



Final Audit Report

California Highway Patrol Deputy Chief, CHP Exam

Prepared by the Staff

of the

State Personnel Board

**Floyd D. Shimomura
Executive Officer**

August 2005

CALIFORNIA HIGHWAY PATROL

Final Audit Report

August 2005

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CALIFORNIA HIGHWAY PATROL

Final Audit Report

The Personnel Practices, Policies, and Processes Audit

The California Highway Patrol (CHP) requested that the State Personnel Board (SPB) conduct an audit of its Deputy Chief, CHP managerial examination for which interviews were conducted in June 2004 and an eligible list established on June 28, 2004. The request was based on possible irregularities in the examination interview raised through a whistleblower retaliation complaint.

In June 2005, SPB staff conducted an audit of the Deputy Chief, CHP examination to determine whether the selection processes used by CHP complied with the civil service laws and rules designed to insure compliance with the merit principle.

Selection Practices

Article VII of the California Constitution requires that permanent appointments in state civil service be based on merit ascertained by competitive examination. This merit principle is embodied in the State Civil Service Act and SPB rules that govern the examination process for all civil service positions.

The state's selection system is largely decentralized and provides for state departments, under the authority and oversight of SPB, to administer their own selection processes, including initial recruitment and publicity efforts, eligible list establishment, and hiring. CHP has the authority to conduct examinations and make appointments to civil service classifications within CHP. Appointing powers, such as CHP, and all officers and employees to whom an appointing power delegates appointment authority, are responsible for ensuring adherence to the laws and SPB rules throughout the selection and appointment process. Failure to adhere to the laws and rules renders the state employer vulnerable to charges of improprieties in the selection process and can result in costly challenges, the need to re-administer examinations, and the voiding of illegal appointments.

To insure compliance with the merit principle in the state civil service, SPB may conduct an investigation, in this case at the request of the department, of the selection process leading to the establishment of an eligible list; and if the examination is found to be conducted improperly, SPB may consider remedial action including, but not limited to, the freezing of an eligible list and ordering a new examination.

Civil Service (non-CEA) Examination Process

The merit principle embodied in Article VII, Section 1(b) of the State Constitution requires that civil service examinations be job-related and fairly test the qualifications of the competitors.

The State Civil Service Act dictates that to be *competitive*, an examination must be open to persons who meet the minimum qualifications for the class, and be of such a character as “fairly to test and determine the qualifications, fitness and ability of competitors actually to perform the duties of the class of position for which they seek appointment.” [Government Code (GC) §§ 18900(a) and 18930]

To ensure *job-relatedness* of an examination, an appointing power should perform a job analysis of the position to be filled. A job analysis is used to identify and determine in detail the particular job duties and requirements and the relative importance of these duties to the position in question. The job analysis can then be used to develop minimum requirements for screening applicants, as well as for selection and development of the examination itself.

The selection process for regular civil service positions begins with the examination phase and is followed by an appointment phase. Persons are appointed (hired for the job) to regular civil service positions based upon a classification-specific selection process typically consisting of a written test and/or oral interview. The type of testing process used may vary depending upon the results of a job analysis, but must comply with existing laws and rules to be consistent with the merit principle.

The names of persons who pass all parts of the examination are placed on an employment eligibility list. When there are job openings in state civil service, persons who are reachable on the employment eligibility lists are contacted for a hiring interview. The department has the discretion to hire anyone who is certified as eligible from the employment list or other people who have civil service eligibility by way of transfer or reinstatement. Most positions are full-time and employees gain permanent status after successfully completing a probationary period.

To ensure that an examination is not discriminatory, an analysis of statistical data is completed prior to or after the administration of each examination to determine if adverse impact resulted from any phase of the selection process (GC § 19705). The data is collected from the voluntary ethnic, gender, and disability document/flap attached to each state application form. Applicant and hiring data should be reviewed, summarized in an analysis and maintained in the examination file until a new examination is conducted. When there is a finding of adverse impact, human resources staff typically re-evaluates their selection

procedures or document that the procedures were job-related, and include that information in their analysis.

Audit of Examination

This audit encompassed a review of the Deputy Chief, CHP managerial examination. CHP utilized a Statement of Qualifications, the CHP 118s (Performance Appraisal), information in the competitor's Official Personnel File, and a 100% weighted QAP interview, which was conducted in June 2004 with an eligible list established on June 28, 2004. Since this examination was conducted on a promotional basis and the class is designated as a peace officer, by law [Government Code (GC) § 18954], seniority credits are added to the final score of each successful competitor.

In this type of examination, qualifying competitors are required to submit a written "Statement of Qualifications" describing the reasons why they are qualified to be a Deputy Chief, CHP, with input from their Division Commander indicating their concurrence or non-concurrence regarding the competitor's promotional qualifications and comments to support their position. If the competitor does not submit the Statement of Qualifications, he/she is eliminated from the examination. All competitors who submit the Statement are then scheduled for an interview before a panel of raters. The panel of raters asks the same questions of each competitor, evaluates each competitors' Statement of Qualifications, Performance Appraisal, and information from the competitor's official personnel file, and, based all of this information, a final score is derived. Seniority credits are then added to the final score of each successful competitor (credits are granted for merit, efficiency, and fitness of one-quarter of a point for each year that a competitor has served in the grade next lower than that for which the examination is given, in this case at the level of Assistant Chief, CHP). No hires have been made from this eligible list.

The audit of this examination included a review of the examination files, as well as the following:

- Exam bulletin
- Exam control records
- Competitors' applications
- Competitors' Statement of Qualifications
- Performance appraisals and any other information provided from personnel files
- Pattern questions and rating criteria
- Transcripts of the recorded interviews for all 17 competitors
- QAP interview tapes
- Rating sheets

- Exam scoring
- Awarding of seniority credits
- Analysis of current or previous examination

Findings:

A number of inadequacies were revealed in the administration of this examination, as indicated in the following findings:

1. **Job Analysis:** There was no information in the examination files that demonstrated that the examination was based on a job analysis. The absence of a job analysis makes it impossible to establish the job-relatedness and content validity of CHP's examination, the appropriateness of the testing methods used, and the accuracy with which the knowledge, skills, abilities, and other qualifications of competitors are assessed. GC §§ 18930, 19702.2; and 2CCR § 250.
2. **Documentation:** The examination files lacked essential documentation. To ensure that an examination is competitive and fairly tests the qualifications of the competitors as required by the Constitution as well as applicable laws and regulations (Government Code § 18930; 2CCR § 198), documentation must demonstrate how the examining agency determined point values awarded to the competitors for each part of the examination and how the examining agency arrived at the competitors' final scores. Furthermore, the panel of raters was unable to provide their examination interview notes for the auditors to review as required by SPB for post examination audit or appeal purposes.

In addition, CHP did not conduct a post review of the current and/or previous examination bottom line data for possible adverse impact, and, if the bottom line data indicated adverse impact in any phase of the exam, what CHP's proposed plan of action should be to make the exam more job-related. Based on the lack of documentation, CHP is unable to demonstrate that the examination was competitive and fair and without adverse impact, an essential element in demonstrating merit.

3. **Rating Criteria:** This examination file did not contain documentation for pass point setting or the rationale for determining how raw scores were converted to final scores. Additionally, there were no criteria for the panel of raters to use to evaluate the competitors' Statement of Qualifications, Performance Appraisal, and the Official Personnel File information. Furthermore, based on the information provided, it is unclear how the Statement of Qualifications, Performance Appraisals, and Official Personnel File information were integrated into the QAP process.

4. **Scoring:** For this examination, CHP utilized an inappropriate scoring method (GC § 19057.2, CCR §§ 199, 205, 206). The examination file indicates the panel of raters used the full range of scores instead of using the six-rank scoring for managerial classes as required by law. Additionally, the audit team was unable to determine what score each panel member assigned to each competitor as the Seniority Credits had been added to the competitor's score by the panel of raters. To compound this further, the panel of raters did not utilize rating sheets in scoring competitors, which would document how each competitor was scored for each question. There were no clear instructions in the examination file as to how the panel of raters was to score the exam.

Seniority credits should have been added by the human resources exam staff and not by the panel of raters. Allowing the panel of raters to add seniority credits to the competitors' scores contaminates the interview process by introducing factors, which could potentially influence the raters' scores. Without proper documentation of the scoring process, the department cannot demonstrate that the selection process comports with the merit principle and is susceptible to charges that a particular candidate was pre-selected, that the selection instrument was designed to favor a particular competitor's qualifications, that the pass point and final scoring were determined after the results of the interviews were known, or that the examination results were otherwise a product of favoritism.

5. **Raters:** One panel member challenged some competitors' responses to the examination questions; tossed the examination materials to the competitors; provided leading information or directly prompted some competitors, which assisted them in responding to the exam questions; and told specific candidates during the interview when they responded correctly to the interview questions. The chairperson failed to control this rater's behavior and, thus, did not ensure that the examination interviews were conducted fairly.
6. **Eligible List:** CHP released the eligible list including candidates' names on the informational copy of the eligible list, which is in direct violation of 2CCR § 50 (Merit Selection Manual, Section 8000). This section directs departments to only disclose the candidate identification number, rank and score as part of the 30-day eligible list inspection period. This is to ensure the integrity of the State's merit system and to preserve the competitive nature of the State's civil service testing program.
7. **Interview Conduct:** The conduct of the panel of raters showed possible bias towards certain competitors. Mr. Acevedo was the only competitor questioned on his memoranda of direction (MOD), although there were two other competitors who also had similar reports in their personnel files.

On the day of Mr. Acevedo's interview, the QAP panel was provided a copy of an e-mail sent from Jonathan Rothman to Bob Giannoni with a specific question to be asked only of Mr. Acevedo regarding the memoranda of direction in his personnel file. It stated, "Although not commented on by your immediate supervisor, we are aware that you have received two memos of direction within the past six months. Do you wish to comment on how, or whether if at all, the memos of direction reflect on your qualifications to become, or on your ability to perform the duties of, Deputy Chief?". It was not appropriate for the panel to ask any questions not asked of all competitors; nor is it appropriate to accept information from an outside source during the interview process (GC § 19705).

INTRODUCTION OF DIRECTIVES

The examination audit was conducted by State Personnel Board staff to assess the extent to which the California Highway Patrol conformed to state laws, regulations, and merit principles in the administration of the Deputy Chief, California Highway Patrol examination. What follows is the complete list of directives and action items set forth in this report and the department's response to the audit.

Directives:

1. To ensure the competitiveness and fairness of the examinations, CHP shall include proper documentation in each examination file that demonstrates that the selection instrument, rating scale, and procedures are job-related. Rating criteria shall include meaningful distinctions that do not overlap, contain meaningful distinctions in its text, and appropriately assess each competitor's qualifications and the required knowledge, skills, and abilities for the position/classification. Rating instructions shall precisely describe the method for evaluating and integrating all sources of information including the Statement of Qualifications, performance appraisal, official personnel file, and responses to the interview questions.
2. CHP shall conduct a job analysis prior to the re-administration of this examination, to ensure that examinations for this class are job-related, competitive, and fairly test and determine the qualifications, fitness, and ability of competitors to actually perform the duties of the class. CHP shall base its selection instrument(s) on the job-related factors identified through this job analysis.
3. Paula Guzman is hereby decertified and is not to serve as chairperson for any CHP or other state departmental examinations. CHP shall utilize only chairpersons certified by the State Personnel Board to ensure that exam interviews are conducted fairly and without bias or prejudice.
4. CHP shall use the six-rank scores for all future examinations conducted for managerial classes as required by law.
5. For all future peace officer promotional examinations where seniority credits are warranted, CHP's human resources staff will add seniority credits to the competitor's final score and document in the exam file how the credits were totaled and added to the final score.

6. Due to irregularities in the conduct of the examination, CHP is not to make any appointments and is to abolish the eligible list that is now one year old as of June 28, 2005.
7. The CHP is directed to administer a new examination for the class of Deputy Chief, CHP.
8. SPB's Merit Employment and Technical Resources Division shall monitor the new examination given by CHP for the classification of Deputy Chief, CHP, to ensure it is administered in accordance with merit selection standards. CHP shall provide SPB with at least 30 days' prior notice of the next Deputy Chief, CHP examination that it intends to administer and SPB staff will review all steps in the examination process.

CALIFORNIA HIGHWAY PATROL'S RESPONSE

In its response to the SPB's preliminary audit findings, the CHP asserts that "...the Board's staff recommendation that 'the current Deputy Chief eligibility list be abolished and that no appointments be made from that list' will unjustly and unfairly penalize numerous candidates who legitimately and successfully completed the examination process." The CHP further contends that:

"A majority of the preliminary report's directives and action items address issues that are concerned with examination administration and processes. The report's assessment does not discuss, nor consider, candidates' efforts that demonstrate qualification and eligibility, nor does it explain why what you [the SPB] refer to as 'significant irregularities' ... have in some manner invalidated or otherwise compromised the efforts of qualified, prepared, and recognized examination competitors ... The criticisms of the processes of the 2004 Deputy Chief's examination, however, does not speak to the merit and worthiness of the numerous candidates who prepared for, competed in, and achieved success on, the examination itself. If the Board's quarrel is with the Department, it should not, by recommending abolition of the examination list, inappropriately penalize the successful competitors as its measure of response to the Department."

STATE PERSONNEL BOARD'S RESPONSE

The SPB does not dispute the CHP's contention and acknowledges that the examinees prepared for and participated in the examination in good faith. Nor does the SPB dispute that some or all of the candidates may be very well qualified for promotion. The CHP's response, however, fails to grasp the significant nature of the discrepancies found to exist in the examination process. The irregularities set forth in this report do not address mere "examination administration and processes flaws." Instead, the irregularities go to the very heart of the examination process itself, and are of such a significant nature that the SPB is unable to determine, among other things, how the respective candidates were scored, what justification existed for each respective score, and what specific score each candidate received for each portion of the examination. Absent such information, it is literally impossible for the SPB to certify that each candidate was examined, scored, and ranked in a fair and objective manner. Nor

is it possible for the SPB to now, “speak to the merit and worthiness of the numerous candidates,” as the examination process was so inherently flawed so as to make it impossible for the SPB to accurately assess each candidates’ qualifications.

In short, because the examination process was so fraught with errors as to render it impossible for the SPB to accurately determine whether each candidate was properly rated, the only realistic option available to the SPB is to invalidate the entire list. It is important to note that the SPB does not take this action lightly. Nevertheless, given the circumstances presented here, the SPB is satisfied that abolition of the list is the correct decision.

**Addendum to the
CALIFORNIA HIGHWAY PATROL
Final Audit Report**

On July 18, 2005, SPB met with CHP staff to discuss the final audit report and to address the missing examination materials indicated in the report. At that time, CHP provided SPB with several of the documents that were unavailable when the preliminary report was issued. In addition, CHP on July 25, 2005, sent SPB a memorandum (outlining CHP's perspective regarding issues discussed during the meeting of July 18, 2005, pertaining to the SPB's audit of the 2004 Deputy Chief, CHP, examination). The documents submitted by CHP included all of the following:

- Job Analysis
- Patterned Questions
- Chairperson QAP Notes
- Std. 686 – Examination Planning Document
- Examination Information Sheet
- Examination Schedule
- Examination Control
- SPB 511B – Critical Class Requirements
- SPB 295 – Post Examination Evaluation – Analyst
- SPB 295A – Post Examination Evaluation – Chairperson
- Classification Specification – Deputy Chief, CHP
- Examination Bulletin
- Bulletin Release Form
- Comm-Nets Announcing Examination and Bulletin Release and Drafts
- Bottom Line Hiring Report
- Information List
- Final Results List
- Examination Checklist
- Data Collection Forms
- QAP Evaluations
- Interview Schedule
- Rating Sheets
- Oral Interview Tape Request
- Travel Expense Claim and Attendance Report – Chairperson
- Copies of Notices of Examination Results
- Comm-Net of Final Examination Results
- Copies of Notices of Oral Interview
- Examination Security Statement (Blank Copy)
- QAP Panel Orientation
- On-Line Examination Scheduling
- Adverse Action/Citizen Complaint Data – Request
- List of Competitors

- List of Competitors for SOQ Completion
- Notice of Early Entry – Assistant Chief James McLaughlin
- Form/Printed Material Request for SOQ
- Potential Competitors for Examination
- Miscellaneous E-Mails
- Signed Examination Security Requirements
- Seniority Point Calculations
- Examination Applications/Resumes, SOQ's and Performance Appraisals

SPB's staff has audited the additional materials submitted. The following are the results of the review of the newly submitted examination materials:

1. **Job Analysis:** The job analysis documentation from 1997 was complete. It included the Assistant Chief, CHP and Deputy Chief, CHP classifications. However, nothing in the documentation submitted indicated that the job analysis was re-evaluated for the 2004 administration of the Deputy Chief, CHP exam. The job analysis material was out-of-date, and nothing indicated how it linked to the current job and test material.
2. **Documentation:** The examination files still lacked some of the essential documentation. There was nothing in the new documentation that demonstrated how the agency determined point values awarded to competitors for each part of the exam, and how the examining agency arrived at the competitors' final scores. The agency did provide the chairperson's examination interview notes; however, they did not provide the notes from the two other rating panel members. CHP did provide bottom line data for the previous and current examinations. However, the department did not indicate what impact this had on the exam.
3. **Rating Criteria:** There was nothing in the new documentation that would change the initial findings in this area.
4. **Scoring:** There was nothing in the new documentation that would change the initial findings in this area.
5. **Raters:** There was nothing in the new documentation that would change the initial findings in this area.
6. **Eligible List:** In the documentation submitted there was an e-mail that indicated that the agency was aware of the eligible list disclosure regulation and that the personnel officer instructed staff to continue with the department's past practice and release the names of eligibles on the Deputy Chief, CHP examination, which is in direct violation of 2CCR § 50 (Merit Selection Manual Section 8000).

7. **Interview Conduct:** There was nothing in the new documentation that would change the initial findings in this area.

SPB has determined that the additional information provided by CHP does not result in a change to the final audit report.

APPENDICES

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CALIFORNIA STATE PERSONNEL BOARD

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APPENDIX A

ARNOLD SCHWARZENEGGER, Governor



Telephone: (916) 653-1403

Facsimile: (916) 653-4256

TDD: (916) 653-1498

July 8, 2005

Michael L. Brown, Commissioner
California Highway Patrol
P.O. Box 942898-001
Sacramento, CA 94298-0001

Re: State Personnel Board Audit of California Highway Patrol Deputy Chief Examination

Dear Commissioner Brown:

In accordance with a request received from the Department of the California Highway Patrol (CHP), during June 1995 State Personnel Board (SPB) staff conducted an audit of the CHP's Deputy Chief examination, conducted by the CHP during June 2004. A copy of the SPB's preliminary findings are enclosed for your review. The SPB's audit revealed several significant irregularities in the examination process and, as a result, SPB staff are recommending, among other things, that the current Deputy Chief eligibility list be abolished and that no appointments be made from that list.

It is my understanding that you have requested an opportunity for CHP staff to meet with SPB staff prior to the SPB issuing its final audit findings, in order to afford the CHP an opportunity to respond to the preliminary audit findings. You may contact Executive Officer Floyd Shimomura's assistant, Irene Riego, at (916) 653-1028 to arrange a mutually convenient time for a meeting between SPB staff and CHP staff. In order to expedite the completion of the final audit report, please instruct your staff to bring whatever written comments the CHP has to the SPB's preliminary audit findings to that meeting.

You may contact me at (916) 653-1456 if you have any questions or concerns regarding this matter.

Sincerely,


BRUCE A. MONFROSS
Senior Staff Counsel

Enclosure

[CHP Exam-cor-070805-bam]

AUTHORITIES

Constitution

Article VII, Section 1(b) of the State Constitution requires, “In the civil service permanent appointment and promotion shall be made under a general system based on merit ascertained by competitive examination.”

Government Code Sections

18900(a) provides that “Eligible lists shall be established as a result of free competitive examinations open to persons who lawfully may be appointed to any position within the class for which these examinations are held and who meet the minimum qualifications requisite to the performance of the duties of that position as prescribed by the specifications for the class or by board rule.”

18930 states, in part, that “Examinations for the establishment of eligible lists shall be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors actually to perform the duties of the class of position for which they seek appointment....”

18954 provides that “In any promotional examinations for positions in the California Highway Patrol, there shall be allowed to each competitor an additional credit for merit, efficiency and fitness of one-quarter of a point for each year which he has served in the grade next lower than that for which the examination is given.

19057.2 sets forth the standards for the use of six ranks and the scoring of eligibles for classifications designated as managerial by the five-member Board.

19702.2 states, in part, that “Educational prerequisites or testing or evaluation methods which are not job-related shall not be employed as part of hiring practices or promotional practices conducted pursuant to this part unless there is no adverse effect....”

19705 prohibits an applicant's ethnic, disability, and other confidential information from being disclosed or available to any member of an examination panel, appointing power, or individual empowered to influence the appointment prior to the offer of employment.

Regulation Sections

50 incorporates by reference SPB's *Merit Selection Manual: Policy and Practices*, which establishes policy and provides guidance for state civil service testing and selection activities and documents professional best practices.

198 states, in part, that "Ratings for education, experience, and personal qualifications shall be made on a competitive basis in that each competitor shall be rated thereon in relation to the minimum qualifications for the class in question and relation to the comparable qualifications of other competitors...."

199 sets forth minimum qualifying ratings and states, in part, that "In qualifications appraisal interviews, ratings accorded competitors shall all be expressed in percentages, with 70 percent being the minimum qualifying rating, or shall all be expressed as qualified or eliminated without the assignment of percentage ratings...Ratings shall be made on forms prescribed by the executive officer, which shall be signed by the interviewer...A competitor shall be eliminated only if a majority of the members of the qualifications appraisal panel assign the competitor ratings below 70 percent or ratings of "eliminated".

205 and 206 provide information regarding scoring results of examinations.

250 codifies the obligation of a department to conduct merit-based examinations and selection processes. Departments are required to apply these merit principles to each selection and testing process by inviting broad and inclusive competition, utilizing sound testing devices for the competitive assessment of job-related qualifications, and providing fair and equitable treatment of individuals on an equal opportunity basis.

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

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July 11, 2005

BY FAX TO (916) 653-4256 AND BY U.S. MAIL

File No.: 008.A9684.A3705.R121

Bruce A. Monfross, Senior Staff Counsel
California State Personnel Board
801 Capitol Mall
Sacramento, CA 95814

Re: **Your July 8, 2005 Correspondence to Commissioner Michael L. Brown and the Audit Preliminary Findings Attached Thereto**

Dear Mr. Monfross:

I have been asked to provide a preliminary response to above communication addressed to Commissioner Michael L. Brown of the Department of California Highway Patrol ("the Department"), which includes the preliminary audit findings of the State Personnel Board ("the Board").

The Department will contact the Executive Officer to arrange for a meeting with Board staff so as to be able to respond to the preliminary findings, discuss the basis for the response, and to propose additions, comments, edits, and changes it believes might be necessary for the final audit findings. Three points in advance of such a meeting are necessary.

First, the Board's staff recommendation that "the current Deputy Chief eligibility list be abolished and that no appointments be made from that list" will unjustly and unfairly penalize numerous candidates who legitimately and successfully completed the examination process. A majority of the preliminary report's directives and action items address issues that are concerned with examination administration and processes. The report's assessment does not discuss, nor consider, candidates' efforts that demonstrate qualification and eligibility, nor does it explain why what you refer to as "significant irregularities" in your cover correspondence have in some manner invalidated or otherwise compromised the efforts of qualified, prepared, and recognized examination competitors. While a dialogue on the report's directives and action items is forthcoming, the Department looks forward to addressing any procedural or administrative

Bruce A. Monfross, Senior Staff Counsel

Page 2

July 11, 2005

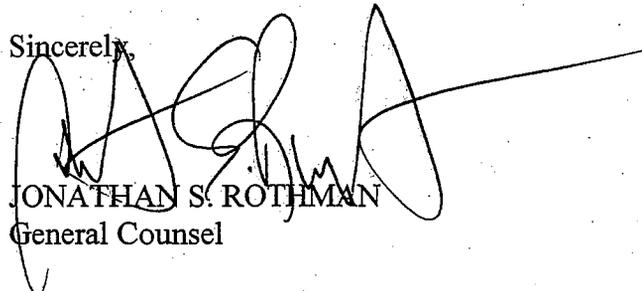
processes (see below) that the Board believes are necessary so as to make certain the administration of future examinations is done in an appropriate and proper manner. The criticisms of the processes of the 2004 Deputy Chief's examination, however, does not speak to the merit and worthiness of the numerous candidates who prepared for, competed in, and achieved success on, the examination itself. If the Board's quarrel is with the Department, it should not, by recommending abolition of the examination list, inappropriately penalize the successful competitors as its measure of response to the Department.

Second, the staff recommendation that the Board's Merit Employment and Technical Resources Division shall monitor" the Department's next Deputy Chief examination is one which the Department wholly embraces. To the extent the Department's examination processes are in need of remedial measures so as to "ensure administration in accord with merit selection standards," the Department welcomes such Board oversight and looks forward to working with the Board to accomplish that end.

Third, the Department wishes to reiterate that the matters presently pending before the Board in Assistant Chief Acevedo's whistleblower and retaliation action are, and should be, separate from the audit review and analysis done with respect to the 2004 Deputy Chief's examination. While much of the report's findings are process oriented in focus, the "interview conduct" finding of the preliminary report specifically addresses, and is directly considerate of, matters germane to the whistleblower and retaliation action.

The Department intends to have specific and detailed comments with regard to the preliminary report and will, at your request, be prepared to present them in writing at the meeting. In view of the focus and emphasis of the report's analysis and the procedural and administrative concerns with which the report is primarily concerned, the Department believes the abolition of the eligibility list is unwarranted and unfairly penalizes worthy and successful candidates who, through no action of their own, would suffer consequences for actions not of their doing.

Sincerely,



JONATHAN S. ROTHMAN
General Counsel

M e m o r a n d u m

APPENDIX D

C O N F I D E N T I A L

Date: July 25, 2005

To: Floyd Shimomura
Executive Officer
State Personnel Board

From: **DEPARTMENT OF CALIFORNIA HIGHWAY PATROL**
Office of the Commissioner

File No.: 1.A10661

Subject: CALIFORNIA HIGHWAY PATROL PERSPECTIVE REGARDING ISSUES
DISCUSSED DURING MEETING OF JULY 18, 2005, PERTAINING TO
THE STATE PERSONNEL BOARD'S AUDIT OF THE 2004 DEPUTY CHIEF,
CHP, EXAMINATION

This memorandum provides a summary of the California Highway Patrol's (CHP) perspective on the findings documented in the Preliminary Audit Report by the State Personnel Board (SPB) as a result of its audit of the 2004 Deputy Chief, CHP, examination. On Monday, July 18, 2005, CHP staff met with SPB staff to discuss the report. In attendance from the CHP were Kevin Green, Assistant Commissioner, Staff; Bob Giannoni, Chief of Personnel Management Division (PMD), and Valentin Lopez, Commander of Selection Standards and Examinations. Representing the SPB were Daisy McKenzie and Rosie Jauregui of the Personnel Resources and Innovations Division. SPB staff stated that the report had been finalized and that any additional information provided by CHP could be included only as an amendment to the final report. However, on July 19, 2005, Ms. McKenzie informed Michael Davis, Assistant Chief of CHP's PMD that the report is not ready for final, and she would be conducting additional analysis in conjunction with her audit of the examination. As a result, the intent of this memorandum is to provide CHP's perspective of the issues discussed during the July 18 meeting.

To begin the meeting, Commissioner Green explained that, due to the nature of the audit (whistle blower complaint), CHP management determined that it would be best to remove some examination documents pertaining to Examinations Program and place them in the custody of the CHP's Office of Internal Affairs (OIA). Consequently, when SPB requested examination materials from CHP in conjunction with the audit, it appears that many requests were directed by SPB staff to OIA. As a result, some of SPB's requests for documents were not fully understood by OIA and, due to this misunderstanding, requested documents were not provided. Due to the fact OIA was unable to respond effectively to all requests for information from SPB, the

Safety, Service, and Security

Preliminary Audit report reflected this lack of response for important examination processing elements. To ensure SPB has access to the complete examination file at this time, two binders of examination file documents were provided by CHP to SPB during the meeting.

This summary of the July 18, 2005, meeting will address each finding from the draft report in the order in which it was presented.

1. Job Analysis: There was no information in the examination files that demonstrated that the examination was based on a job analysis.

At the meeting, CHP provided SPB with a Deputy Chief, CHP, job analysis dated 1997. It was explained that all CHP job analyses are kept in a separate location within Examinations Program and not filed as part of the Examination Resource File. Nevertheless, the job analysis was reviewed by CHP Examination Program staff and departmental subject matter experts prior to test construction in order to ensure the knowledge, skills, and abilities to be tested were current and accurate. All qualification appraisal panel (QAP) questions for the 2004 Deputy Chief, CHP, examination are clearly linked to knowledge and skills which relate directly to the job analysis. A full undated job analysis for the Deputy Chief, CHP, classification is scheduled to be conducted in 2007.

2. Documentation: The examination files lacked essential documentation.

As previously stated, CHP provided two binders of Deputy Chief, CHP, examination materials, including the Examination Resource File, Audit File, Job Analysis, and the QAP questions with recommended responses and rating criteria, as well as the documented linkages of each item to the critical class requirements to SPB. In addition, CHP staff discussed how the Department's detailed examination orientation provides guidelines for incorporating each examination element into the competitor's overall score. The draft report also stated that the CHP did not conduct a post review of the examination's bottom line data. This is an inaccurate finding. All bottom line hiring reports are critically reviewed by the CHP at the conclusion of each examination. A review of the bottom line hiring reports reveals that there was no adverse impact on this, or any other recent, Deputy Chief, CHP, examination.

In addition, following the 2004 Deputy Chief, CHP, examination (as well as following all other uniformed promotional examinations), the CHP conducted an extensive feedback meeting involving the QAP members at the conclusion of the interviews. The purpose of this feedback meeting is to identify possible areas of concern or improvement regarding all aspects of the examination.

3. Rating Criteria: This examination file did not contain documentation for pass point setting or the rationale for determining how raw scores were converted to final scores. Additionally, there were no criteria for the panel of raters to use to evaluate the competitors' Statement of Qualifications, Performance Appraisal, and the Official Personnel file information.

Pass point setting and raw score conversions relate to a written test, whereas the Deputy Chief, CHP, examination plan was conducted 100% QAP. In addition, as presented at the July 18 meeting, the suggested responses and rating criteria for each QAP item are listed with the QAP questions themselves. The rating criteria used for this examination were developed from the Standard Rating Criteria as presented in Section 5535.4 of SPB's Selection Manual. In regard to how the various test materials are to be evaluated and incorporated into the final score, during the examination's QAP orientation (See Binder 2, #26), Examination Program staff discussed how these materials (i.e., competitors' Statement of Qualifications, performance appraisals, and official personnel file information) are to be evaluated and incorporated by the QAP members into each competitor's final QAP interview score.

It should be noted that finding number three is not unique from that of finding number two. These two findings should have been combined into a single item.

4. Scoring: For this examination, CHP utilized an inappropriate scoring method.

The CHP has always used the full range of scores for the Deputy Chief, CHP, examination. The rationale was based upon Government Code Section 19057.1, which states that "Fractional examination scores shall be provided to, and utilized by, the California Highway Patrol for its Peace Officer classes." The CHP's former Commissioner was directly instrumental in getting this section passed by the Legislature. Based on his understanding of the intent of this code section, he understood he was obligated to use fractional scores in CHP's peace officer promotional examinations. If this understanding is incorrect, it was neither intentional nor limited to this single examination, but rather reflected the former Commissioner's interpretation of his obligation under the law.

A further charge is made that the panel of raters, in rating competitors, did not utilize rating sheets to document the criteria on which each competitor was rated. This is incorrect; standardized note taking forms were, in fact, used by all members of the panel which consisted of two state service representatives and one chairperson. Unfortunately, the two state service representatives were unable to locate their note taking forms so that the SPB would have them during its review of the examination. The chairperson's note taking forms were provided.

Repeated in this finding was the allegation that no clear instructions were provided to the panel as to how to rate competitors. As explained earlier in this memorandum, this is inaccurate, in

that the QAP orientation clearly covered how the panel was to use all examination materials to arrive at a final examination score for each competitor.

5. Raters: This finding dealt with inappropriate actions by a panel member and the failure of the chairperson to control this inappropriate behavior.

CHP agrees that if inappropriate actions (such as prompting) were taken by a panel member during the QAP interviews, the chairperson should have controlled this behavior.

6. Eligible List: CHP released the eligible list including candidates' names on the informational copy of the eligible list, which is in direct violation of 2CCR, Section 50.

Discussion during the July 18 meeting initially focused on CHP's Comm-Net release of names of those who placed in the top three ranks of the examination. The use of such a Comm-Net was raised by Bob Giannoni, an appointed member (appointed by the SPB Executive Officer at the time, Walter Vaughn) of the SPB's Select Panel on Policy and Procedures. For CHP examinations that use SPB Rule 241, the use of such a Comm-Net was deemed appropriate by that Select Panel. Although the Deputy Chief, CHP, examination does not use Rule 241, the intent of the Comm-Net is identical to the Comm-Nets issued following other peace officer promotional examinations, which is to publish the names of the candidates that the Department intends to promote, such that they can get their personal affairs in order in anticipation of a possible geographic relocation. Following the discussion of the Comm-Net, SPB staff also stated that a copy of the actual Informational List that is printed at the close of an examination was provided to them by either a competitor or an anonymous writer. The CHP did not at any time promulgate or post a copy of the actual Informational List. The CHP would respectfully request that the SPB ask the person who provided the Informational List how he/she came to be in possession of a copy of this document. Although, no matter how it was obtained, the CHP agrees to ensure it will follow all SPB direction with respect to providing any future examination results, Comm-Net or otherwise, at the conclusion of future examinations and thereby remain in full compliance with eligible list inspection requirements in the future.

It appears that findings number 4, 5, and 6 are not distinctly different from finding number 2. The four findings might be more economically collapsed into a single finding.

7. Interview Conduct: The conduct of the panel of raters showed possible bias towards certain competitors.

Mr. Acevedo was the only competitor questioned regarding his Memorandum of Direction (MOD). This question was addressed in an email by Jonathan Rothman, General Counsel, CHP.

Floyd Shimomura
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It was subsequently learned that two other competitors also had an MOD on file and yet were not questioned about their MOD.

The panel was aware of only Mr. Acevedo's MOD, due in part to the fact that one of the state service representatives had been directly involved in developing it. During a meeting with Ms. Gladys Washington, Chief of SPB's Appeals Division, following the examination, Ms. Washington indicated it was appropriate for the panel to have asked Mr. Acevedo about his MOD, as it would have been similarly appropriate to have asked other competitors about an MOD of which a panel member was aware, due to the fact that a recent MOD may be related to a competitor's qualifications. In fact, Ms. Washington suggested that if any QAP member is aware that a competitor has a current MOD on file, it is the panel's obligation to inquire about that MOD in order to provide the competitor an opportunity to address it.

I appreciate that the SPB coordinated the July 18 meeting, and trust you will find this CHP perspective concerning the meeting useful. If I can further assist in the continuing audit, please contact me at (916) 657-7152.

A handwritten signature in black ink, appearing to read "M. L. Brown", with a long horizontal flourish extending to the right.

M. L. BROWN
Commissioner

**MEMORANDUM**

DATE: August 25, 2005

TO: Michael L. Brown, Commissioner
California Highway Patrol
P.O. Box 942898-001
Sacramento, CA 94298-0001

FROM: State Personnel Board
Executive Office

SUBJECT: FINAL REPORT OF THE EXECUTIVE OFFICER OF THE STATE PERSONNEL BOARD'S REVIEW OF THE CALIFORNIA HIGHWAY PATROL'S DEPUTY CHIEF, CHP EXAMINATION

Enclosed is the final audit report of the California Highway Patrol's (CHP) Deputy Chief, CHP examination, conducted in June 2004 by CHP. For your convenience, we have incorporated CHP's response and State Personnel Board's (SPB's) comments in the report. This report will now be available to the public.

In your department's response (letter from Jonathan S. Rothman, General Counsel, dated July 11, 2005), and a subsequent meeting held on July 12, 2005, your office raised three points. The first is in regard to our conclusion that the Deputy Chief, CHP eligible list be abolished and that no appointments be made from this list. CHP emphasized that such an action would unjustly and unfairly penalize candidates who legitimately and successfully completed the examination process. Although SPB does not dispute CHP's contention that some or all of the candidates may be very well qualified for promotion; nevertheless, the examination process was so fraught with errors as to render it impossible for SPB to accurately determine whether each candidate was properly rated. Given these circumstances, SPB is satisfied that the conclusion to abolish the eligible list is the correct decision.

Second, CHP "wholly embraces" SPB's Merit Employment and Technical Resources Division monitoring the next administration of CHP's Deputy Chief, CHP. CHP welcomes such oversight and looks forward to working with SPB to accomplish this directive. SPB is pleased to provide CHP with any necessary oversight and monitoring to ensure compliance with the merit principle.

Michael L. Brown, Commissioner
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Third, CHP expressed concern regarding Assistant Chief Acevedo's whistleblower and retaliation action that is before the Board and indicated it should be separate from the audit/analysis done with respect to the 2004 Deputy Chief's examination. The SPB's audit of the Deputy Chief, CHP examination was based solely on the examination documents provided by the CHP and reviewed for compliance with the merit principle.

Under the authority and oversight of SPB, SPB will be monitoring the next CHP administration of the Deputy Chief, CHP examination. If you have any questions related to this memorandum, please contact me at (916) 653-1028 or TDD (916) 653-1498.

Sincerely,



Floyd D. Shimomura
Executive Officer

Enclosure

cc: Bob Giannoni, Personnel Officer, CHP