

**NEW HAMPSHIRE  
DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL**

**BIENNIAL REPORT**

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**JULY 1, 2011 - JUNE 30, 2013**

# NEW HAMPSHIRE DEPARTMENT OF JUSTICE

*Joseph A. Foster*

Attorney General

## BIENNIAL REPORT

for the period  
July 1, 2011 through June 30, 2013

*Margaret Wood Hassan*

Governor

### Executive Councilors

*Raymond S. Burton*

District One

*Colin Van Ostern*

District Two

*Christopher T. Sununu*

District Three

*Christopher C. Pappas*

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*Debora B. Pignatelli*

District Five

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

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JOSEPH A. FOSTER  
ATTORNEY GENERAL



ANN M. RICE  
DEPUTY ATTORNEY GENERAL

To Governor Margaret Wood Hassan, Members of the Executive Council, Members of the General Court and the Citizens of New Hampshire:

I am pleased to present the Office of the Attorney General Biennial Report for the period of July 1, 2011-June 30, 2013 detailing the work of the Department of Justice.

The Department of Justice's mission is:

*To serve the people of New Hampshire with diligence, independence and integrity by performing the constitutional, statutory and common law duties of the Attorney General as the State's chief legal officer and chief law enforcement officer;*  
*To seek to do justice in all prosecutions;*  
*To provide the State with legal representation and counsel of the highest quality;*  
*To protect the State's environment and the rights of its consumers; and*  
*To provide supervision and leadership of New Hampshire law enforcement.*

This report summarizes the accomplishments of the attorneys and staff of the Department of Justice to protect and serve the people of New Hampshire. It does so through a wide variety of efforts including criminal prosecutions, defense of civil claims, legal advice to state agencies, boards and legislative committees, oversight of charities, elections and public education. The attorneys, investigators and other staff of the Department are among the most dedicated and creative public servants anywhere in state government. Notably, the number of attorneys and other staff working at the Department has been static for almost three decades. During this same period, the population of the state has grown by almost 40% and the regulatory and litigation environment has become ever more complex. Put simply, the Department is doing more with less and doing it with excellence.

During the last budget cycle, some positions that had to be left vacant due to budgetary challenges were again funded and we are thankful to the Governor and the Legislature for taking that step. During the next biennium I am hopeful resources to the Department will continue to be enhanced so it can better meet its mission for the people of our great state.

A handwritten signature in blue ink, appearing to read "J. Foster", is written over a light blue rectangular background.

Joseph A. Foster  
Attorney General



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## Leadership

Joseph A. Foster ..... Attorney General

Ann M. Rice ..... Deputy Attorney General

Anne M. Edwards ..... Associate Attorney General  
Chief of Staff

Rosemary Faretra ..... Director of Administration

Dr. Thomas A. Andrew ..... Chief Medical Examiner

James T. Boffetti ..... Senior Assistant Attorney General  
Chief, Consumer Protection and Antitrust Bureau

Timothy Brackett ..... Supervisor, Grants Unit

K. Allen Brooks ..... Senior Assistant Attorney General  
Chief, Environmental Protection Bureau

Michael K. Brown ..... Senior Assistant Attorney General  
Chief, Client Counseling Unit

Mary Ann Dempsey ..... Senior Assistant Attorney General  
Chief, Civil Law Bureau

Dr. Jennie V. Duval ..... Deputy Chief Medical Examiner

Karin M. Eckel ..... Senior Assistant Attorney General  
Chief, Medicaid Fraud Unit

Stephen D. Fuller ..... Senior Assistant Attorney General  
Chief, Criminal Appellate Unit

## Leadership (continued)

Suzanne M. Gorman	Senior Assistant Attorney General Chief, Civil Appellate Unit
Richard W. Head	Associate Attorney General
Terry M. Knowles	Assistant Director, Charitable Trusts Unit
Sandra Matheson	Director, Office of Victim/Witness Assistance
Karen A. Schlitzer	Senior Assistant Attorney General Chief, Transportation and Construction Bureau
Nancy J. Smith	Senior Assistant Attorney General Deputy Chief, Litigation Unit
Jeffery A. Strelzin	Senior Assistant Attorney General Chief, Homicide Unit
Scott A. Sweet	Commander, Drug Task Force
Richard C. Tracy	Chief Investigator
Vacant	Director, Charitable Trusts Unit
Jane E. Young	Associate Attorney General Chief, Criminal Justice Bureau



## Criminal Justice Bureau

The Criminal Justice Bureau (CJB) is best known for its prosecution of homicide cases throughout the state. However, its responsibilities are far more varied. The CJB is mandated by statute to prosecute crimes punishable by death or imprisonment for life, and to represent the State in all criminal matters in the New Hampshire Supreme Court and the federal courts. It is also required to handle the forfeiture of assets that were the proceeds of, or have been used in connection with, drug offenses. In addition to those statutorily mandated functions, the CJB investigates and prosecutes cases involving drug trafficking, financial crime, public integrity, and Medicaid fraud. When a police officer uses deadly force in the line of duty, which results in a serious injury, the CJB attorneys oversee the investigation to determine whether the use of force was justified. The CJB attorneys serve as instructors at each New Hampshire Policy Academy for full and part-time officers. They also provide training to law enforcement agencies on topics such as the use of deadly force, search and seizure, drug laws, and asset forfeiture laws. The

Traffic Safety Resource Prosecutor provides training and litigation support to law enforcement and prosecutors in matters involving traffic safety, with a particular emphasis on issues surrounding the crime of driving while under the influence of alcohol or drugs.

During the past biennium, the staff of the CJB met the daily challenges of the Bureau with unwavering effort and dedication. In one particularly grueling five-week period, CJB attorneys were involved in the investigation of the murder of Greenland Chief Michael Maloney, the attempted murder of Manchester Police Officer Daniel Doherty, seven other homicides, and an officer-involved shooting, while two attorneys were involved full-time in a murder trial.

Members of the CJB assisted the State Police, the Federal Bureau of Investigation, and various other law informant agencies from New Hampshire and the surrounding states in an intense seven-day investigation into the disappearance of eleven year old Celina Cass in West Stewartstown. Her body was ultimately recovered from the

*In one particularly grueling five-week period, CJB attorneys were involved in the investigation of the murder of Greenland Chief Michael Maloney, the attempted murder of Manchester Police Officer Daniel Doherty, seven other homicides, and an officer-involved shooting, while two attorneys were involved full-time in a murder trial.*

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river less than half a mile from where she was last seen alive. Her death was ruled a homicide. While no arrest has been made, the investigation remains active.

The CJB attorneys investigated and prosecuted Donna Rockholt, a former Department of Motor Vehicle employee, for receiving money in exchange for issuing fraudulent drivers' licenses. She was sentenced to the New Hampshire State Prison for 8 to 28 years. Numerous individuals who received fraudulent licenses were arrested when they displayed them in New Hampshire and elsewhere. They have all pleaded guilty to conspiracy to commit bribery and were sentenced to a term of incarceration at the Rockingham County House of Corrections.

The CJB also continued its longstanding mission of providing training to prosecutors and law enforcement officers across the state. The Traffic Safety Resource Prosecutor conducted twenty-one trainings on legal issues associated with obtaining blood samples for testing in felony-level motor vehicle offenses, three trainings on how to effectively testify as a witness, six trainings at the police prosecutor school, and trainings on traffic accident reconstruction for prosecutors, trial advocacy, sobriety checkpoints, and updates on DWI laws. She also coordinated the annual Jay McDuffee Motor Vehicle Seminar, attended by more than 100 law enforcement officers each year. In response to the ever-increasing problems

associated with distracted drivers, she conducted five distracted driving trainings for teenage student drivers.

The Attorney General's Office of Victim/Witness Assistance hosted conferences on domestic and sexual violence and child abuse and neglect. Attorneys from the CJB were among the dozens of instructors who taught various classes at each of the conferences.

The functions and accomplishments of the units within the CJB during the biennium are set forth in more detail below.

**The Public Integrity and Economic Crime Unit**

The CJB investigated and prosecuted criminal wrongdoing by public officials and complex theft cases, typically involving thefts in excess of \$100,000 or thefts that spanned multiple counties. The public integrity cases involved a variety of criminal conduct, including theft of funds from trust accounts by a town official, theft from the Catholic Church by employees, and police officer criminal misconduct. Both economic crime and public integrity crime cases involve extensive investigation, including the preparation of search warrants and subpoenas, the review of voluminous financial documents such as bank, tax, and payroll records, and the interviewing of numerous witnesses.

**Criminal Justice Bureau**

A summary of some of the more significant cases litigated by the unit over the last two years follows:

In *State v. Karen Gagne*, the defendant befriended an elderly woman and then stole approximately \$514,522 in assets, savings, and certificates of deposit from her. Gagne was convicted and sentenced to 10 to 30 years in prison and was ordered to make restitution to the victim. At the sentencing hearing, the trial judge noted that the sentence accurately reflected the “calculating way” in which Gagne isolated the victim from her friends and advisors and used the stolen money to pay her own debts, help purchase a home, and finance her lifestyle. The following year, Gagne was prosecuted for stealing an additional \$183,610 from three women as part of a confidence scam for a fictional investment property company. She pleaded guilty, was sentenced to a consecutive suspended sentence of 5 to 10 years in prison, and ordered to make restitution to each of the victims.

In *State v. Horace Seymour*, the defendant stole \$7,817.99 from two separate town trust accounts while he was the treasurer of the Town of Litchfield. He pleaded guilty, and was sentenced to a suspended 3 to 6 year term of imprisonment, and ordered to pay full restitution.

**The Homicide Prosecution Unit**

Homicide prosecutors become involved in a homicide case when the death is discovered, and remain involved throughout the investigation, trial, and post-trial proceedings. The attorneys, who provide 24-hour coverage throughout the state, work closely with state and local law enforcement officers in all homicide investigations. They also assist with suspicious death and missing persons investigations and oversee all investigations involving a police officer’s use of deadly force.

During the biennium, attorneys supervised the investigation of 43 homicide cases and dozens of suspicious death cases that were later determined to be natural deaths or suicides. An attorney in the unit also oversaw the investigation of an attempted murder of a police officer and was a member of the trial team who convicted the defendant. Five homicide cases went to trial; all resulted in convictions. Fifteen other defendants resolved homicide charges by pleading guilty. Of the remaining cases that did not result in criminal charges, seven involved murder-suicides and seven were ruled justified as self-defense. The remaining of the 43 cases are in pre-trial litigation or are still under investigation.

**Criminal Justice Bureau**

A summary of the more significant cases litigated by the unit over the last two years follows:

In *State v. Ben Duling*, the defendant was charged with second degree murder for the stabbing death of his children's mother. After trial, Duling was convicted and was sentenced to 30 years to life in prison.

In *State v. Myles Webster*, the defendant was charged with the attempted murder of Manchester Police Officer Daniel Doherty, reckless conduct, robbery, and resisting arrest. After a multi-week jury trial, Webster was convicted on all charges and sentenced to a total of 60 years to life in prison.

In *State v. Charles Glenn*, the defendant was charged with second degree murder, robbery, criminal threatening, felon in possession of a firearm, and falsifying physical evidence. This case was retried after the defendant's first trial ended in a mistrial due to a hung jury. After trial, Glenn was convicted and was sentenced to a total of 40 years to life in prison.

In *State v. Michael Petelis, Anthony Papile, Trevor Ferguson*, each of the defendants pleaded guilty for their role in the murder of Krista Dittmeyer. On April 23, 2011, Ms Dittmeyer's car was found in the parking lot of Mount Cranmore. The car was running and Dittmeyer's child was inside. The investigation revealed that Papile and Petelis planned to rob Dittmeyer of her drugs. After she arrived at their

residence, she was struck on the head, bound, and driven to North Conway, where her body was placed in the pond at Mount Cranmore. Papile pleaded guilty to second degree murder and was sentenced to 50 years to life in prison. Petelis pleaded guilty to being an accomplice to second degree murder and was sentenced to 35 years to life in prison. Ferguson pleaded guilty to conspiracy to commit robbery and was sentenced to 7 to 15 years in prison.

On October 11, 2012, the police were notified that UNH student Elizabeth Marriott was missing. A multi-agency investigation led to a determination that Marriott had been murdered in Dover by Seth Mazzaglia and her body had been left in the Piscataqua River in Portsmouth. While her remains have not been located, Mazzaglia has been charged with first degree murder and is awaiting trial. For her role in Marriott's murder, Kathryn McDonough pleaded guilty to conspiring to hinder apprehension or prosecution, hindering apprehension, and witness tampering, and was sentenced to 1½ to 3 years in prison.

**The Drug Unit**

The Drug Unit, now comprising just one attorney, prosecutes significant drug trafficking crimes and reviews drug overdose deaths to determine whether any criminal charges should be pursued. The attorney works closely with the Attorney General's Drug Task Force (DTF), and provides daily assistance and

**Criminal Justice Bureau**

guidance to the State Police, the Drug Enforcement Administration (DEA), and local police departments. The attorney is available 24 hours a day to respond to requests for assistance and for authorization to intercept telephone calls or other communications as allowed by statute.

The Unit also prosecutes all forfeiture actions so that drug traffickers are stripped of the proceeds and implements of their crimes—cars, cash, and weapons. The proceeds from the sale of any forfeited item are divided among the seizing agency (45%), the drug forfeiture fund (45%), and an account established to fund drug treatment programs (10%). During the biennium, the unit initiated forfeiture actions that resulted in the forfeiture of approximately \$184,852.53.

The drug prosecutor is a member of the advisory council for the Prescription Drug Monitoring Program (PMP) and the Therapeutic Use of Cannabis Advisory Council.

A summary of some of the more significant cases litigated by the Unit over the last two years follows:

In *State v. Maiko Justiniano-Suarez and John Sladdin*, the defendants were convicted of a conspiracy related to the sale of approximately 100 pounds of marijuana that was to be sold in the Manchester area.

In *State v. Jason Dear*, the defendant was arrested for selling cocaine in Cheshire County. The defendant was convicted of being a drug enterprise leader. He pleaded guilty and was sentenced to serve 10 to 20 years in prison.

In *State v. Celestino Nieves-Vazquez, Wilfredo Pagan, Gaddiel Fantauzzi*, the defendants were convicted of a conspiracy related to the sale of cocaine. All three defendants were given lengthy prison sentences.

In *State v. Justin Henry*, the defendant was arrested on Interstate 95 in Greenland after a traffic stop. The police found 10.8 ounces of cocaine in the trunk inside a crushed McDonald's bag, the estimated street value of which exceeded \$11,000. The defendant pleaded guilty and was sentenced to serve 2 to 7 years in prison.

**The Drug Task Force**

The New Hampshire Attorney General's Drug Task Force (DTF) enforces the State's drug laws by conducting undercover drug investigations and providing support to local, county and State law enforcement agencies in their efforts to combat drug trafficking. The DTF is led by the Commander and Deputy Commander, both employees of the Department of Justice, who work in conjunction with officers who are assigned to the task force from state,

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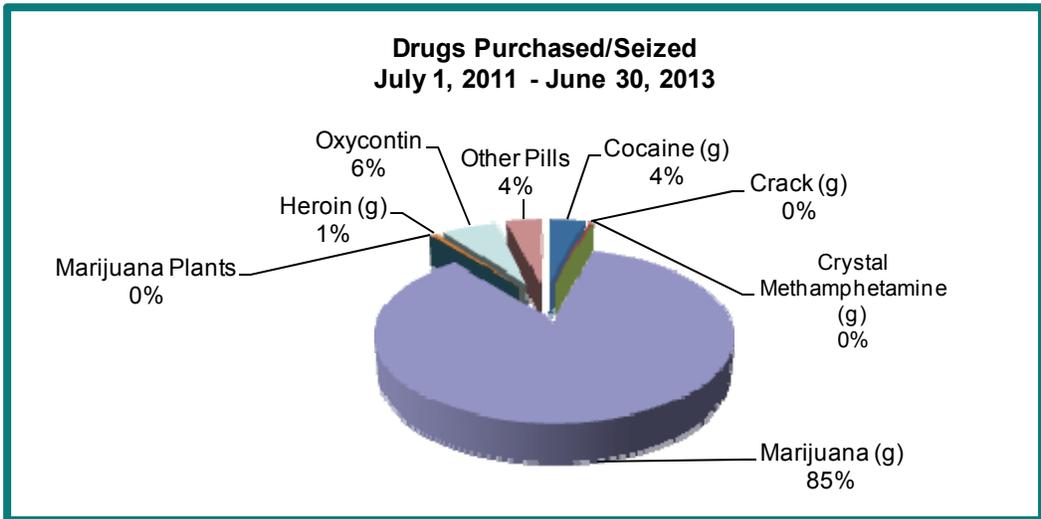
county, and local police agencies. A long-standing mission of the DTF is to provide the officers assigned to the DTF with the skills necessary to conduct drug investigations, such as cultivating confidential informants, preparing search warrants, writing comprehensive police reports, and testifying in court. After their tenure with the DTF, the officers return to their respective departments and use their honed skills to improve their agencies' investigations. The DTF maintains regional offices, which serve the seacoast, central, western, and northern regions of New Hampshire.

The DTF experienced its most challenging year in 2012, with the murder of Greenland Chief Michael Maloney and the wounding of four DTF investigators during the execution of a DTF search warrant. The Attorney General convened an independent commission to review the Greenland incident. The commission issued a report

with numerous recommendations concerning DTF operations and management, the majority of which were implemented during the biennium.

The DTF underwent significant changes during the biennium. In response to a significant cut in federal funding, it was necessary to reduce the number of task force investigators from 24 to 17. Command staff was also reduced by one-third. In addition, the longtime commander retired. He was replaced by Scott Sweet, a former New Hampshire State Police Captain.

As a result of the Greenland incident and its aftermath, which included the cessation of all DTF operations for several weeks, and reduction in the number of investigators, the DTF experienced a drop in the number of cases it handled in 2012. Despite those hurdles, the DTF had a productive two years. During the biennium, it was



**Criminal Justice Bureau**

involved in 1,794 criminal cases, which resulted in 284 arrests. DTF investigators seized approximately \$191,264, which represented proceeds of drug trafficking. Sixty-eight weapons were also seized. The DTF seized or purchased approximately 157 pounds of marijuana, 221 marijuana plants, more than 7 pounds of cocaine, more than 7 ounces of crack cocaine, more than 15 ounces of heroin, 3,255 Oxycontin pills, 3,982 prescription depressant pills, 41 methadone pills, 309 Ecstasy pills, more than 3 ounces of MDMA, 14 hits of LSD, and more than 5 ounces of mushrooms.

The DTF also provided undercover assistance to various law enforcement agencies. For example, undercover officers assisted the Berlin Police Department with the investigation of an armed bank robbery. Undercover officers also assisted the State Police Major Crime Unit, the Conway Police Department, and the Attorney General's Office with a drug-related homicide investigation.

**The Appeals Unit**

The Appeals Unit fulfills the statutory mandate that the CJB represent the State of New Hampshire in all appeals in criminal cases in the New Hampshire Supreme Court and the federal courts. The Unit comprises four attorneys who work almost exclusively on criminal appeals in the New Hampshire Supreme Court and one attorney who handles both the CJB's habeas corpus litigation in the federal courts as well as state appellate

cases. Because the caseload of the Unit remains high, other attorneys in the office have been called upon to assist the Unit with criminal appeals.

The appellate attorneys file legal briefs, memorandums of law, and other pleadings in the New Hampshire Supreme Court, and appear at oral argument in both that court and federal court. During the biennium, the attorneys filed 214 briefs and 31 memorandums of law in lieu of briefs in the New Hampshire Supreme Court, and two briefs in the Supreme Court of the United States, one in opposition to a petition for a writ of certiorari and one on the merits. In seven cases, the office sought review of a trial court ruling adverse to the State. In the remaining cases, the State was responding to an appeal filed by a convicted defendant. During the biennium, the attorneys also opposed petitions for writs of habeas corpus in seven cases in the United States District Court and in five cases in the state court. The Court has granted summary judgment in favor of the State in seven of those cases. The other five were pending at the end of the biennium.

The attorneys addressed a wide range of legal issues in their appellate work, including the sufficiency of the evidence to prove a defendant's guilt beyond a reasonable doubt, the admissibility of evidence under the Confrontation Clause and the Rules of Evidence, and the proper interpretation of various statutes both within and outside the Criminal Code.

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The decisions issued by the New Hampshire Supreme Court and the federal courts in these areas provide the legal framework for the courts, prosecutors, and law enforcement officers in all subsequent criminal cases.

A description of a few of the Unit's significant cases follows:

During the biennium, the Appeals Unit filed the State's brief in *Perry v. New Hampshire*, a case before the Supreme Court of the United States. At issue was whether the New Hampshire Supreme Court had correctly determined that the admission at trial of a pretrial identification cannot violate due process where no improper state action caused the circumstances under which the identification was made. Attorney General Michael Delaney presented the oral argument in the Supreme Court on November 2, 2011. The Supreme Court issued its decision on January 11, 2012. By a vote of eight to one, the Court ruled in favor of the State. *Perry v. New Hampshire*, 132 S. Ct. 716, 721 (2012).

The Appeals Unit briefed and argued the case in *State v. Michael Addison*, a death penalty case in the New Hampshire Supreme Court. The State's brief, which was the combined effort of three attorneys, comprised five volumes, totaling 616 pages. The brief raised 22 legal issues by the defendant. The oral argument before the Court lasted for 3½ hours, divided into four segments, and all three assistant attorneys general presented arguments. The case was pending at the end of the biennium.

The Unit opposed a petition filed by four inmates, all of whom had been sentenced to life without the possibility of parole for murders committed when they were under eighteen years old. The United States Supreme Court held in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), that a defendant who was under eighteen at the time he committed murder could not be sentenced to a mandatory term of life without parole. The four petitioners, Michael Soto, Robert Tulloch, Robert Dingman, and Eduardo Lopez, Jr., filed petitions claiming that the holding of *Miller v. Alabama* should apply to their cases even though they had been resolved before the *Miller* opinion was issued. The trial court ruled in favor of the petitioners. The State has filed a petition in the New Hampshire Supreme Court appealing the decision.

In *State v. Hollenbeck*, the State appealed from a superior court decision finding RSA 632-A:2, I(g)(1) unconstitutional. That statute involves a sexual assault "[w]hen the actor provides therapy, medical treatment or examination of the victim and in the course of that therapeutic or treating relationship or within one year of termination of that therapeutic or treating relationship: ... [a]cts in a manner or for purposes which are not professionally recognized as ethical or acceptable ..." By a vote of four to one, the New Hampshire Supreme Court reversed the superior court and rejected the defendant's challenge to the statute.

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In *State v. Marchand*, the defendant was charged with murder. He notified the court that he was going to present a defense of insanity, but was not going to present a psychiatric evaluation in support of that claim. The State filed a motion to compel the defendant to submit to a psychological evaluation by the State's expert, but the superior court denied the motion. The State appealed this order to the New Hampshire Supreme Court, which overruled the lower court. *State v. Marchand*, 164 N.H. 26, 33 (2012).

In *State v. McLeod*, the first case charged by the Cold Case Unit, the defendant was charged with murder in connection with a fire that occurred in 1989. During pre-trial litigation, the superior court ordered that the State would not be permitted to present testimony from its arson experts because those experts relied, in part, on information given to them by a witness who had since died. The State appealed the order to the New Hampshire Supreme Court, which overturned the lower court. *State v. McLeod*, 66 A.3d 1221, 1230 (N.H. 2013).

**The Medicaid Fraud Control Unit**

The Medicaid Fraud Control Unit (MFCU) investigates and prosecutes several types of crimes associated with the Medicaid program. These offenses include fraudulent and abusive billing practices by health care providers while serving the State's Medicaid recipients, and physical abuse, neglect, or financial exploitation of residents of nursing homes and assisted living facilities. The

MFCU has several statutory remedies available to prosecute fraudulent and abusive provider billing practices, ranging from administrative to criminal sanctions.

The Medicaid program covers medical and other related services for primarily three low-income groups: parents and children, the elderly, and the disabled. It is a joint venture between the states and the federal government. While the federal government must approve each state's Medicaid program, the states are responsible for day-to-day administration. There are 82 licensed nursing facilities and 152 assisted living facilities in New Hampshire. Of the more than 8,500 individuals residing in these facilities, approximately 73% are covered by Medicaid.

MFCU investigations are typically initiated based on reports received directly from agency personnel charged with Medicaid oversight responsibility at the New Hampshire Department of Health and Human Services (DHHS), as well as referrals from other state agencies, law enforcement, and private citizens.

During the biennium, the MFCU brought 22 criminal charges against eight defendants. The MFCU obtained convictions against 8 defendants and prosecutions were pending against 4 defendants. Monetary recoveries, fines, and penalties from all cases totaled \$12,512,636. Of that amount, \$11,988,578 was recovered for the Medicaid Program. Patient funds

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restitution in financial exploitation cases totaled \$522,522. Fines from all cases totaled \$1,970.

A summary of some of the more significant cases litigated by the MFCU over the last two years follows:

In *State v. Seung-Bok Lee*, the defendant, a Medicaid recipient, was convicted of theft for defrauding the Medicaid Program of approximately \$150,000 by falsely submitting hundreds of fraudulent timecards to Granite State Independent Living (GSIL). The timecards falsely represented that Lee was receiving personal care attendant services from a GSIL care worker. Lee was sentenced to serve 2 to 4 four years imprisonment and was ordered to pay \$150,000 in restitution to the Medicaid program.

In *State v. Stephen MacInnes*, the defendant, the owner and operator of an entity that provided transportation services for Medicaid beneficiaries, pleaded guilty to two charges of theft, totaling more than \$370,000. MacInnes submitted fraudulent Medicaid claims for more than 1,300 transports that were not performed and submitted fraudulent Medicaid claims that inflated the mileage on more than 2,600 transports that were performed. MacInnes was sentenced to serve 5 to 10 years imprisonment, with 3 years suspended, and ordered to pay \$375,000 in restitution.

In *State v. Nina Perez*, the defendant, a former licensed practical nurse, pleaded guilty to possession of a controlled drug and abuse of facility patients. Perez, while working as a licensed practical

nurse at a nursing home facility, took some morphine that was prescribed for a resident and retained it for her own use. Perez was sentenced to a term of 12 months imprisonment, with 6 months suspended, and a consecutive sentence of 2 to 5 years, all suspended conditioned on good behavior. Her nursing license was revoked and her name has been added to a federal database of individuals who are excluded from working in healthcare facilities for 5 years.

The MFCU initiated a criminal investigation against David Kwiatkowski, a health care technician, following receipt of a report that he was involved in drug diversion at the Exeter Hospital, and there was a possible link to a widely publicized hepatitis C outbreak at the hospital. After an intensive investigation involving multiple law enforcement and public health agencies, Kwiatkowski pleaded guilty in federal court to 7 counts of tampering with a consumer product and seven counts of obtaining controlled substances by fraud.

Maxim Healthcare Services agreed, as part of a civil settlement, to pay the State over \$80,000 in restitution and penalties to resolve allegations that it billed the Medicaid program for certain services that were not eligible for reimbursement.

The MFCU entered a civil settlement with the daughters of a former nursing home resident in which they agreed to reimburse the Medicaid program \$78,000 in proceeds from the sale of real estate they had jointly owned with their mother. The two daughters jointly possessed their

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mother's power of attorney for finances when the property was sold while their mother was living in the care facility. Under applicable laws governing fiduciary responsibilities, the mother's share of the sale proceeds should have been preserved for her needs rather than distributed to other family members. At the time the property was sold, the Medicaid program was funding the mother's long term care.

In a nationwide multi-state case, Pharmaceutical manufacturer GlaxoSmithKline entered a settlement agreement which resulted in the State being paid \$3.98 million. The settlement resolved allegations that, among others, the company unlawfully marketed drugs for uses not approved by the Food and Drug Administration and made false representations regarding the safety and efficacy of certain drugs.

As a result of a nationwide multi-state settlement agreement with the pharmaceutical company, McKesson Corporation, paid New Hampshire \$1.7 million. The settlement resolved allegations that McKesson, one of the largest drug wholesalers in the country, violated the federal and various state false claims acts by deliberately inflating prices it reported to First Data Bank, the standard for drug pricing used in Medicaid programs.

**Office of Victim/Witness Assistance**

The criminal justice system can be confusing and intimidating to people who are drawn into the system as a result of having been a victim of, or witness to, a crime. The Office of Victim/Witness Assistance (OVWA) strives to meet the emotional, mental, and physical needs of victims and witnesses; to minimize the trauma and the impact of the crime; and to prevent further victimization by the criminal justice system. Its mission is to enhance the systemic response to crime victim issues statewide through protocol/policy development, legislative initiatives and multidisciplinary professional training, and to ensure that all victims are treated with dignity and respect and provided with the services and support they need throughout their involvement in the criminal justice process.

OVWA is staffed by the Director, an administrative assistant, a criminal justice specialist, three victim/witness advocates, one AmeriCorps victim advocate and the Sexual Assault Resource Team (SART) Coordinator.

The OVWA team is responsible for providing 24-hour services and support in the event of a homicide anywhere in the State. Whenever a homicide occurs, one of the advocates will respond to the scene to notify the victim's family of the death

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of their loved one and to provide immediate crisis intervention and support to both family members and witnesses to the crime.

The advocate continues to work closely with the family during the extremely painful and difficult aftermath, providing a wide range of services, which may include arranging for the cleanup of the homicide scene, informing the family on the results of the autopsy, retrieving necessary items from the home if it is the crime scene, assisting with funeral arrangements, and explaining in general terms the process of a death investigation.

The family continues to receive support and services from the advocate as the case progresses through the criminal justice system. Those services include educating the family about the court process, providing case status reports, notifying the family of upcoming court hearings, accompanying family members to court and, if necessary, intervening with an employer, school, or creditor. The advocate's involvement with a family does not end with the disposition of the criminal case, but may continue for years, throughout the post-conviction, sentence suspension, sentence review, and parole hearings.

The value of the victim/witness advocate's services is reflected in the following excerpts from letters that the advocates have received from families of homicide victims:

*"We are so thankful and appreciative of the care and protection you gave us... Your steady and firm command of our situation along with your compassion and professionalism made our experience the best that it could be under the circumstances."*

*"We hope you know how very much the work you do helps victim's family members. You are one of those rare persons who seem to have chosen the perfect career."*

In addition to providing support to family members, the advocates work with the individuals who will be called as witnesses in homicide prosecutions. The advocates schedule meetings with the prosecutors and court appearances so as to minimize any inconvenience to the witness, provide courtroom orientation, explain the court process and assist the witness in obtaining his/her statutory witness fee. During the biennium, the advocates worked with 92 witnesses and coordinated 583 witness preparation meetings.

During the 2012-2013 Biennium, OVWA advocates responded to 45 homicides, coming into contact with a total of 285 new family members. They provided a total of 10,578 services to 934 family members. The advocates were also available to provide services in non-homicide cases and death investigations when a need was identified.

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In 2009, the OVWA was recognized as one of three model homicide services programs in the country by the United States Department of Justice Office for Victims of Crime (OVC) and was awarded a three-year grant totaling \$483,000 for an Intensive Case Management for Family Members of Homicide Victims Project. Through the grant, OVWA conducted an evaluation of the existing homicide program, identified gaps and shortcomings in services, and developed formal OVWA operating protocols, policies and procedures to address those gaps. In addition, the *New Hampshire Guide for Homicide Survivors* was published, outreach and training materials were developed and a new more effective system of case management, data collection, and time management was designed and implemented. OVWA has provided technical assistance to other states interested in replicating OVWA's homicide program.

One of the major gaps identified was the lack of mental health providers, particularly in the rural counties, who were willing and able to provide trauma informed services to family members of homicide victims. As a result, OVWA established the New Hampshire Network of Trauma Informed Mental Health Providers, made up of 25 trained providers, half from the rural counties, who have committed to providing trauma-informed mental health services to survivors of homicide.

OVWA is responsible for administering the New Hampshire Address Confidentiality Program (ACP), which enables people escaping from violent situations to hide their location from their assailant. The ACP sets up a substitute address that a participant can use to receive services such as obtaining a driver's license, registering a car, or applying to vote as an absentee voter. Mail sent to this substitute address is then forwarded to the participant by the OVWA, thus keeping the participant's location confidential. Since its inception, 249 people have registered with the program. In the last biennium, 67 new participants were enrolled and a total of 5,901 pieces of mail were forwarded to program participants.

OVWA also oversees the SART Program. The SART model strategy is a collaborative, multidisciplinary approach to improve the response to and successful prosecution of adult sexual assault cases. The SART Coordinator provides technical assistance and support to nine SART teams statewide and is collaborating with the New Hampshire National Guard to begin the SART equivalent in the military. During the past biennium, the SART Coordinator presented at 26 trainings and conferences and trained 816 multidisciplinary professionals.

In addition to the SART trainings, the OVWA coordinated 15 other conferences and trainings during the biennium,

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reaching a total of 2,255 professionals. Trainings included a 2-day Statewide Domestic and Sexual Violence Conference, two 2-day Child Abuse Conferences, a 3-day conference on Partnering for a Future without Violence Conference, two Child Advocacy Center (CAC) Summits, six Lethality Assessment trainings, eight trainings for mental health providers, four system-based victim advocate trainings, a 5-day training on forensic interviewing, the Tri-State Victim Assistance Advanced Academy and a 5-day CAC forensic interview training.

OVWA also represents the Attorney General on numerous committees and commissions aimed at standardizing the services and support provided to victims of crime and enhancing the systemic response to the issues. Those committees and commissions include the following:

The Attorney General's Task Force on Child Abuse and Neglect is dedicated to improving the investigation and prosecution of child abuse and neglect cases in New Hampshire. The Task Force has been very involved in the Attorney General's effort to establish and sustain a Child Advocacy Center (CAC) in each county to ensure that every abused child has access to the high quality, comprehensive, specialized and culturally competent services of a CAC. The Task Force continues to sponsor an annual statewide conference and CAC Summit, as well as advanced forensic interview trainings for CAC team members.

The Governor's Commission on Domestic and Sexual Violence continues to develop and implement programs to reduce the level and seriousness of domestic and sexual violence and stalking, and to increase public awareness of the issues. During the past biennium, the Commission updated and distributed the Law Enforcement Domestic Violence Response Protocol as well as the SART Protocol and the Adult Sexual Assault Medical/Forensic Protocol.

The OVWA is responsible for coordinating the efforts of the New Hampshire Child Fatality, the Domestic Violence Fatality, and the Elder and Incapacitated Adult Fatality Review Committees. These committees review cases of child deaths, all domestic violence-related homicides, and fatalities of elder or incapacitated adults in New Hampshire, respectively, and make recommendations for systemic improvements to prevent future deaths. These recommendations are published in reports to the Governor.

In 2012, the Attorney General's Office published a data report from the Domestic Violence Fatality Review Committee, which included a detailed overview of all of the homicide and domestic violence homicides that occurred in the state during a 10-year period of 2001-2010, as well as data from the Circuit Courts and the New Hampshire Coalition on Domestic and Sexual violence. The report can be found at <http://www.doj.nh.gov/criminal/victim-assistance/documents/domestic-violence-report-2012.pdf>.

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The New Hampshire SANE (Sexual Assault Nurse Examiner) Program is a joint project of the Attorney General's Office and the New Hampshire Coalition Against Domestic and Sexual Violence. The program trains and certifies medical providers on the provision of consistent care that respects the emotional and physical needs of the sexual assault/abuse victim, while collecting the best possible forensic evidence to promote the effective prosecution of the offender. In the biennium, 60 nurses attended SANE sponsored training. OVWA is also responsible for the distribution and tracking of the sexual assault forensic evidence collection kits.

In 2012, the Attorney General created the Commission to Combat Human Trafficking, whose mission is to develop and implement a multidisciplinary, trauma informed, victim-centered community response to eradicate human trafficking in New Hampshire. The Commission is developing a multidisciplinary protocol on the handling of human trafficking cases along with a training curriculum for all professionals involved. It is also working to develop a core group of law enforcement investigators to become experts on handling these cases statewide.

All of the protocols, policies and other publications developed by the OVWA are available at <http://doj.nh.gov/criminal/victim-assistance/index.htm>.



## Office of the Chief Medical Examiner

The New Hampshire Office of Chief Medical Examiner (OCME) is responsible for investigating 25 specific types of deaths, as codified in RSA 611-B, and determining cause and manner of death. In brief, RSA 611-B authorizes the OCME to investigate deaths from accident, suicide and homicide as well as sudden unexpected natural deaths.

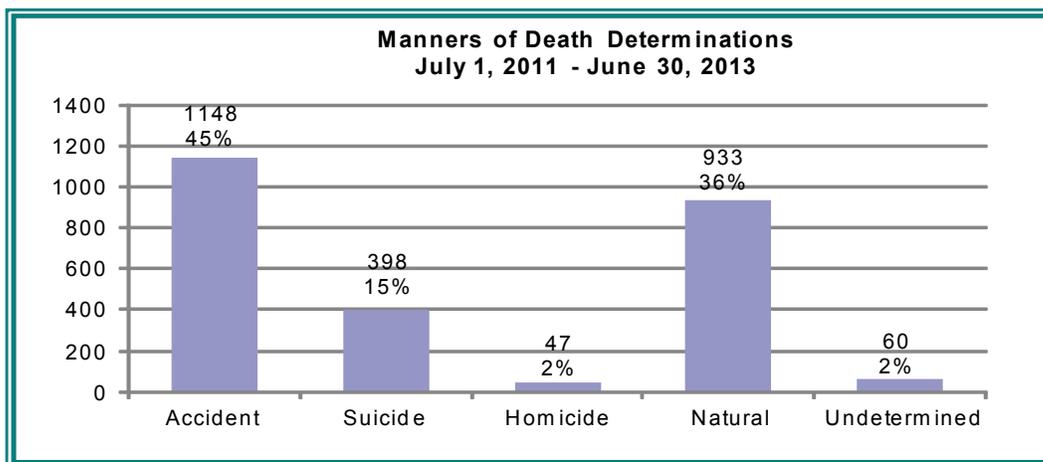
The OCME consists of 4 full time employees—2 board certified forensic pathologists, a chief forensic investigator and an administrative assistant. The office also has a part time data clerk and a part time evidence technician. The data clerk is responsible for entering information concerning sudden infant deaths into a case registry developed by the Centers for Disease Control and Prevention.

Death scene investigations are handled primarily by Assistant Deputy Medical Examiners (ADMEs), who are independent contractors. They have been formally trained in death investigations and work under the supervision of the OCME professional staff.

During the biennium there were 21,086 deaths in New Hampshire, of which the OCME actively investigated 2,586. Full autopsies were performed in 919 of the OCME cases and external examinations were performed in the remaining 1,667 cases. The manners of death for those OCME cases were classified as:

- 1148 accidents
- 398 suicides
- 47 homicides
- 60 undetermined
- 933 natural

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**Office of the Chief Medical Examiner**

In addition, hospital staff and law enforcement notified and consulted with ADMEs on over 3200 deaths where the ADMEs declined jurisdiction.

Statistically, the most common cause of accidental deaths in New Hampshire is falls. Most of these falls are in the elderly and are due to complications of hip fractures and closed head injuries. Drug deaths also represent a large percentage of accidental deaths.

New Hampshire continues to have a high number of drug deaths, from both prescription drug abuse and use of illicit drugs. It is one of 15 states in which the number of drug deaths exceeds the number of motor vehicle deaths.

During the biennium, 212 people died from gunshot wounds. Most were suicide deaths.

The most common method of suicide is firearms.

The OCME is committed to reducing injuries and deaths in NH and does so by participating in several fatality review committees including:

- Trauma Fatality Review
- Child Fatality Review
- Sudden Unexpected Infant Death Review
- Youth Suicide Prevention Alliance
- Domestic Violence Fatality Review
- Suicide Prevention Council
- Elderly and Incapacitated Adult Fatality Review.

The goal of these committees is to understand risk factors for certain types of deaths and to develop recommendations to prevent future deaths.

During the biennium, members of the OCME medical staff presented at several national and international conferences including the 2012 Annual Meeting of the National Association of Medical Examiners, the 2012 International Meeting on Stillbirth, SIDS, and Infant Survival, the 2013 Annual Scientific Meeting of the American Academy of Forensic Sciences and the 2013 International Association of Coroners and Medical Examiners Annual Training Conference.

The OCME is involved with a cold case dating back almost 30 years. In November 1985, a year prior to the founding of the OCME, a hunter walking in the woods found the decomposing bodies of a woman and a girl near a barrel. Both were homicide victims. In 2000, the skeletal remains of 2 female children were found in a barrel about 1000 yards away. It is possible that those bodies were there in 1985.

The OCME has been working to identify the four victims. DNA test results show that it is likely that the woman, the child found in 1985 and the smaller child found in 2000 are related through a maternal connection. Specimens are preserved and regularly sent to a DNA laboratory whenever new DNA testing techniques are developed that may shed additional light on their identities.

## Office of the Chief Medical Examiner

A forensic anthropologist has examined all the remains and a forensic odontologist has examined the teeth. They have determined that the victims' appearance would have been Caucasian and the estimated age range for the woman is 23-32 years old. The children's age ranges are 9-11 years old, 3-5 years old, and 2-3.5 years old.

The OCME has consulted with the National Center for Missing Exploited Children (NCMEC). Their forensic artists have made 3-D facial reconstructions and NCMEC created and distributed a poster with the victims' images.

In November 2012, NCMEC invited investigators from NH State Police Major Crime Unit, the forensic anthropologist and OCME's chief forensic investigator to present the case to FBI profilers, Naval Criminal Investigative Service (NCIS) consultants, NCMEC staff and other law enforcement consultants at a 2 day review meeting. At the conclusion, the various consults provided recommendations on investigative avenues to pursue.

This case has been publicized by media organizations in New Hampshire and in June 2013, it was the top story on CNN.com.





## Consumer Protection and Antitrust Bureau

The Consumer Protection and Antitrust Bureau (the Bureau) is responsible for enforcing the consumer protection and antitrust laws of New Hampshire and ensuring that trades and businesses operating in the state comply with governing statutes. In addition to its regulatory and enforcement responsibilities under the Consumer Protection Act, the Bureau is responsible for fulfilling statutory requirements under more than thirty other statutes such as Fair Debt Collection, Automated Telemarketing Calls, Security Breach Notification and the Condominium and Land Sales Full Disclosure Acts. The Bureau also houses the Administrative Prosecutions Unit (APU), the Insurance Fraud Prosecutor, and the Banking Prosecutor.

The Bureau has 19 staff, including lawyers, paralegals and support staff. Their work is supplemented by a team of 12 dedicated volunteers, whose contributions to the Bureau are invaluable. The volunteers' work represents the equivalent of at least two additional full time employees and has allowed the Bureau to positively impact

the lives of many more individuals than would otherwise have been possible.

### Direct Citizen Services

The Bureau provides direct service to consumers using a variety of means. It supports two toll-free telephone hotlines; a hotline for general consumer complaints (1-888-468-4454), and the mortgage hotline (1-866-522-4450). The mortgage hotline was initiated in response to the National Mortgage Settlement and continues to be a resource for homeowners with banking/ mortgage related problems and complaints.

During the biennium, the Bureau received and responded to approximately 5,910 written or electronically filed complaints from consumers. Many of the complaints were referred to the Bureau's voluntary Mediation Program, which is staffed by trained volunteers and paralegals. Others were investigated for civil or criminal enforcement action. If the Bureau was unable to assist a consumer, the complaint was often referred to another state or federal agency,

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**Consumer Protection and Antitrust Bureau**

such as the New Hampshire Banking Department, the New Hampshire Insurance Department, the Bureau of Securities Regulation, the Federal Trade Commission (FTC), the Consumer Financial Protection Bureau (CFPB), or the Office of the Comptroller of the Currency (OCC).

The top 10 categories of complaints received during the biennium were:

1. Motor vehicle sales/services
2. Cable/Satellite Services
3. Real estate purchases/rental properties
4. Contractors
5. Debt collection
6. Energy sales
7. Mortgages
8. Telecommunications/slamming/cramming
9. Internet/Telephone/Mail scams
10. Identity theft

During the biennium, the Bureau responded to approximately 15,223 general consumer-related telephone calls, emails and walk-ins, as well as 2,953 calls specifically related to mortgages. The total restitution recovered for consumers in the form of money, goods or services for this biennium was \$975,068.

The Bureau continued to offer outreach programs throughout the state, often in partnership with local law enforcement and other agencies. Many of the programs offered this biennium were aimed at senior citizen groups, to educate

them about common frauds and scams and to provide helpful, preventative tips. In response to the ever-increasing problem of identity theft, the Bureau also offered outreach programs focused on preventing identity theft and minimizing the harm done to victims. Bureau attorneys and staff have partnered with print, radio and television media in an effort to reach wider audiences on an array of consumer issues.

The Bureau maintains an informative website, <http://doj.nh.gov/consumer>. Consumers can access the Bureau's New Hampshire Consumer Sourcebook, find links to all the consumer press releases and alerts issued by the Attorney General's Office, and helpful links to FTC and CFPB alerts. These press releases and alerts notify the public about prevalent scams and contain practical advice for consumers. The website includes a business look-up database that allows consumers to check for prior complaints against a specific company. The website also contains a listing of the security breach notifications received by the Attorney General's Office and a variety of other helpful links and forms.

**Enforcement Activities**

In addition to direct consumer services, the Bureau is responsible for enforcement of the Consumer Protection Act (CPA) and various other statutory consumer protections. During the biennium, the Bureau issued 70 subpoenas to business, witnesses,

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and/or documents, to investigate suspected violations of the CPA. One hundred thirty investigations were opened into alleged misconduct. Some of those investigations led to the filing of civil or criminal charges. Many were resolved by agreement with the parties.

The Bureau also filed 13 new consumer protection civil/equity suits and resolved a number of other cases involving a wide variety of unfair and/or deceptive trade practices. For example, it filed against Brady Sullivan Paugus Woods, LLC alleging violations of the Land Sales Full Disclosure Act and the Consumer Protection Act related to the sales of homes in the Villa at Paugus Bay subdivision. The suit alleged that the homes were not in compliance with basic building and safety codes when they were sold, to include violations of electrical and building codes, and failure to bolt home modules together as required by the home manufacturer. That case is scheduled for trial in early 2014.

In February, 2012, the Bureau brought a consumer protection civil enforcement action against UMass Memorial Health Ventures and Caitlin Raymond International Registry for unfair or deceptive acts involving the defendants' solicitations of bone marrow registry participants. The Bureau entered into a consent judgment with the defendants that resolved all claims and required the defendants to pay \$200,000 in civil penalties, reimburse the State for the cost of the investigation and required the defendants to make a donation of

\$100,000 to the National Bone Marrow Registry in support of the work of bone marrow donation and to improve the image of bone marrow recruitment organizations.

The Bureau successfully petitioned the Superior Court for a permanent injunction against the unauthorized practice of law by George E. Kersey. The respondent had continued to practice law in New Hampshire after being disbarred by the New Hampshire Supreme Court in 2004.

Criminal prosecution of consumer protection violations continues to be a priority of the Bureau. During the biennium, the Bureau filed 13 criminal charges involving a wide variety of unfair and/or deceptive trade practices or theft. A summary of some of the more significant cases litigated over the last two years follows:

In *State v. Nickolas Skaltsis*, the defendant was charged with four counts of felony-level theft for operating a fraudulent real estate investment scheme in the Dover area. He pleaded guilty and was sentenced to 1½ - 5 years imprisonment and ordered to pay restitution to his victims in the amount of \$277,733.94.

In *State v. Andrea Runkel d/b/a Luminescence Photography*, the defendant was charged with a criminal violation of the CPA for taking payments from consumers and failing to provide the agreed upon wedding photography

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goods and services. The defendant pleaded guilty and was sentenced to a suspended term of 6 months incarceration, probation and restitution to consumers in the amount of \$9,294.40.

**Tobacco Activities**

In 1998, New Hampshire, along with 46 other states and 4 territories joined in the Master Settlement Agreement (the "MSA") to end litigation against the four major tobacco companies. A major provision of the MSA is participating manufacturers ("PMs") agreement to reimburse the settling states for their costs in the treatment of tobacco-related illnesses. As a result, New Hampshire receives an annual payment of approximately \$45 million. The amount of the annual payment is based on a complex formula. Among the factors that have an effect on the final payment are nationwide sales of tobacco products, the percentage of sales by PMs compared to the sales by nonparticipating manufacturers ("NPMs"), or those small tobacco producers who did not join in the MSA, the rate of inflation and other factors.

Under the MSA, each settling state was obligated to pass legislation requiring NPMs to establish an escrow account in favor of each state and to pay into that account a little over two cents for each cigarette sold in the state. New Hampshire enacted such a statute, which also contains a provision that the Bureau must approve all tobacco manufacturers and brands of cigarettes before they can

be legally sold in New Hampshire. All approved manufacturers and brands are included on the state's tobacco directory.

Currently there are over 225 different brands and over 1700 brand styles of cigarettes, including roll-your-own, sold in New Hampshire, by 50 different manufacturers, and through 58 different wholesalers. Approximately 15 of these manufacturers are NPMs, and the Bureau receives applications for approval of new companies and new brands on a weekly basis.

The Bureau is responsible for enforcing the NPM's obligation to place funds in escrow for each cigarette sold in New Hampshire. If an NPM has failed to abide by its escrow obligations, a warning letter is issued. If the NPM does not respond adequately, the Bureau will file suit to enforce the escrow statute, or remove the NPM's products from the directory, thereby barring further sales into New Hampshire until such time as the NPM comes into compliance.

Beginning in 2005, and every year thereafter, the settling tobacco companies reduced their annual payments to the settling states. New Hampshire's annual payment has been approximately \$5.0 million below the required amount. This led to a protracted dispute between the PMs and settling states. In 2013, New Hampshire joined several other states in a settlement with the PMs, which removed New Hampshire from the on-going litigation.

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Entering into the settlement provided an up-front payment to New Hampshire of approximately \$22 million, but that payment will be eventually repaid through reductions in New Hampshire's annual payments. In addition, New Hampshire will be required to change its methods of accounting for NPM sales and enforcing the NPMs' obligation to deposit escrow for those sales.

**Antitrust Activities**

The Bureau's antitrust enforcement activities have generally been undertaken in concert with other state antitrust bureaus, as most violations and violators exist across state borders. By pooling resources, states have found that they can prevail against large, even multinational, corporations when they violate antitrust statutes.

New Hampshire is currently engaged in two significant multistate antitrust matters. In *United States v. American Express Co.*, the United States and various state plaintiffs have alleged that American Express has engaged in anticompetitive activity by requiring merchants that accept payment via the American Express card to refrain from encouraging customers to pay with a card that charges the merchants a lower transaction fee. In *The State of Texas et al. v. Penguin Group (USA) Inc., et al.*, the United States and plaintiff states allege that the named publishers and Apple conspired to fix prices for e-books sold through the Apple bookstore. To date, the publishers have all settled, and litigation proceeded against Apple, Inc. The US and States prevailed at trial.

The other antitrust matters handled during the biennium were primarily related to the healthcare industry. The Bureau worked with three hospitals in northern New Hampshire that were working to create a collaborative effort to expand services. It reviewed the proposed collaboration to ensure that it would not be in derogation of competition or in violation of state or federal antitrust laws, ultimately concluding that it would not. The Bureau completed a similar review of the Dartmouth Hitchcock – New London Hospital affiliation. It also began a review of the proposed affiliation between Memorial Hospital in North Conway, NH, and a Maine Health organization. That review remains in progress.

**The National Mortgage Settlement**

In 2012, New Hampshire was among the 49 states that signed an agreement with the five largest banks in the country, Bank of America, Citibank, Wells Fargo, J.P. Morgan Chase, and GMAC/Ally, to settle claims against those banks involving their mortgage servicing, origination and foreclosure practices. Nationally, the banks agreed to provide \$25 billion to consumers and the states, with \$20 billion in direct benefits to borrowers in the form of interest rate and principal reductions, short sale facilitations, forgiveness of deficiency balances, and benefits to members of the military. New Hampshire's share of the settlement was estimated to be approximately \$44 million, with approximately \$34 million in direct relief to borrowers. The actual benefits

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received have far exceeded that, and are estimated at \$92,536,000. In addition, the State of New Hampshire received direct payments in the amount of \$10,595,447, of which \$3.5 million is being used to fund free housing counseling services to any homeowner facing foreclosure or dealing with the aftermath of the foreclosure process. An additional \$3.5 million has been awarded to three legal service organizations to provide trained and qualified lawyers, some on a *pro bono* or reduced fee basis. Some of the remaining settlement money will be used to establish a new financial fraud unit within the Bureau to investigate and prosecute financial fraud cases.

**Other Multistate Investigations**

The Bureau regularly participates in a number of Attorneys General-led multi-state investigations. During the biennium, such an investigation led to a \$200 million settlement with Janssen Pharmaceuticals over its unfair or deceptive marketing of the drug Risperdal for unapproved or off-label uses. New Hampshire received \$2,751,330 as its share of the settlement. In January 2013, a settlement was reached with Lender Processing Services, Inc and its subsidiaries, LPS Default Solutions and DocX. The settlement resolved allegations that the company, which primarily provides technological support to banks and mortgage loan servicers, “robo-signed” documents and engaged in other improper conduct related to mortgage

loan default servicing. New Hampshire received \$547,981 as its share of the settlement.

**The Insurance Prosecutor**

The Bureau’s insurance prosecutor works closely with New Hampshire Insurance Department’s Fraud Unit (Fraud Unit) to combat insurance fraud and insurance related crimes. Insurance fraud is defined by statute as a false material statement to an insurance company by a claimant. Insurance related criminal activity includes crimes such as theft of premiums, forgery by insurance agents, perjury at workers’ compensation hearings, theft of money by fake insurance companies, unlicensed producers, and forged workers’ compensation insurance certificates.

During the biennium, the insurance prosecutor and Fraud Unit investigators were referred approximately 480 cases of potential insurance fraud or insurance related criminal cases for review, investigation and possible prosecution. The referrals included allegations of, among others, theft by deception, insurance fraud by consumers making false statements or omissions when seeking insurance coverage, and forgery by service businesses of certificates of insurance. The joint efforts of the insurance prosecutor and the Fraud Unit resulted in courts ordering more than \$64,000 in restitution and fines. Seventeen cases were prosecuted in Superior and Circuit Courts statewide, and six cases were referred to other state or federal agencies for prosecution.

**Consumer Protection and Antitrust Bureau**

Some of the cases prosecuted by the insurance prosecutor during the biennium are listed below.

In *State v. Tammiann Searle*, Ms. Searle was charged with felony insurance fraud for filing a false claim for loss of property. Ms. Searle reported that items in her apartment had been destroyed as a result of water damage and was paid insurance proceeds for their replacement. Many of the items she claimed were destroyed were later discovered, in good condition, either in storage or in use. Ms. Searle pleaded guilty, was given a suspended state prison sentence, and ordered to pay restitution of \$24,139. She was also ordered to pay a \$1,000 fine.

In *State v. Randy Ekmarck*, Mr. Ekmarck was charged with insurance fraud, stemming from his filing of claim for the loss of his fiancé's diamond engagement ring, which he reported was destroyed after falling into a running kitchen disposal. Investigators later determined that he had pawned the ring. Ekmarck pleaded guilty, was sentenced to a suspended House of Corrections sentence, a \$2,000 fine, and one year of probation.

In *State v. Kristine Tetrault*, Ms. Tetrault was charged with insurance fraud for claiming that a car accident in which she had been involved occurred after she purchased liability insurance for her car when, in fact, the accident occurred less than an hour before she obtained coverage. She pleaded guilty

and was ordered to pay \$1,149 in restitution and a fine of \$1,500.

**The Banking Prosecutor**

In late 2009, the Banking Department and the Department of Justice entered into a memorandum of understanding for a new banking prosecutor's position to work collaboratively and cooperatively between the two departments. The banking prosecutor reviews complaints received at both agencies, determines whether the complaint would best be handled by a state or federal agency and initiates investigations, some which led to civil and criminal enforcement actions. The banking prosecutor was instrumental in overseeing the complaints generated by the National Mortgage Settlement. During this biennium, the Bureau received 1,149 banking complaints and 2,953 mortgage hotline calls.

**Registration/Regulation**

The Bureau is required by statute to register a variety of types of entities. During the biennium, its registration activities included the following:

- The Bureau issued 67 certificates of registration or exemptions for subdivisions under the Land Sales Full Disclosure Act (subdivisions) and 91 certificates of registration or exemption for condominiums under the Condominium Act.

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- The Bureau issued 418 registrations to health clubs and to martial arts schools. The Bureau aggressively sought out health clubs that were not complying with the statutory registration requirement.
- Thirty-nine automatic telephone dialers registered with the Bureau during the biennium. Any telemarketer using pre-recorded messages is required by statute to file and pay a \$20 filing fee.
- Forty-eight independent living retirement communities registered with the Bureau during the biennium.
- In compliance with RSA 151:31, 24 hospital and health care provider institutions in New Hampshire filed a report with the Bureau detailing its relationship physician-hospital organizations. The Bureau compiles that information into an annual report, which is submitted to the Legislature.

### Administrative Prosecutions Unit

The Bureau's Administrative Prosecutions Unit (APU)—comprising of 3 attorneys, 1 investigator and 1 paralegal—investigates and prosecutes professional misconduct cases before the following New Hampshire professional licensing bodies:

- The Board of Allied Health Professions which is made up of Occupational Therapy Governing Board, Physical Therapy Governing Board, Recreational Therapy Governing Board, Respiratory Care Practitioners Governing Board, Speech-Language Pathology Governing Board and Athletic Trainers Governing Board;
- The Barbering, Cosmetology & Esthetics Board;
- The Board of Chiropractic Examiners;
- The Board of Dental Examiners;
- The Joint Board of Licensure and Certification which is made up of Board of Professional Engineers, Board of Architects, Board of Accountancy, Electricians Board, Board of Land Surveyors, Board of Foresters, Board of Professional Geologists, Board of Natural Scientists, Board of Landscape Architects, Board of Court Reporters, Real Estate Appraisers Board, Manufactured Housing Installation Standards Board, Board of Home Inspectors and Board of Manufactured Housing;
- The Board of Medicine;
- The Board of Mental Health Practice;
- The Board of Nursing;
- The Board of Pharmacy;
- The Podiatry Board;
- The Psychology Board; and
- The Board of Veterinary Medicine.

The APU opened 597 cases during the biennium. The cases were for the Board of Medicine (71), the Board of Dental Examiners (41), the Board of Mental Health Practice (23), the Board of Pharmacy (65), the Licensed Allied Health Professionals (20), Joint Board of Licensure and Certification (10), the NH Board of Veterinary Medicine (10), Board of Chiropractic Examiners (7), Board of Accountancy (5), Board of Nursing (325), and the Barbering, Cosmetology & Esthetics Board (11).

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The APU closed 522 cases during the biennium, including cases carried forward from the previous biennium. Of those, 310 resulted in some form of disciplinary action. In those cases in which an APU attorney acted as prosecutor during an administrative hearing, 84 resulted in a reprimand or required the licensee to take remedial measures and 5 resulted in license denial, suspension or revocation. In some cases, multiple hearings were necessary to reach a final disposition.

Settlements after investigation resulted in 105 license suspensions, surrenders or revocations; 114 confidential letters of concern; and 142 findings of no discipline warranted. In addition, the boards assessed \$256,235 in fines in the biennium in cases involving APU lawyers and investigators. \$15,000 of the assessed fines were conditionally stayed or suspended.

A sampling of the matters handled during the biennium by APU for various boards follows.

### *NH Board of Medicine*

Following investigations and submissions by the APU, the Board of Medicine:

- Issued a Preliminary Agreement for Practice Restrictions against a doctor who had been charged with aggravated felonious sexual assault against a patient. Pursuant to the terms of the agreement, the licensee was prohibited from

practicing medicine until further order of the Board;

- Issued an emergency suspension of a physician's license to practice medicine due to the physician's potentially dangerous behavior, indicative of a serious mental health issue. The Board later approved an Agreement for Non-Disciplinary Remedial Action negotiated by the APU, which resulted in the physician's license being revoked;
- Suspended the medical license of a physician in response to his arrest on federal charges of receiving child pornography; and
- Approved a Settlement Agreement negotiated by the APU against a physician who was alleged to have engaged in excessive prescribing of narcotics, provided inappropriate psychiatric treatment of pediatric patients, and failed to maintain appropriate professional boundaries. According to the terms of the final settlement, the physician's license was revoked for five years.

Following a hearing in which the APU served as Hearing Counsel, the Board of Medicine issued an order against a physician extending an already-imposed emergency suspension. The Board found that the licensee routinely consumed alcohol during his lunch break, rendering him too inebriated to treat his afternoon patients. Sanctions included a requirement that he undergo a forensic psychiatric evaluation, complete an inpatient rehabilitation program, and enter into a 7-year monitoring contract with the NH Physicians Health Program.

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### *NH Board of Pharmacy*

In response to investigations and submissions by the APU, the Board of Pharmacy:

- Issued an emergency suspension of the privileges of a pharmacy technician in response to the registrant's arrest for theft and possession of narcotics.
- Issued an emergency suspension of the license of a pharmacist who had been prescribed large amounts of a controlled drug for a long period of time and who was also diverting controlled drugs from his employer. Following further investigation by the APU, the Board accepted the pharmacist's voluntary surrender of license.
- Issued an emergency suspension of the registration of a pharmacy technician following his arrest on three felony charges of possession of controlled drugs. It is alleged that the pharmacy technician stole in excess of 1,000 tablets of hydrocodone from his pharmacy employer.

### *NH Board of Dental Examiners*

Following investigation and submission by the APU, the Board of Dental Examiners:

- Accepted the voluntary surrender of the license of the president of a company that owned numerous dental practices. The dental practice had abruptly closed all of its dental offices in thirteen states, including two in New Hampshire, and patients arriving for appointments found

a note on the door informing them that the offices were closed. The New Hampshire Department of Justice and the Board of Dental Examiners received more than 143 complaints from patients claiming to have had their dental treatment discontinued. According to the complaints, at the time of the practice's closing, many of these patients had had their teeth extracted and were waiting for permanent dentures, and many had pre-paid for dental care that they did not receive.

- Issued an emergency suspension of dentist's license in response to information indicating that he had written numerous prescriptions for controlled and non-controlled drugs for his own use and that his use of those drugs may have adversely impacted his ability to practice dentistry.
- Issued an emergency suspension of a dentist's privileges to prescribe controlled substances in the state. The Board acted in response to information indicating that the licensee had been prescribing controlled substances to some individuals without a medical basis to do so and that the frequency, quantity and dosage of the controlled substances being prescribed were excessive for what had been documented. The Board later approved a settlement agreement negotiated by the APU with terms of discipline that included a reprimand, continuing education, an administrative fine and restrictions on being able to prescribe controlled substances again.
- Following a hearing in which the APU served as Hearing Counsel, the Board of Dental Examiners issued an

## Consumer Protection and Antitrust Bureau

order against a dentist for failing to maintain a required controlled-drug inventory. Sanctions included a reprimand and an administrative fine.

### *NH Board of Nursing*

Following investigations and submissions by the APU, the Board of Nursing:

- Approved a Settlement Agreement negotiated by the APU against a registered nurse facing multiple complaints of drug diversion. Under the agreement, the nurse's license was suspended for one year followed by one year probation with several restrictions on his license, including quarterly supervisor reports to the Board and 32 random drug tests per year.
- Approved a Settlement Agreement negotiated by the APU against a nurse who gave a patient medication through an IV that should have been given orally. The patient died as a result of this action. Terms of the settlement agreement included a \$500 fine and a 2-year probation with stipulations related to work restrictions, supervision, and quarterly reports to the Board.
- Accepted the voluntary surrender of license from a nurse who was convicted of falsifying physical evidence based on evidence that he destroyed his computer because he discovered the police were investigating him for sending pornographic emails to a former student. The nurse had been employed at a boys' boarding/day school.

- Issued an emergency suspension of the license of a registered nurse in response to questions surrounding the death of her brother-in-law. The licensee informed local police that she had killed her brother-in-law by giving him 300 units of insulin, which she claimed to have brought home from her job.
- Issued an emergency suspension of the license of an licensed nursing assistant who had been arrested for taking several thousand dollars worth of jewelry from an elderly woman for whom she was providing homecare and for possession of controlled drugs.

Following a hearing in which the APU served as Hearing Counsel, the Board of Nursing:

- Revoked the license of a visiting nurse who provided home care for an 81-year old man, after she used the patient's credit card to make several purchases for herself and her family, totaling between \$1500 and \$2000.
- Revoked the license of an APRN for failing to manage over 500 patient records, writing prescriptions on her former employer's prescription pads after she had been terminated from that agency, failing to maintain professional boundaries, and demonstrating a pattern of behavior incompatible with the standards of practice.
- The Board revoked the license of an LNA and imposed a \$1,500 fine after finding that the LNA cashed several checks totaling \$2,800 that were not signed or authorized by her elderly client. She was arrested for forgery.

**Consumer Protection and Antitrust Bureau***NH Board of Mental Health Practice*

The Board of Mental Health Practice approved settlements negotiated by the APU with:

- A licensee who was alleged to have had a sexual relationship with a patient. Sanctions included a 5-year revocation of licensure and a requirement that the licensee undergo a psychiatric evaluation before reapplying for licensure
- A licensed clinical social worker in response to the social worker's failure to properly supervise a minor client on a field trip during which the minor client engaged in sexual relations with another client. Sanctions included a reprimand and the requirement that the social worker practice under individual and peer group supervision for at least 12 months.

Following an investigation and a submission from the APU, the Board of Mental Health Practice issued an emergency suspension of a mental health counselor's license following his arrest on charges of attempted sexual assault, falsifying physical evidence, and invasion of privacy.

*Other Boards*

Following a hearing in which the APU served as Hearing Counsel, the Board of Land Surveyors issued an order against a licensee who was alleged to have failed to provide land surveying services that had been paid for and for failing to cooperate with a board investigation. Sanctions included a six-month suspension and mandatory mental health counseling.

The Board of Accountancy approved a Settlement Agreement negotiated by APU against an accountant who had been advertising himself as "an accounting firm" without the proper firm licensure and who was issuing financial statements without proof of satisfactory peer review. Terms of the settlement included a reprimand and an administrative penalty of \$1,000.

Following an investigation and submission by the APU, the Board of Barbering and Cosmetology accepted the Voluntary Surrender of a manicurist's license based on the licensee's criminal conviction for simple assault against a licensing board inspector during a routine inspection.



## Environmental Protection Bureau

The Environmental Protection Bureau (EPB) is comprised of six attorneys, two paralegals, and a secretary. Among its many roles in State government, the EPB enforces environmental laws and rules through administrative, civil, and criminal actions. It provides legal counsel and representation to various state environmental agencies such as the Department of Environmental Services (DES), the New Hampshire Fish and Game Department (F&G), and the Office of Energy and Planning. It represents numerous environmental councils and similar bodies such as the Council on Resources and Development, the Lakes Management Advisory Committee, the Rivers Management Advisory Committee, the State Conservation Committee, and the Oil Fund Disbursement Board which administers four different State funds. The EPB also provides advice to some non-environmental entities such as the Second Injury Fund. Additionally, the EPB makes significant contributions to the State's welfare through its participation on behalf of state agencies in bankruptcy procedures and the more recently developed debt collection program.

In coordination with the state's environmental agencies and their federal partners, such as the United States Environmental Protection Agency (EPA), the EPB pursues violations of federal and state law related to air pollution, water pollution, disposal of septage, solid waste and hazardous waste, oil discharges, ground and surface water quality rules, and other laws designed to protect human health and the environment. The following is a small sampling of the work performed by the EPB on a daily basis.

### Environmental Crimes Prosecution

#### *State v. Thibeault Corporation of NE (Allenstown Aggregate)*

In December of 2012, Thibeault Corporation of NE (TCNE), a New Hampshire company, pleaded guilty to charges of unlawful transportation and storage of construction and demolition debris. The facility had accepted ground and granulated construction and demolition debris from another facility in Everett, Massachusetts. The Massachusetts Department of Environmental Protection had identified the material as solid waste unsuitable for use as a

*Among its many roles in State government, the EPB enforces environmental laws and rules through administrative, civil, and criminal actions. It provides legal counsel and representation to various state environmental agencies and represents numerous environmental councils and similar bodies.*

**Environmental Protection Bureau**

landfill cap. The material was hauled to the Allenstown Aggregate facilities, which were not permitted solid waste disposal sites. TCNE was ordered to pay a fine of \$50,000, with an additional \$50,000 suspended upon good behavior.

*State v. Gateway Recycling*

In September of 2008, Hanscom Air Force Base in Massachusetts hired NG Environmental Contractors, LLC (NGE), to clean up and dispose of firing range debris, which included lead projectile fragments. Without knowledge of Air Force Base officials, NGE employees removed 14 buckets of sand mixed with pulverized lead fragments from the Base and sold them to Gateway Resource Recovery, LLC located in Salem, New Hampshire. The sand mixture was hazardous waste, the disposal of which is highly regulated and is only allowed at permitted hazardous waste facilities. Gateway accepted the material as a recyclable waste even though this material could not be reclaimed. During the subsequent investigation, EPB attorneys determined that Gateway could not account for all of the buckets it had received. As a result of that conduct, Gateway pled guilty to a misdemeanor of reckless conduct. It was ordered to pay a penalty of \$10,000, with an additional \$10,000 penalty suspended upon compliance with stringent environmental conditions.

*State v. Kevin Guay*

Kevin Guay was previously convicted of unlawfully maintaining a solid waste facility by keeping solid waste buried on one of his residential properties near Penacook Lake in Concord, as well as unlawfully maintaining a septic system and keeping solid waste at a rental property without a permit. After the New Hampshire Supreme Court upheld the convictions in March 2013, Mr. Guay was required to serve the remainder of his 12-month sentence, and pay fines plus restitution of over \$21,000 to police and DES for the cost of the investigation.

**Civil Enforcement and Defense**

During the biennium, the EPB opened 198 new civil environmental enforcement cases. These cases coincide generally with the different programs of EPB's client agencies although some relate to the State's common law duties and responsibilities. EPB collected over \$90,000,000 from the MtBE lawsuit and approximately \$1,700,000 in civil penalties, cost recovery, mitigation, and other funds during the biennium. During the same period, the EPB obtained more than \$480,000 in debt recovery.

**Environmental Protection Bureau****Water Division**

The EPB expends considerable resources enforcing the State's numerous water-related statutes. Water cases cover a wide range of programs and essential areas of environmental protection.

Within the DES Water Division exist a multitude of individualized programs represented by the EPB. The Wetlands Program involves the filling or dredging of wetlands or surface waters. Water quality cases involve the introduction of contaminants to the waters of the State including drinking water supplies. The Alteration of Terrain Program (formerly described as the site specific program) protects watersheds from disturbances that may cause or contribute to the degradation of water quality. The Drinking Water Quality Program protects public water systems. The Groundwater Protection Program specializes in protection of water resources beneath the surface. The Shoreland Program preserves the integrity of the areas surrounding designated surface waters from despoliation. The Dam Bureau monitors the state's 2,615 dams including lake level management of State-owned impoundments. The Subsurface Bureau regulates septic systems. Finally, the New Hampshire Coastal Program protects the coast through a federally approved and enforceable coastal management program. Each program possesses unique characteristics that require expertise and specialized knowledge on the part of the EPB attorneys representing these interests.

The EPB actively represented each of these programs during the last biennium. The most important case involved the gasoline additive MTBE.

*State v. Hess, et al. (MTBE)*

After more than a decade of work and a four-month trial, the State successfully obtained a jury verdict of \$236,000,000 against Exxon Mobil for contamination of the State's ground and surface waters caused by the gasoline additive Methyl Tertiary Butyl Ether ("MTBE"). The defendant has appealed the verdict which is expected to be briefed and argued during the next biennium. The State also obtained \$90,000,000 from other major oil companies that settled in lieu of going to trial. Those funds will be used to help remediate MTBE contamination throughout the State.

*State, et al. v. Kruger, et al.*

Over the last several years, the Town of Hooksett expended considerable money, including State and federal grants, to upgrade its wastewater treatment facility (HWTF). The upgrades included placing millions of small plastic discs in the HWTF bioremediation tanks, which help bacteria to grow and greatly increase the capacity of the HWTF to treat waste. In March of 2011, however, the HWTF experienced a catastrophic failure that resulted in the overflow of untreated wastewater and plastic discs to the facility's parking lot and eventually the Merrimack River. Discs traveled as far away as Hampton Beach and Cape Ann,

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Massachusetts. It cost over one million dollars to clean up the discs and the HWTF still does not perform to specification. For these reasons, the EPB, along with the Town of Hooksett, filed suit against the disc manufacturer, the HWTF designer, and the builder for claims related to unsafe products, design failures, and the failure to warn.

*City of Dover, et al. v. N.H. DES (Great Bay Estuary Coalition)*

Several seacoast communities filed a lawsuit challenging DES's authority to determine that the Great Bay Estuary is impaired with respect to nitrogen. The EPB successfully defended DES's actions in the Superior Court and the case is currently before the New Hampshire Supreme Court. The State's actions will help protect the estuary from pollution.

### Waste

*State v. Catholic Medical Center*

The EPB reached a settlement with Catholic Medical Center ("CMC") wherein CMC agreed to pay \$205,000 in penalties. The State alleged that CMC failed to identify certain pharmaceutical wastes as hazardous wastes and shipped the wastes to facilities that were not authorized to accept hazardous wastes. State law requires that hazardous waste be handled and disposed of in accordance with stringent rules, in order to prevent harm to human health or the environment. The allegations against CMC did not pertain to infectious waste, such as used needles.

*State v. Concord Hospital*

In an action similar to that against CMC, the EPB alleged that Concord Hospital failed to identify certain pharmaceutical wastes as hazardous wastes, and shipped the wastes to unauthorized facilities. Hazardous wastes cannot be properly managed to prevent exposure if they are not identified by the generator at the point of generation. These violations, as well as the hospital's failure to follow certain hazardous waste management requirements, were discovered during a DES inspection. The EPB reached settlement with Concord Hospital, under the terms of which the Hospital will be assessed a total penalty of \$205,000. Of that penalty, \$50,000 shall be credited to Concord Hospital if it provides free State-approved training related to the management of pharmaceutical wastes to New Hampshire-based healthcare facilities.

### Air

*State v. Plourde Sand and Gravel, Inc.*

The EPB prevailed in a lawsuit against Plourde Sand and Gravel, Inc. ("Plourde") for air emissions violations at two facilities – one in Hooksett and one in Allenstown. Plourde has paid all outstanding fees, obtained all necessary air permits, and will pay the State \$60,000 in civil penalties.

*State v. Watts Foundry*

The Watts Foundry ("Watts") in Franklin, N.H., began construction without first obtaining an air permit as

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required by State and federal law. Once this deficiency was discovered, Watts moved quickly to obtain necessary permits and DES staff efficiently processed the requests to bring the plant into compliance and allow construction to move forward. However, due to the magnitude of the violation, Watts was ordered to pay \$150,000 in penalties.

*In re PSNH Mercury Baseline*

PSNH appealed a DES decision establishing the baseline mercury emission level for the PSNH Merrimack Station in Bow. After a hearing before the Air Resources Council, the EPB was able to reach a settlement with PSNH, which provides that the total mercury emissions shall be at least 80 percent less than 268 pounds per year – or 54 pounds per year – beginning on July 1, 2013.

**Multi-State Litigation**

Over the biennium, the EPB continued its active involvement in multi-state litigation to enforce the critical provisions of the federal Clean Air Act (“CAA”) and other environmental laws. For example, EPB attorneys worked on measures to limit particulate matter, creation of ground level ozone, acid rain, and emissions of greenhouse gases such as CO<sub>2</sub>. Recently, EPB attorneys, in coordination with many other State plaintiffs, were successful in requiring the EPA to promulgate a more stringent “secondary standard for ozone,” which protects against harmful effects such as decreased visibility. In various federal

consolidated cases, EPB attorneys have sought to uphold EPA’s “endangerment finding” which determined that CO<sub>2</sub> is a gas that contributes to climate change. At the same time, EPB attorneys are actively participating in litigation supporting EPA’s “tailoring rule,” which is designed to reduce the burden on states when dealing with CO<sub>2</sub> emissions as they pertain to regulated sources, state plans, and permits.

**New Hampshire Fish and Game Department****Facilities Construction and Lands Division**

The EPB provides legal counsel to, and review of real estate documents for, the Facilities Construction and Lands Division. Over the biennium, the EPB’s major task in representing the Division involved the controversial boat ramp proposal for Lake Sunapee, which is discussed below. The EPB successfully defended the issuance of a shoreland permit for the project, which had been appealed to the New Hampshire Supreme Court.

**Council on Resources and Development (CORD)**

The EPB succeeded in its request to the New Hampshire Supreme Court to overturn a Superior Court decision that had prevented construction of the proposed CORD public boat ramp on Lake Sunapee. A subsequent hearing took place in the Superior Court in

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December of 2013. Construction of the boat ramp would provide increased public access to the lake. CORD had been working cooperatively with F&G on the project since the early 1990's.

**Bankruptcy and Insolvency**

One EPB attorney handles most bankruptcy matters affecting State interests. Over the biennium, that attorney was involved in a number of such matters.

For example, a New Hampshire petroleum company tried to avoid imposition of court-ordered penalties for its failure to comply with court orders related to environmental laws, arguing that its pending bankruptcy action shielded it from any financial obligations. The EPB successfully argued before the federal district court that bankruptcy protection did not extend to contempt penalties for failure to comply with numerous court orders. The company then appealed that decision to the First Circuit Court of Appeals which ruled in favor of the State. At this point, the State has obtained judgments against the company totaling over \$600,000.

**Debt Collection**

In 2007, the Legislature created the Attorney General's debt recovery program to collect debt owed to the

State. Agencies and departments refer outstanding debts to the EPB, and, pursuant to RSA 7-15-a, a portion of each debt collected is retained by the EPB to sustain the debt recovery program. The types of debts vary widely, including administrative fines owed to DES, civil penalties owed to the Department of Labor, unpaid road tolls owed to the Department of Safety, lottery agents' un-remitted ticket sales proceeds owed to the Lottery Commission, amounts owed to the Department of Transportation for guardrail damage, Medicaid liens, New Hampshire Hospital bills, inmate cost of care, and property payable under New Hampshire's unclaimed property law. Over the biennium, the program collected over \$480,000.

**Counsel for the Public – Site Evaluation Committee**

EPB attorneys served as Counsel for the Public in matters relating to several proposed wind energy facilities in New Hampshire, including the Groton Wind Project, the Timbertop Wind Facility and the proposed Antrim Wind Facility.

**Contracts**

During the biennium, the EPB reviewed 756 contracts for its agency clients prior to submittal to the Governor and Executive Council.



## Charitable Trusts Unit

The mission of the Charitable Trusts Unit (CTU) is to protect the public's interest in the property and assets committed to charitable purposes in the State of New Hampshire through effective registration, education and enforcement. Despite the economic hard times, the charitable sector in New Hampshire remains strong, diverse and responsive to the growing demands placed upon the sector.

To carry out its core missions, the CTU is staffed with one attorney who serves as the Director of Charitable Trusts, an Assistant Director, a financial analyst, two investigative paralegals, a records control clerk, and two part-time staff.

The CTU is statutorily mandated to perform the following:

- Enforcement of charitable trusts in New Hampshire, including the review of all applications for registration and reports filed by charitable trusts;
- Review of all nonprofit healthcare mergers, affiliations, and consolidations;
- Receive the community benefits plans filed by the healthcare charitable trusts and nonprofit nursing homes in New Hampshire;

- License professional fundraisers who solicit charitable donations from New Hampshire citizens;
- Monitor commercial co-venturers and charitable sales promotions;
- Monitor the issuance of charitable gift annuities;
- Cooperate with the Racing and Charitable Gaming Commission in enforcing gaming laws relating to games of chance, Bingo and Lucky 7's; and
- Review all pecuniary benefit transactions by board members of nonprofit organizations.

### Continued Growth of the Nonprofit Sector

During the biennium, the number of charities registering with the CTU continued to increase. As of June 30, 2012, the total number of charitable trusts registered in New Hampshire was 8,711; as of June 30, 2013, that number increased to 9,069. Those figures do not include 383 registered testamentary trusts (trusts created by wills). Nor do they include the hundreds of individual trust funds given to towns and cities and held by the 234 municipally-elected Trustees of Trust Funds.

*The CTU is statutorily mandated to enforce charitable trusts in New Hampshire; review all nonprofit healthcare mergers, affiliations, and consolidations; license professional fundraisers; monitor commercial co-venturers and charitable sales promotions; monitor the issuance of charitable gift annuities; assist in enforcing gaming laws relating to games of chance, Bingo and Lucky 7's; and review all pecuniary benefit transactions by board members of nonprofit organizations.*

## Charitable Trusts Unit

During the biennium, there were approximately 1,356 additional charitable trusts registered with the CTU. This increase underscores two important trends. First, a healthy, diverse, mature and dynamic sector now exists in this State, ranging from the smallest youth sport leagues to the largest private universities and most sophisticated nonprofit hospitals. Second, from a regulatory perspective, the demands on the CTU for its expertise, time and skills continue to increase.

The value of the registered charities native to New Hampshire is estimated by the National Center for Charitable Statistics to be \$23.9 billion. That figure understates the real value of the nonprofit sector in New Hampshire as it does not include the value of assets held by: (i) religious organizations, (ii) municipal trusts, and (iii) the smallest charities in this State, all of which would significantly increase the valuation of charitable assets well beyond \$23.9 billion.

### Transparency and Accountability

A major objective of the CTU is providing accurate and timely information to donors in order to help them make informed decisions about the charities to which they contribute. To do so, the CTU provides links on its website at <http://www.doj.nh.gov/site-map/charities.htm>, to assist donors in making informed giving decisions, including a link to The Ten Tips For

Making Smart Donations, <http://www.doj.nh.gov/charitable-trusts/documents/ten-tips.pdf>. The website includes other valuable resources to help donors to understand the New Hampshire laws that govern charitable trusts.

### Outreach

The CTU is committed to educating boards of directors and other staff on their roles and responsibilities in overseeing charities. CTU staff regularly consult with, and provide live training and written materials to the CEOs, governing boards, audit committees and staff members of nonprofit entities on such topics as fiduciary responsibilities, community benefits, pecuniary benefit transactions, establishing internal controls to prevent theft and mismanagement, best practices, and mergers.

For the past 28 years, the CTU has presented annual workshops to New Hampshire's municipal trustees. More than 450 cemetery trustees, library trustees, and trustees of trust funds attended the 2013 sessions held in Gorham and Concord. CTU staff also met with individual towns and cities to discuss issues pertaining to the trust funds held by a particular municipality. For the first time, working in cooperation with the New Hampshire Center for Nonprofits, the CTU developed and presented a workshop on governance issues targeted to specific subsectors of nonprofits including youth sports organizations and animal shelters.

## Charitable Trusts Unit

Over the biennium, the CTU engaged the public and nonprofit community in a variety of other ways, including:

- Educational forums for the trustees of cities and towns;
- Presentations at the New Hampshire Library Trustees Association and the New Hampshire Cemetery Association;
- Educational forums on endowment investment and management;
- Presentations at sessions sponsored by the New Hampshire Bar Association and the National Association of Attorneys General (NAAG) on the Uniform Trust Code, the Federal IRS Form 990, preventing charitable fraud, and charitable regulation generally; and
- Presentation at workshops offered with the New Hampshire Center for Nonprofits and the Governor's Annual Conference on Volunteerism.

The CTU collaborated with the Internal Revenue Service in producing press releases and other public information announcements relative to the Pension Protection Act of 2006 requirement for small nonprofit charitable organizations to file documentation with the IRS or risk losing their 501(c)(3) status for failure to file.

### Court Proceedings

The Director is a necessary party to any litigation involving charitable trusts. During Fiscal Year 2012, the CTU opened 83 cases and 28 investigations. In Fiscal Year 2013, 81 new cases and 21 new investigations were opened.

These cases range from extensive involvement by the CTU to monitoring the case for status and developments. They include reformation of trust instruments, removal of trustees, determination of beneficiaries, petitions for *cy pres*, and investigations into allegations of wrongdoing by charities and their officers, directors and professional fundraisers.

A number of these cases involved novel or significant issues, including the following:

#### *Sales, Terminations and Consolidations of Nonprofit Organizations, Petitions for Cy Pres*

The CTU devoted significant resources to the termination, consolidation, or sale of assets of a number of charities in this state. These include:

- Petition for *Cy Pres* and Termination of Trust filed by the Director, requesting the distribution of assets of, and transfer of property owned by, the Charles B. Gafney Trust to the Gafney Library, Inc. to be used solely for the benefit of the Gafney Library free of trust and without restriction.
- Termination of the Ellen Henneberry Trust, involving a trust, the assets of which were too small to justify the cost of administration.
- Dissolution of the Eventide Home and the distribution of its remaining assets into a newly created charitable foundation.

## Charitable Trusts Unit

- Petition for *Cy Pres* to redirect the assets of the George Wentworth Trust to assist worthy and/or needy women in the towns of Exeter, Brookfield, and Wakefield.
- *Girl Scouts of the Green & White Mountains v. Attorney General*, Petition for *Cy Pres* and to Quiet Title involving several tracts of undeveloped real estate located in Dublin NH, which contain a reverter clause to State if the Swift Water Girl Scout Council is dissolved. Petitioner seeks permission to sell the real estate and use money in furtherance of the Girl Scout's charitable purpose.
- Petition for *Cy Pres* filed by the Town of Peterborough, seeking to extinguish a clause requiring the Town of Peterborough to hold and keep the Grand Army of the Republic Hall forever as a park and memorial building, and permitting the Town to dispose of the property, with the proceeds dedicated to historic preservation.
- Petition for Instructions filed by the Director regarding the Rosa Valpey Memorial Fund, which was established and donations solicited to pay the final medical expenses of Rosa Valpey and to use the balance for a purpose to honor her memory. The court ordered the remaining \$14,467.32 be transferred to the Town of Warner's Trustees of Trust Funds, to be known as the Rosa Valpey Memorial Fund for the sole purpose of funding the Rosa Valpey Memorial Bicycle Safety Rodeo.

### *Removal of Trustees/Appointment of Special Trustees*

The CTU sought a change in leadership for several charities:

- The Director filed a Petition seeking to appoint a Special Trustee for Tri-County Community Action Program, Inc. (TCCAP) and to suspend the existing Board of Directors. TCCAP is a multi-service nonprofit agency serving over 40,000 New Hampshire residents in the northern half of the State, including Coos, Carroll and Grafton counties. Facing a financial crisis, TCCAP used restricted funds for impermissible purposes in order to meet its immediate cash requirements. The Special Trustee was charged with determining whether TCCAP could be a viable entity moving forward, establishing financial stability, and ensuring continuity of services.

The CTU worked with the Special Trustee and New Hampshire's nonprofit and public agencies so that critical services, including Fuel Assistance, Head Start, Drug and Alcohol Services, Homeless Programs, Food Pantries, and Transit Services were uninterrupted. The CTU continues to investigate the causes that led to TCCAP's crisis.

- Petition to Appoint a Successor Board for the Effingham Falls Cemetery Association, filed by the Director because the Association's original board is no longer in existence and thus lacks the necessary quorum to elect new directors. The Association holds title to real estate as well as cash assets.

## Charitable Trusts Unit

- Petition to Appoint a Special Trustee for the New London Early Learning Center, Inc., filed by the Director after determining that the Executive Director of the Center operated independently of any board control and the board members in many cases did not realize they had been elected. The court ruled in accordance with the Special Trustee's findings that the Center was not a nonprofit organization, had never registered with the Charitable Trusts Unit, and its corporate charter had been revoked.

### *Other Court Matters*

The CTU was involved in a variety of other litigation, examples of which follow:

- Neal and Louise Tillotson Trust: Pursuant to an agreement reached between the parties, the remaining shares of stock of the Tillotson Corporation were transferred to OCG, LLC, a limited liability company formed and owned by the New Hampshire Charitable Foundation; distribution of the Tillotson Trust assets was made to the Neil and Louise Tillotson Donor Advised Fund of the New Hampshire Charitable Foundation; and the Tillotson Liquidating Trust was formed for the sole benefit of the New Hampshire Charitable Foundation.
- Chester College filed a petition for dissolution for purposes of closing the college and distributing its assets, including Chester College's endowment, to a successor entity, New England

College, Henniker, New Hampshire. The New Hampshire Institute of Art filed a motion to intervene in the case. The matter was resolved by a mediated settlement agreement providing that 60% or \$1M, whichever is greater, is to be distributed to New England College and the remaining balance distributed to the New Hampshire Institute of Art.

- Town of Walpole and Hooper Trust: A Petition for *Cy Pres* was filed by the Selectmen of the Town of Walpole in their capacity as Trustees of the Hooper Trust seeking permission to sell a parcel of property which contains the Hooper Golf Course and to use the proceeds of the sale to further the purposes of the George Hooper Trust.

- Florence Mae Tarr Trust Petition for *Cy Pres*: This is a long-standing matter involving several parcels of land in Bedford held in trust. The Director filed a Petition to Remove Trustees after learning that the trustees had deeded the Trust's property to the Town of Bedford via tax deed for failure to pay real estate taxes. A mediated settlement was reached but later challenged by one of the Trustees. In accordance with the settlement agreement, the Director filed a Petition for *Cy Pres*. The matter was still pending at the end of the biennium.

The CTU's work also included a cross-section of other issues, including: (1) issues relating to the ownership of assets by Croydon Volunteer Fire Department and the Ladies Auxiliary of the Croydon Volunteer Fire Department including cross petitions by the two parties; (2) settlement of litigation relating to the

## Charitable Trusts Unit

City of Portsmouth and the Connie Bean Center building; (3) University of New Hampshire's Petition to Approve Sale of Property, requesting redress for its oversight in selling the property without court approval by obtaining the permission from the Probate Court for the 2002 sale and the subsequent disposition of the pro rata portion of the net proceeds into the Samuel S. Whidden Trust Fund; and (4) several petitions for *cy pres* and deviation filed for purposes of will interpretation or the modification of trust provisions in those cases where the original purpose is impossible or impractical to carry out.

### Mediation and Non-Judicial Settlements

The Probate Court continues to encourage parties in litigation involving charitable trusts to attempt to mediate their differences prior to litigation. These non-judicial settlements are intended to bring efficiency to the Court system when trusts with assets of less than \$25,000 and more than 25 years of existence are involved. The CTU reviewed 22 non-judicial settlements under the provisions of the Uniform Trust Code during the biennium.

### Civil Enforcement

The CTU has authority under RSA 7:24 and RSA 7:25 to issue Notices to Attend Investigation whenever a question arises regarding the operation of a charity. The CTU issued 13 Notices and conducted 13 hearings, for a variety of reasons, including failure to register, failure to

report, or failure to comply with RSA 7:28.

The CTU's work includes enforcement of the charitable solicitation law. During Fiscal Year 2012, the CTU reviewed 510 solicitation notices and registered 257 professional fundraisers (both fundraising counsel and paid solicitors). During Fiscal Year 2013, the CTU reviewed 480 solicitation notices and registered 257 professional fundraisers. From the date of receipt, the CTU has ten business days to review each registration and solicitation notice or it is approved by default. The CTU considers this review a priority to prevent fraudulent solicitation in the State.

In Fiscal Year 2012, the CTU filed five petitions to compel in superior court against one paid solicitor, Share Group, Inc., located in Massachusetts, involving failure to file 23 required reports. The lawsuit was settled and the solicitor paid civil penalties to the State of New Hampshire.

The CTU met with the New Hampshire Hospital Association on several occasions to discuss the Patient Protection and Affordable Care Act (ACA), section 501(r), which impacts state law regarding community benefits provided by hospitals, including the preparation of a community needs assessment. CTU staff, along with staff from the Consumer Protection and Antitrust Bureau discussed how certain hospital proposed affiliations and mergers may trigger a review of antitrust issues.

## Charitable Trusts Unit

### Registration and Licensing

In Fiscal Year 2012, the CTU collected \$606,735 in registration and filing fees from charitable trusts and \$166,250 in filing fees from professional fundraisers. In Fiscal Year 2013, the CTU collected \$648,125 in registration and filing fees from charitable trusts and \$159,525 in filing fees from professional fundraisers.

During Fiscal Year 2012, the CTU reviewed 5,447 annual reports filed by charities and 265 probate accounts filed by testamentary trusts. During Fiscal Year 2013, the CTU reviewed 5,850 annual reports and 272 probate accounts filed by testamentary trusts. During each year of the biennium, the CTU received reports from the 234 towns and cities having custody of trust funds for the benefit of cemeteries, libraries, parks, and other public purposes. These reports were reviewed to ensure compliance with applicable statutes.

Each 501(c)(3) charitable entity is required to file a copy of its Federal IRS Form 990, form 990EZ, or Form 990 PF with the CTU, along with the required New Hampshire forms. In addition, charities with revenue in excess of \$1,000,000 per year must file audited financial returns. Once filed, these documents are available to the public. The CTU continues to explore the possibility of electronic filing of the Form 990s, a practice that other states have begun to implement.

The CTU works with the Racing and Charitable Gaming Commission to enforce the Games of Chance, Bingo, and Lucky 7 statutes. As part of its application review, the Commission must confirm that the charities involved are registered with the CTU. This involves monthly reports from the CTU to the Commission and frequent telephone contact between the two state entities.

### Estates and Testamentary Trusts

Whenever a will mentions a charity or trust, the Probate Division of the Circuit Court provides a copy of the will to the CTU. These wills are reviewed and information is entered into the CTU's database. When the estate is closed and distributions are made to the charities, that information is also entered into the database, making it easier to retrieve financial information as well to satisfy requests from charities regarding their responsibilities in holding trust funds. In Fiscal Year 2012, the CTU tracked 223 wills through the probate process and recorded \$17,845,484.43 in charitable bequests. In Fiscal Year 2013 the CTU tracked 211 wills and recorded \$36,473,407.12 in charitable bequests.

### Right-to-Know Requests

The CTU responded to 119 Right-to-Know requests in Fiscal Year 2012, and 156 requests in Fiscal Year 2013. The number of requests indicates a strong public interest in financial, governance and other information regarding charities publicly available at the CTU.



## Civil Law Bureau

The Civil Bureau (Civil) is responsible for providing legal advice and representation to 50 state agencies, many of which have multiple divisions with varied duties and functions, 46 licensing and regulatory boards, and 29 councils and commissions. Civil also defends all three branches of state government in the event of a lawsuit. During the biennium, Civil was staffed on average by 10-15 attorneys, some of whom worked part-time or were dedicated to a specific agency. There are also 2 paralegals and 4 secretaries currently assigned to Civil.

Civil is organized into a Client Counseling Unit and a Litigation Unit, both being overseen by a Bureau Chief. A Civil Appellate Chief supervises all civil appellate matters, including those being handled in the Transportation and Environmental Protection Bureaus. Civil also has a sub-unit known as the Federal Litigation Unit that specializes in federal court litigation. Most attorneys, however, carry a mixed caseload of both client counseling and litigation.

Civil does both trial and appellate court litigation for all

of its clients and provides legal advice through formal written opinions, informal memoranda, email, telephone, and of course, in-person. It continues to see a marked increase in both the number and complexity of cases and legal issues presented to it. Civil is very dynamic in that it addresses a wide variety of challenging legal issues. In any given week, a Civil attorney may be conducting an evidentiary preliminary injunction hearing on a major state program, litigating a class action lawsuit in federal court, defending an agency and its employees before a state court or an administrative board, briefing and arguing a case in the New Hampshire Supreme Court or at the First Circuit Court of Appeals, reviewing or assisting in negotiations of state agency contracts, researching a question of statutory authority for an agency, investigating an elections complaint, or advising an administrative licensing board. Civil is also actively involved in various legislative matters either by providing a legal opinion to legislative leaders, testifying before one of the many policy or finance committees, or advising a state agency on an issue affecting its legislative initiatives.

*In any given week, a Civil attorney may be litigating a class action lawsuit in federal court, defending an agency and its employees before a state court or an administrative board, briefing and arguing a case in the New Hampshire Supreme Court or at the First Circuit Court of Appeals, reviewing or assisting in negotiations of state agency contracts, or investigating an elections complaint.*

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**Litigation**

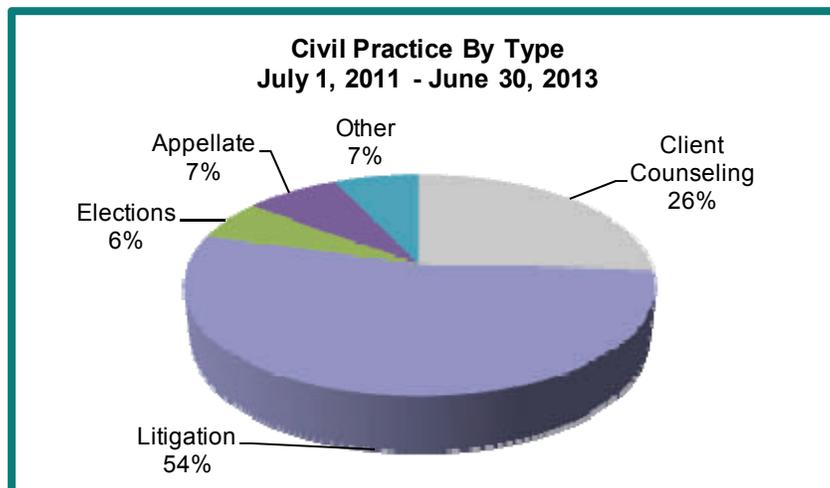
Approximately sixty percent of Civil’s legal practice time is now devoted to litigation, including appellate practice, and twenty-six percent is devoted to client counseling. The litigation practice is spread between the trial courts (63%); appellate matters (7%); and administrative or other forums.

During the biennium, Civil opened 353 new non-federal trial court cases or administrative matters and 35 new federal trial court cases. Approximately 541 litigation files were closed. Civil attorneys also worked on hundreds of other litigation matters still active from prior years. The nature and complexity of the litigation varied significantly. Some cases were resolved in a few months through written motions to the court or after a single court hearing. Other more complex litigation takes years to resolve and some will span the biennium and beyond, including both the trial and appeal.

**Contract Litigation**

Civil defends state agencies whenever a breach-of-contract claim is filed. If necessary, it will bring suit on behalf of a state entity against a vendor for breach of a contract. For example, a typical type of contract claim against the State might arise when an agency selects a vendor as a result of the competitive bid process.

One representative case is *Law Warehouses, Inc. v. N.H. Liquor Commission*, in which Law Warehouses, Inc. brought an action against the New Hampshire State Liquor Commission challenging the Commission’s award of the long term warehousing contract. Law Warehouses was the third place bidder on the project. The trial court denied Law Warehouse’s request for preliminary injunction and trial is scheduled for 2014. In a companion case, *XTL-NH, Inc. v. New Hampshire State Liquor Commission and Exel, Inc.*, the second place bidder, XTL, also challenged the contract award and sought



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an injunction against the Commission and the successful bidder. The trial court denied XTL's request for preliminary injunction and trial is scheduled for 2014.

### Hospital Litigation

In this biennium, Civil had substantial litigation involving hospitals. The litigation included a federal challenge to the New Hampshire's Medicaid rates and state services, a state constitutional challenge to the Medicaid Enhancement Tax (MET) and health care litigation regarding hepatitis C.

In *Exeter Hospital v. Dr. Sharon Alroy-Preis, et al.*, Exeter Hospital filed a declaratory judgment action against the State epidemiologist, the director of public health services and the Department of Health and Human Services. This case arises out of the investigation of the hepatitis C outbreak at Exeter Hospital, which was conducted by the division of public health service (DPHS). During the course of the investigation, Exeter Hospital notified DPHS that it would no longer allow review of its patients' medical records absent a detailed explanation of the reason for the request, which the hospital claimed was required by HIPAA. The Hospital filed a court action seeking a court order requiring that detailed explanation. Civil attorneys filed an objection, defending DPHS's authority. The court denied Exeter's request, found that DPHS had conducted a professional and lawful investigation, and affirmed that DPHS had the authority to require

healthcare providers to produce information including access to medical records.

In *Dartmouth-Hitchcock Clinic, et al. v. Nicholas Toumpas*—a highly complex case both procedurally and in substance—ten hospitals claimed that the State's reduction of Medicaid reimbursement rates and Disproportionate Share (DSH) payments violated federal laws requiring notice and adequate access to health care. The federal court denied the State's motion to dismiss without prejudice, and ordered that the United States Secretary of Health and Human Services answer specific questions related to rate reductions. Concurrently with this litigation, Civil attorneys, working in close cooperation with DHHS staff, were negotiating with the Center for Medicare and Medicaid Services (CMS), the federal entity that regulates Medicaid, for approval of several state plan amendments (SPAs) incorporating the disputed reductions. CMS approved the SPAs, which effectively negated the hospitals' claims. Further litigation on a related issue is expected.

### Class Action Lawsuits

During the biennium, Civil attorneys were involved in a number of complex class action and multiple party lawsuits in federal and state courts and continued their involvement in several class action matters that remained pending from the prior biennium. Examples of those class action matters follow.

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In *Woods, et al. v. Commissioner of NH Department of Corrections*, four inmates incarcerated at the New Hampshire State Prison for Women filed a lawsuit claiming constitutional and statutory violations related to the facilities, conditions of confinement, programs, and services. The Petition sought to bring a class action lawsuit on behalf of all female inmates, to which the Department of Corrections objected. After conferring, the parties filed a joint Stipulation to Stay Action in light of the fact that the Governor's capital budget request for 2014-2015 contained a specific line item funding construction of a new state prison for women and the parties' belief that the passage of a capital budget containing such funding would address many of the issues raised by this litigation.

In *Dube v. Hassan (formerly, Ellsworth, Barry, et al. v. N.N. Governor, et al.)* six State residents who have received mental health services from either New Hampshire Hospital or Glencliff Home filed a class action lawsuit alleging that the State failed to comply with the Americans with Disabilities Act by not providing services for individuals with mental illness that allow them to live in the most integrated community-based settings appropriate for their needs. The US Department of Justice joined the lawsuit against the State. Because of the limited staff resources and the plaintiffs' voluminous documentary requests, it was necessary to hire outside counsel to assist Civil's attorneys in defending the litigation. After the end of the biennium, the parties reached a settlement on all issues.

Civil also continued to monitor agency compliance with consent decrees that had been entered to resolve class action matters in the past, such as *Cassandra Hawkins v. Department of Health and Human Services* (dental care for children) and *Thomas Holliday v. Department of Corrections* (inmate mental health and medication delivery). These matters require substantial attorney involvement to meet the reporting requirements under the consent decrees and to attend compliance meetings with counsel for the represented class. For example, as the time period covered in the consent decree in the *Hawkins* case was nearing conclusion, the plaintiffs filed a pleading in federal court claiming that the State was not in compliance with the decree, therefore entitling them to a multiple-year extension of the consent decree. The court ruled in the State's favor and terminated the consent decree. The plaintiffs appealed to the First Circuit Court of Appeals, which affirmed the lower court's order.

**Tax Litigation**

Civil regularly defends against challenges to the constitutionality of tax statutes and lawsuits disputing the Department of Revenue Administration's (DRA) administration of the tax statutes. Civil defends DRA in litigation brought by taxpayers pertaining to various taxes including, for example, the interest and dividends tax. Civil has also handled cases involving compensation deductions.

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In *Bill Duncan, et al. v. State of New Hampshire*, the ACLU, on behalf of eight individuals, brought a Petition for Preliminary Injunction and Declaratory Injunction challenging the constitutionality of RSA 77-G, which provides a tax credit to businesses that make a donation to a scholarship organization. The scholarships are provided to students to attend nonpublic schools, including homeschool programs. The trial court declared the law unconstitutional to the extent that scholarships would be used at religious schools, but upheld the law with respect to the award of scholarships to non-religious institutions. The parties filed cross-appeals and the matter was pending before the New Hampshire Supreme Court at the end of the biennium.

During the biennium, Catholic Medical Center, Exeter Hospital and St. Joseph's Hospital each filed a lawsuit challenging the constitutionality of RSA 84-A, the Medicaid Enhancement Tax ("MET"). The hospitals claim the MET is unconstitutional under both state and federal law and each seeks full reimbursement of the tax it paid in 2011. Northeast Rehabilitation Hospital filed a similar lawsuit seeking reimbursement for the tax paid in 2011. In both cases, the parties have filed cross-motions for summary judgment and will have oral argument before the trial courts in 2014. In addition to their involvement in constitutional litigation regarding the MET, Civil attorneys engaged in months of negotiations with a group of hospitals

regarding the hospitals' requests for refunds of tax payments in prior years. The attorneys were able to resolve the claims through settlement agreements.

### Right-to-Know Litigation

Compliance with the Right-to-Know Law, RSA 91-A, is an on-going responsibility for state agencies, boards, councils, and commissions. The Attorney General's Office has prepared a Right-to-Know Memorandum that is available on its website, which provides general guidance on the requirements of the law. The attorneys in Civil regularly provide advice and guidance to such entities on how to respond to requests for information under RSA 91-A. Such requests, and the responses thereto, often generate litigation, which Civil defends. Some examples of that type of litigation follow.

In *Premium Research Services v. NH Dept. of Labor*, Civil defended the Department of Labor's decision not to disclose documents relating to disbursements from the second injury fund. The New Hampshire Supreme Court ultimately ruled that such documents are exempt from disclosure under the Right-to-Know law.

In *Granite Commercial Real Estate, LLC v. NH Dept of Transportation. et al.*, Granite Commercial sought the release of information concerning the bidding process for the Hooksett Service Area Development Project. Granite

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Commercial was an unsuccessful bidder on the project. The State agreed to the disclosure of many documents, but contended that other documents were confidential under RSA 91-A. After much litigation, the court adopted the State's position with respect to certain types of documents, but ordered the disclosure of others.

In *Law Warehouses, Inc. v. N.H. Liquor Commission*, the petitioner filed a petition under the Right-to-Know law seeking documents related to the Liquor Commission's award of a 20-year contract for liquor warehousing services. The trial court denied Law Warehouse's petition and the matter is on appeal at the New Hampshire Supreme Court.

In *New Hampshire Right to Life (NHRTL) v. New Hampshire State Board of Pharmacy*, the NHRTL claimed that the Board violated the Right-to-Know Law by discussing Planned Parenthood's license application in a non-public hearing, and by improperly redacting the names of Planned Parenthood's employees from documents released by the Board. Civil argued that all statutory requirements of RSA 91-A were met and no additional documentation should be produced. The trial court agreed and denied the petition.

In a matter regarding White Mountain Communication Corp., Civil assisted the Department of Resources & Economic Development (DRED) in responding to a Right-to-Know request for all communications from DRED related to

the NHDAS Mountain Top Communication Sites Upgrade Project, which is presently the subject of ongoing litigation. The Civil attorneys were responsible for reviewing and preparing approximately 23,000 pages of documents for release. That process took numerous attorneys several months to complete.

**Insurance Litigation***Home Insurance Liquidation*

One half-time Civil attorney position is devoted entirely to the matter of *In re: Liquidation of The Home Insurance Company*, a multi-billion dollar insurance liquidation proceeding commenced in state superior court in 2003. The Home Insurance Company specialized in complex liability insurance for large, international corporations. By statute, the Commissioner of the Department of Insurance acts as the Liquidator and is charged with marshalling assets, processing claims and administering the estate. With estimated assets of \$1.9 billion, gross undiscounted liabilities of \$4.1 billion and over 21,000 proofs of claim, many of which deal with several thousand claimants and involve asbestos, environmental and mass tort liabilities, The *Home* case is one of the largest and most complex insurance liquidations ever filed. In addition to the ongoing litigation of disputed claims in the superior court, the Liquidator has pursued or defended cases in the New Hampshire Supreme Court, the United

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States District Court, the First Circuit Court of Appeals, state and federal courts in various other states, and the High Court of Justice in England. Over the course of the liquidation, the New Hampshire Supreme Court had decided eleven appeals on various issues. One appeal is pending.

In 2011, the US Department of Labor sued the Liquidator in federal district court seeking a declaration that the Longshore and Harbor Workers Compensation Act preempts the New Hampshire insurer insolvency statute and that its \$2.8 million claim is entitled to absolute priority above all other creditors. The court issued a significant ruling holding that Congress did not intend for federal law to preempt the priorities established by the state statute. The Department of Labor chose not to pursue an appeal.

By the end of 2013, the Liquidator estimates that he will have determined approximately \$1.8 billion of claims, the single largest of which the Liquidator compromised after 3 years of extensive research and negotiation for \$242.5 million. Despite steady progress in resolving claims and collecting assets, the administration of the estate is likely to take at least another 10 years.

### JUA Litigation

A substantial litigated case involving the New Hampshire Medical Malpractice Joint Underwriting Association (JUA) resolved during the biennium. In June

2009, legislation was passed that required the JUA to transfer \$110 million of “excess surplus” to the State general fund. However, that law was later held to be unconstitutional. Three JUA policyholders then brought a class action suit against the JUA and its Board of Directors, seeking an accounting, a distribution of the JUA excess surplus, and damages. Civil intervened in the lawsuit on behalf of the Insurance Commissioner, and hired outside counsel to defend the JUA and its Board of Directors. In June of 2011, legislation was passed declaring that the excess surplus of the JUA “belong[s] to the policyholders” and directing the JUA to turn over to the court no less than \$110 million of excess surplus (minus a reserve of \$25 million for potential federal taxes) for distribution to policyholders. The court ordered the distributions in October 2012, funds were transferred to the court in November of 2012 and distributions were made to policyholders of the initial \$85 million in February of 2012. In June 2013, the JUA resolved outstanding tax issues with the IRS and the remaining \$25 million was distributed to policyholders thereafter. The litigation is now concluded.

### Inmate Litigation

The Department of Corrections accounts for a significant portion of both Civil’s client counseling and litigation time. In addition to filing lawsuits in federal and state courts, inmates regularly file petitions for writs of habeas corpus

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claiming that their incarceration is unlawful because of the conditions of confinement or a trial or sentencing related error. Ninety-nine such petitions were filed by inmates during the biennium. The State prevailed in the overwhelming majority of these cases.

Much more lengthy and time-consuming are the civil rights actions that inmates file in state court and increasingly in federal court. For example, during the biennium, lawsuits filed by inmates included challenges to the prison's health care program, claims of violations of First Amendment rights (freedom of religion), claims of failure to protect, and failure to provide proper medical care. Some cases are resolved by the courts based on the parties' legal pleadings. Other cases are decided by a jury after trial.

In *Bader v. Wrenn*, an inmate challenged his transfer from the prison in Concord to the prison in Berlin, arguing that the transfer imposed a substantial burden on the exercise of his religion in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA) because there are fewer opportunities for Jewish religious worship at the Berlin facility. The First Circuit Court of Appeals upheld the lower court's denial of relief, and held that RLUIPA does not constrain prison transfers based on disadvantages at the transferee prison that are not themselves of the government's creation.

In *Darren Starr v. Greg Moore*, an inmate at the Berlin facility alleged a violation of his 8th Amendment right to safety in prison. Mr. Starr claimed that he was assaulted by other inmates on numerous occasions due to a comment that Mr. Moore, a chef at the prison, made about the fact that weekend brunches at the prison had been canceled due to a lawsuit Mr. Starr had brought. After a three day trial, the jury found in favor of Mr. Starr but awarded only one dollar in damages.

In *Daniel Boothby v. NH Department of Corrections; Jeffrey Bettez; Eric Jorgenson; William Duffy; Lee Houston; and John O'Brien*, the inmate brought an 8th Amendment claim for cruel and unusual punishment, along with claims of battery against the named correctional officers. The case arose from a series of events at the men's prison in Concord, during which the plaintiff alleged that officers punched, hit and kicked him without provocation and in retaliation for his altercation with another officer. After a trial the jury rendered a verdict in favor of the defendants on all counts.

### Tort Litigation

Civil defends any state agency, employee, or official who is sued in negligence or a civil rights suit, unless the Attorney General determines that the official's or employee's conduct was either outside the scope of his or her duties, or was wanton or reckless. This

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type of litigation can range from a simple negligence claim arising from a slip and fall accident to a claim of wrongful death stemming from a discharge from the New Hampshire Hospital.

### Employment Litigation

Civil defends the State in actions alleging discrimination in employment as well as wrongful termination claims in both state and federal court. The last biennium saw an increase in the filing of employment related matters. Although there had been a trend towards filing discrimination-related matters in state court in the recent past, that trend now appears to be shifting back to federal court. Employment cases often encompass both state and federal violations and range in issues such as first amendment retaliation, racial discrimination, national origin discrimination, sexual harassment, violations of the Americans with Disabilities Act, and equal rights violations.

In *Tilton, et al. v. State of New Hampshire*, the plaintiffs, both Registrars of Probate, brought a claim of constructive discharge based on the passage of legislation that reduced the Registrar of Probate salary to \$100 per year and eliminated many job responsibilities. The trial court ruled in the plaintiffs' favor and held that they were entitled to damages. At a hearing to determine the amount of damages, the State argued that the plaintiffs failed to mitigate damages by not applying for the

Clerk, Deputy Clerk, or Court III positions that were available with the newly organized Circuit Court. The trial court rejected that argument, finding that the open positions were substantially different than the Registrar position they held under RSA 548:5. However, the court found that one plaintiff failed to mitigate damages in that she chose to retire and only work part-time.

*Susan Lavin v. BTLA* involved a former employee of the Board of Tax and Land Appeals who sued alleging twelve separate torts. Early in the litigation, the court dismissed all but four claims, leaving two claims for defamation, a claim of intentional interference with contractual rights, and a privacy claim. The State filed a Motion to Dismiss on the grounds of sovereign immunity. The plaintiff objected and, after an evidentiary hearing, the court dismissed the remaining claims finding that the state actors involved reasonably believed their conduct was lawful and they were acting within of the scope of their employment.

Several other wrongful termination cases were successfully settled in the biennium.

### Constitutional Litigation

Many of the lawsuits Civil defended involved allegations of constitutional violations. Those cases fall into two general categories; the first involves allegations that state employees have acted in such a way as to violate the

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constitutional rights of some constituency; the second involves claims that legislation passed by the General Court violates one or more constitutional provisions. In the latter, the petitioners generally seek a court ruling that the State should be enjoined from enforcing the law. The following are examples of constitutional challenges defended by Civil in the last biennium.

In *Cloutier v. State of New Hampshire*, seven retired judges challenged the constitutionality of RSA chapter 100-C, which created a new judicial retirement plan. The case was previously appealed to the New Hampshire Supreme Court, which held that the previous retirement statutes created contractual rights. On remand, the trial court ruled that RSA chapter 100-C substantially impaired those contractual rights, and therefore, was unconstitutional as applied to Petitioners.

In *David P. Eby, et al. v. State of New Hampshire*, the trial court granted summary judgment in part in favor of the State and held that the 10% tax on the gambling winnings of non-professional gamblers as set forth in RSA 77:38—which has since been repealed—was constitutional. The case is presently on appeal at the New Hampshire Supreme Court.

In *3D Business Center, LLC v. Michael Delaney*, the petitioner, which operates an internet café, brought a declaratory judgment and sought a preliminary injunction claiming that certain

amendments to RSA 647:2 were unconstitutional. RSA 647:2 was amended to change the definition of gambling to prohibit unauthorized sweepstakes. The petitioner claimed that the amendments infringed on its free speech by impermissibly criminalizing a method of communication. The petitioner also claimed the statute was ambiguous. The trial court denied the petitioner's request and granted summary judgment in the State's favor. In doing so, the court held that the statute regulates conduct, not speech, and the restriction placed on sweepstakes was rationally related to the state's interest in regulating the general welfare of society.

Civil is defending three pending challenges to legislative changes made to the public employees' retirement system.

In *American Federation of Teachers - New Hampshire, et al. v. State, Retirement System, et al.*, a group of plaintiffs are challenging the changes to the retirement that affect (1) earnable compensation; (2) cost of living adjustment ("COLA") payments; and (3) medical subsidies. The trial court issued an order holding that the law was unconstitutional as applied to those employees who had already vested in the retirement system. The court ruled that the COLA benefit was not contractually protected, and found that aspect of the law to be constitutional. Lastly, the court found that the modification to the special account (removing the funding for medical subsidies) was necessary to serve a substantial public interest, and

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therefore does not violate the constitution. The case was pending with appeal at the end of the biennium.

In *Professional Firefighters, et al. v. State of New Hampshire (Professional Firefighters I)*, the plaintiffs are challenging changes to member and employer contribution rates. The trial court granted summary judgment for the plaintiffs to the extent they are vested in the retirement system (ten years). The Court ruled that vested members have a contractual interest in their contribution rates, and legislative changes cannot substantially impair those rights. An appeal is pending with the Supreme Court.

In *Professional Fire Fighters of New Hampshire, et al. v. State of New Hampshire ("Firefighters II")*, the plaintiffs are challenging various legislative changes to law on retirement benefits, which were included in 2011 House Bill 2. The trial court issued a preliminary order ruling that employees have a contractual interest in their retirement benefit when they become "permanent employees" (approximately 1 year into employment). The case remains pending with the trial court on the question of whether the changes to the law resulted in a "substantial impairment."

**Appellate Litigation**

Pursuant to RSA 7:6, the Attorney General must act as attorney for the State in all civil cases in the New Hampshire

Supreme Court when the State has an interest. During this biennium, Civil opened approximately 107 new appellate matters. Civil, in conjunction with other civil litigation bureaus in the Department of Justice, filed 128 briefs and memoranda of law, including 119 in the New Hampshire Supreme Court and 9 in the United States Court of Appeals for the First Circuit, 3 in other state's appellate courts, and 1 response to a writ of certiorari in the United States Supreme Court. Of these briefs, the overwhelming majority were in defense of state action. The others were appeals initiated by the State or *amicus* briefs in cases in which the State was not a party. Many of the *amicus* briefs involved constitutional challenges to state statutes or rules.

When the New Hampshire Supreme Court instituted the mandatory appeal system in 2004, Civil's appellate caseload increased dramatically in the following biennium. Since that time, through more streamlined procedures and increased focus on appellate litigation, Civil has been able to resolve more appeals through summary procedures, thereby reducing the number of briefs that must be filed.

Abuse and neglect, termination of parental rights, and civil commitment cases accounted for a significant percentage of the New Hampshire Supreme Court appeals handled by Civil. In one such termination of parental rights appeal, *In Re: C.M. & A.M.*, the New Hampshire Supreme Court addressed

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whether the Due Process Clause of the New Hampshire Constitution requires that indigent parents be represented by appointed counsel in State-initiated abuse or neglect proceedings under RSA chapter 169-C. Civil filed a brief on behalf of the State, arguing that due process did not require the appointment of counsel in every such proceeding, although the facts of a particular case might warrant it. The Court issued an opinion adopting the position advocated by the State, with one justice concurring specially and another justice dissenting.

In addition to those appeals in which Civil takes an active role by filing pleadings or participating in oral argument, it reviews and monitors hundreds of appeals in both state and federal courts every year regarding a wide variety of issues and agencies, including child support enforcement cases, cases involving constitutional claims, and all workers compensation cases filed in the New Hampshire Supreme Court.

Civil also reviews and analyzes appeals filed in federal courts of appeals throughout the country as well as the United States Supreme Court, and participates in some *amicus* briefs filed by other states' attorneys general. In February of 2013, the New Hampshire Attorney General, together with the Louisiana Attorney General and 20 other states, filed an *amicus* brief in the United States Supreme Court in support of a New Hampshire consumer in a case entitled *Dan's City Used Cars, Inc. d/b/a*

*Dan's City Auto Body v. Robert Pelkey*. At issue was whether a certain provision of the Federal Aviation Administration Authorization Act of 1994 (FAAAA) preempts state-law negligence and consumer protection claims arising from a towing company's disposal of a vehicle. Mr. Pelkey's car had been towed from his apartment complex during a snowstorm; following an illness and hospitalization, Pelkey eventually returned home and tried to retrieve his car from the towing company. When Dan's City disposed of the car, despite Pelkey's desire to pay the fees and retrieve it, Pelkey sued, claiming that Dan's City's actions were deceptive in violation of the New Hampshire Consumer Protection Act. The court granted summary judgment to Dan's City, finding the claims preempted by the FAAAA. After the New Hampshire Supreme Court reversed that ruling, Dan's City appealed to the United States Supreme Court, which affirmed the judgment of the New Hampshire Supreme Court consistent with the position advocated by the State Attorneys General.

**Client Counseling**

Providing legal advice to state agencies, boards and commissions is a core function of Civil and represents approximately twenty-six percent (26%) of attorney legal practice time for the biennium. Agencies require legal assistance interpreting and implementing the laws that define their obligations. The type of assistance varies depending

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on the nature of the issue. Some questions have broad applicability throughout state government, involve significant legal research and require a written analysis by the assigned attorney, while other questions can be answered by a brief memorandum to the agency. Still other questions can be answered informally and frequently through telephone contact or e-mail. The goal is to be readily accessible to the client agencies, to provide them with the legal tools they need to carry out their missions, and to provide assistance in identifying and managing risk.

Examples of some of the significant client counseling topics in which Civil was involved during the biennium include implementation of the laws regarding Medicaid managed care, responding to federal audit findings, bid procurements for the liquor warehousing contract and prison privatization, agency reorganizations, personnel issues, collective bargaining issues, liability of volunteers, contract review and approval, drafting requests for disaster declarations, assistance with legislation, and real property issues including land conservation.

### Representation of Occupational and Professional Licensing Boards and Other Regulatory Agencies

Civil represents and provides legal advice to occupational and professional licensing boards and other agencies whose statutory duties include adjudicative, prosecutorial and investigative functions. These boards

and commissions are primarily composed of volunteers from the licensed professions and the general public. These entities meet on a regularly scheduled basis ranging from bi-weekly to quarterly. The goal of Civil's work with the occupational, professional licensing boards, and other regulatory boards/commissions is multi-faceted: to provide counsel on best procedural practices in order to help prevent problems from occurring during daily operations; to minimize the potential for appeals by assisting the boards/commissions at all stages of the proceeding; and to ensure each licensee or regulated individual is afforded his or her right to due process while advancing the policy behind the legislation creating the board/commission.

In the event a decision of a board or commission is appealed, Civil will represent the board in court. Should a member get sued, Civil will defend the person in litigation.

Administrative proceedings—which all boards and commissions conduct—are intended to be less formal than judicial proceedings. However, over time, the nature of administrative proceedings has evolved. Parties to contested cases are far more likely to be represented by counsel, to file more sophisticated motions, and generally to take a more litigious stance, all of which results in longer and more complex hearings. This, in turn, has led to increased demand on the part of boards and commissions for legal guidance from Civil.

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Because of the volunteer nature of the state's boards and commissions, there is a high turnover rate for the members, resulting in an on-going need to train new members. To address that need, Civil presents an annual training seminar for board/commission/agency members, staff, and investigators. The 14th and 15th Annual Office of the Attorney General Training Program: The Wynn E. Arnold Administrative Law Workshop, named in honor of former Senior Assistant Attorney General Wynn Arnold, were held on March 30, 2012 and April 19, 2013, respectively. Over 100 people attended each of these full-day seminars. The workshops included presentations by the Chief Justice of the New Hampshire Superior Court and an Associate Justice of the New Hampshire Supreme Court and a segment on ethical standards and financial reporting. Break-out sessions covered topics such as the Right-to-Know law, conducting investigations, the requirements of due process, and how to write an order.

### Contract Review

The review of contracts and leases is an important aspect of providing legal assistance to state agencies. Every contract for personal services totaling more than \$2,500, or for goods and services in an amount greater than \$5,000 must be reviewed and approved by the Attorney General's Office prior to being submitted to the Governor and Executive Council. The documents are reviewed to ensure legal sufficiency with regard to substance, execution and form.

Over the biennium, Civil reviewed approximately 3,050 contracts and leases. Most of these contracts were reviewed and returned to the agencies within a week or less. In addition to reviewing final contract documents, Civil attorneys frequently consult with agency staff regarding contract and bid related questions.

### Election Law

Part I, Article 11 of the New Hampshire Constitution provides, in part, that "[a]ll elections are to be free, and every inhabitant of the State of 18 years of age and upwards shall have an equal right to vote in any election." To safeguard this constitutional provision, the Legislature has designated the Attorney General, pursuant to RSA 7:6-c, to enforce all election laws in New Hampshire. Civil fulfills this responsibility and provides legal counsel to the Secretary of State, who administers elections throughout the State. Civil attorneys defend the State or the Secretary of State in actions before the Ballot Law Commission and the state courts.

### Enforcement Activities

Civil receives and investigates election law complaints regarding state and local elections, town, school and village district meetings, and other alleged election law violations. The types of complaints vary widely and cover a range of issues including but not limited to: (1) the citizen right to petition for warrant articles; (2) election day voter

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registration and absentee ballot registration; (3) political advertising, push-polling and automated pre-recorded political calls associated with state and municipal elections and town meetings; (4) electioneering; (5) preparation of the polling place – accessibility; and (6) counting votes. While many election law complaints can be resolved without conducting an official investigation, during the past biennium, Civil opened 259 election enforcement matters.

### Election Day Activities

There were 718,700 ballots cast during 2012 Presidential General Election. On Election Day, the Attorney General's Office had a team of 38 individuals inspecting the polling places and providing assistance to election officials. This team of inspectors consisted of attorneys, paralegals and investigators. In addition to actively enforcing the State's election laws and ensuring that the new voter ID law was being implemented correctly, the inspectors from the Attorney General's Office answered numerous questions from election officials and helped them deal with lines, wait times and end-of-day procedures at the polling places. Their efforts in the field were coordinated by a team of six attorneys who were responding to emails and answering calls made to the election hotline by voters, candidates, voter advocacy groups and party/candidate attorneys. The hotline was staffed from 6:30 am to 10:30 pm.

### Help America Vote Act

Civil continues to work in close cooperation with the Secretary of State's Office to implement and ensure continuing compliance with The Help America Vote Act of 2002 (HAVA), which requires the State to:

- Provide at least one voting machine in each polling place to enable most voters with disabilities to vote privately and independently;
- Create a new uniform centralized statewide database of registered voters that shall be the source for the official checklist for each town and city;
- Assist towns and cities in ensuring their polling places are accessible for people with disabilities and the elderly;
- Ensure each qualified individual has an equal right to register and vote through statewide uniform election procedures and standards;
- Provide voter and election official education; and
- Maintain a statewide complaint system for the uniform, nondiscriminatory investigation and resolution of complaints.

### Educational Activities

As required by RSA 652:22, Civil attorneys worked closely with the Secretary of State's Office to prepare the 2012-2013 edition of New Hampshire's Election Procedure Manual (EPM) for New Hampshire's local election

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officials. The EPM provides an easy-to-read interpretation of New Hampshire's election laws. It was sent to every town/city clerk, moderator and supervisor of the checklist in the State prior to the November 2012 election.

In addition to its work on the EPM, Civil attorneys routinely conduct or support election law training for local government officials and the public at large. During this biennium, Civil presented election law training to hundreds of local election officials throughout the State. Multiple training sessions were often held in a single day.

The Attorney General, the Secretary of State, the Secretary of State's Office, and the University of New Hampshire maintain an on-line election law training website at <http://nhvotes.sos.nh.gov>. It is an easy to use, interactive tool for learning about voting rights and procedures in New Hampshire. The site includes an on-line course for election officials, which provides instruction on all aspects of the election process. Election officials who successfully complete the course receive a certificate. During this biennium, Civil, in conjunction with the Secretary of State's Office, updated the content of the on-line training courses to reflect changes in the State's election laws. The Voter ID law became effective just months before the 2012 presidential primary. Civil and the Secretary of State's Office worked diligently, in close cooperation, to disseminate information about the changes in the law to election officials and the public at large in a timely manner.

**Election Law Litigation**

In *Sumner v. State of New Hampshire*, the Petitioner sought an order requiring the State to retain all the ballots cast in the Town of Jaffrey during the November 2, 2010, general election and all future elections, and allowing her to review all such ballots. The court dismissed the case because, as the Petitioner conceded, neither the State nor any of its agencies had possession, custody, or control of the Jaffrey ballots. On appeal, the New Hampshire Supreme Court affirmed the trial court's decision.

In *Hannah Rivers, et al. v. The State of New Hampshire*, the trial court granted the petitioner's motion for preliminary injunction regarding the amended registration form required by 2012 Chapter Law 285, which included the following language: "In declaring New Hampshire as my domicile, I am subject to laws of the state of New Hampshire which apply to all residents, including laws requiring a driver to register a motor vehicle and apply for a New Hampshire's driver's license within 60 days of becoming a resident." The court directed the Secretary of State (SOS) to strike that language from the form and to post information on the SOS website regarding driver licenses and car registration, including the language that "[o]ut-of-state students attending school in New Hampshire do not, as a consequence of choosing to vote in New Hampshire, have to obtain a New Hampshire driver's license or register their car in New Hampshire." Trial in this case is scheduled for May 2014.



## Transportation Law Bureau

The Transportation and Construction Bureau (TCB) serves as legal counsel for the Departments of Transportation (DOT) and Safety (DOS) and the Department of Administrative Services, Bureau of Public Works (Public Works). The TCB's role includes trial and appellate advocacy on behalf of the agencies in both state and federal courts, as well as in hearings before a variety of administrative boards. It also provides general legal advice to the agencies on a daily basis on a wide array of matters, including eminent domain, real estate, evictions, contract development, construction issues, personnel matters, law enforcement issues, motor vehicle licensing, the sex offender registry, bid procurement, and public works projects.

The TCB opened 540 new files during the biennium, which represents an increase of 133 files from the previous biennium. The TCB resolved 268 matters during the same period. The TCB performed critical legal roles in major public projects, including the I-93 Expansion Project, the

Hooksett Rest Area Redevelopment, the construction of four mountaintop communications facilities, and the start of construction of the Pembroke Regional Training Institute and Barracks of the New Hampshire Army National Guard. The TCB also provided assistance on a plethora of smaller projects throughout the State. Public Works' projects included a new courthouse and a new liquor store. In addition, severe weather continued to bring new legal challenges for emergency operations, disaster response, and property damage claims.

The TCB's attorneys had jury trials in the state and federal courts. In one, a \$1.5M jury verdict was vacated after the court granted the State a directed verdict. That case is on appeal. In another case, a jury in federal court found in favor of the State in a case in which a plaintiff sued a number of state troopers for excessive force.

### Eminent Domain

Land acquisition is one of the central functions of the TCB. The eminent domain process is an essential tool in completing

*The TCB performed critical legal roles in major public projects, including the I-93 Expansion Project, the Hooksett Rest Area Redevelopment, the construction of four mountaintop communications facilities, and the start of construction of the Pembroke Regional Training Institute and Barracks of the New Hampshire Army National Guard.*

**Transportation Law Bureau**

the public projects necessary to improve the safety and efficiency of the state's infrastructure network. Prior to the condemnation of a piece of property, the TCB advises the DOT on land title issues, document preparation, and legal issues affecting the proper valuation for the acquisition of property. After eminent domain proceedings are initiated, the TCB represents the State in negotiating a fair and equitable payment for the property and, in the event negotiations are unsuccessful, represents the State during litigation. During the biennium, 66 new eminent domain cases were opened (an increase of 24 from the prior biennium), and 33 were resolved.

The eminent domain cases vary in terms of complexity and the amount of just compensation involved. The amount of compensation in controversy can range from less than \$1,000 to millions, depending on the particular case. The types of issues that may affect just compensation vary widely and include such things as the loss of parking spaces, the impact to an existing sign of a business, or the landowner's alleged development plans. In *State v. 107 Indian Rock Road, LLC, et al.*, the State acquired approximately 32 acres at Exit 3 between the barrels of I-93. The parties' estimates of the value of the acquired land differed by more than \$27 million. The landowner contends that the land, in conjunction with 30 adjacent acres still in his possession, could support a 600,000 square foot major commercial retail development. The State contends that a retail center that

large would not be built, for a variety of reasons. As of the end of the biennium, the case was awaiting trial.

**Personal Injury And Property Damage Claims**

The TCB regularly defends the DOT against claims in tort, including wrongful death, personal injury, and property damage allegedly caused by the negligent design, construction, or maintenance of the state's transportation system. Over the biennium, the TCB opened 243 DOT tort claims, a significant increase over the previous biennium's 165. A large number of these were "paint claims" filed with the Board of Claims, which are claims alleging that wet paint got on a driver's vehicle during a road striping operation when the lines are being painted. Other cases that are often litigated before the Board of Claims involve claims of property damage or personal injury resulting from potholes in the road or from a maintenance operation on or near the road.

The TCB also defends the DOT in tort cases before the superior court. For example, in *Lingard v. DOT*, the TCB is defending against a claim that the DOT was negligent in its duty regarding signage at the intersection of Route 11 and Spring Street in Farmington, resulting in a motorcycle accident which left one plaintiff with severe and permanent paralysis; and caused the other plaintiff to suffer loss of consortium. The case remained pending as of the end of the biennium.

**Transportation Law Bureau**

In *Liamos v. DOT, et al.*, the plaintiff claimed that the DOT negligently maintained winter conditions in the parking lot, causing the plaintiff to fall and suffer a leg fracture, which required surgery. The case was ultimately settled for \$1,500.

The case of *Michie Corp. v. Victor Virgin Construction Corp. v. New Hampshire Dept. of Transportation*, arose from a 2008 DOT construction project in Hollis, which involved the reconstruction of a failing stone box culvert. After being sued by its consultant, the general contractor, Victor Virgin Construction Corp., sued DOT for breach of contract and misrepresentation, claiming that the State provided misleading plans to bidders that resulted in additional costs of \$700,000 to complete the project. A jury entered an award in excess of \$1.5 million against the State, but the State was successful in reducing the verdict to \$779,078. As of the end of the biennium, the case was pending on appeal before the New Hampshire Supreme Court.

During the biennium, there were a number of tort cases filed against the DOT, in which the DOT was ultimately defended and indemnified by a construction company's insurance company. In such cases, the TCB attorney will typically handle the case at the outset, and later oversee the defense by another lawyer hired by the insurance company. For example, in *Michelle L. Avery v. State of New Hampshire, et al.*, a property owner brought a lawsuit

against the DOT and a construction company claiming that her home flooded as a result of construction done on a roadway project in front of her house. The construction company's insurer took over the defense of that case, with TCB oversight. At the end of the biennium, that case remained pending.

An accident that occurred in July of 2011 on I-95 resulted in two related lawsuits being brought against the DOT, for which the DOT was defended and indemnified by an insurance company. *Estate of Doris J. Gardner v. New Hampshire Department of Transportation, et al.* and *Alden Milton, et al. v. New Hampshire Department of Transportation, et al.*, were filed after two vehicles crossed the median of the highway and struck a third vehicle traveling in the opposite direction, severely injuring two occupants of the third vehicle and fatally injuring a third. The DOT had contracted with a private paving company, Brox Industries, Inc., to perform resurfacing work in the area of the accident. The plaintiffs alleged that the paving company and DOT were negligent, and that the accident was caused, at least in part, by the negligent failure to maintain safe roadway conditions during the resurfacing project. These cases were still pending at the end of the biennium.

In a somewhat unusual case, the TCB represented the State in a lawsuit, along with the State of Maine, against a German ship owner, whose 469 foot long, 72 foot wide tanker ran into the

**Transportation Law Bureau**

Sarah Mildred Long Bridge. The bridge crosses the Piscataqua River from Portsmouth to Maine. The State of New Hampshire and the State of Maine brought suit in federal court alleging that the vessel caused more than \$1 million in damages. That case was still pending at the end of the biennium.

A total of \$25,221.41 was awarded against the DOT and settlements totaling \$46,881.98 were paid out from state funds during the two-year period. Although there was a significant increase in the number of total claims, the payment of \$46,881.98 to claimants was a substantial decrease from the total of \$335,587.01 paid during the previous biennium.

The TCB also represents the DOS against claims in tort, which generally stem from its law enforcement responsibilities. Over the biennium, the TCB opened 11 such cases relating to the DOS. They involved claims of civil rights violations, malicious prosecution, negligence, and excessive use of force. No money was paid during the biennium as a result of verdicts against the DOS. Settlements totaling \$137,770.40 were paid out from state funds during the two-year period; which is \$55,032.51 less than the previous biennium. Examples of the cases handled during the biennium follow.

In *Krill v. New Hampshire Department of Safety, et al.*, the plaintiff alleged that a State Trooper used excessive force in entering his home and handcuffing him,

leading him to suffer a significant wrist injury that permanently altered his earning capacity. The Trooper had responded to Krill's house to investigate an alarm and mistakenly identified the plaintiff as a potential burglar. The matter was settled for a payment of \$110,000 by the State.

In *Conrad v. State of NH Dept. of Safety, et al.*, the plaintiff, a former New Hampshire State Trooper, filed suit against the DOS and several of its employees alleging, among other claims, false imprisonment and emotional, reputational and economic damages. The claims stemmed from events at State Police Headquarters which resulted in Conrad being restrained. The jury returned a plaintiff's verdict in the amount of \$1.5 million. However, after trial, the trial court ruled that the defendants' actions were subject to immunity, thus overturning the jury verdict. The plaintiff has appealed to the New Hampshire Supreme Court, and the State filed a cross-appeal. As of the end of the biennium, this case was still pending at the New Hampshire Supreme Court.

In *Kate Andrews, as Administratrix on behalf of the Estate of Colby Jordan v. NH Department of Safety*, a trooper and the DOS were sued (among other defendants) as a result of the suicide of an 18 year old. The plaintiff alleged that the DOS was liable either because the trooper took the young man into custody and did so negligently (by failing to prevent the suicide), or that the trooper

**Transportation Law Bureau**

failed to take the young man into custody and should have. The State moved for summary judgment on the basis of immunity and asserted that the law on suicide precluded any State defendant from liability. As of the end of the biennium, that case remained pending.

The TCB also handles all appeals to the superior court from the decision of a DOS hearings officer. For example, in *Marco Petroleum Industries, Inc. v. Commissioner, New Hampshire Department of Safety*, the TCB defended the decision of a DOS hearings officer that the plaintiff owed \$155,070.71 in unpaid road toll taxes plus applicable interest. The case remained pending at the end of the biennium.

**Public Works**

The TCB was involved in two very time-consuming and significant matters involving Public Works projects during the biennium. The first involved the construction of the Pembroke Regional Training Institute & Barracks of the N.H. Army National Guard. During the early stages of construction, the contractor was terminated, leading to complex negotiations aimed at resolving pending issues and rebidding the project. That matter remained pending at the end of the biennium.

The second matter involved the construction of four mountaintop communications facilities. Those projects resulted in legal disputes, some of which still remained pending at the end of the biennium.

During the biennium, weather related events resulted in numerous claims for property damage and personal injury. Winter weather also resulted in lawsuits involving plaintiffs injured in highway accidents or otherwise suffering injury on the highway system. A case brought by a plaintiff injured at an intersection during a power outage caused by a major ice storm was dismissed and upheld on appeal before the New Hampshire Supreme Court.

**Contract Law And Construction Issues**

The TCB reviewed 941 state contracts and leases during the biennium, an increase of 153 from the previous two-year period. Many of these contracts were unique or highly complex in nature.

Privacy issues relating to E-ZPass records resulting from requests from a variety of sources remain a recurring issue.

Increased emphasis on rail and transit options led to new and creative public/private partnerships. Early and frequent TCB participation in these arrangements has become increasingly important in avoiding legal pitfalls while still moving the projects forward.

The federal funding from the economic stimulus program, ARRA, created complex contract management and oversight issues that continued into this biennium. The TCB continued to actively participate in the statewide effort to streamline and expedite the construction project contract approval process.

**Transportation Law Bureau****Human Resources**

The TCB provides risk management advice regarding disciplinary actions, including warnings, suspensions, and terminations; and it handles matters involving not only potential criminal activity but administrative actions as well.

The TCB conducts disciplinary reviews for the DOT and defends DOT's matters before the Personnel Appeals Board. The TCB filed a Petition for Writ of Certiorari with the New Hampshire Supreme Court involving an issue arising from the Personnel Appeals Board. That matter remains pending.



## Administration

### Program Administration

The New Hampshire Department of Justice administers a variety of programs which provide service to all areas of New Hampshire's criminal justice system. These programs are supported by federal, state and dedicated funds and are administered by the following units.

#### Witness Payment Unit

Since 1992, this agency has been responsible for paying the witness fees to all law enforcement and civilian witnesses who are subpoenaed by the State to testify in criminal cases. The Business Office is responsible for the processing of these payments. In State Fiscal Years (SFY) 2012 and 2013, the Business Office processed witness payments totaling \$1,036,621 for approximately 41,000 witnesses.

#### Victims' Compensation Unit

The Victims' Compensation Program was established in 1990 to financially assist innocent victims of violent crime by providing compensation to them and their

immediate family members for losses incurred due to personal injury or death of the victim. The economic losses must be directly related to an eligible misdemeanor or felony violent crime.

The Office of the Attorney General was designated to administer the program, which is funded from monies collected through a penalty assessment on criminal fines and funding provided under the federal Victims of Crime Act. The fund is also replenished through restitution paid by the offenders and enforcement of the statutory lien against any monies paid out if any other financial resources become available to the victims. The Victims' Compensation Program is the payer of last resort after all free care, health insurance, workers compensation, unemployment compensation, proceeds from settlements or other available resources have been exhausted.

The Victims' Assistance Commission, a five-member board, meets monthly to review applications for compensation under the program and award claims. Commission members are nominated by the Attorney

*Administration includes the Witness Payment Unit which is responsible for paying witness fees to all law enforcement and civilian witnesses who are subpoenaed by the State to testify in criminal cases; the Victims' Compensation Unit which financially assists innocent victims of violent crime; and the Grants Management Unit which administers approximately 25 different grant programs..*

**Administration**

General and confirmed by Governor and Council. The Commissioners all serve as volunteers. Current members include a victim, a sexual assault nurse examiner, a licensed mental health professional, a social worker and an attorney. Their work, which is supported by 3 staff members from the Attorney General's Office, benefits the lives of crime victims in significant ways.

The Victims' Compensation Unit paid a total of \$1,213,373 in compensation to crime victims for SFY 2012/2013. This amount represents awards to 1,197 claimants.

A total of \$110,405 in awards was paid for the relocation of 47 families in life-threatening, domestic violence situations. This benefit allows a victim to have his or her security deposit, rent for the first two months, start up utilities expenses and moving and storage costs paid when forced to flee from the offender due to direct credible threats to the victim's safety. In addition to relocation awards paid during the biennium, compensation funds benefitted many other victims in the form of reimbursement for lost wages, payments for medical, dental, mental health counseling services and funeral expenses.

Economic support in the form of reimbursement of lost wages for non-homicide victims and for loss of support for dependents of homicide victims was

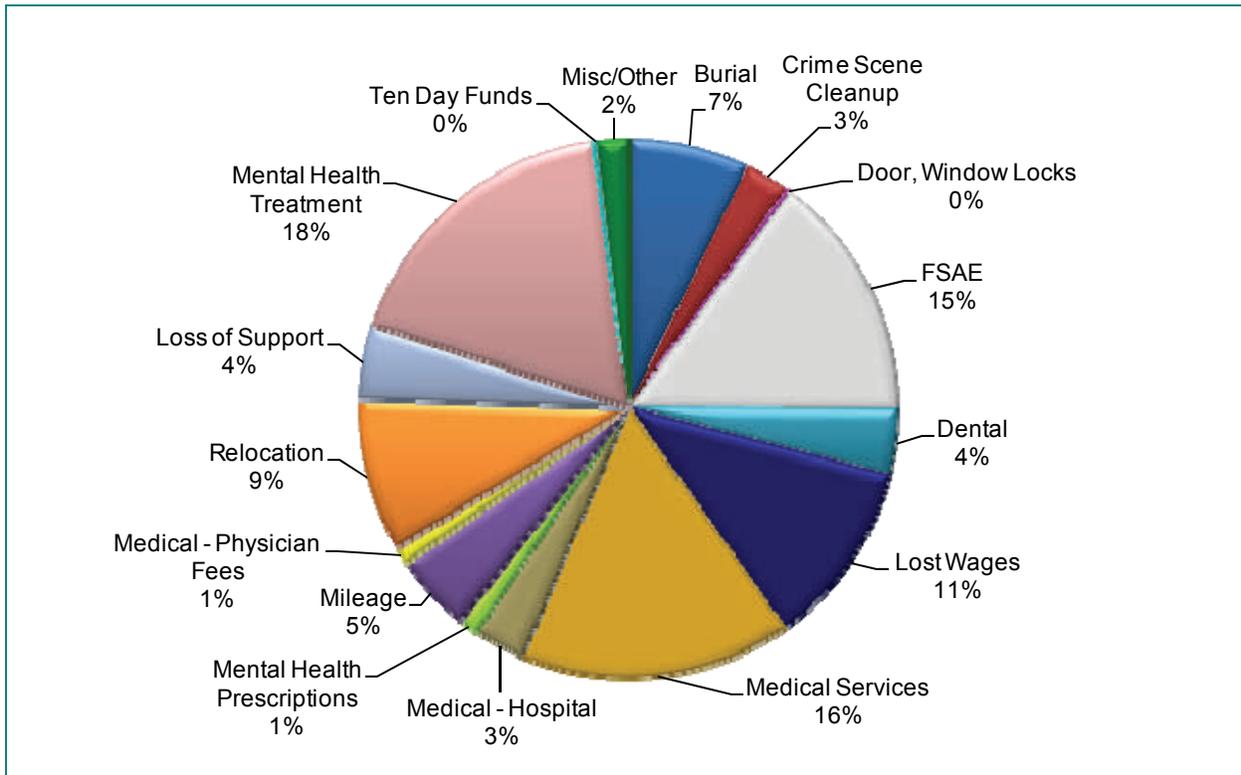
a large portion of the Victims' Compensation Unit's payments. A total of \$135,742 was paid to victims who were unable to work due to the nature of their crime-related injuries, and to survivors of homicide victims who depended on economic support from the deceased victim.

Cyber crime has continued to impact underage victims of sexual assault who are lured via the internet into contact with their offenders. Financial awards have been made to families whose needs included mental health counseling, and reimbursement of the parents' lost wages for time missed due to court appearances, attending counseling and bringing their child to therapy appointments. The Attorney General's Office continued its efforts to combat such victimization through statewide educational outreach to parents, children, and the law enforcement community on how to better monitor predatory practices on the Internet.

The Victims' Compensation Unit and Commission continue to review their practices and procedures with the goal of reassessing and implementing program efficiencies to assure timely and quality services to victims of crime. In addition, during the upcoming biennium, the Victims' Compensation Unit will be updating the administrative rules to reflect program changes that have been made over the last two years.

**Administration**

**Victims Compensation By Service Types  
Fiscal Years 2012-2013**



<b>CATEGORY</b>	<b>SFY 2012</b>	<b>SFY 2013</b>	<b>TOTAL</b>
Burial	\$66,907	\$21,250	\$88,157
Crime Scene Cleanup	\$2,250	\$30,032	\$32,282
Door, Window Locks	\$3,411	\$263	\$3,674
FSAE	\$79,015	\$101,454	\$180,469
Dental	\$26,300	\$21,287	\$47,587
Lost Wages	\$62,230	\$73,512	\$135,742
Medical Services	\$107,040	\$89,259	\$196,299
Medical - Hospital	\$17,419	\$20,295	\$37,714
Mental Health Prescriptions	\$9,192	\$5,426	\$14,618
Mileage	\$27,480	\$29,047	\$56,527
Medical - Physician Fees	\$10,584	\$2,198	\$12,782
Relocation	\$54,523	\$55,882	\$110,405
Loss of Support	\$0	\$54,590	\$54,590
Mental Health Therapy	\$90,385	\$126,365	\$216,750
Ten Day Funds	\$2,327	\$777	\$3,104
Misc./Other	\$5,631	\$17,042	\$22,673
<b>Totals</b>	<b>\$564,694</b>	<b>\$648,679</b>	<b>\$1,213,373</b>

**Administration**

**Grants Management Unit**

The Grants Management Unit (the Grants Unit) administers approximately 25 different grant programs, which are funded by federal funds allocated for criminal justice purposes. The Grants Unit began in 1985 with the Crime Control Act of 1984 and has a staff of four grant administrators.

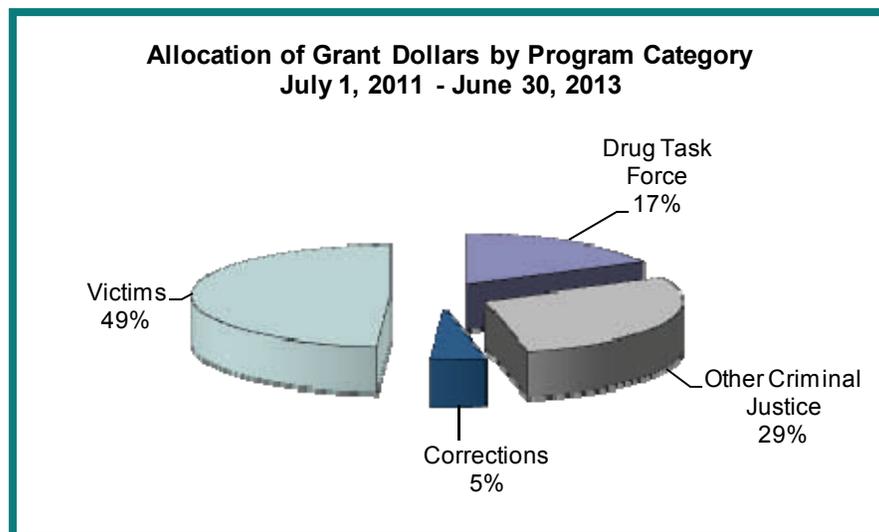
Over the biennium, the Grants Unit brought in over \$20 million in revenue from open, previously awarded, grants, in addition to approximately \$10 million in new grant awards. The grants have four main purpose areas focusing on Crime Prevention and Victim Services, the Multi-Jurisdictional Drug Task Force, Other Criminal Justice Areas, and Corrections. The graph below shows the allocation of grant dollars by purpose areas.

There were over 200 sub grants awarded during the biennium, with awards going

to cities/towns, nonprofit agencies, county and state agencies. The majority were to either local governments or non-profit organizations. For most of the recipients, this funding is the only means of delivering the services in question. Absent this funding, many of the non-profit organizations funded through this office would either be faced with the prospect of closing their doors or significantly scaling back their services.

Many of the local government units that provide enhanced services, such as specific domestic violence prosecution, drug enforcement or underage drinking enforcement, would also be unable to sustain these efforts without this funding.

Because of these grant dollars, New Hampshire’s citizens receive many services that would not otherwise be available. Examples of some of the programs benefiting from grants include the following.



## Administration

### *Programs for Victim Services*

- Support for Child Advocacy Centers, which serve child victims of sexual assault and abuse. These centers are designed to minimize the trauma experienced by child victims through the use of a multidisciplinary team approach to the investigation of child abuse cases. Sexual Assault Nurse Examiners (SANE) are located in numerous hospitals to ensure the appropriate collection of evidence and provide victim support/referrals.
- Funding to the New Hampshire Coalition Against Domestic and Sexual Violence and other victim services organizations in New Hampshire responsible for providing services to victims of sexual assault, domestic violence and stalking, and for the operation of crisis centers and shelters.
- Support for the AmeriCorps Victim Assistance Program.
- Training for law enforcement and prosecutors in the unique aspects of Elder Abuse cases.
- Supervised Visitation Centers across the State. Studies have shown that there is an increased risk of violence to victims of domestic violence and their children after separation from an abusive situation. These centers can provide a safe environment for supervised visitation and safe exchange of children between parents with a history of family violence and efforts are underway to make them even safer.
- Additional domestic violence and sexual assault (DV/SA) Culturally Specific Advocates working in immigrant/ethnic populated communities.
- Victim/Witness Advocate positions in County Attorney offices and police departments.
- Funding for prosecutors devoted to DV/SA prosecutions located in the counties of Belknap, Cheshire, Coos, Grafton, Hillsborough, Rockingham and Strafford.
- Support for police department domestic violence units in the communities of Manchester and Nashua and a DV/SA Investigator at the Plymouth State University.
- Emergency legal services for victims seeking protective orders.
- Support to the courts for judicial training and statewide technical improvements.
- Court Appointed Special Advocates (CASA) programs to provide advocates for abused and neglected children in the New Hampshire court system.
- Support to the Department of Corrections for victim-offender mediation programs, and victim notification services.
- Mental health services for crime victims in the North Country.
- Support for several Youth Safe Havens programs, designed to provide a safe and supportive environment for youth in high crime areas.

### *Drug Task Force Programs*

Funding for the Attorney General's Drug Task Force, a multi-jurisdictional drug task force of approximately 20 individuals from state, county and local law enforcement agencies across the state tasked with the investigation of street level drug crimes.

**Administration***Other Criminal Justice Programs*

- Funding to support the Cold Case Unit in New Hampshire, consisting of a prosecutor, two State Troopers and a local police officer, who are tasked with the investigation of New Hampshire's unsolved homicides.
- Financial support for a trained pharmacist to work with the New Hampshire State Police drug unit to assist with investigations.
- Drug Court Programs designed to provide more specialized assistance to drug involved offenders with the goal of reducing recidivism.
- Ongoing efforts to support J-One — a comprehensive criminal justice information system involving the courts, law enforcement, and corrections.
- Support for youth-at-risk programs throughout New Hampshire designed to help keep troubled youth out of the court system.
- Funding to combat underage drinking through statewide media and enforcement of underage drinking laws by local police departments, county sheriffs, campus police, and the Bureau of Liquor Enforcement.
- Funding for a Traffic Safety Resource Prosecutor to conduct regional trainings and provide technical assistance to law enforcement and prosecutors in the area of impaired driving and alcohol-related motor vehicle crimes.

- Funding to support the efforts of the New Hampshire State Police to make National Incident Based Reporting System (NIBRS) data available to the public via the Internet, and to publish regional crime data in collaboration with Massachusetts and Vermont.
- Funding to support compliance with the requirements of the Help America Vote Act (HAVA), to include the implementation of a statewide database of voters, assistance to voters with disabilities, and training and monitoring local election officials.
- Funding for the New Hampshire State Police Forensic Crime Lab for increased testing and analysis capacity.

*Programs in the Correctional Arena*

- Statewide efforts to provide corrections-related services designed to keep offenders from recidivating and, thereby, increase public safety. The largest of these programs supported Keystone Hall's provision of a wide range treatment service for state prisoners re-entering society. These services included mental health counseling and substance abuse treatment to assist with successful reentry.
- Substance abuse treatment services provided for male and female offenders at County correctional facilities and at the Sununu Youth Services Center.

**Administration**

More details as to the level of funding and grant type are as follows:

<b>Grants Available By Program Category</b>	<b>FY12</b>	<b>FY13</b>	<b>Total</b>
<i>Criminal Justice</i>			
Byrne Justice Assistance Grant Program Drug Task Force	\$1,928,410	\$1,361,576	
Byrne Justice Assistance Grant Program General Criminal Justice Activities	2,245,248	1,209,644	
Bullet Proof Vest Grant	4,291		
Enforcing Underage Drinking Laws	263,641	279,416	
Help America Vote Act	87,415	54,136	
National Criminal History Improvement	298,615		
National Forensic Science Improvement	208,118	207,612	
Project Safe Neighborhoods	20,315	37,312	
Traffic Safety Resource Prosecutor	128,942	133,789	
Statistical Analysis Center	58,084	42,668	
Homeland Security Equipment Program			
Drug Court Program	13,395	91,696	
John R. Justice Grant Program	95,095	96,256	
Other Criminal Justice	184,631	172,396	
<b>Total Criminal Justice:</b>	<b>5,666,207</b>	<b>3,686,501</b>	<b>\$9,352,708</b>
<i>Corrections</i>			
Residential Substance Abuse and Treatment	103,767	100,915	
Statewide Victim Notification (SAVN) Program	52	9,720	
Prisoner Reentry Initiative (Going Home Program)	236,135		
Family Based RSAT	114,511	92,458	
Other Corrections	184,631	172,396	
<b>Total Corrections:</b>	<b>639,095</b>	<b>375,488</b>	<b>\$1,014,584</b>
<i>Victim Services</i>			
Children's Justice Act	31,325	81,198	
Sexual Assault Support Program	152,484	162,734	
Sexual Assault Resource Teams (SART)	32,882	34,491	
Safe Havens Visitation Centers	171,157	185,424	
State Victim Fund – Victim Comp Portion	606,997	436,798	
State Victim Fund Grants to Victim Programs	403,351	394,945	
Victims Compensation – Federal	169,930	245,338	
Victims of Crime Act	2,296,561	2,032,734	
Violence Against Women Act	1,030,166	942,378	
Homicide Victims Program	128,355	75,313	
Elder Abuse Program	51,949	71,764	
Other Victim Services	184,631	172,396	
<b>Total Victim Services:</b>	<b>5,259,787</b>	<b>4,835,514</b>	<b>\$10,095,301</b>
<i>Totals</i>			
<b>Drug Task Force – Byrne</b>	<b>1,928,410</b>	<b>1,361,576</b>	
<b>Other Criminal Justice</b>	<b>3,737,798</b>	<b>2,324,925</b>	
<b>Corrections</b>	<b>639,095</b>	<b>375,488</b>	
<b>Victims</b>	<b>5,259,787</b>	<b>4,835,514</b>	
<b>Total:</b>	<b>\$11,565,090</b>	<b>\$8,897,503</b>	<b>\$20,462,593</b>

**Administration**

<b>Federal Grant Awards Received By Grant Program</b>	<b>FY12</b>	<b>FY13</b>	<b>Total</b>
Byrne Justice Assistance Grant Program (JAG)	\$1,078,295	\$1,027,579	
Paul Coverdell National Forensic Science Improvement	63,517	58,186	
Natl. Criminal History Improvement Program (NCHIP)	129,580		
Children's Justice Act	104,226	103,050	
Victims of Crime Act (VOCA) Assistance Program	1,972,117	2,153,515	
Victims of Crime Act (VOCA) Compensation Program	50,000	238,000	
Traffic Safety Resource Prosecutor (TSRP)	121,757	132,792	
Help America Vote Act (HAVA)	138,000	138,000	
John R. Justice Grant Program (JRJ)	53,189	52,803	
Residential Substance Abuse and Treatment (RSAT)	47,642	58,459	
Violence Against Women Act (VAWA)	1,019,815	990,132	
Sexual Assault Support Program	238,057	243,750	
Sex Offender Registration and Notification Act (SORNA)	64,886	61,690	
Enforcing Underage Drinking Laws (EUDL) Program		59,639	
Statistical Analysis Center (SAC)	50,069	60,000	
<b>Total Biennium Amount:</b>	<b>\$5,131,150</b>	<b>\$5,377,599</b>	<b>\$10,508,749</b>

New Hampshire citizens continued to benefit from funds made available to the State under the American Recovery and Reinvestment Act of 2009 (ARRA). The funds were awarded in 2009 and were still being spent on programs and services during this biennium.

<b>American Recovery and Reinvestment Act of 2009</b>	<b>Amount Received</b>	<b>Total</b>
Byrne Justice Assistance Grant (JAG) Program	\$6,253,755	
Victims of Crime Act (VOCA) Assistance Program	587,000	
Victims of Crime Act (VOCA) Compensation Program	60,301	
Violence Against Women Act (VAWA) Program	\$1,058,641	
<b>Total Stimulus Funding:</b>		<b>\$7,959,697</b>



## Appendices

### Appendix A

#### Reports Required Under RSA 570-A:10, III and 570-B:7 (Authorized Recordings)

During the biennium, the Attorney General did not file any petitions for authorization to intercept telecommunications under RSA 570-A:7, and therefore did not file any petitions for an extension of the orders authorizing intercepts. The Attorney General did not apply for or receive any orders to install and use pen register devices under RSA 570-B:4. Therefore, the Attorney General did not file any petitions for an extension of the orders authorizing pen registers. The Attorney General, or designated Assistant Attorneys General, authorized 396 interceptions pursuant to RSA 570-A:2.

## Appendix

## Appendix B

## Personnel Data

Current Number of Positions Authorized	SFY 12	SFY 13
1. Unclassified	70	70
2. Classified	58	58
3. Temporary	3	3
<b>TOTAL</b>	<b>131</b>	<b>131</b>

## Physical Plant and Property Appraisal

	6/30/12	6/30/13
1. Equipment	\$2,394,662	\$2,351,663
2. Physical Plant	0	0
3. Farm	0	0
4. Highway	0	0
<b>TOTAL</b>	<b>\$2,394,662</b>	<b>\$2,351,663</b>

## Appendix

## Appendix C

## Receipts and Expenditures

	SFY 12	SFY 13
<b>Receipts</b>		
Federal Funds	\$10,350,664	\$8,337,555
Transfers from Other Agencies (restricted)	2,123,796	2,206,739
Health Club Registrations - unrestricted	18,340	18,920
Consumer Land/Condo Registrations - unrestricted	67,870	80,490
Judgments and Recoveries - unrestricted	232,220	9,186
Tobacco Settlement- unrestricted	42,509,837	63,249,297
All Other Sources (other source 005,009)	3,451,332	4,641,542
MTBE Funds (general funds) *	0	9,012,021
<b>Total</b>	<b>\$58,754,059</b>	<b>\$87,555,750</b>
<b>Expenditures</b>		
Permanent Personnel	\$8,161,837	\$7,675,834
Current Expense incl Rent and Trfr General Services	719,025	721,366
Equipment	148,685	54,790
Benefits incl Retirees Benefits	3,225,731	3,274,899
In State Travel	69,626	75,420
Out of State Travel	39,700	37,247
Litigation	709,995	1,975,048
Witness Fees	518,691	487,930
Autopsy Expense plus Asst. Deputy ME's	1,159,968	1,187,528
Office Information Technology (OIT)	381,672	357,816
Grants/Activities	8,330,732	9,947,699
Victims Services	776,927	682,136
Miscellaneous	1,213,636	354,183
<b>Total</b>	<b>\$25,456,225</b>	<b>\$26,831,896</b>
Receipts deposited directly into the General Fund	\$42,828,267	\$72,369,914

\* MtBE Funds only include the transfer to General Funds; received \$81,688,248 MtBE settlement funds.

**Appendix**

**Appendix D**

OPINIONS

July 1, 2011 - June 30, 2013

There were no opinions issued during this biennium.

**Appendix**

**Appendix E**

Expenditures Pursuant to RSA 7:12

SFY 2012

*January 20, 2012 Fiscal Committee Meeting*

RSA 7:12 request for \$360,000 for litigation funding

SFY 2013

*February 1, 2013 Fiscal Committee Meeting*

RSA 7:12 request for \$850,000 for litigation funding

*June 7, 2013 Fiscal Committee Meeting*

RSA 7:12 request for \$500,000 for litigation funding