



COMPLIANCE REVIEW REPORT

CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES

Compliance Review Unit
State Personnel Board
April 19, 2018

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INTRODUCTION

Established by the California Constitution, the State Personnel Board (the SPB or Board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to departments through the Board's decisions, rules, policies, and consultation.

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authority's personnel practices in five areas: examinations, appointments, equal employment opportunity (EEO), personal services contracts (PSC's), and mandated training to ensure compliance with civil service laws and board regulations. The purpose of these reviews is to ensure state agencies are in compliance with merit-related laws, rules, and policies and to identify and share best practices identified during the reviews. The SPB conducts these reviews on a three-year cycle.

The CRU may also conduct special investigations in response to a specific request or when the SPB obtains information suggesting a potential merit-related violation.

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of California Correctional Health Care Services (CCHCS) personnel practices in the areas of examinations, appointments, EEO, and PSC's from November 1, 2016, through March 31, 2017, and mandated training from May 31, 2015, through May 31, 2017. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Job Analyses Were Not Developed or Used for the Examination Process	Very Serious
Appointments	Equal Employment Opportunity Questionnaires Were Not Separated from Applications	Very Serious
Appointments	Probationary Evaluations Were Not Provided for All Appointments Reviewed	Serious
Appointments	Appointment Documentation Was Not Kept for the Appropriate Amount of Time	Serious

Area	Finding	Severity
Equal Employment Opportunity	A Disability Advisory Committee Has Not been Established	Very Serious
Personal Services Contracts	Personal Services Contracts Complied with Procedural Requirements	In Compliance
Mandated Training	Ethics Training Was Not Provided for All Filers	Very Serious
Mandated Training	Supervisory Training Was Not Provided for All Supervisors	Very Serious
Mandated Training	Sexual Harassment Prevention Training Was Not Provided for All Supervisors	Very Serious

A color-coded system is used to identify the severity of the violations as follows:

- Red = Very Serious
- Orange = Serious
- Yellow = Non-serious or Technical
- Green = In Compliance

BACKGROUND

In 2001, a federal class-action lawsuit alleged that the dire state of medical care within California Department of Corrections and Rehabilitation (CDCR) adult institutions violated the 8th amendment of the U.S. Constitution, which prohibits cruel and unusual punishment. On February 14, 2006, the Federal Court appointed a Receiver to take control over the delivery of medical services to California’s adult patients confined by CDCR. That order vested the Receiver with the duty to control, oversee, supervise, and direct all administrative, personnel, financial, accounting, contractual, legal, and other operational functions of the medical delivery component for CDCR.

Thus, the Office of the Receiver and CCHCS was established with the mission to reduce unnecessary morbidity, mortality, and protect public health by providing patient-inmates timely access to safe, effective and efficient medical care, and integrate the delivery of medical care with mental health, dental, and disability programs. Once CCHCS has successfully brought the level of health care in CDCR adult institutions into sustainable compliance with constitutional standards, the Federal Court will return control of correctional health care to the State and the Receivership will end.

The Receiver is currently responsible for providing health care to roughly 123,000 inmates, delivering health care at 35 CDCR adult institutions statewide, and overseeing

more than 14,000 CCHCS positions, including doctors, nurses, pharmacists, and administrative staff.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing CCHCS' examinations, appointments, EEO program, and PSC's from November 1, 2016, through March 31, 2017, and mandated training from May 31, 2015, through May 31, 2017. The primary objective of the review was to determine if CCHCS' personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action for those deficiencies identified.

A cross-section of the CCHCS' examinations and appointments were selected to ensure that various samples of examinations and appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the CCHCS provided, which included examination plans, examination bulletins, job analyses, 511b's, scoring results, notice of personnel action (NOPA) forms, vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The review of the CCHCS' EEO program included examining written EEO policies and procedures; the EEO Officer's role, duties, and reporting relationship; the internal discrimination complaint process; the upward mobility program; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC).

The CCHCS PSC's were also reviewed.¹ It was beyond the scope of the compliance review to make conclusions as to whether the CCHCS justifications for the contracts were legally sufficient. The review was limited to whether the CCHCS practices, policies, and procedures relative to PSC's complied with procedural requirements.

In addition, the CCHCS mandated training was reviewed to ensure all employees required to file statements of economic interest were provided ethics training and that all supervisors were provided basic supervisory and sexual harassment prevention training within statutory timelines.

¹ If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

On February 15, 2018, an exit conference was held with the CCHCS to explain and discuss the CRU's initial findings and recommendations. On April 6, 2018, the CRU received and carefully reviewed the response, which is attached to this final compliance report.

FINDINGS AND RECOMMENDATIONS

Examinations

Examinations to establish an eligible list must be competitive and of such character as to fairly test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931.) Within a reasonable time before the scheduled date of the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (*ibid.*) Every applicant for examination shall file an application in the office of the department or a designated appointing power as directed in the examination announcement. (Gov. Code, § 18934.) Generally, the final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, the CCHCS conducted 94 examinations. The CRU reviewed 10 of those examinations, which are listed below:

Classification	Examination Type	Exam Components	Final File Date	No. of Applications
Chief Executive Officer, Health Care (Safety)	Open	Training and Experience (T&E) ²	Continuous	44
Chief Psychiatrist	Open	T&E	Continuous	4
Chief Support Executive, (CEA) A	CEA	Statement of Qualifications (SOQ) ³	Until Filed	7
Deputy Director, Resource Management Branch – CEA B	CEA	SOQ	3/14/2017	1
Food Administrator I	Open	Education & Experience (E&E) ⁴	Continuous	4
Nurse Consultant II	Open	T&E	Continuous	3
Pharmacist I	Open	E&E	Continuous	64
Physician Assistant, Correctional Facility (CF)	Open	T&E	Continuous	24
Senior Radiologic Technologist	Open	E&E	Continuous	8
Unit Supervisor (Safety)	Open	T&E	Continuous	20

² The training and experience (T&E) examination is administered either online or in writing, and asks the applicant to answer multiple-choice questions about his or her level of training and/or experience performing certain tasks typically performed by those in this classification. Responses yield point values, which are totaled by the online system or a department exam analyst, and then assigned a percentage score.

³ In a statement of qualifications (SOQ's) examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

⁴ In an education and experience (E&E) examination, one or more raters reviews the applicants' Standard 678 application forms, and scores and ranks them according to a predetermined rating scale that may include years of relevant higher education, professional licenses or certifications, and/or years of relevant work experience.

FINDING NO. 1 – Job Analyses Were Not Developed or Used for the Examination Process

Summary: A job analysis is required for each civil service examination. The CCHCS could not provide job analyses for the Food Administrator I, Physician Assistant, CF, and Unit Supervisor (Safety) examinations. The CCHCS asserts that the CDCR created the examinations based on job analyses prior to transition of examination administering duties to the CCHCS; however, the CCHCS was unable to retrieve the job analyses. Without documentation showing that job analyses were completed prior to exam administration, the CRU is unable to verify that the examinations were job related or legally defensible.

Classification	List Active Date	List Expiration Date	No. of Eligibles
Food Administrator I	1/16/2009	N/A	4
Physician Assistant, CF	12/24/2005	N/A	97
Unit Supervisor (Safety)	4/7/2011	N/A	44

Criteria: The Merit Selection Manual (MSM), which is incorporated in California Code of Regulations, title 2, section 50, mandates the development and use of a job analysis for the examination process. A "[j]ob analysis shall serve as the primary basis for demonstrating and documenting the job-relatedness of examination processes conducted for the establishment of eligible lists within the State's civil service." (MSM (Oct. 2003), § 2200, p. 2.) The MSM requires that JAs adhere to the legal and professional standards outlined in the JA section of the MSM, and that certain elements must be included in the JA studies. (*Ibid.*) Those requirements include the following: (1) that the JA be performed for the job for which the subsequent selection procedure is developed and used; (2) the methodology utilized be described and documented; (3) the job analytic data be collected from a variety of current sources; (4) job tasks be specified in terms of importance or criticality, and their frequency of performance; (5) and job tasks must be sufficiently detailed to derive the requisite knowledge, skills, abilities (KSAs), and personal characteristics that are required to perform the essential tasks and functions of the job classification. (MSM, § 2200, pp. 2-3.)

Severity: Very Serious. The examination may not have been job-related or legally defensible.

Cause: The CCHCS states they assumed the CDCR retained the job analyses and all necessary validation support documentation, however, they were unable to retrieve the job analyses from the CDCR.

Action: To correct this deficiency, the CCHCS must abolish the Food Administrator I, Physician Assistant I, CF, and Unit Supervisor (Safety) examination lists. Within 60 days of the SPB's Executive Officer's approval of these findings and recommendations, the CCHCS must submit to the CRU a written report of compliance verifying that the above-stated examination lists have been abolished. Additionally, prior to administering any future examinations, the CCHCS must create and develop each examination based upon a job analysis that meets the requirements of the MSM.

Furthermore, the CRU finds the appointments that were made from the examinations were made in good faith, were not the fault of the appointed employees, and do not merit being voided.

Appointments

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) Appointments made from eligible lists, by way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness, which requires consideration of each individual's job-related qualifications for a position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

During the compliance review period, the CCHCS made 2,408 appointments. The CRU reviewed 157 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Assistant Director of Dietetics	Certification List	Permanent	Full Time	1
Associate Budget Analyst	Certification List	Permanent	Full Time	2
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	2
Associate Personnel Analyst	Certification List	Limited Term	Full Time	1
Certified Nursing Assistant	Certification List	Permanent	Full Time	3
Chief Psychiatrist	Certification List	Permanent	Full Time	1
Chief Psychiatrist	Certification List	Limited Term	Full Time	1
Clinical Social Worker	Certification List	Permanent	Full Time	1
Custodian Supervisor III - CF	Certification List	Permanent	Full Time	1
Dental Assistant, CF	Certification List	Permanent	Full Time	1
Dental Hygienist, CF	Certification List	Limited Term	Part Time	1
Dental Hygienist, CF	Certification List	Permanent	Part Time	1
Health Program Manager I	Certification List	Permanent	Full Time	1
Health Program Manager III	Certification List	Limited Term	Full Time	1
Health Program Manager III	Certification List	Permanent	Full Time	1
Health Program Specialist II	Certification List	Permanent	Full Time	1
Health Record Technician I	Certification List	Permanent	Full Time	1
Health Record Technician II (Supervisor)	Certification List	Limited Term	Full Time	1
Health Record Technician II (Supervisor)	Certification List	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Instructional Designer - Commission on Peace Officer Standards and Training	Certification List	Limited Term	Full Time	1
Licensed Vocational Nurse	Certification List	Limited Term	Full Time	2
Licensed Vocational Nurse, CDCR	Certification List	Permanent	Full Time	4
Materials and Stores Supervisor I, CF	Certification List	Limited Term	Full Time	1
Materials and Stores Supervisor I, CF	Certification List	Permanent	Full Time	1
Materials and Stores Supervisor III, CF	Certification List	Permanent	Full Time	1
Nurse Practitioner, CF	Certification List	Limited Term	Full Time	1
Office Technician	Certification List	Permanent	Full Time	1
Office Technician (Typing)	Certification List	Limited Term	Full Time	2
Office Technician (Typing)	Certification List	Permanent	Full Time	1
Pharmacist I	Certification List	Limited Term	Full Time	1
Pharmacist I	Certification List	Permanent	Full Time	4
Pharmacist II	Certification List	Permanent	Full Time	2
Physician and Surgeon, CF (Internal Medicine/Family Practice)	Certification List	Permanent	Full Time	1
Psychologist-Clinical, CF	Certification List	Limited Term	Full Time	2
Psychologist-Clinical, CF	Certification List	Permanent	Full Time	1
Registered Nurse	Certification List	Permanent	Full Time	1
Registered Nurse, CF	Certification List	Limited Term	Full Time	3

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Registered Nurse, CF	Certification List	Permanent	Full Time	4
Respiratory Care Practitioner	Certification List	Limited Term	Full Time	1
Senior Information Systems Analyst	Certification List	Permanent	Full Time	1
Senior Information System Analyst (Supervisor)	Certification List	Permanent	Full Time	1
Senior Psychiatrist (Supervisor), Correctional And Rehabilitative Services (Safety)	Certification List	Permanent	Full Time	1
Senior Psychologist, Correctional and Rehabilitative Services (Safety)	Certification List	Permanent	Full Time	1
Senior Psychologist, CF (Supervisor)	Certification List	Limited Term	Full Time	1
Senior Psychologist, CF (Supervisor)	Certification List	Permanent	Full Time	1
Staff Information Systems Analyst	Certification List	Permanent	Full Time	2
Staff Information Systems Analyst (Supervisor)	Certification List	Permanent	Full Time	2
Staff Psychiatrist, Correctional and Rehabilitative Services (Safety)	Certification List	Permanent	Full Time	3
Supervising Clinical Laboratory Technologist, CF	Certification List	Permanent	Full Time	1
Supervising Dental Assistant, CF	Certification List	Permanent	Full Time	1
Supervising Psychiatric Social Worker I, CF	Certification List	Limited Term	Full Time	2
Supervising Registered Nurse II	Certification List	Limited Term	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Supervising Registered Nurse II, CF	Certification List	Limited Term	Full Time	1
Supervising Registered Nurse III, CF	Certification List	Limited Term	Full Time	1
Systems Software Specialist I	Certification List	Permanent	Full Time	1
Training Officer I	Certification List	Permanent	Full Time	1
Unit Supervisor (Safety)	Certification List	Permanent	Full Time	1
Licensed Vocational Nurse	Demotion	Permanent	Full Time	1
Office Technician (T)	Demotion	Permanent	Full Time	1
Staff Psychiatrist	Demotion	Permanent	Full Time	1
Associate Governmental Program Analyst	Mandatory Reinstatement	Permanent	Full Time	1
CEA - Chief Support Executive	Mandatory Reinstatement	Permanent	Full Time	1
Certified Nursing Assistant	Mandatory Reinstatement	Permanent	Intermittent	1
Certified Nursing Assistant	Mandatory Reinstatement	Permanent	Full Time	1
Dental Hygienist	Mandatory Reinstatement	Permanent	Full Time	1
Dentist	Mandatory Reinstatement	Permanent	Full Time	2
Digital Print Operator I	Mandatory Reinstatement	Permanent	Full Time	1
Health Program Manager III	Mandatory Reinstatement	Permanent	Full Time	1
Health Program Specialist I	Mandatory Reinstatement	Permanent	Full Time	1
Laboratory Assistant	Mandatory Reinstatement	Permanent	Full Time	1
Licensed Vocational Nurse	Mandatory Reinstatement	Permanent	Full Time	4

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Office Services Supervisor I	Mandatory Reinstatement	Permanent	Full Time	1
Office Services Supervisor II	Mandatory Reinstatement	Permanent	Full Time	1
Office Technician (Typing)	Mandatory Reinstatement	Permanent	Full Time	1
Pharmacist I	Mandatory Reinstatement	Permanent	Full Time	1
Personnel Technician I	Mandatory Reinstatement	Permanent	Full Time	1
Physician and Surgeon	Mandatory Reinstatement	Permanent	Full Time	1
Physician and Surgeon, CF	Mandatory Reinstatement	Permanent	Full Time	1
Psychiatric Technician	Mandatory Reinstatement	Permanent	Full Time	2
Psychologist	Mandatory Reinstatement	Permanent	Full Time	1
Registered Dietitian	Mandatory Reinstatement	Permanent	Part Time	1
Registered Nurse	Mandatory Reinstatement	Permanent	Full Time	2
Senior Psychiatrist Supervisor	Mandatory Reinstatement	Permanent	Full Time	1
Staff Information Systems Analyst	Mandatory Reinstatement	Permanent	Full Time	1
Staff Psychiatrist	Mandatory Reinstatement	Permanent	Full Time	1
Certified Nursing Assistant, CF	Permissive Reinstatement	Permanent	Full Time	1
Dentist, CF	Permissive Reinstatement	Permanent	Full Time	1
Health Program Manager I	Permissive Reinstatement	Permanent	Full Time	1
Health Record Technician I	Permissive Reinstatement	Permanent	Full Time	1
Licensed Vocational Nurse, CDCR	Permissive Reinstatement	Limited Term	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Licensed Vocational Nurse, CDCR	Permissive Reinstatement	Limited Term	Full Time	1
Registered Nurse, CF	Permissive Reinstatement	Permanent	Full Time	1
Captain	Retired Annuitant	Limited Term	Intermittent	1
Staff Services Manager I	Retired Annuitant	Limited Term	Intermittent	1
Mechanical and Technical Occupational Trainee	Temporary Authorization Utilization (TAU)	Temporary	Full Time	1
Office Technician (Typing) – Limited Examination Appointment Program	TAU	Temporary	Full Time	2
Associate Governmental Program Analyst	Training and Development (T&D)	Permanent	Full Time	1
Associate Health Program Adviser	T&D	Permanent	Full Time	1
Associate Information Systems Analyst (Specialist)	T&D	Permanent	Full Time	2
Correctional Health Services Admin I	T&D	Permanent	Full Time	1
Public Health Nurse II, CF	T&D	Permanent	Full Time	1
Administrative Assistant I	Transfer	Permanent	Full Time	1
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	1
Associate Information Systems Analyst	Transfer	Permanent	Full Time	1
Dental Assistant, CF	Transfer	Limited Term	Full Time	1
Licensed Vocational Nurse, CDCR	Transfer	Limited Term	Intermittent	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Licensed Vocational Nurse, CDCR	Transfer	Limited Term	Full Time	1
Nurse Instructor, CF	Transfer	Limited Term	Full Time	1
Nurse Instructor, CF	Transfer	Permanent	Full Time	1
Office Technician (T)	Transfer	Limited Term	Full Time	2
Personnel Technician I	Transfer	Limited Term	Full Time	1
Personnel Technician I	Transfer	Permanent	Full Time	1
Pharmacist I	Transfer	Permanent	Full Time	1
Physician and Surgeon CF (Internal Medicine/Family Practice)	Transfer	Permanent	Full Time	2
Psychiatric Technician	Transfer	Limited Term	Full Time	1
Psychiatric Technician (Safety)	Transfer	Permanent	Part Time	1
Psychologist - Clinical, CF	Transfer	Limited Term	Full Time	1
Registered Nurse, CF	Transfer	Permanent	Full Time	1
Senior Psychologist, CF (Supervisor)	Transfer	Limited Term	Full Time	1
Staff Psychiatrist	Transfer	Permanent	Full Time	1
Staff Services Analyst (General)	Transfer	Permanent	Full Time	2
Systems Software Specialist I	Transfer	Permanent	Full Time	1

FINDING NO. 2 – Equal Employment Opportunity Questionnaires Were Not Separated from Applications

Summary: Out of 157 appointments reviewed, seven appointment files included applications where EEO questionnaires were not separated from the STD 678 employment application. Specifically, 22 of the 1,589 applications reviewed included EEO questionnaires that were not separated from the STD 678 employment application.

Criteria: Government Code section 19704 makes it unlawful for a hiring department to require or permit any notation or entry to be made on any application indicating or in any way suggesting or pertaining to any protected category listed in Government Code section 12940, subdivision (a) (e.g., a person's race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status). Applicants for employment in state civil service are asked to provide voluntarily ethnic data about themselves where such data is determined by the California Department of Human Resources (CalHR) to be necessary to an assessment of the ethnic and sex fairness of the selection process and to the planning and monitoring of affirmative action efforts. (Gov. Code, § 19705.) The EEO questionnaire of the state application form (STD. 678) states, "This questionnaire will be separated from the application prior to the examination and will not be used in any employment decisions."

Severity: Very Serious. The applicants' protected classes were visible, subjecting the agency to potential liability.

Cause: The CCHCS states that several documents were missed inadvertently, and in some instances the employees' applications were submitted double-sided and the questionnaire was missed on the back side of the page.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CCHCS submit to the CRU a written corrective action plan that the department will implement to ensure that EEO questionnaires are

separated from all applications. Copies of any relevant documentation should be included with the plan.

FINDING NO. 3 – Probationary Evaluations Were Not Provided for All Appointments Reviewed

Summary: The CCHCS did not prepare, complete, and/or retain 11 required probationary reports of performance.

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Pharmacist II	Certification List	1	1
Physician and Surgeon, CF (Internal Medicine/Family Practice)	Certification List	1	2
Senior Information System Analyst (Supervisor)	Certification List	1	1
Senior Psychiatrist (Supervisor), Correctional and Rehabilitative Services (Safety)	Certification List	1	1
Staff Psychiatrist, Correctional and Rehabilitative Services (Safety)	Certification List	2	3
Office Technician (Typing)	Demotion	1	2
Staff Services Analyst (General)	Transfer	1	1
Total		8	11

Criteria: A new probationary period is not required when an employee is appointed by reinstatement with a right of return. (Cal. Code Regs., tit. 2, § 322, subd. (d)(2).) However, the service of a probationary period is required when an employee enters state civil service by permanent appointment from an employment list. (Cal. Code Regs., tit. 2, § 322, subd. (a).) In addition, unless waived by the appointing power, a new probationary period is required when an employee is appointed to a position under the following circumstances: (1) without a break in service in the same class in which the employee has completed the probationary period, but under a different appointing power; and (2) without a break in service to a class with substantially the same or lower level of duties and responsibilities and salary range as a class in which the employee has completed the probationary period. (Cal. Code Regs., tit. 2, § 322, subd. (c)(1) & (2).)

During the probationary period, the appointing power is required to evaluate the work and efficiency of a probationer at sufficiently frequent intervals to keep the employee adequately informed of progress on the job. (Gov. Code, § 19172; Cal. Code Regs., tit. 2, § 599.795.) The appointing power must prepare a written appraisal of performance each one-third of the probationary period. (Cal. Code Regs., tit. 2, § 599.795.)

Severity: Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

Cause: The CCHCS states that in some instances an incomplete probationary report was due to turnover at the supervisory level.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CCHCS submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the probationary requirements of Government Code section

19172. Copies of any relevant documentation should be included with the plan.

FINDING NO. 4 – Appointment Documentation Was Not Kept for the Appropriate Amount of Time

Summary: The CCHCS failed to retain complete personnel records. Specifically, of the 157 appointments reviewed the CCHCS did not retain 10 NOPAs and one certification list.

Criteria: As specified in section 26 of the Board’s regulations, appointing powers are required to retain records related to affirmative action, equal employment opportunity, examinations, merit, selection, and appointments for a minimum period of five years from the date the record is created. These records are required to be readily accessible and retained in an orderly and systematic manner. (Cal. Code Reg., tit. 2, § 26.)

Severity: Serious. Without documentation, the CRU could not verify if the appointments were properly conducted.

Cause: The CCHCS states that the identified missing NOPAs were for employees who receive human resources services from CDCR institution personnel offices. The CCHCS attributes the missing certification list to human error.

Action: It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the CCHCS submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the record retention requirements of California Code of Regulations title 2, section 26. Copies of any relevant documentation should be included with the plan.

Equal Employment Opportunity

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to equal employment opportunity; issue procedures for filing, processing, and resolving discrimination complaints; issue

procedures for providing equal upward mobility and promotional opportunities; and cooperate with the CalHR by providing access to all required files, documents and data. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO Officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795.)

Because the EEO Officer investigates and ensures proper handling of discrimination, sexual harassment and other employee complaints, the position requires separation from the regular chain of command, as well as regular and unencumbered access to the head of the organization.

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

The CRU reviewed the CCHCS EEO policies, procedures, and programs in effect during the compliance review period.

FINDING NO. 5 – A Disability Advisory Committee Has Not Been Established

Summary: The CCHCS does not have an established DAC.

Criteria: Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

Severity: Very Serious. The agency head does not have direct information on issues of concern to employees or other persons with disabilities and input to correct any underrepresentation. The lack of a DAC

may limit an agency's ability to recruit and retain a qualified workforce, impact productivity, and subject the agency to liability.

Cause: The CCHCS states that they have yet to establish an independent DAC, and have utilized the CDCR's Office of Internal Affairs for administering these services.

Action: The CCHCS must continue to take immediate steps to ensure the establishment of a DAC, comprised of members who have disabilities or who have an interest in disability issues. The CCHCS must submit to the CRU a written report of compliance, including the DAC roster, agenda, and meeting minutes, no later than 60 days from the date of the SPB Executive Officer's approval of these findings and recommendations.

Personal Services Contracts

A PSC includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element, and the business or person performing the services is an independent contractor that does not have status as an employee of the State. (Cal. Code Reg., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state's authority to contract with private entities to perform services the state has historically or customarily performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC's achieve cost savings for the state. PSC's that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC's a state agency is required to notify the SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the compliance review period, the CCHCS had 15 PSC's that were in effect and subject to Department of General Services (DGS) approval, and thus our procedural review. The CRU reviewed 10 contracts, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
Alexander V. Antipov, DDS	Dental	3/1/2016 - 2/28/2019	\$595,000	Yes
Boutros Dental Corporation	Dental	3/1/2017- 2/28/2019	\$1,435,000	Yes
C.Randy Landis, DDS	Dental	3/1/2017- 2/28/2019	\$200,000	Yes
Central Coast Oral & Maxillofacial Surgery	Oral/Maxillofacial Surgery	3/1/2017- 2/28/2019	\$332,500	Yes
Joseph L. McQuirter, DDS	Dental	3/1/2017- 2/28/2019	\$3,154,488	Yes
Management Solution, LLC	Staffing	2/1/2017- 7/31/2017	\$149,999	Yes
Mark Kuo D.M.D. Inc.	Oral/Maxillofacial Surgery	3/1/2017- 2/28/2019	\$350,000	Yes
Mirwais Hussainy, DDS, Medical Corporation	Dental	3/1/2017- 2/28/2019	\$660,000	Yes
Olena Norris, DDS Dental Corporation	Dental	3/1/2017- 2/28/2019	\$1,325,000	Yes
Steven F. Paul, DDS	Dental	3/1/2017- 2/28/2019	\$2,176,910	Yes

FINDING NO. 6 – Personal Services Contracts Complied with Procedural Requirements

When a state agency requests approval from the DGS for a subdivision (b) contract, the agency must include with its contract transmittal a written justification that includes *specific and detailed factual information* that demonstrates how the contract meets one or more conditions specified in Government Code section 19131, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60.)

The total amount of all the PSC's reviewed was \$10,378,897. It was beyond the scope of the review to make conclusions as to whether the CCHCS justifications for the contract were legally sufficient. For all PSC's subject to DGS approval, the CCHCS provided specific and detailed factual information in the written justifications as to how each of the two contracts met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the CCHCS PSC's complied with procedural requirements.

Mandated Training

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as "filers") because of the position he or she holds with the agency is required to take an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, §§ 11146 & 11146.1.) State agencies are required to offer filers the orientation course on a semi-annual basis. (Gov. Code, § 11146.1.) New filers must be trained within six months of appointment and at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3.)

Upon the initial appointment of any employee designated in a supervisory position, the employee shall be provided a minimum of 80 hours of training, as prescribed by CalHR. (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role of the supervisor, techniques of supervision, performance standards, and sexual harassment and abusive conduct prevention. (Gov. Code, §§ 12950.1, subds. (a), (b), & (c), & 19995.4, subd. (b).) The training must be successfully completed within the term of the employee's probationary period or within six months of the initial appointment, unless it is demonstrated that to do so creates additional costs or that the training cannot be completed during this time period due to limited availability of supervisory training courses. (Gov. Code, § 19995.4, subd. (c).) As to the sexual harassment and abusive-conduct prevention component, the training must thereafter be provided to supervisors once every two years. (Gov. Code, § 12950.1.)

Within 12 months of the initial appointment of an employee to a management or CEA position, the employee shall be provided leadership training and development, as prescribed by CalHR. (Gov. Code, §§ 19995.4, subds. (d) & (e).) For management employees the training must be a minimum of 40 hours and for CEAs the training must be a minimum of 20 hours. (*Ibid.*) Thereafter, for both categories of appointment, the employee must be provided a minimum of 20 hours of leadership training on a biannual basis. (*Ibid.*)

The Board may conduct reviews of any appointing power's personnel practices to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).) In particular, the Board may audit personnel practices related to such matters as selection and examination procedures, appointments, promotions, the management of probationary periods, and any other area related to the operation of the merit principle in state civil service. (*Ibid.*) Accordingly, the CRU reviews documents and records related to training that appointing powers are required by the afore-cited laws to provide its employees.

The CRU reviewed the CCHCS mandated training program that was in effect during the compliance review period.

FINDING NO. 7 – Ethics Training Was Not Provided for All Filers

Summary: The CCHCS did not provide ethics training to 890 of 1,349 existing filers. In addition, the CCHCS did not provide ethics training to 592 of 822 new filers within six months of their appointment.

Criteria: New filers must be provided ethics training within six months of appointment. Existing filers must be trained at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3, subd. (b).)

Severity: Very Serious. The department does not ensure that its filers are aware of prohibitions related to their official position and influence.

Cause: The CCHCS states that they attempted to secure the Department of Justice (DOJ) approval to place their ethics training course into CCHCS' learning management system (LMS), however the DOJ could not allow departments to have direct access to transfer their training into their LMS and were unable to provide completion reports.

Action: The CCHCS must take appropriate steps to ensure that filers are provided ethics training within the time periods prescribed. It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the CCHCS must submit a written corrective action plan to ensure compliance with ethics training mandates.

Copies of any relevant documentation should be included with the plan.

FINDING NO. 8 – Supervisory Training Was Not Provided for All Supervisors

Summary: The CCHCS did not provide basic supervisory training to 210 of 370 new supervisors within twelve months of appointment.

Criteria: Each department must provide its new supervisors a minimum of 80 hours of supervisory training within the probationary period. Upon completion of the initial training, supervisory employees shall receive a minimum 20 hours of leadership training biannually. (Gov. Code, § 19995.4, subd. (b) and (c).)

Upon initial appointment of an employee to a managerial position, each employee must receive 40 hours of leadership training within 12 months of appointment. Thereafter, the employee shall receive a minimum of 20 hours of leadership training biannually. (Gov. Code, § 19995.4, subd. (d).)

Upon initial appointment of an employee to a CEA position, each employee must receive 20 hours of leadership training within 12 months of appointment. Thereafter, the employee shall receive a minimum of 20 hours of leadership training biannually. (Gov. Code, § 19995.4, subd. (e).)

Severity: Very Serious. The department does not ensure its leaders are properly trained. Without proper training, leaders may not properly carry out their leadership roles, including managing employees.

Cause: The CCHCS offers basic supervision training on a regular basis, but does not have a tracking mechanism in place to ensure that new supervisors receive basic supervisory training within twelve months of appointment.

Action: The CCHCS must take appropriate steps to ensure that new supervisors are provided supervisory training within twelve months of appointment. It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the CCHCS must submit a written

corrective action plan to ensure compliance with basic supervisory training mandates. Copies of any relevant documentation should be included with the plan.

FINDING NO. 9 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

- Summary:** The CCHCS did not provide sexual harassment prevention training to 136 of 686 new supervisors within six months of their appointment. In addition, the CCHCS did not provide sexual harassment prevention training to 34 of 833 existing supervisors every two years.
- Criteria:** Each department must provide its supervisors two hours of sexual harassment prevention training every two years. New supervisors must be provided sexual harassment prevention training within six months of appointment. (Gov. Code, § 12950.1, subd. (a).)
- Severity:** Very Serious. The department does not ensure its new supervisors are properly trained to respond to sexual harassment or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. This limits the department's ability to retain a quality workforce, impacts employee morale and productivity, and subjects the department to litigation.
- Cause:** The CCHCS offer sexual harassment prevention training via computer-based training, but do not have a tracking and reporting mechanism in place to ensure supervisors received sexual harassment prevention training in a timely manner.
- Action:** The CCHCS must take appropriate steps to ensure that its supervisors are provided sexual harassment prevention training within the time periods prescribed. It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the CCHCS must submit a written corrective action plan to ensure compliance with sexual harassment prevention training mandates. Copies of any relevant documentation should be included with the plan.

DEPARTMENTAL RESPONSE

The CCHCS' response is attached as Attachment 1.

SPB REPLY

Based upon the CCHCS' written response, the CCHCS will comply with the CRU recommendations and findings and provide the CRU with a corrective action plan.

It is further recommended that the CCHCS comply with the afore-state recommendations within 60 days of the Executive Officer's approval and submit to the CRU a written report of compliance.



April 6, 2018

Alton Ford
State Personnel Board
80 Capitol Mall, Suite 1200
Sacramento, CA 95814

Dear Mr. Ford:

The California Correctional Health Care Services (CCHCS) is in receipt of the State Personnel Board's (SPB) draft Compliance Review Report. CCHCS is committed to ensuring fairness in the hiring process, and that information pertaining to protected categories is not used in any employment decisions. CCHCS has taken action to correct all identified deficiencies as detailed below:

Finding number 1 – Job Analyses Were Not Developed or Used for the Examination Process

Disagree with finding: Upon creation of the Receivership in 2007, the California Department of Corrections and Rehabilitation (CDCR) turned over the examination processes for all medical-related classifications whereas CCHCS was to administer the examinations. The examinations themselves were created by CDCR based upon their job analysis data and following their exam development procedures. At the time of the transition, CDCR provided only the exam materials and exam bulletins with the assurance that all necessary validation support and legal documentation was in existence and retained at CDCR. In 2011, CDCR transitioned an additional 18 Dental and Mental Health examinations to CCHCS in response to an additional court order. Again, the examinations were created by CDCR based upon their job analysis data and following their exam development procedures with all required supporting documentation to be retained by CDCR.

CCHCS contacted CDCR to request the job analysis and validation reports for the exam processes which they originally created. Unfortunately, for many of the exams, CDCR's final report appears to have not been retained or only the final tasks and KSA statements resulting from the study and a brief description of the study methodology are available.

In CCHCS' previous compliance review, the SPB Compliance Review team acknowledged and accepted that documentation regarding job analyses conducted by CDCR were retained at CDCR despite attempts from CCHCS to retrieve the documentation. In the final compliance review



report issued by SPB in July 2015, CCHCS was not penalized for not having the final reports since CCHCS did not conduct the job analysis nor examination development originally.

It became clear to CCHCS the need for creating our own job analysis plan to review the accuracy and job-relatedness of the exams that CDCR provided. CCHCS began this process in July of 2012. CCHCS creates a yearly Job Analysis and Exam Validation Plan to address the areas where appropriate validity documentation is lacking. Both our job analysis and exam development methodology are rigorous; reflect current, professional best practice; and are developed based upon years of professional experience. Our team of exam analysts receives job analysis training from the California Department of Human Resources, in addition to attending department specific training programs and ad hoc job analyses groups. CCHCS Examination Services is committed to fully meeting all requirements of its own job analysis program as well as those established in Section 50 of Title 2 of the California Code of Regulations.

The SPB findings indicate job analyses were not developed or used for the examination process for the Food Administrator I, Correctional Facility (CF), Physician Assistant, CF, and Unit Supervisor (Safety). These findings are inaccurate. As previously mentioned, CCHCS assumed examinations from CDCR with the assurance that all necessary validation support and legal documentation was in existence and retained at CDCR. Therefore, for the Food Administrator I, CF, Physician Assistant, CF, and the Unit Supervisor (Safety), job analyses were completed by CDCR.

Since the time of the audit, CCHCS has completed the Food Administrator I, CF job analysis, and the job analyses for the Physician Assistant, CF and the Unit Supervisor (Safety) will be completed by June 2018.

Finding number 2 – Equal Employment Opportunity (EEO) Questionnaires Were Not Separated from Applications

Agree with finding: CCHCS understands the importance of ensuring confidentiality of employee's EEO information. CCHCS diligently attempted to gain full compliance by redacting or removing the EEO Questionnaire, however, several documents were missed inadvertently. In some instances, the employee's applications were submitted double-sided and the questionnaire was missed on the back side of the page. Additionally, of the 7 findings, 2 were double-sided applications. After a secondary review of the file, of the 5 remaining employees, does not reflect the EEO page was attached as cited. This issue has been mitigated by the implementation of Examination and Certification Online System effective July 1, 2017, which no longer prints EEO information. Additionally, there is a quality check of all applications and hiring personnel analysts now reprint all applications single-sided to avoid this error in the future.

**Finding number 3 – Probationary Evaluations Were Not Provided for all Appointments Reviewed**

Agree with finding: All managers and supervisors are required to provide probationary evaluations for every staff member required to complete a probation. CCHCS will continue to stress and highlight the critical need to complete probationary evaluations for all probationary employees. The Human Resources Associate Director sends a monthly notice via email to each program with the probation dates of each employee listing all three probationary dates. Furthermore, the list also contains the dates for each annual Individual Development Plan. In some instances, an incomplete probationary report was due to a turnover at the supervisory level. CCHCS will continue to emphasize the importance of timely completion of probationary reports through Basic Supervision Training and in our other training modules for supervisory classes. Additionally, we are adding probationary reports and Individual Development Plans (IDP) to our Human Resources (HR) Automation Project in order to have electronic notices automatically notify managers and supervisors of upcoming probation reports and IDP's, as well as a notification to HR to monitor and track compliance.

Finding number 4 – Appropriate Documentation Was Not Kept for the Appropriate Amount of Time

Agree with finding: CCHCS makes every attempt to retain records for the appropriate amount of time. In regards to the Notice of Personnel Action (NOPA), personnel staff are instructed to send notices to every employee and retain copies in the employee's Official Personnel File (OPF). Due to the high volume of employees who travel between institutions, HR instituted a process to track and calendar NOPAs that have not been signed by employees. HR staff are required to keep unsigned copies of all NOPAs noting the date the notice was mailed and the number of attempts made to gain compliance. The unsigned copy is also retained in the OPF to show proof of attempted compliance. All of the identified missing NOPAs are for employees who receive HR services from CDCR institution personnel offices. CCHCS will bring this matter to the attention of CDCR HR headquarters to provide direction and reinforcement of the importance of ensuring NOPAs are signed and filed in the OPF accordingly.

In regards to the single missing certification list, CCHCS attributes this to human error because HR staff have strict instructions to retain all lists for the appropriate time.

Finding number 5 – A Disability Advisory Committee Has Not Been Established

Agree with finding: CCHCS adheres to all EEO policies and procedures and acknowledges that the agency has yet to establish an independent Disability Advisory Committee (DAC). However, the agency utilizes CDCR's Office of Internal Affairs for administering these services. CCHCS is in the process of establishing a separate DAC and has taken several steps towards this goal. CCHCS has drafted policies and instituted a framework for a DAC and is currently recruiting members for this effort. The anticipated launch date is August 2018.

**Finding number 7 – Ethics Training Was Not Provided for All Filers**

Agree with finding: CCHCS has a rigorous process for notifying Conflict of Interest (COI) filers of their obligation to file Form 700 notices with the Fair Political Practices Commission. All filers are notified annually by email and an automated system tracks adherence. The compliance rate is compiled weekly and sent to Executive management for review. The Ethics Training was developed by the Department of Justice (DOJ) and it is solely available through their website. CCHCS tried to secure their approval to place the training into our Learning Management System (LMS) so that required staff would be enrolled in the course, and allow managers the ability to run automated reports showing compliance. Unfortunately, DOJ cannot allow department's direct access to transfer their training into LMS and is unable to provide completion reports. In order to improve compliance, CCHCS will ensure staff provide the certification of completion to their training coordinator or COI Liaison for submittal to the Staff Development Unit (SDU). SDU will enter the training completion information in the LMS system for improved tracking. This will allow for production of reports for oversight and ensure non-compliant staff complete the training.

Finding 8 - Supervisory Training Was Not Provided for All Supervisors

Agree with finding: CCHCS offers Basic Supervision training at the Headquarters campus on a regular basis. To ensure that those new supervisors receive the training within twelve months of appointment, SDU will set up a tracking mechanism utilizing reports from the State Controller's Office (SCO) Management Information Retrieval System that identify promotions and will automatically enroll those new supervisors into the training.

Finding 9 - Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Agree with finding: CCHCS supervisors participate in CDCR's sexual harassment prevention training that is offered every two years via computer based training. The training was offered in 2016 and it is being offered currently during March and April of 2018. SDU will monitor those supervisors that are out on extended leave to ensure compliance with the training requirement upon their return.

As mentioned under Finding 8, CCHCS will rely on reports from SCO identifying new supervisors for attendance into Basic Supervision Training. The supervisors will automatically be enrolled into Basic Supervision training, which includes Sexual Harassment prevention as a part of the course. This new process will ensure that new supervisors receive the training within six months of appointment.

CCHCS is in the process of mitigating these issues through the implementation of our HR Automation Project which seeks to streamline, modernize, and automate processes and protocols to create an environment with fewer manual processes to support overall compliance. CCHCS is dedicated to proactively addressing the findings from SPB and welcomes the opportunity to improve our processes in order to gain full compliance. These actions will be



implemented immediately and uniformly as we strive to significantly decrease any areas of non-compliance.

Sincerely,

JASINDA MUHAMMAD

Deputy Director

Human Resources

California Correctional Health Care Services

- cc: Yulanda Mynhier, Director, Health Care Policy and Administration, CCHCS
Migdalia Siaca, Deputy Director, Labor Relations, Performance Management, and SDU, CCHCS
Laura Harvick, Associate Director (A), Field Operations and Activation Support, HR, CCHCS
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