Units	%	Total # of Dosage Units	%	
Registered Pharmacist	49,893	19%	40,964	5%	13,408	2%	-67%
Pharmacist Intern	0	0%	0	0%	0	0%	0%
Registered Pharmacy Technician	99,199	38%	307,798	35%	304,283	54%	-1%
Pharmacy Technician-in-Training	0	0%	0	0%	159,078	28%	+159,078%
Physician	0	0%	0	0%	0	0%	0%
Registered Nurse	885	<1%	5,007	<1%	2,968	<1%	-41%
Certified Registered Nurse Anesthetist	0	0%	0	0%	0	0%	0%
Licensed Vocational Nurse	16	<1%	894	<1%	468	<1%	-48%
Delivery – In or Out of Pharmacy	25,996	10%	29,751	3%	0	0%	-100%
Pharmacy Cashier – Pharmacy Clerk	20,650	8%	11,302	1%	14,901	3%	+32%
Pharmacy Staff – Unidentified	50,655	19%	409,287	46%	64,840	12%	-84%
Hospital Staff – Unidentified	47	<1%	2,901	<1%	711	<1%	-75%
Hospital Staff – Pharmacy Staff	10	<1%	22,385	3%	200	<1%	-99%
Miscellaneous *	12,730	5%	59,483	7%	1,608	<1%	-97%
TOTALS	260,081	100%	889,772	100%	562,465	100%	-37%

* Examples: Non-pharmacy employees; contract workers (e.g., repairmen, cleaning crew).

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4. **In cooperation with the Licensing Division and in compliance with the agency's policies and procedures, to process criminal background checks on applicants for licensure and registration throughout FY2009, including fingerprint-based criminal background checks; and to conduct criminal background checks on licensees and registrants on a quarterly basis throughout FY2009.**

Status: ACCOMPLISHED

Comments: In March 2009, TSBP implemented the fingerprint-based criminal background check for all individuals applying for a technician or technician trainee registration. Although there were start-up difficulties, the Licensing division diligently reviewed these reports and when the report indicated some type of criminal history, the Licensing Division referred the application and report to the Enforcement Division to investigate. Also during FY2009, the Enforcement Division worked with the Licensing Division to implement the fingerprinting requirement for all applicants for re-licensure or reinstatement. The fingerprint system provided immediate information to TSBP if the individual was arrested after the application was filed. During FY2009, TSBP received 18 such reports.

In addition, Division staff continued to conduct quarterly background checks on pharmacists, interns, and technicians/tech trainees. During FY2009, the agency opened 847 complaints due to the criminal history information provided on the quarterly reports.

5. **To provide technical assistance, maintain liaison, and coordinate joint investigations of pharmacists, interns, pharmacy technicians, and pharmacies, in line with the "lead agency approach," with federal, state, and local law enforcement agencies, including health regulatory or administrative agencies, throughout FY2009.**

Status: ACCOMPLISHED

Comment: TSBP continued to provide assistance to other agencies, when requested, throughout FY2009. TSBP Field Investigators maintained liaison with law enforcement agencies across the State, totaling over 602 contacts with 226 agencies. In-house investigative staff made hundreds of contacts with courts and law enforcement agencies both in Texas and out of state while conducting criminal background checks.

6. **To monitor compliance with all Board Orders and Agreed Board Orders, including rehabilitation Orders relating to impaired or recovering pharmacists, throughout FY2009.**

Status: ACCOMPLISHED

Comment: Almost all of the disciplinary orders entered in FY2009 required some type of monitoring by Division staff (i.e., 633 orders or 86% of the 737 disciplinary orders that TSBP entered during FY2009 required some type of monitoring). Monitoring included the following types of actions/activities:

- A. Licensure documents – Division staff monitored the receipt of licensure documents that were required to be submitted to TSBP (e.g., wall certificate of a revoked pharmacist license) and returned these documents as required (e.g., upon reinstatement of the license or completion of the suspension period).

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- B. Fines & Fees – Division staff, in conjunction with Accounting staff, ensured that Administrative Penalties (fines) and probation fees were paid.
- C. Reinstatement – Division staff monitored the status of reinstatement applicants [e.g., whether applicant completed Law Exam, Internship, and required CE within the required time period; reviewing reports from supervising pharmacist(s)].
- D. Rehabilitation Orders – These types of Orders are extremely labor-intensive, including monitoring of random drug screens and the review/evaluation of approximately 12 reports per year per Order [reports from probationer, supervising pharmacist(s), and mental health professional(s)].
- E. Other – Division staff monitored the submission of other documents (e.g., required continuing education and policy/procedures manuals; quarterly reports from a consulting/auditing pharmacist on a pharmacy's operation).

In addition to the in-house monitoring described above, Compliance Officers conducted inspections of pharmacies for the purpose of monitoring compliance with the terms of the Orders, particularly individuals/facilities who were revoked, suspended, or subject to a probated suspension (see Ongoing Objective #2).

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The following charts indicate the types of Orders entered in FY2009, which required the Division to monitor the licensee's compliance with the Order, in some manner:

Types of TSBP Disciplinary Orders Entered on Licensees (Pharmacists and Pharmacies) and Interns That Required Monitoring (FY07-FY09)						
Sanction	FY07 Orders	FY08 Orders	FY09 Orders	% of FY09	3-Yr. Avg.	% of 3-Yr. Avg.
Revoke / Retire	29	26	25	7%	27	9%
Suspension	33	23	23	7%	26	9%
Restricted	8	4	6	2%	6	2%
Rehabilitation Orders*	13	18	19	6%	17	6%
Reinstatement	4	4	0	N/A	3	1%
Fines or Probation Fees Only	94	67	84	25%	82	28%
Continuing Education, Texas Jurisprudence Exam, and/or Pharmacy Law Course (could also include fines and/or probation fees)	46	35	48	14%	43	15%
Continuous Quality Improvement Program, Self Assessments, Policies/ Procedures, and/or Quarterly Reports (could also include fines and/or probation fees)	51	56	96	29%	68	23%
Public Orders Requiring Drug Screens	**	5	3	1%	3	1%
TOTAL NUMBER OF ORDERS ON LICENSEES REQUIRING MONITORING	278	238	304	91%	273	92%
TOTAL NUMBER OF ORDERS NOT REQUIRING MONITORING	22	15	30	9%	22	7%
TOTAL ORDERS	300	253	334	100%	296	100%

* Rehabilitation Orders which are not included in the following categories: Revocation, Restriction, Reinstatement, and Suspension.

** New category created in FY2008.

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Types of TSBP Disciplinary Orders Entered on Technicians That Required Monitoring (FY07 – FY09)						
Sanction	FY07 Orders	FY08 Orders	FY09 Orders	% of FY09	3-Year Average	% of 3-Year Average
Revoke	57	66	149	37%	91	26%
Suspension	75	27	18	4%	40	11%
Restriction	1	0	0	N/A	0	0%
Fines Only	60	56	112	28%	76	22%
Other *	129	101	50	12%	93	26%
TOTAL NUMBER OF ORDERS ON TECHNICIANS REQUIRING MONITORING	321	250	329	82%	300	85%
TOTAL NUMBER OF ORDERS ON TECHNICIANS NOT REQUIRING MONITORING	27	60	74	18%	54	15%
TOTAL NUMBER OF ORDERS ON TECHNICIANS	348	310	403	100%	354	100%

* Orders not in other categories (e.g., probation with conditions; probation with conditions and fines; report required from Mental Health Professional)

Total Number of Orders Entered by TSBP That Required Monitoring on Licensees (Pharmacists and Pharmacies), Interns, and Technicians (FY09)		
	FY09	% of FY09
Total Number of Orders on Licensees Requiring Monitoring	304	41%
Total Number of Orders on Technicians Requiring Monitoring	329	45%
Total Number of Orders Requiring Monitoring	633	86%
Total Number of Orders Not Requiring Monitoring	104	14%
Total Number of Orders Entered by TSBP in FY09	737	100%

During FY2009, TSBP entered 55 confidential disciplinary Orders on pharmacists (of the 55, 2 orders were entered on Intern applicants). These Orders were based upon various violations that the licensees allegedly committed, as reflected in the chart below:

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Confidential Disciplinary Orders On Pharmacists and Interns Entered by TSBP (FY07 – FY09)						
Nature of Violation	FY07	FY08	FY09	% of FY09	3-Yr. Avg.	% of 3-Yr. Avg.
Non-Compliance with ABO	15	13	17	31%	15	26%
Non-Compliance with PRN	3	3	4	7%	3	5%
Action by Other Boards	3	5	4	7%	4	7%
Audit Shortages	1	0	1	2%	1	2%
Alcohol-Related Conviction	4	1	2	4%	2	4%
Theft of Prescription Drugs	6	1	5	9%	4	7%
Created Fraudulent Rx or Obtained C/S by Fraud	2	0	0	0%	1	2%
Convictions	1	0	1	2%	1	2%
Deferred Adjudication	2	3	3	5%	3	5%
Illegal Possession of Controlled Substances	0	1	0	0%	0	0%
Unauthorized Refills of Controlled Substances	0	0	0	0%	0	0%
Probable Cause/Dependency	3	11	6	11%	7	12%
Mental Impairment	0	3	0	0%	1	2%
Request for Modification of Previously Entered ABO	14	12	9	16%	12	21%
Request for Retirement or Revocation	2	2	3	5%	2	4%
Request for Reinstatement	4	2	0	0%	2	4%
TOTAL	60	57	55	100%	57	100%

Of the 55 confidential *pharmacist/intern* Orders entered in FY2009, there were 24 Orders resulting in an impaired/recovering pharmacist being added to the number who were being monitored at the end of FY2009, as reflected in the chart below. However, 23 pharmacists were deleted from the list as a result of early termination of probation, successful completion of probation, death, revocation or retirement of license, or license expired. Accordingly, as of August 31, 2009, a total of 103 impaired/recovering pharmacists were being monitored by TSBP. The number of individuals being monitored at year-end, as compared to the year-end of previous fiscal years, is depicted in the following chart:

Impaired/Recovering Pharmacists Monitored by Enforcement Division (FY05 – FY09)			
Fiscal Year	Total Orders*	Total New Orders**	Total Being Monitored***
FY05	43	15	93
FY06	51	16	89
FY07	60	27	97
FY08	57	27	102
FY09	55	24	103

* All confidential Orders entered by the Board involving an impaired pharmacist (including revocations, modifications, and “second Orders” due to disciplinary action for violation of the terms of previously entered Orders).

** An Order that resulted in one individual being added to the list of impaired pharmacists to be monitored by the agency.

*** Total number of pharmacists being monitored by the agency as of the last day of the reporting period. The number represents the new Orders entered by the agency during the fiscal year, minus the number of deletions made during reporting period (e.g., as a result of death, early termination of probation through the entry of an Order, and/or successful completion of probation).

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7. To provide verbal and written information to Board staff and customers as needed or required throughout FY2009, to include providing technical assistance to other Divisions and responding to surveys and questionnaires.

Status: ACCOMPLISHED

Comment: This objective was accomplished through the following activities:

A. COMPLIANCE INSPECTIONS

Compliance Field Staff provided information during compliance inspections. The Division conducted 2,016 inspections in FY2009 (see Ongoing Objective #2).

B. TELEPHONE CALLS

Division staff provided technical assistance and answered questions regarding laws and rules governing the practice of pharmacy from approximately 15,466 callers who were routed through the Compliance Queue telephone line.

Number of Telephone Calls Handled via Compliance Queue (FY06 – FY09)	
FY06	10,492
FY07	11,498
FY08	14,326
FY09	15,466

C. COMPLAINT FORMS

During FY2009, TSBP mailed 707 complaint forms to individuals who requested a complaint form. As indicated in the chart below, 304 complaint forms (43% of total) were mailed to individuals who had requested a form by calling the HPC toll-free complaint hotline and 403 complaint forms (57% of total) were mailed to individuals who called the TSBP voice mail complaint line. The number of requests for complaint forms during the past five fiscal years is depicted in the following chart:

Complaint Forms Mailed to Potential Complainants (FY05 – FY09)						
Fiscal Year	Requests for Complaint Forms via HPC 800#	% Change	Requests for Complaint Forms via TSBP Voice Mail	% Change	Total Request	% Change
FY05	490		422		912	
FY06	506	+3%	495	+17%	1001	+10%
FY07	564	+11%	585	+18%	1149	+15%
FY08	398	-29%	406	-30%	804	-30%
FY09	304	-24%	403	-1%	707	-12%

D. CUSTOMER SERVICE SURVEYS

During FY2009, Division staff mailed 725 customer service surveys to TSBP customers.

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E. WRITTEN INFORMATION

During FY2009, Division staff mailed 69 packets of information to TSBP customers.

F. PRESENTATIONS (PUBLIC SPEAKING ENGAGEMENTS) – regarding Pharmacy Laws/Rules (unless otherwise noted)

DATE	PRESENTATIONS Name of Association/Presentation and Location of Meeting	STAFF PERSON	ATTENDANCE (Approx.)
09/29/08	Q Pharmacy Corporate & Medical Staff – San Antonio	Mike Ethridge, R.Ph.	38
12/09/08	Carvajal Pharmacy Group – San Antonio	Mike Ethridge, R.Ph.	15
12/16/08	Central Pharmacy - Carrizo Springs	Mike Ethridge, R.Ph.	6
01/27/09	Lake Houston Pharmacy Association - Humble	Iona Grant, R.Ph.	40
02/03/09	Texas State Board of Pharmacy Update – John Peter Smith Hospital – Ft. Worth	Paul Holder, Pharm.D.	85
02/04/09	Texas Department of Insurance Fraud Conference, Drug Diversion Presentation - Austin	Robert Ebrom	155
02/07/09	Sterile Compounding Update – Gulf Coast Society of Health System Pharmacists – Galveston	Paul Holder, Pharm.D.	125
02/07/09	Technician Town Hall Meeting – Gulf Coast Society of Health System Pharmacists – Galveston	Paul Holder, Pharm.D.	30
02/20/09	Texas Southern University COPHS, APhA – Academy of Student Pharmacists	Iona Grant, R.Ph.	100
02/21/09	Texas Pharmacy Association Board Meeting, Drug Diversion Presentation - Austin	Robert Ebrom	30
03/27/09	Kingsville College of Pharmacy – Diversion Class	Robert Ebrom	325
03/27/09	The Role of the Texas State Board of Pharmacy in the Professional Recovery Network – University of Houston	Paul Holder, Pharm.D.	120
04/19/09	TSBP Class C Taskforce – Challenges & Changes – Annual Meeting, Texas Society of Health System Pharmacists – Austin	Paul Holder, Pharm.D.	175
05/02/09	Texas Southern University College of Pharmacy and Health Sciences Annual Preceptor's Conference – Houston	Iona Grant, R.Ph.	150
05/13/09 – 05/15/09	DPS Academy Drug Diversion Training Class - Austin	Robert Ebrom	7
05/14/09	McAllen Community Pharmacist Meeting	Mike Ethridge, R.Ph.	35
05/21/09	Presentation at Hoffman Middle School	Iona Grant, R.Ph.	60
06/11/09	Mid-Valley Pharmacists – Weslaco	Mike Ethridge, R.Ph.	18
06/23/09	Morningside Ministries – San Antonio	Mike Ethridge, R.Ph.	8
Total			1522

G. ASSISTANCE TO BOARD MEMBERS AND EXECUTIVE DIRECTOR

- (1) Division Director assisted in the development of the proposed Goals and Objectives for FY2010, which were presented to/approved by the Board at its meeting held in August 2009;
- (2) At all Board meetings held in FY2009, Division Director made presentations regarding the number of acting/pending complaints and the number of dismissed complaints, and Assistant Division Director made a report regarding the Peer Assistance Performance Measures;

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- (3) Division Director assisted in the review/edit of drafts of minutes of four Board meetings;
- (4) Division Director assisted the Executive Director in the updating of the job description of the Executive Assistant position;
- (5) In the absence or at the request of the Executive Director, Division Director responded to inquiries from the media; and
- (6) Assistant Division Director served as liaison to the Task Force on Class C (Institutional) Pharmacy Practice.

H. TECHNICAL ASSISTANCE TO BOARD STAFF

(1) Legal Division

- (a) Disciplinary Proceedings – At the request of TSBP General Counsel, Division Director reviewed approximately 155 drafts of Preliminary Notice Letters prior to these documents being finalized and mailed; and
- (b) Informal Conferences involving pharmacists and pharmacies, and pharmacy technicians – Division staff attended numerous conferences.
- (c) SOAH Hearings – Division Director served as an expert witness in four hearings conducted by the State Office of Administrative Hearings (1/27/09; 4/20/09; 5/4/09; and 5/13/09).

(2) Division of Professional Services

- (a) TSBP *Newsletter* – Division staff assisted with each issue of the Newsletter (e.g., wrote articles such as Compliance Reminders and Complaint Corner and provided applicable information regarding disciplinary orders entered by the Board).
- (b) NABP Survey of Pharmacy Law – Division Director provided assistance with applicable sections of this document.
- (c) Open Records Requests – Division Director provided assistance when needed.
- (d) Health Integrity and Protection Data Bank (HIPDB) – Division staff provided administrative assistance in the data entry of information regarding disciplinary orders entered by the agency in FY2008-09.

(3) Administrative Services and Licensing Division

- (a) Various Internal Documents – Division Director provided assistance in updating the agency's Employee Handbook and Record Retention Schedule. Division Director and Assistant Director provided assistance in updated the agency's Business Continuity Plan and Risk Assessment Plan.

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- (b) Review Applications for Licensure/Registration – Division staff reviewed applications of any applicant with a criminal history or prior disciplinary action by another professional licensing board, and determined, in concert with the Executive Director and Legal Counsel, whether disciplinary action would be instituted to deny the application. Division staff also assisted in the review of applications for a Class B or D Pharmacy license, as indicated in the chart below:

Activity	FY2007	FY2008	FY2009	3-Year Average
New Class D (Clinic) Pharmacy Applications	23	34	19	25
New Class B (Nuclear) Pharmacy Applications	0	1	0	0
Petitions for Expanded Formularies for Class D (Clinic) Pharmacies	69	51	43	54
Petitions for Alternative Visitation Schedules for Class D (Clinic) Pharmacies	3	10	55	23
Notifications of Temporary Locations for Class D (Clinic) Pharmacies	5	4	9	6
Standard Class D Formularies Reviewed	10	31	21	21

I. TECHNICAL ASSISTANCE TO OTHER AGENCIES AND ORGANIZATIONS

- (1) Division staff notified various agencies regarding disciplinary orders entered by the Board (e.g., DEA, DPS, MHMR, HHS, NABP, HIP-DB, and Deans of the Texas Colleges of Pharmacy);
- (2) See Ongoing Objective #4.

8. In cooperation with the Executive Director and other Divisions, to provide internship experience to student pharmacist-interns upon requests from the Texas Colleges of Pharmacy, throughout FY2009.

Status: ACCOMPLISHED

Comment: During FY2009, Assistant Division Director with the assistance of Division Director and Chief of Compliance, served as preceptor to nine students from four different Schools/Colleges of Pharmacy, as listed below:

FY2008 - 09

- Linda Ho (August 18 – September 26, 2008) – Texas Southern University
- Bianca Cruz (August 18 – September 26, 2008) – University of TX

FY2009

- Laura Hejl (September 29 – November 7, 2008) – University of TX
- Lesley Kan (September 29 – November 7, 2008) – University of Houston
- Sarah Leung (November 10 – December 19, 2008) – University of TX
- Payal Patwa (May 26 – July 2, 2009) – University of the Incarnate Word
- Shauna Rutherford (July 6 – August 14, 2009) – University of TX

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FY2009 - 10

- Michael Don Hearn (August 17 – September 25, 2009) – University of TX
- Delaney Ruth Ivy (August 17 – September 25, 2009) – University of TX

9. To serve as liaison for the Board to the Professional Recovery Network (PRN) of the Texas Pharmacy Association and to monitor non-financial contractual obligations of PRN throughout FY2009.

Status: ACCOMPLISHED

Comment: This objective was accomplished through the following activities:

- A. Board Member Ben Fry, R.Ph., served as an ex-officio member of the TX-PRN State Committee throughout FY2009;
- B. The TX-PRN Program submitted year-to-date financial reports to TSBP at each one of its Board meetings in FY2009;
- C. TSBP requested an independent audit be conducted on the data provided to TSBP (financial data and performance measure data). This audit was conducted on January 30, 2009, and the results of the audit were reported to the Board at its meeting held on February 10, 2009;
- D. Throughout FY2009, Division staff reviewed quarterly activity reports submitted to TSBP by TX-PRN Director;
- E. Division staff attended one TX-PRN State Advisory Committee meeting held on June 30, 2009;
- F. Throughout FY2009, Enforcement Program Specialist Janelle Nastri worked closely with TX-PRN Program Director to ensure the accuracy of data for peer assistance performance measures; and
- G. The PRN Program experienced a change in Program Directors in January 2009, when Donna Chamberlain became the new Director. Division staff, in conjunction with Legal staff, conducted an orientation of agency operations with Ms. Chamberlain on March 4, 2009.

10. To assist the Executive Director in developing and implementing the objectives of the Health Professions Council pertinent to Division activities throughout FY2009.

Status: ACCOMPLISHED

Comment: This objective was accomplished through the following activities:

- (1) HPC Annual Report – Division Director submitted agency Enforcement performance data to be incorporated in the HPC Annual Report. Division Director attended one meeting regarding the format of the HPC Annual Report, as it related to S.B. 1058.
- (2) HPC Toll-Free Complaint Hotline – HPC member agencies are billed for hotline calls received by the respective agency. When complainants call the hotline, they may leave a message advising the agency of the complainant's name,

ENFORCEMENT DIVISION

address, and telephone number, or they may “zero out” and speak to an HPC staff member for clarification of procedures. During FY2009, TSBP mailed 304 complaint forms to individuals requesting forms on the HPC complaint hotline.

- 11. 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 FY2009.**

Status: ACCOMPLISHED

Comment: In FY2009, Division staff attended several team meetings, Division staff meetings, and general staff meetings. Division Staff Meetings and General Staff Meetings were held in November 2008, December 2008, March 2009, May 2009, June 2009, and August 2009. In conjunction with quarterly General Staff Meetings, Division staff participated in all-staff training, as listed below:

- 12/04/08 – Ethics Training, “Character: Take it Personally,” and Discrimination and Sexual Harassment Training;
- 03/03/09 – Presentation on Texercise Program;
- 08/25/09 – Workplace Violence – Designing a Safe Workplace; Personal Safety and Situational Awareness (presented by SORM); and
- 08/26/09 – Body Composition and Your Health.

In addition, individual Division staff attended personal development seminars.

- 12. To conduct periodic reviews and annual evaluations of all employees under the supervision of this Division during FY2009.**

Status: ACCOMPLISHED

Comment: Formal performance reviews were conducted for all Division employees in FY2009, except for those employees who were hired after March 1, 2008.

Other activities relating to personnel included:

- A. During FY2009, Division staff members who were classified as Program Specialists were required to respond to a survey developed by the State Auditor Classification Office with regard to the duties performed by each of these employees. The surveys were completed by applicable employees and responses were electronically submitted by the required due date. Division Director provided the required supervisor response by the designated due date. The State Auditor agreed that Division staff were appropriately classified.
- B. Division Director developed new job descriptions for three of the six positions funded by the 81st Texas Legislature, in anticipation of posting these positions in September 2009 (FY2010): Program Specialist; Enforcement Officer; and Administrative Assistant. In addition, Division Director updated/revised three job descriptions [Enforcement Program Officer and two Enforcement Specialist positions (the positions that monitor pharmacists and technicians who have been subject to rehabilitation disciplinary orders)].

ENFORCEMENT DIVISION

- C. The Division began FY2009 with the following three vacant positions: Field Investigator (who resigned in July 2008); Compliance Inspector (who resigned in July 2008); and Enforcement Specialist (Investigator II), due to an internal promotion in July 2008. In addition, the Division experienced two additional staffing changes as a result of one resignation and one internal promotion. These five staffing changes are listed below:

October 1, 2008	Annette Porterfield was hired as Investigator II
October 14, 2008	John Plasek was hired as Field Investigator
January 6, 2009	Adrienne Bauer was hired as Compliance Inspector
April 2009	Enforcement Specialist Patty Galan Castillo resigned
May 2009	Annette Porterfield was hired as Enforcement Specialist to fill position vacated by Patty Galan Castillo
August 1, 2009	David Gomez was hired as Investigator II to fill position vacated by Annette Porterfield due to her promotion.

- D. As a result of the staffing changes described above, Division staff were busy in FY2009 with the following activities: reviewing applications; conducting interviews; and conducting in-depth orientations for four new Division Staff.
- E. Division Director also served as a preceptor to Annette Porterfield for a college class requiring an internship. Ms. Porterfield completed a special project that demonstrated the cost savings to the agency for implementing a program that offered options to technicians or technician trainees who had criminal history involving drug charges.

13. **To maintain Division records throughout FY2009, including the following: to image records and destroy records in accordance with the agency's record retention plan; to update the Division's *Policies and Procedures Manual* as needed and submit any substantive revisions to the Executive Director for approval.**

Status: PARTIALLY ACCOMPLISHED

Comment: The following activities relate to this objective:

- A. Records Management

During FY2009, Division staff destroyed 99.19 cubic feet of records, in accordance with the TSBP record retention schedule. The quantity of Division records destroyed in the past five years is depicted in the chart below:

ENFORCEMENT DIVISION

Fiscal Year (FY05 – FY09)	# of Cubic Feet of Records Destroyed	% Change
FY2005	72.00	+136%
FY2006	35.56	-51%
FY2007	7.02	-80%
FY2008	27.88	+297%
FY2009	99.19	+256%

B. Policies and Procedures were not updated during FY2009.

- 14. To recommend changes to the Texas Pharmacy Act and rules and to recommend policies and procedures that 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 FY2009.**

Status: ACCOMPLISHED

Comment: All Division staff made recommendations to improve the efficiency and effectiveness of agency operations. Significant recommendations included the following:

A. Recommendations regarding the Texas Pharmacy Act and TSBP Rules:

1. Division Director recommended that TSBP adopt a rule to address prescription drugs that are recalled by manufacturers.
2. Division Director recommended that TSBP Rule 291.32(c)(1)(F) be amended to require the product verification pharmacist to perform a final check of all aspects of the prescription preparation, if the verification of data entry of prescription information was not conducted by a pharmacist working at the dispensing pharmacy (i.e., additional safeguards for remote verification of data entry of prescription information and assigning responsibility to the pharmacy who delivers the prescription to the patient).
3. Assistant Division Director recommended amendments (new definitions) to clarify TSBP Rule 291.133 relating to compounding of sterile preparations.
4. Chief of Compliance recommended an amendment to TSBP Rule 291.17 to include an inventory requirement for "all dosage forms containing Tramadol (e.g., Ultram)."
5. Chief of Compliance recommended an amendment to TSBP Rules 291.14 and 291.93(a)(1) to require the owner of a Class D Pharmacy to submit a drug formulary upon renewal of the pharmacy license.
6. Senior Compliance Officer Iona Grant recommended that TSBP Rule 291.33(b) be amended to enhance the security of Class A Pharmacies who purchase extremely large quantities of controlled substances: that these pharmacies be required to store the controlled substances in a 1000 pound safe which is bolted to the floor at the licensed location.

ENFORCEMENT DIVISION

7. Senior Compliance Officer Iona Grant recommended that the definition of “primary place of employment” be clarified in TSBP rules, so that pharmacists who work at multiple pharmacies know at which pharmacy the wall certificate should be displayed.
8. Division Staff recommended that TSBP adopt a rule requiring pharmacy personnel to sign daily logs with hours worked to indicate the time that the pharmacist or technician worked on that day.

B. Recommendations regarding agency operations:

1. Division Director recommended that TSBP send a cover letter to Technician Trainees, when their Certificates are mailed, explaining their registration expiration date and that the registration is non-renewable.
2. Division Director recommended that TSBP image pharmacy license files and compliance inspection reports, rather than maintain paper records which necessitate filing cabinets (office space).
3. Division Director recommended that TSBP re-implement the procedure to send a letter to applicants for a technician or technician trainee registration, notifying the applicants of their options regarding the disciplinary process, if the applicant has been convicted or has been the subject of a deferred adjudication for a felony offense that constitutes denial of the application.
4. Assistant Division Director implemented procedures relating to the seventh Compliance region which was created as a result of an additional Compliance Inspector position approved by the 81st Texas Legislature.
5. Assistant Division Director recommended that the TSBP website be updated to include the agency’s response time to e-mail questions regarding the laws/rules governing the practice of pharmacy, so that Board customers who submit written questions to “Rx Law” are provided advance notice that it may take the agency up to 10 days to respond to the customer’s question.
6. Assistant Division Director implemented his recommendation that applicable Division staff complete an extensive on-line training program, which was provided at no charge to TSBP, regarding the compounding of sterile preparations.
7. Chief of Compliance implemented procedures to track time elapsed following a pharmacy’s notification of a temporary closure.
8. Chief of Compliance recommended that after the agency issues a license to a new pharmacy, the Licensing Division forward a copy of that document to the Compliance Specialist who will forward the information to the applicable Field Inspection Staff so that they can monitor the opening of the new pharmacy within the required six-month period.

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9. Division staff recommended that technicians be required to pay their registration fees with money orders, credit cards, or debit cards, rather than by personal check, in order to reduce workload on accounting, licensing, and enforcement staff when registration fees are paid with a worthless check.
 10. Division staff made recommendations to the TSBP Legal Division with regard to revisions in wording of disciplinary orders.
 11. Division staff made several recommendations to update TSBP website (e.g., update link for TSBP pharmacy Laws and Rules handbook).
 12. Division staff developed and implemented a new application form and procedures relating to requests for reinstatement from pharmacy technicians who had their registrations revoked.
 13. Division staff made recommendations to clarify TSBP applications for licensure and registration (e.g., change the location of the "sex-offender" question from being the last question to the first question, in order to heighten the awareness to the question and to lessen the chance for the individual incorrectly answering this question).
 14. Division staff implemented changes to the Pre-Inspection Checklist.
 15. Division staff implemented new procedures that were necessitated as a result of a contract being awarded to a new drug screening vendor.
- 15. To prepare a report on the accomplishment of Division objectives, for incorporation into the agency's *FY2008 Annual Report* and submit to the Executive Director by the due date.**

Status: **ACCOMPLISHED**

Comment: The Division's first draft of the *FY2008 Annual Report* was submitted to the Executive Director by the due date. Drafts of all Divisions were compiled into one Annual Report and subsequently presented to and approved by the Board at its meeting in August 2009.

FY2009 SIGNIFICANT ACCOMPLISHMENTS

1. Division staff accomplished all of the Division's 16 objectives for FY2009.
2. During FY2009, the agency continued to handle a large number of ongoing disciplinary issues for pharmacy technicians. The Division handled approximately 767 disciplinary cases against the pharmacy technicians and pharmacy technician trainees who were found to have had a criminal history, who falsified the registration application, or who had some other ground for disciplinary action. The Division has seen an increase in the number of cases where pharmacy technicians or pharmacy technician trainees were suspected and investigated for diversion of drugs from the pharmacies at which they were employed, which requires more time to analyze and process. The Division initiated 622 disciplinary actions by mailing a Preliminary Notice Letter and entered 403 orders against pharmacy technicians and pharmacy technician trainees during the fiscal year. During the same time, 295 applicants for registration as a pharmacy technician or pharmacy technician trainee were subject to mandatory withdrawal, indicating that although the Division initiated disciplinary action, the applicant did not complete the process.
3. Approximately 98% of the disciplinary cases against pharmacists and pharmacies and 100% of the cases against pharmacy technicians were settled through the entry of Agreed Board Orders or default Board Orders, which resulted in significant efficiencies, both in terms of complaint resolution time and expenditures.
4. The Division initiated more disciplinary actions by mailing Preliminary Notice Letters (PNL) in FY2009 than any prior fiscal year. The Division mailed a total of 942 PNLs, as compared to 799 in FY2008, with 320 PNLs mailed to pharmacists and pharmacies and 622 PNLs mailed to pharmacy technicians and pharmacy technician trainees.
5. The Division resolved 4 cases that were set for administrative hearings at the State Office of Administrative Hearings (SOAH) prior to proceeding to hearing. The cases were resolved through Agreed Board Orders (ABO) through negotiations with the licensees or their attorneys or through the SOAH Mediation process. These resolutions saved the agency considerable resources both in time and expenditures.
6. Five administrative hearings were conducted at SOAH. These hearings involved preparing motions for summary judgment and numerous discovery documents (including interrogatories and requests for admission), preparing for trial and for witness examination, and conducting the hearings. Following the hearings, exceptions were filed and drafts of proposed orders were prepared. The extensive preparation for the hearings and the presentations to the Board required a considerable amount of time, and the Division was able to maintain a fairly consistent number of cases resolved.
7. Division staff implemented the use of the electronic notebook for informal conferences, thus allowing the informal conference panel to access the allegations and evidence on computer laptop rather than in the hard-copy format previously used. This recommendation reduced copying cost and staff time to prepare the informal conference notebooks.

LEGAL DIVISION

PHARMACISTS/PHARMACIES

FISCAL YEAR	NUMBER OF BOARD ORDERS (BOs)	NUMBER OF DEFAULT ORDERS ENTERED BY BOARD	NUMBER OF AGREED BOARD ORDERS (ABOs)	NUMBER OF DISCIPLINARY ORDERS (BOs & ABOs)	% CHANGE IN DISCIPLINARY ORDERS	% ABOs OR DEFAULT OF TOTAL ORDERS
FY05	2	5	165	172	-27%	99%
FY06	0	1	206	207	20%	100%
FY07	10	5	285	300	45%	97%
FY08	4	5	244	253	-16%	98%
FY09	7	10	317	334	32%	98%
TOTAL	23	26	1217	1266	94% OVER 5 YRS.	5 YR. AVG. 98%

PHARMACY TECHNICIANS/PHARMACY TECHNICIAN TRAINEES

FISCAL YEAR	NUMBER OF BOARD ORDERS (BOs)	NUMBER OF DEFAULT BOARD ORDERS (BOs)	NUMBER OF AGREED BOARD ORDERS (ABOs)	NUMBER OF DISCIPLINARY ORDERS (BOs & ABOs)	% INCREASE IN DISCIPLINARY ORDERS	% ABOs OR DEFAULT OF TOTAL ORDERS
FY05	3	0	377	380	62%	99%
FY06	4	34	230	268	-29%	99%
FY07	1	51	296	348	30%	100%
FY08	3	57	250	310	-11%	99%
FY09	0	74	329	403	30%	100%
TOTAL	11	216	1482	1709	6% OVER 5 YRS.	99%

LEGAL DIVISION

FY2009 SIGNIFICANT DISAPPOINTMENTS/CONSTRAINTS

The caseload has continued to increase and reflected an increase in the resolution time for cases in FY2009. In addition, the cases against pharmacy technicians and pharmacy technician trainees continued to become more complicated and time-consuming as the cases began to involve not merely adjudicated criminal offenses, but also cases involving investigations by TSBP of thefts at pharmacies, which leads to a longer resolution time in the Legal Division due to the longer amount of time to draft and prepare the cases.

LEGAL DIVISION

FY2009 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)

To assist the Executive Director, in cooperation with other Divisions, in preparing testimony, attending public hearings, providing any fiscal or technical information, reviewing all legislation that has an impact on the practice of pharmacy and agency operations, and monitoring the progress of this legislation, throughout the 81st Texas Legislative Session.

Status: **ACCOMPLISHED**

Comment: This objective was accomplished through the following activities:

- A. General Counsel viewed House committee meetings and Senate committee meetings, including those involving the agency's legislative appropriation request, and served as a resource witness at the request of the Executive Director.
- B. General Counsel reviewed numerous bills filed during the 81st legislative session for applicability to TSBP licensees and registrants and TSBP operation. In addition, General Counsel assisted with the preparation of fiscal notes for the bill involving the agency.
- C. General Counsel provided information and impact analysis to various senators and representatives as requested.
- D. General Counsel assisted Executive Director as requested with any issues involving pharmacy practice or agency related legislation and participated in meetings to implement legislation, including pharmacy technician duties at rural hospitals.
- E. General Counsel drafted and/ or reviewed bill drafts for legal sufficiency and suggested modifications as necessary.
- F. General Counsel coordinated implementation of legislation providing for criminal history evaluation letters with other Health Professions Council agencies, and assisted with implementation of the agency's gun policy.

LEGAL DIVISION

Objectives (Ongoing)

1. **To coordinate and monitor throughout FY2009 the receipt, assignment, and resolution of all cases accepted by the Division.**

Status: **ACCOMPLISHED**

Comment: This objective was accomplished through the following activities:

- A. Division staff met approximately twice a month 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.
- B. Division staff maintained a database system to track the current status of all cases, which has increased efficiency in monitoring cases. In addition, Division staff continued to maintain an electronic log, tracking dates involving mailing of Preliminary Notice Letters, scheduling of Informal Conferences, mailing and receiving of Agreed Board Orders, and other due dates previously recorded on paper to enhance accessibility by all Division staff and improve more efficient and immediate information sharing.
- C. TSBP entered a total of 737 disciplinary orders in FY2009, as reflected in the charts below.

Type of Order	Summary Suspensions	SOAH Board Orders	Default Board Orders	ABOs Entered by ED	ABOs Public	ABOs Confidential	Total Number of Orders
Pharmacists and Pharmacies	4	3	10	82	181	57	334
Pharmacy Technicians	0	0	74	227	102	0	403
Total	4	3	84	309	283	57	737

The Division staff prepared for the presentation of Agreed Board Orders and Board Orders for approval at the four regularly scheduled Board meetings throughout the year.

Information regarding the disciplinary cases entered in FY2009 is set forth in the following charts:

LEGAL DIVISION

TEXAS STATE BOARD OF PHARMACY SANCTIONS IMPOSED BY THE ENTRY OF DISCIPLINARY ORDERS ON PHARMACISTS, PHARMACIES, INTERNS, AND APPLICANTS FOR LICENSURE AND INTERN REGISTRATIONS (FY2009)

			Pharmacist	Pharmacy	Total
Licenses Removed	25	(7%)			
Revoke			14	8	22
Retire			3	0	3
Suspensions	82	(25%)			
Suspension			6	3	9
Suspension w/Conditions	12		0	12	
Suspension/Fine/Conditions			3	0	3
Suspension/Probation			2	0	2
Suspension/Probation w/Conditions	25		8	33	
Suspension/Probation/Fine			2	4	6
Suspension/Probation/Fine w/Conditions			8	9	17
Restricted	6	(2%)	6	0	6
Other	186	(56%)			
Fine			46	10	56
Fine with Conditions			2	44	46
Fine and Reprimand			2	0	2
Fine, Reprimand with Conditions			14	26	40
Reprimand			12	2	14
Reprimand with Conditions			18	10	28
Issuance License/Regist.	28	(8%)			
Grant with Suspension			0	0	0
Grant with Restrictions			0	0	0
Grant with Probation			3	1	4
Grant with Probation/Fine/Conditions			2	0	2
Grant with Probation and Conditions	3		0	3	
Grant with Reprimand and Fine			1	0	1
Grant with Reprimand			6	0	6
Grant with Fine			9	2	11
Deny			1	0	1
Reinstatements	1	(0%)			
Grant			0	0	0
Grant with Probation/Conditions			0	0	0
Deny			1	0	1
Modifications	6	(2%)			
Grant			6	0	6
Deny			0	0	0
TOTAL FY09:	334	(100%)	207	127	334

FY09 Orders Entered Against Pharmacist Licenses	207	62%
FY09 Orders Entered Against Pharmacy Licenses	127	38%
FY09 Total Disciplinary Orders on Pharmacist/Pharmacy	334	100%

LEGAL DIVISION

TEXAS STATE BOARD OF PHARMACY DISCIPLINARY ORDERS ON PHARMACISTS, INTERNS, AND APPLICANTS FOR LICENSURE AND INTERN REGISTRATIONS (FY2009) NATURE OF VIOLATIONS*

	RPh	Phcy	Total	Total %
Diversion	19	3	22	7%
Illegal Delivery	0	0	0	
Illegal Possession of Rx Drugs	1	0	1	
Unauthorized Dispensing	3	0	3	
Theft	8	0	8	
Obtained C/S by Fraud	3	0	3	
No Valid Dr-Pt Relationship (InternetRXs)	3	2	5	
Non-Therapeutic Dispensing	1	1	2	
Convictions/Defer Adj	25	6	31	9%
Felony	7	5	12	
Misdemeanor	4	0	4	
Deferred Adjudication, Felony	6	1	7	
Deferred Adjudication, Misdemeanor	6	0	6	
Alcohol-Related	2	0	2	
Audit Discrepancies	11	23	34	10%
Drug	11	23	34	
Continuing Education	0	0	0	
Practice Deficiencies	43	46	89	27%
Dispensing Errors	23	21	44	
Dispensing Errors & No Counsel and/or No Drug Regimen Review	15	22	37	
No Counsel and/or DRR	5	3	8	
Unprofessional Conduct	93	47	140	42%
Aiding and Abetting	7	6	13	
Allow Tech to Work with Expired or No Registration	29	28	57	
Falsified Application for Licensure	12	4	16	
Sterile Compounding w/o Proper Training	2	2	4	
Operating with Delinquent License	0	1	1	
Impairment	6	2	8	
Action by Other Boards	13	2	15	
Non-Compliance with Previously Entered Order	20	0	20	
Non-Compliance with PRN Program	4	0	4	
Violation of Board Rules	0	2	2	
Other				
Modification	9	0	9	3%
Reinstatement	0	0	0	0%
Request for Revocation/Retirement	7	2	9	3%
TOTAL FY09:	207	127	334	100%

* 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 as the primary violation.

LEGAL DIVISION

TEXAS STATE BOARD OF PHARMACY SANCTIONS IMPOSED BY THE ENTRY OF DISCIPLINARY ORDERS ON PHARMACY TECHNICIANS, TECHNICIAN TRAINEES, AND APPLICANTS FOR TECHNICIAN/TRAINEE REGISTRATIONS (FY2009)

		Total	Percent
Licenses Removed		149	(37%)
Revoke	149		
Retire	0		
Suspensions		30	(7%)
Suspension	6		
Suspension followed by Probation	1		
Suspension w/Conditions, followed by Probation	9		
Suspension/Fine	0		
Suspension/Fine w/Conditions, followed by Probation	2		
Suspension/Probation with Conditions	10		
Suspension/Probation/Fine	2		
Restricted	0	0	(0%)
Other		58	(14%)
Fine	34		
Fine with Conditions	0		
Fine/Reprimand	2		
Fine/Reprimand with Conditions	0		
Reprimand	22		
Reprimand with Conditions	0		
Issuance Registration		165	(41%)
Grant with Suspension	0		
Grant with Suspension/Fine	0		
Grant with Probation	15		
Grant with Probation/Conditions	32		
Grant with Probation/Conditions and Fine	8		
Grant with Probation and Fine	3		
Grant with Fine	43		
Grant with Fine and Reprimand	12		
Grant with Reprimand	52		
Deny	0		
Reinstatements		1	(0%)
Grant with Fine	1		
Modifications	0	0	(0%)
TOTAL FY09:		403	(99%) *

* Due to rounding.

LEGAL DIVISION

TEXAS STATE BOARD OF PHARMACY DISCIPLINARY ORDERS ON PHARMACY TECHNICIANS, TECHNICIAN TRAINEES, AND APPLICANTS FOR TECHNICIAN/TRAINEE REGISTRATIONS (FY2009) NATURE OF VIOLATIONS

		Total	Percent
Diversion		36	(9%)
Theft	33		
Forged Rx	3		
Convictions/Deferred Adjudications		205	(51%)
Felony	9		
with Falsified Application	4		
Misdemeanor	30		
with Falsified Application	10		
Deferred Adjudication/Felony	45		
with Falsified Application	8		
Deferred Adjudication/Misdemeanor	78		
with Falsified Application	14		
Alcohol-Related (e.g., DWI)	7		
with Falsified Application	0		
Chemical Impairment		12	(3%)
Drug or Alcohol Dependency	11		
with Falsified Application	1		
Falsified Applications *		29	(7%)
Other Violations		42	(10%)
Gross Immorality	0		
Non-Compliance w/Previously Entered Order	12		
Performed Tech Duties w/Expired Registration	7		
Performed Pharmacist Duties	10		
Performed Tech Duties without Registration	13		
Request for Revocation/Retirement		78	(19%)
Reinstatement		1	(0%)
TOTAL FY09:		403	(100%)

* Does not include the 36 falsified applications described above.

LEGAL DIVISION

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 receipt of the case, in accordance with priorities established for the Legal Division, throughout FY2009.

Status: ACCOMPLISHED

Comment: This objective was accomplished through the following activities:

- A. During FY2009, Division staff participated in 22 case and/or complaint review meetings. These meetings were held approximately twice per month with participation by the Executive Director and Legal and Enforcement Division staff.
- B. Division staff received a total of 1,028 complaints in FY2009. The complaints were resolved in the following manner:
 - (1) 640 complaints with the entry of Agreed Board Orders;
 - (2) 4 complaints with the entry of Board Orders;
 - (3) 2 complaints with the entry of Temporary Suspension Orders;
 - (4) 97 complaints with the entry of Default Orders;
 - (5) 300 complaints with the mandatory withdrawal of the applicant's application; and
 - (6) 89 complaints through other means, including dismissals with and without letter and before and after informal conferences.

Division staff resolved a total of 1,132 complaints, which were 104 more than received.

- C. Division staff mailed a record high number of 942 Preliminary Notice Letters in FY2009, in accordance with the priorities established for the Division, as compared to FY2008, when the Division mailed 799 PNLs. Of these PNLs, 320 PNLs were mailed to pharmacists and pharmacies, and 622 PNLs were mailed to pharmacy technicians.
- D. The number of days to mail PNLs after the case review date in FY2009 was 117 days which is an increase from the FY2008 number of 91 days. The number of days for PNLs to be sent to pharmacists and pharmacies averaged 83 days as compared to 110 days in FY2008. PNLs to pharmacy technicians were sent in an average of 134 days from receipt of the case, as compared to 82 days in FY2008.
- E. Total resolution time for cases in FY2009 was 193 days from receipt of the case in the Legal Division to the entry of an Agreed Board Order, which is slightly higher than last year's number of 165 days. Case resolution for pharmacists and pharmacies averaged 181 days, up from 210 days as in FY2008, and for pharmacy technicians averaged 201 days, also up from 143 days in FY2008.

LEGAL DIVISION

- F. The Division filed petitions to conduct a Temporary Suspension hearing for a case involving a pharmacist and a pharmacy in FY2009. The case was based on allegations that a pharmacy was being operated without a pharmacist on-duty. The petitions were granted. Following the temporary suspensions, the case was settled with disciplinary actions against the pharmacist's and pharmacy's licenses.

3. To plan and conduct a minimum of 24 days of informal conference sessions in FY2009 to adjudicate violators of pharmacy laws/rules.

Status: ACCOMPLISHED

Comment: During FY2009, the Division prepared for 36 days of Informal Conferences for 517 licensees/registrants, as indicated in the following charts. The number of licensees/registrants significantly increased in FY2009, from 467 licensees/registrants in FY2008.

Informal Conferences for Pharmacies and Pharmacists

Dates of Informal Conferences	# of Days	# of Phy/RPh Licensees	# of Techs	# of Cases	# of Licensees Dismissed
9/9-11/2008	2 ½	29	1	17	2
10/14-16/2008	2 ½	30	1	22	5
11/12/2008	1	10	0	5	0
12/9-11/2008	2 ½	20	1	15	3
1/13-15/2009	3	26	1	19	3
2/17-19/2009	1 ½	19	0	12	1
3/10-12/2009	2 ½	24	2	17	4
4/7-9/2009	3	28	2	24	3
6/9-11/2009	2 ½	12	1	12	1
7/14-16/2009	3	25	0	20	5
TOTAL FY2009	24	223	9	163	27

Informal Conferences for Technicians/Technician Trainees

Dates of Informal Conferences	# of Days	# of Cases	Applicants (tech/TNT)	Registrants	No-show (tech/TNT)	Defaults
9/18/2008	1	20	3/3	3/1	2/6	1/1
10/23/2008	1	26	7/7	2	1/7	2/0
11/15/2008	1	24	3/7	4	3/4	3/0
12/19/2008	1	27	1/6	2	2/10	6/0
1/24/2009	1	26	6/9	1	1/9	0/0
2/21/2009	1	21	1/1	1	0/11	7/0
3/20/2009	1	23	2/2	2	1/10	6/0
4/24/2009	1	22	1/9	4	0/5	3/0
5/22/2009	1	24	2/4	2	2/6	7/1
6/26/2009	1	19	0/3	2	0/7	7/0
7/24/2009	1	25	1/4	4	1/7	7/1
8/21/2009	1	21	1/5	2	2/8	2/1
TOTAL FY2009	12	285	32/58	31	16/88	57/3

LEGAL DIVISION

4. **To refer disciplinary cases to the State Office of Administrative Hearings (SOAH) throughout FY2009, 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 FY2009, three cases were ongoing following the filing of a complaint at the State Office of Administrative Hearings in FY2008 and pending a resolution. The Division filed formal Complaints at SOAH, within 120 days that the case failed to settle with an Agreed Board Order, for 9 additional cases in FY2009.
- B. Four cases were resolved prior to a full contested administrative hearing being conducted at SOAH. Two of these cases were resolved through a Mediated Settlement Conference and two through negotiations. This resolution was beneficial in saving the agency both considerable time and effort in the alternative of preparing for and presenting a full contested case hearing. However, considerable preparation was required for several of the cases because they were not resolved until shortly before the scheduled hearing date.
- C. Five administrative hearings were conducted in FY2009, one by default. Five Proposals for Decision (PFD) were issued by the Administrative Law Judges during FY2009. In three of the cases, the Board essentially adopted the recommendations in the PFDs by Board Order, and another was pending presentation to the Board. The other case was dismissed following both an unsuccessful mediation and ultimately the issuance of the PFD, which found no violations of the Pharmacy Act. Three cases were pending a hearing at the end of FY2009.
- D. SOAH performed 31 hours of work on 11 cases for the TSBP in FY2009, totaling approximately \$3,946 in direct hearings expenses and \$4,542 in total case expenses. These SOAH hours are significantly decreased from the 193.3 hours of work on 13 cases in FY2008. This data reflects the increased focus on settlement of cases prior to administrative hearing and Division staff's improved ability and skill in negotiating these settlements.

5. **To research legal issues and provide legal services and advice to the Board and agency staff; to provide legal services to the Enforcement and Administrative Services and Licensing Divisions regarding interpretation of the laws and rules and to the Division of Professional Services in the development of agency rules and publication of newsletters.**

Status: **ACCOMPLISHED**

LEGAL DIVISION

Comment: This objective was accomplished through the following activities:

A. Legal Research and Advice on Agency Administration

- (1) General Counsel reviewed the following for legal sufficiency and effectiveness:
 - (a) partnering requirements with CMS regarding joint Medicaid fraud audits of pharmacies;
 - (b) interagency contract with OAG regarding refusal to renew a license for delinquent child support payments;
 - (c) contact to provide licensing and disciplinary database system between Versa and HPC;
 - (d) contract with First Advantage regarding drug screening services; and
 - (g) clerkship agreement with pharmacy school.
- (2) General Counsel served as Fraud Coordinator for the agency.
- (3) General Counsel participated in meetings regarding Risk Assessment and provided recommendations in the development of the agency's Risk Management plan.
- (4) General Counsel and Division staff provided legal advice and consultation on numerous personnel issues during FY2009, including:
 - (a) reviewed dress policy;
 - (b) analyzed applicability of ADA, FMLA, and FSLA to employee actions;
 - (c) assisted with issues in various hiring/disciplinary processes and complaints against agency employees;
 - (d) provided legal advice regarding outside employment for agency staff;
 - (e) developed and reviewed performance plans and/or probation;
 - (f) interviewed applicants for new positions;
 - (g) reviewed I-9 form requirements;
 - (h) assisted with resolution of complaints by agency employees; and
 - (i) reviewed policies in TSBP Employee Handbook.

LEGAL DIVISION

- (5) General Counsel continued to serve as the agency's Ethics Advisor and continued to assist Board Members and staff with legal and ethical issues.
- (6) General Counsel consulted with other Division Directors regarding completion of the Survey of Organizational Excellence by agency staff. Division staff prepared recommendations based on survey results. General Counsel prepared management response in consultation with the Executive Director and other Division Directors.
- (7) General Counsel attended numerous management staff meetings and meetings to implement the legislative authorization of new employees, including office space, computer requirements, and job requirements.
- (8) General Counsel and Division staff participated in meetings and evaluation of new licensing and enforcement system.
- (9) General Counsel participated in meetings with EAP representative to plan continuation of contract services.
- (10) General Counsel coordinated with the Department of Justice and filed a Request for Reconsideration regarding Equitable Sharing in Asset Forfeiture and a corresponding Application for Transfer of Federally Forfeited Property (Form DAG-71) for assets in a case of a pharmacist selling prescription drugs to an undercover DEA agent. The request was granted and the TSBP was deemed eligible to participate in sharing of seized assets.
- (11) General Counsel and Division staff participated in an audit by the State Auditors Office regarding classification of employees as Program Specialists.
- (12) General Counsel provided significant input regarding the development of a Request for Proposal for providers of pharmacy technician certification examinations, including meeting with a psychometrician.

B. Technical Assistance to Enforcement Activities

- (1) Division staff researched numerous issues, including the determination of crimes of moral turpitude and various forms of disposition for criminal cases.
- (2) General Counsel attended quarterly meetings of Compliance staff and Investigative staff, as requested, to provide legal guidance on inspection and investigative issues including obtaining evidence and issuing subpoenas.
- (3) Division staff drafted numerous subpoenas to assist with the investigative work of the TSBP investigators.
- (4) Division staff handled numerous legal questions from all staff regarding a myriad of issues.

LEGAL DIVISION

- (5) General Counsel reviewed numerous complaint files for pharmacists and pharmacies and provided guidance regarding the identification of violations and the resolution of the cases. In addition, General Counsel reviewed numerous complaint files on pharmacy technicians to determine type of violation and appropriate action, as previously determined by the Board.
- (6) Division staff made presentations at all Board meetings held in FY2009. Presentations included information about proposed Agreed Board Orders and proposed Board Orders following SOAH proceedings.
- (7) General Counsel assisted in the review and preparation of minutes of four regularly-scheduled Board meetings.
- (8) Division staff informed the Enforcement staff of disciplinary actions to be taken by the Board prior to entry of the orders, to ensure the correct information is immediately available on the computer system.
- (9) Division staff assisted the Enforcement Division with issues involving the monitoring of impaired pharmacists, including legal consultation on handling of positive drug screens and interfacing with the PRN program.
- (10) Division staff updated the Disciplinary Index to all actions taken by TSBP on a quarterly basis following each Board.

C. Legal Services for Professional Services

- (1) General Counsel assisted the Division of Professional Services in the review/drafting of proposed rules and preambles for rules, and the review of rule submissions to the *Texas Register* for all rules either proposed or adopted during FY2009.
- (2) General Counsel assisted the Division of Professional Services with requests for public information in clarifying requests and requesting assistance from the OAG.

D. Legal Services for Licensing

- (1) Division staff assisted with recommendations on eligibility for licensure and registration, verified accuracy of warning letters, and handled cases through the legal process.
- (2) General Counsel reviewed responses regarding ADA issues for legal compliance.

LEGAL DIVISION

E. Other Legal Services regarding Pharmacy Issues

- (1) General Counsel participated in meetings and teleconferences regarding:
 - (a) Class D settings;
 - (b) Rural hospital requirements;
 - (c) Telepharmacy; and
 - (d) Supervision of pharmacy technicians.
- (2) General Counsel participated in the review of the question pool for the Multistate Jurisprudence Examination to ensure the validity of the questions in the pool.
- (3) General Counsel participated in teleconference meetings of committee to review requests for pilot projects and assisted with development of rules on issues involving supervision of technicians and pharmacy kiosks.
- (4) General Counsel participated and provided legal analysis in several meetings of the Class C Pharmacy Task Force.

6. To review and monitor the Texas Register for Attorney General opinions; to draft requests for Attorney General Opinions throughout FY2009; 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.

Status: ACCOMPLISHED

Comment: This objective was accomplished through the following activities:

- A. 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, and disseminated any relevant material to appropriate agency personnel.
- B. Liaison with the Office of Attorney General
 - (1) Division staff continued to serve as liaison with the OAG throughout FY2009. John Langley served as the Assistant Attorney General assigned to TSBP from the OAG Administrative Law Division.
 - (2) Appeals; Injunctions; Civil Litigation
 - (a) One disciplinary case was pending a hearing following an appeal by a pharmacist convicted of felony DWI and the pharmacy owned by the pharmacist.
 - (b) General Counsel coordinated representation by OAG, Bankruptcy Division, regarding a pharmacy bankruptcy.

LEGAL DIVISION

- (c) General Counsel consulted with attorney at OAG, Consumer Protection, regarding TDSHS case against a pharmacy licensed as a wholesaler.
- (d) General Counsel coordinated representation regarding mandamus action involving release of confidential investigative information.
- (3) Requests for AG Opinions
 - (a) Two requests for open records decision were filed in FY2009, and both were resolved favorably to TSBP with open records letter rulings.
- (4) General Assistance
 - (a) Division staff completed service on the Electronically Stored Information Task Force which developed statewide guidance policy for retention of electronic records.
 - (b) General Counsel provided information to the Consumer Protection Division regarding hospital formulary issues.
 - (c) General Counsel assisted attorney in Medicaid Fraud Division with prosecution of pharmacist.
 - (d) General Counsel assisted attorney for Physical and Occupational Therapy Board regarding implementation of fingerprinting requirements as part of criminal history background checks.
 - (e) Division staff assisted Medicaid Fraud Division in investigation of pharmacist.

7. To assist with open records requests throughout FY2009, in accordance with the procedures set forth in the Texas Public Information Act.

Status: ACCOMPLISHED

Comment: This objective was accomplished through the following activities:

- A. General Counsel reviewed written responses to open records requests, prepared by the Professional Services Division, for legal compliance with the Public Information Act in FY2009. In addition, the General Counsel assisted with clarifying certain open records requests requiring telephonic clarification, when legal issues were involved.
- B. Division staff prepared requests for open records decisions for those open records requests that related to confidential information requiring a ruling from the OAG.

LEGAL DIVISION

8. To provide verbal and written information to Board staff and customers, including responses to surveys and questionnaires, as needed and required throughout FY2009; to provide legal 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 FY2009.

Status: ACCOMPLISHED

Comment: This objective was accomplished through the following activities:

- A. Surveys/Questionnaires and Other Correspondence
 - (1) General Counsel and/or Division staff responded to following surveys:
 - (a) NABP surveys;
 - (b) Survey from North Carolina Board of Pharmacy regarding out-of-state pharmacists and pharmacies; and
 - (c) Annual survey from the State Office of Administrative Hearings.
- B. Technical Assistance to Other Agencies and Organizations
 - (1) Division staff attended Public Service Career Day at the University of Texas School of Law.
 - (2) Division staff assisted U.S. Probation Office regarding information necessary to determine sentencing of imposter pharmacist.
 - (3) General Counsel attended meetings to facilitate transition to a new Director of the Professional Recovery Network and to provide information regarding contractual requirements for reporting of impaired individuals.
 - (4) General Counsel assisted Optometry Board, with question regarding pharmacists working under protocol for a physician.
 - (5) General Counsel provided clarification of information to the Health and Human Services Commission (HHSC) Office of Inspector General and to the Drug Enforcement Agency regarding disciplinary action taken against licensees and registrants.
 - (6) Division staff assisted Department of Public Safety regarding requirements for information contained on controlled substance prescriptions.
 - (7) General Counsel attended Texas Medical Board stakeholder meetings regarding modifications to licensing and enforcement rules.
 - (8) Division staff assisted TMB attorney with information on evidence provided under a business record affidavit.

LEGAL DIVISION

- (9) General Counsel assisted MHMR staff with requirements for drug therapy management by pharmacists.
- (10) General Counsel participated in meetings with DSHS Bureau of Radiation Control to discuss rules on licensing requirements.

D. Technical Assistance to the Legislature

- (1) General Counsel compiled data and prepared quarterly reports for Legislature as required by SB1879 on disciplinary actions take in FY2009 for violations of the Controlled Substances Act.
- (2) General Counsel and/or Division staff responded to questions from Legislators/legislative staff and Governor's staff regarding proposed and filed legislation.

E. Technical Assistance to the Press and the Public

- (1) Division staff answered numerous telephone calls from pharmacist and pharmacy technician applicants and licensees/registrants regarding the application process and the associated disciplinary process, including providing information about denial of registration and options for Informal Conference.
- (2) Division staff answered numerous questions from licensees, attorneys, and other members of the public regarding legal issues, including:
 - (a) licensing eligibility and requirements;
 - (b) effect of convictions and deferred adjudications and/or probation for various crimes on registration and licensure; and
 - (c) schedules for resolution of pending cases.
- (3) General Counsel assisted reporter from the American Journal of Health System Pharmacists regarding technicians performing medication reconciliation procedures.

9. To assist the Executive Director in developing and implementing the objectives of the Health Professions Council (HPC) pertinent to Division activities throughout FY2009.

Status: ACCOMPLISHED

Comment: This objective was accomplished through the following activities:

- A. General Counsel served as chair of the HPC Legal Committee, which includes attorneys from other agencies, and provided updates to HPC about Legal Committee activities as requested. General Counsel conducted a meeting of the committee to discuss and develop and implementation plan for HB 963 regarding eligibility letters to potential licensees.

LEGAL DIVISION

- B. General Counsel assisted HPC with development of contracts and/or memoranda of understanding with DIR, Versa, and TDSHS, and coordinated representation by the OAG on these issues.

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 FY2009.

Status: ACCOMPLISHED

Comment: This objective was accomplished through the following activities:

In FY2009, Division staff attended general staff meetings and in-house training sessions. In addition, Division attorneys attended required continuing legal education, and Division staff attended various programs, seminars, and events.

11. To conduct periodic reviews and annual evaluations of all employees under the supervision of this Division during FY2009.

Status: ACCOMPLISHED

Comment: This objective was accomplished through the following activities:

- A. Division staff was evaluated on an annual basis, as required by agency policy.
- B. General Counsel conducted team meetings approximately twice a month with Division staff.
- C. The Division interviewed for and had two law clerks during the summer of 2009, to provide assistance with the preparation of legal cases.
- D. General Counsel prepared and conducted orientations of all new TSBP employees and interns during FY2009 regarding the Legal Division, the legal process, ethics, and Public Information and Open Meetings Acts.

12. To destroy records in accordance with the agency's record retention plan throughout FY2009; to update the Division's Policies and Procedures Manual as needed and submit any substantive revisions to the Executive Director for approval throughout FY2009.

Status: ACCOMPLISHED

Comment: This objective was partially accomplished as follows:

- A. Records Management
 - (1) General Counsel participated in several meetings to review and amend the TSBP record retention schedule as required by the State Library.
 - (2) During FY2009, Division staff destroyed records, in accordance with the TSBP record retention schedule, including general correspondence. Division staff also prepared and indexed material for transfer to the State Library.

LEGAL DIVISION

B. Policies and Procedures

- (1) Division staff updated and maintained Disciplinary Notebooks and Index containing all Board Orders and Agreed Board Orders.
- (2) Division staff updated notebook of samples of preliminary notice letters for pharmacist and pharmacy disciplinary actions and forms for various pharmacy technician and technician trainee PNLs and ABOs.
- (3) Division staff drafted several new written policies and procedures for case reviews and preparation of PNLs, including instructions and samples, and developed new chart for disciplinary sanctions and penalties for allegations involving aiding and abetting unlicensed practice.

13. To recommend changes to the Texas Pharmacy Act and rules and to recommend policies and procedures that 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 FY2009.

Status: ACCOMPLISHED

Comment: This objective was accomplished as follows:

- A. General Counsel submitted numerous changes to the Pharmacy Act for approval by the TSBP regarding disciplinary and legal proceedings prior to and during the legislative session.
- B. General Counsel drafted rule changes to disciplinary guidelines and disciplinary sanctions for all licensees, and reviewed and recommended modifications for rules changes presented to the Board.
- C. General Counsel, in conjunction with the Director of Professional Services, developed a plan for TSBP participation in social networking sites, such as Facebook and Twitter.
- D. General Counsel served as co-chair on the agency's Wellness Committee, and coordinated the Maintain No Gain program. In addition, General Counsel coordinated weekly breakfast meetings for Texercise program, and drafted and conducted agency survey regarding utilization of the program. The agency staff responded positively to the survey, and the results were used in the development of new programs.
- E. Division staff recommended implementation of Focus Groups to facilitate various employees from across the agency working together to solve problems common among employees. The first group was convened to deal with the issues involving pharmacy technicians. Division staff served as facilitator of the group and drafted a report summarizing the recommendations.

LEGAL DIVISION

- F. General Counsel and Division staff developed a Division reorganization to prepare for hiring of three new legal assistants, which included restructuring of duties for Division staff and drafting of new job descriptions for new employees. In addition, a plan was developed for the hiring and training schedule of the new employees.
 - G. Division staff developed Calendar of Events for FY2010 for informal conferences and reserved conference rooms accordingly.
 - H. General Counsel edited policies and procedures regarding use of firearms, search and seizure, and arrests for TSBP Police Unit.
 - I. Division staff recommended and developed automatically generated letterhead which resulted in significantly reduced printing costs.
 - J. Division staff participated extensively in development of business needs analysis for transition to new licensing and disciplinary database system.
 - K. Division staff served on the agency staff committee to improve the appearance and utility of the agency's website.
 - L. Division staff worked with the Professional Recovery Network in the implementation of an FTP server to transfer files between the entities in a confidential manner.
 - M. General Counsel participated in meetings to develop a Business Continuity Plan and analyzed the division requirements for disaster planning.
- 14. To prepare and submit a report on the accomplishment of Division objectives, for incorporation into the agency's FY2008 *Annual Report* to be presented to the Board by its May 2009 Board meeting.**

Status: **ACCOMPLISHED**

Comment: The Division's first draft of the FY2008 *Annual Report* was submitted to the Executive Director by the due date. The final draft of the report was submitted to the Board at the August 2009 Board meeting.