



## OFFICE OF THE ATTORNEY GENERAL FY2018

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### What We Do: Four Core Functions

- **ENFORCE** laws of the State of Vermont
- **DEFEND** State of Vermont laws, policies, employees
- **PRODUCE** revenues
- **PROTECT** Vermont citizens

## OFFICE OF THE ATTORNEY GENERAL

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### Authority of the Attorney General

#### Title 3 of the Vermont Statutes Annotated

- Section 152      The attorney general may represent the state in all civil and criminal matters as at common law and as allowed by statute. The attorney general shall also have the same authority throughout the state as a state's attorney.
- Section 153      The attorney general shall have the general supervision of criminal prosecutions, shall consult with and advise the state's attorneys in matters relating to the duties of their office, and shall assist them by attending the grand jury in the examination of any cause or in the preparation of indictments and informations when, in his judgment, the interests of the state require it.
- Section 157      The attorney general shall appear for the state in the preparation and trial of all prosecutions for homicide and civil or criminal causes in which the state is a party or is interested when, in his judgment, the interests of the state so require.
- Section 159      The attorney general shall advise the elective and appointive state officers on questions of law relating to their official duties... He shall have general supervision of matters and actions in favor of the state and of those instituted by or against state officers wherein interests of the state are involved and may settle such matters and actions as the interests of the state require.

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### Division Highlights

#### Civil Litigation Division

Defends money claims against the State, State officials and State employees

- 686 lawsuits were filed against the State, State officials and State employees in 2016, including wrongful death, personal injury, civil rights claims; 439 lawsuits have been filed as of August 31, 2016

Defends lawsuits that challenge State laws and policies

- GE Food Labeling Litigation – *GMA* case: Successfully defended Act 120 against constitutional claims made by trade associations; case voluntarily dismissed by Plaintiffs after enactment of federal law
- Hospital Provider Tax Litigation – Defending claims against DVHA by Fletcher Allen and other hospitals for \$39,000,000 in tax refunds
- *DHMC v. Cohen* Medicaid Reimbursement case – Defending Dartmouth Hitchcock lawsuit in New Hampshire federal court challenging Medicaid reimbursement rates for out-of-state hospital on constitutional grounds
- Employment policies – *O’Neill*: Defending federal court case against Department of State’s Attorneys and Sheriffs claiming that policies violate Equal Pay Act and Vermont Fair Employment Practices Act; *Coniff*: Second Circuit affirmed ruling that Vermont overtime policies comply with FLSA; *Silloway*: Vermont Supreme Court affirmed trial court decision that DOC hiring decision did not violate Vermont Equal Pay Act
- Campaign finance – *Vermont Right to Life Committee*: Second Circuit affirmed dismissal of constitutional challenge to Vermont law, U.S. Supreme Court denied petition for review

EB-5 Litigation – Securities and consumer fraud claims.

#### Criminal Division

Prosecutes/investigates felonies, public corruption, other crimes (statewide)

- Vermont Internet Crimes Against Children (VT-ICAC) Task Force Grant: Eleven criminal cases resolved involving child exploitation occurring over

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### Division Highlights

#### **Criminal Division (continued)**

the internet since January 1, 2016. Prosecutions arising from peer-to-peer investigations, undercover investigations and cybertips from the National Center for Missing and Exploited Children. Charges filed throughout Vermont. Lead agency responsible for operations of the VT-ICAC Task Force.

- Homicide/manslaughter prosecutions (*State v. Duby*, *State v. Pelletier*, – Rutland, *State v. Herring* – Washington, *State v. Smith* – Windsor)
- Drug investigations and prosecutions: over 85 matters opened since January 1, 2016
- Handles criminal appeals, post-conviction relief proceedings and other criminal matters (statewide)
- Public corruption and embezzlement
- Police cases: alleged criminal misconduct and use of deadly force reviews (i.e. *State v. Palmer* – Windsor)

Enforces Medicaid Fraud and patient abuse laws

- Arraigned 19 defendants, and convicted 18 defendants, in SFY2016 and SFY2017 to date.
- Recovered approximately \$7.6 million in restitution to the State Medicaid Program and fines or penalties for Medicaid Fraud in SFY2016 and SFY2017 to date.

#### **Environmental Protection Division**

Enforces clean air, clean water, hazardous waste and other environmental laws.

Actions include:

- Agricultural Water Quality enforcement cases in collaboration with, and on behalf of, the Agency of Natural Resources and Agency of Agriculture;
- Action against local water supply system for violations of its public water supply permit;
- Successful Vermont Supreme Court ruling reinstating finding by the Department of Forests, Parks and Recreation against a northeast kingdom logging company – Division attorneys assisted the Solicitor General in the briefing of this case and are handling the matter on remand

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### Division Highlights

#### **Environmental Protection Division (continued)**

- Division has been assisting and coordinating with the Agency of Natural Resources in the Bennington PFOA response, including handling of four separate appeals of the Agency's Standards and Rules on PFOA limits.
- Working with the Public Protection Division, the Environmental Division sued Volkswagen AG and its affiliates to recover civil penalties for deceptive advertising and selling illegally polluting vehicles – Vermont is eligible to receive \$17.8 million as its share of an Environmental Mitigation Fund that was one of the results from the settlement of lawsuits filed against Volkswagen by the Department of Justice, FTC and class action plaintiffs. Division attorneys played a lead role, collaborating with several other states, in the filing of comments on the Environmental Mitigation Fund.
- Division attorney played lead role in the briefing and arguing of motions to compel in multiple federal courts in regard to the GMO Food Labeling Law.
- \$266,750 in awards, penalties and recoveries in SFY2016 and 2017 to date.

#### Vermont Yankee and Nuclear Matters

- The Division continued its role representing the State on post-closure issues relating to the Vermont Yankee nuclear power plant in Vernon, providing legal advice to State agencies as needed.
- The Division challenged Entergy's use of the plant's Nuclear Decommissioning Fund for spent fuel costs at the Nuclear Regulatory Commission (NRC) and last fall obtained an order from the HRC that will result in further environmental review of the exemption that Entergy previously received to use Decommissioning Fund money for other purposes.
- Division attorneys lead a multi-state effort in making a 100-page filing of comments on Decommissioning Rulemaking at NRC.
- The Division expects to play a role representing the State in multiple proceedings relating to the sale of Vermont Yankee.

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### Division Highlights

#### **General Counsel and Administrative Law Division**

- Provides legal counsel to constitutional officers, agencies, departments
- Litigates Labor Board, Human Rights Commission, Liquor Control and Medical Board cases (GCAL handled 229 administrative cases in 2016)
- Negotiates and drafts complex investment and IT contracts; for example, contracts for \$4,000,000,000 in pension investments
- Reviewed 1,205 contracts in SFY2016 for compliance with state law
- Enforces campaign finance and election laws
- Advises state agencies on routine and complex access to records matters
- Successfully defended a highway design case in Vermont Supreme Court
- Defense of pending lawsuits seeking more than \$4,000,000 in property tax reductions for hydroelectric plants on the Connecticut and Deerfield Rivers
- Supervises the statewide Court Diversion programs responsible for more than 5,010 referrals in SFY2016

#### **Human Services Division**

- Provides legal representation to the Agency of Human Services and its Departments in civil and administrative litigation including termination of parental rights trials and appeals, fair hearings in benefits cases, inmate grievances, contract disputes, competency, hospitalization and medication cases; hospital tax appeals
- Reviews Agency and Department contracts and grants
- Advises on legal matters including licensing and rulemaking, legislation, access to records requests and privacy and HIPAA matters
- Division Caseload SFY16:

##### Department for Children and Families - Economic Services Division

Administrative Hearings	1,238
Civil Litigation	5

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### Division Highlights

#### Human Services Division (continued)

Department for Children and Families - Family Services Division	
Termination of Parental Rights (Civil Litigation)	362
Supreme Court Appeals	50
Administrative Appeals before the Human Services Board	106
Department of Corrections	
Litigation	441
Supreme Court Appeals	12
Department of Health	
Contracts Reviewed	424
Public Records Requests	19
Human Services Board Administrative Appeals	12
Internal Commissioner Appeals	88
Department of Mental Health	
Applications for Involuntary Treatment	489
Applications for Continued Treatment	221
Applications for Voluntary Medication	89
Forensic Commitments	110

#### Public Protection Division

- Enforces employment discrimination, hate crime, and civil rights laws
- Three-prong strategy to protect vulnerable communities in Vermont: including affirmative litigation, legislative, and community based efforts:
  - Established Immigration Task Force to create guide for communities on immigration policy
  - Signed on as *amici* in *Washington v. United States* (9<sup>th</sup> Circuit) and *Virginia v. United States*
  - Working constructively with Governor Scott, lawmakers, task forces and partners on legislative proposal to protect religious minorities and others from compulsory registration
- Enforces consumer protection and antitrust laws with financial recoveries to the State of \$4,994,924 in FY16 and FY17 YTD (July to December). In addition to the total recoveries to the State; restitution to consumers were more than \$2.2 million. The AGO continues to provide relief for consumers across various industries, for example:

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### Division Highlights

#### Public Protection Division (continued)

- Wire transfers – consumers eligible for up to at least \$1.5 million in restitution, injunctive relieve to improve practices for consumers, and \$837,500 to Vermont for its leadership in bringing these cases to resolution
- Anti-trust: \$1.6 million to Vermont
- Mortgage/Foreclosure: \$1 million to Vermont
- Anticipated 20% growth in Consumer Assistance Program year-over-year response to consumer complaints averaging over \$300 per consumer in satisfaction of complaints

#### Solicitor General and Appellate Unit

- *Supervision and assistance across all divisions:* In FY 16, the AGO opened 131 appeals, 124 in the Vermont Supreme Court and 7 in federal courts. The Unit has provided substantial input and supervision for appeals across most divisions of the office, including tax, mental health, environmental and Act 250, corrections, criminal and civil defense. Some significant recent or pending appeals include:
  - Citibank N.A. v. Department of Taxes* – Vermont Supreme Court rejected effort by retailers and credit card companies to get sales tax refund
  - TransCanada v. Town of Rockingham* – VSC held hydroelectric facility assessed at \$127 million, not \$84 million as proffered by facility owner
  - D.C. v. Schatz* – VSC dismissed appeal regarding DCF’s Woodside facility
  - State v. B.C.* – VSC agreed with Commissioner of Mental Health’s interpretation of statutes governing discharge hearings
  - In re Taylor* – VSC affirmed Medical Board’s refusal to allow doctor to seek reinstatement of medical license
  - In re Plum Creek Main Timberlands* – VSC reversed lower court and reinstated decisions by the Department of Taxes and Forest, Parks & Recreation removing over 56,000 acres from the current use program
  - In re B&M Realty* – VAC reversed decision awarding Act 250 permit to build a large mixed-use business park in the Town of Hartford; Court accepted NRB’s argument that project was inconsistent with regional plan
  - In re MVP Health* (pending) – challenge to GMCB’s denial of requested rate increase

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### Division Highlights

#### Solicitor General and Appellate Unit (continued)

*In re Lepore* – VSC reversed Labor Board’s reinstatement of terminated State employee

*Kuligoski v. Brattleboro Retreat* (pending) – filed motion to reargue on behalf of AHS Secretary, asking VSC to reconsider decision regarding potential tort liability for mental health providers

*Turner v. Shumlin* – challenge to Governor Shumlin’s constitutional authority to name a successor to Justice Dooley

- *Child protection appeals*: In FY16, the office opened nearly 50 appeals in child protection cases (TPR and CHINS cases). The Appellate Unit oversees all of these cases – the largest part of the appellate docket – to assure that the cases are adequately staffed when our Family Services attorneys are over-burdened. In addition to reviewing all child protection appeals, the appellate unit attorneys frequently handle these cases or assign them to AAGs in other divisions to relieve burdens on the Family Services unit.
- *Child protection legislation*: The Unit staffed the working group on child protection legislation, with responsibility for drafting the meeting agendas, minutes, and interim report to the legislature.
- *Amicus participation*: The Unit coordinates amicus participation at the U.S. Supreme Court. Vermont has participated in amicus briefs supporting access to health services, immigration reform, and environmental programs. The unit also responds to requests for briefing from the Vermont Supreme Court and files briefs in federal courts when cases between private parties present important questions of Vermont law.
- *Act 39 litigation*: defending Act 39, Patient Choices at End of Life, in federal district court.

#### Tobacco

- Diligent enforcement of tobacco master settlement agreement
- Total tobacco recoveries in FY16 were \$35,080,107

**OFFICE OF THE ATTORNEY GENERAL**

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**Financial Recoveries for State of Vermont  
July 1, 2015 to December 31, 2016**

Civil Law Division	\$	31,402
Environmental Division	\$	266,750
Medicaid Fraud & Residential Abuse Unit (Criminal)	\$	7,635,593
Public Protection Division (Consumer Fraud/Antitrust)	\$	4,994,924
Tobacco / MSA, Strategic, and Significant Factor	\$	35,080,107
Attorney General Total	\$	48,008,776

**OFFICE OF THE ATTORNEY GENERAL**  
**AGO Recoveries - FY16 to FY17 (YTD)**  
**Period of July 1, 2015 to December 31, 2016**

<b>SUMMARY OF RECOVERIES</b>			
<b>DIVISION</b>	<b>FY16</b>	<b>FY17 YTD</b>	
Civil Division	0	31,402	
Environmental Division	29,750	237,000	
Medicaid Fraud & Residential Abuse Unit	3,686,905	3,948,687	
Public Protection Division	2,812,538	2,181,386	
Tobacco	34,992,819	87,288	
<b>Total Recoveries</b>	<b>41,522,013</b>	<b>6,486,763</b>	

<b>Case State v.</b>	<b>Settle Date</b>	<b>Vermont Share</b>	<b>Comments</b>
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<b>CIVIL DIVISION</b>			
<b>Total</b>	<b>FY16</b>	<b>0</b>	
Vermont Leads PAC	07/11/16	1,000	Campaign Finance
Vermont Leads, Inc.	07/11/16	2,000	Campaign Finance
GMA v. Sorrell, et al	08/31/16	17,652	Defense/Appeal cost recovery
Vermont House Republican PAC	09/20/16	2,000	Campaign Finance
Democratic AG's Assoc.	12/20/16	8,750	Campaign Finance
<b>Total</b>	<b>FY17 YTD</b>	<b>31,402</b>	

<b>ENVIRONMENTAL DIVISION</b>			
Vermont Forest Parks & Rec.	03/25/16	5,000	
Hanfield, William & Robin	06/28/16	24,750	Balance pending
<b>Total</b>	<b>FY16</b>	<b>29,750</b>	
Harleysville Worcester Ins.	08/11/16	200,000	ANR/PCF
Pico Village Water Corp.	08/04/16	37,000	
<b>Total</b>	<b>FY17 YTD</b>	<b>237,000</b>	

Case State v.	Settle Date	Vermont Share	Comments
<b>MEDICAID FRAUD &amp; RESIDENTIAL ABUSE UNIT</b>			
NuVasive	08/24/15	2,529	
Gross, Carmen	09/02/15	18,705	Restitution to DVHA
AstraZeneca	09/28/15	76,214	Direct to DVHA
Buggiani, Frank DPM	10/05/15	37,655	
Wood & Martin	10/15/15	6,172	Restitution to DVHA
Relations, Gloria	10/23/15	1,125	Restitution to DVHA
Cephalon	10/30/15	26,857	Direct to DVHA
Curtis, Hal	01/07/16	5,822	Restitution to DVHA
Millennium Laboratories	01/12/16	774	
Keene Medical	02/09/16	253,892	
US v. Gamal Eltabbakh M.D.	02/18/16	45,010	
Vintage Pharmaceuticals (Qualitest)	02/18/16	53,132	
Kushi & Myers PC	03/11/16	51,618	Direct to DVHA
NEK Human Services	03/14/16	22,170	
Daily, Shelly	04/12/16	4,410	Restitution to DVHA
Tucker, Katherine	04/26/16	2,023	Restitution to DVHA
Gaboury, Pauline	05/03/16	5,239	Restitution to DVHA
Warner Chilcott	05/09/16	23,565	
Olympus	05/13/16	99,378	
LaFountain, Jaime	05/18/16	1,627	Restitution to DVHA
Phillips Respironics	05/20/16	10,831	Direct to DVHA
Wyeth, Inc.	06/03/16	2,899,677	
Genentech	06/06/16	19,100	
Richard, Christy	06/13/16	2,553	Restitution to DVHA
Newsome, Jennifer	06/27/16	3,892	Restitution to DVHA
Morse, Elle Mae	06/29/16	12,936	Restitution to DVHA
<b>Total</b>	<b>FY16</b>	<b>3,686,905</b>	
Salix Pharmaceuticals	08/06/16	3,056	
Tuker, Karen	08/17/16	43,620	
Ryder, Lisa	08/22/16	9,210	Restitution to DVHA
Bushey, Julie	09/06/16	29,085	Restitution to DVHA
Morse, Donald	09/06/16	4,198	Restitution to DVHA
Burlington Laboratories	10/10/16	3,786,750	\$ to be rec'd beginning in 2019
Onmicare (Depakote)	10/14/16	6,628	
Emeritus Senior Living	11/07/16	10,295	
Mousetrap Pediatrics	11/14/16	37,570	
Lynn Madsen, MD	12/15/16	18,275	
<b>Total</b>	<b>FY17 YTD</b>	<b>3,948,687</b>	

Case State v.	Settle Date	Vermont Share	Comments
<b>PUBLIC PROTECTION DIVISION</b>			
Chase Bank	07/08/15	110,725	
Bank of America	07/10/15	1,000,000	
Dollar Stores	08/17/15	30,013	
Amgen, Inc.	08/17/15	717,360	
Turbo Title Loans	09/23/15	12,000	
Fine Line Communications	09/28/15	5,500	
RuffaloCODY, LLC	10/19/15	6,000	
Suburban Propane	10/22/15	200,000	
Keys Direct Marketing	10/28/15	6,000	
Aspen Marketing Services	12/03/15	109,000	
Smith v. Three White Birches	01/27/16	1,125	
MoneyGram	02/11/16	437,500	
Advantage Payment Systems	03/08/16	10,000	
Rymes Heating Oils	03/09/16	15,000	
Haskins Gas Service	04/29/16	15,000	
Shires Housing, Inc.	04/29/16	1,000	
McTaggart, Cynthia	04/30/16	1,000	
Billing Tree, Inc.	05/20/16	25,000	
eBooks-Apple	06/22/16	110,315	
<b>Total</b>	<b>FY16</b>	<b>2,812,538</b>	
Mclsaac and Bairos New Eng.		35,000	Balance pending
Legacy.com, Inc.		15,220	
Tributes, Inc.		15,311	
Zenvesco, Inc.		34,000	Balance pending
Cephalon, Inc.		1,600,000	Balance pending
Ruffalo Noel Levitz, LLC		6,000	
Immler, Robert		10,000	
DRAM (Samsung / Winbond)		13,884	
Travel Suppliers of America		10,000	Balance pending
Jennison, William		5,000	
Member Travel Services		15,000	
Finch, Gregory		5,000	
Adobe		37,016	
United Advisors Group		6,500	
Jarras, Charles		5,000	
Bailey, Agnes		2,000	
Donatic / Givalike / Katz		15,311	
Larson Vial, LLC		3,000	Balance pending
Osterman Propane		7,500	
Bristol Myers Squibb (Abilify)		222,561	
ruby Corp (Ashley Madison)		116,083	
Rogers, David		3,000	
<b>Total</b>	<b>FY17 YTD</b>	<b>2,182,386</b>	

Case State v.	Settle Date	Vermont Share	Comments
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TOBACCO			
Annual Tobacco MSA Payment	FY16	22,992,294	
Annual Strategic Contribution Fund	FY16	12,000,526	
<b>Total</b>	<b>FY16</b>	<b>34,992,819</b>	
Annual Tobacco MSA Payment	FY17 YTD	0	Payment due April 2017
Annual Strategic Contribution Fund	FY17 YTD	0	Payment due April 2017
Colorado, State of / 2013 MSA Sig Factor	09/26/16	87,288	Significant Factor
<b>Total</b>	<b>FY17 YTD</b>	<b>87,288</b>	