



SPECIAL INVESTIGATION

Additional Appointments of Supervisory and Managerial Employees

California Department of State Hospitals

Prepared By:
State Personnel Board
Compliance Review Division
May 16, 2013

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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.

In addition, the SPB may review an appointing authority's personnel practices to ensure compliance with civil service laws, rules, and policies. The four major areas of review are examinations, appointments, equal employment opportunity (EEO), and personal services contracts.

The SPB may also conduct special investigations of an appointing authority's personnel practices to ensure compliance with civil service laws, rules, and policies. Special investigations may be initiated in response to a specific request or when SPB obtains information suggesting a potential merit-related violation.

EXECUTIVE SUMMARY

In response to a request by the Legislature, the SPB conducted a special investigation into the Department of State Hospitals (DSH)'s personnel policies and practices related to supervisorial and/or managerial employees who held an additional appointment in a rank-and-file position on January 11, 2013. On that date, DSH had 173 managers and or supervisors who held additional appointments as rank-and-file employees.

Regardless of whether an appointment is an additional appointment, civil service laws and rules apply to the appointment, unless the appointment is expressly exempted from civil service. Generally, those laws and rules require hiring departments to ensure a competitive and fair selection process that includes advertising for the position; determining whether an eligible list for the classification exists; collecting applications; and conducting hiring interviews.

In addition, an appointment by way of transfer or reinstatement must be determined by candidate performance in selection procedures, including, but not limited to, hiring interviews, reference checks, background checks, and/or any other procedures

assessing job-related qualifications. Selection procedures must be designed and administered to select those individuals who best meet the selection need.

DHS did not ensure a competitive and fair selection process for any of the rank-and-file positions filled by supervisors and/or managers that included advertising for the positions, determining if eligible lists for rank-and-file classifications existed, or conducting hiring interviews. In addition, DSH appointed the supervisors and/or managers to the additional appointments as rank-and-file employees without determining their performance in a selection procedure. The additional appointments were thus not in compliance with civil service laws and rules, or merit principles. Corrective action should therefore be ordered.

In addition, while departments are currently prohibited from appointing managers and supervisors to additional appointments (CalHR's Policy Memo 2013-015), this policy could be changed or modified in the future. Accordingly, it is recommended that DSH review, and if necessary, update its personnel policies and procedures to ensure that all additional appointments, regardless of the funding source, comply with civil service laws and rules, and merit principles, unless the additional appointment is expressly exempt from civil service. DSH should also ensure that its personnel policies and procedures include a minimum two-year retention requirement for all hiring documents, including documents related to employees placed in additional appointments. Further, DSH should provide its personnel managers and staff with information and/or training on the laws, rules, and policies related to additional appointments and retention of hiring documents.

DSH must comply with the afore-stated recommendations within 60 days of the Board's Resolution and submit to the SPB a written report of compliance.

BACKGROUND

Section 350 of the SPB's Personnel Management Policy and Procedures Manual on "Appointments and Status" (300-911 (1/79) Rev. 10/30/86) states, in pertinent part, that an additional appointment is subject to civil service laws and rules, as follows:

Additional appointment is the term used when a State civil service employee is appointed to a second position in State service. The term is descriptive only since the fact that an appointment is held as an additional appointment does not change the civil service law and rule provisions that would otherwise apply to it.

¶...¶

There are no laws or rules that relate specifically to additional appointments. The authorities for making additional appointments are the same as for making any other appointment. These include the provisions on list appointments, transfers, reinstatements, etc. For example, an Office Assistant II who was reachable on the promotional list for Stenographer could receive an additional appointment as a Stenographer in the same manner as any other reachable eligible.

Section 350 also addresses two areas of “particular concern” regarding the good faith of an additional appointment:

1. The intent of the appointment must not be to circumvent the full-time appointment process; for example, making two part-time appointments of an individual who is eligible for part-time, but not full-time employment.
2. The intent of the appointment must not be to circumvent the overtime provisions.

Additionally, to ensure the proper use of additional appointments, Section 350 provides these examples: an additional appointment “to a distinctly different employment situation than the employee’s initial appointment; typically, this would involve appointment to a different class, department or State facility.”

The following departments had supervisors and/or managers who held additional appointments in rank-and-file positions within the same department on January 11, 2013:

Department	Count
California Department of Consumer Affairs	1
California Department of Corrections and Rehabilitation	227
California Department of Education	2
California Department of Food and Agriculture	2
California Department of Forestry and Fire Protection	1
California Department of Motor Vehicles	2
California Department of State Hospitals	173
California Department of Social Services	101
California Public Employees’ Retirement System	56

California Department of Veterans Affairs	2
Employment Development Department (CUIAB)	4
Total	571

Source: State Controller's Office

The Legislature requested that SPB and the Department of Human Resources (CalHR) review those additional appointments.¹ In order to provide a comprehensive review in the most expeditious manner, CalHR focused on compliance with classification, compensation and labor laws, rules, and policies, while SPB focused on compliance with civil service laws, rules, and policies.

This report contains only the results from the SPB's review.

SCOPE AND METHODOLOGY

The scope of this special investigation involved a review of additional appointments held by DSH supervisors and/or managers in rank-and-file positions on January 11, 2013. DSH records showed that on this date 173 managers and/or supervisors held additional appointments in rank-and-file positions within the department.

On March 8, 2013, a letter and material request form was sent to DSH to compile documentation needed for the special investigation. The SPB held an entrance conference with DSH on March 18, 2013.

The SPB examined the documentation that DSH provided, which included notices of personnel actions, memoranda from hospital officials justifying the need for additional appointments, emails from hospital staff requesting an additional appointment, State Controller's personnel history printout, duty statements for the additional appointments, and applications. The SPB also interviewed appropriate DSH staff.

On April 23, a telephonic exit conference was held with DSH to explain and discuss the SPB's initial findings and recommendations. DSH was also provided a copy of the SPB's draft report. DSH was given until April 24, 2013, to submit a written response to

¹In January 2013, CalHR issued Policy Memo 2013-007 to Personnel Management Liaisons (PML) prohibiting departments from processing any new additional appointments. On April 25, 2013, CalHR issued Policy Memo 2013-015 instructing that effective immediately departments were no longer authorized to make any additional appointments for managers and supervisors. Policy Memo 2013-015 also sets forth options departments can consider in lieu of appointing managers and supervisors to additional positions.

the SPB's draft report. On April 24, 2013, the SPB received and carefully reviewed the department's response, which is attached to this final compliance report.

FINDINGS

The DSH is a newly established department resulting from the restructure of the Department of Mental Health designed to improve the mental hospital system in California. The DSH has nine regional facilities throughout California, one of which is currently under construction in Stockton. Each regional facility was delegated authority to fill positions independently of the DSH headquarters in Sacramento. Seven of the nine regional facilities had managers and/or supervisors in additional appointments as rank-and-file employees on January 11, 2013. According to the personnel documentation provided, the additional appointments were effective as far back as 1997 and as recent as 2013.

DSH had few documents indicating the reasoning behind the additional appointments. The majority of the additional appointments fell into two scenarios: (1) Senior Psychologists or Physician and Surgeons being compensated for Psychologist of the Day or Medical Officer of the Day; and (2) unit supervisors being placed in an additional appointment as a Psychiatric Technician or Registered Nurse to reduce mandated overtime during staff shortages. In addition, to meet state ratio requirements and reduce overtime in particular units, several unit supervisors served an additional appointment as a rank-and-file employee in a unit different than the one they supervised.

A majority of the additional appointments were made to the permanent tenure and intermittent time base; a few others were listed as temporary intermittent or limited term intermittent tenure and time base, respectively. DSH facilities listed the basis for eligibility as reinstatement or unknown due to a lack of personnel documentation.

The following table lists the appointment type, tenure, and time base for the additional appointments:

No.	Appointment Type	Tenure (Status)	Time Base
123	Reinstatement	Permanent	Intermittent
8	Reinstatement	Limited Term	Intermittent
8	Reinstatement	Temporary	Intermittent

34	Unknown	Permanent	Intermittent
173	Total		

Departments must have recruitment strategies designed to be “as broad and inclusive as necessary to ensure the identification of an appropriate candidate group.” (Merit Selection Manual [MSM], § 1100, p. 1100.2 (Oct. 2003); Cal. Code Reg., tit. 2, § 50.) Generally, the typical steps a department takes after determining that approval to fill a vacant position has been secured include: determining whether there is an eligible list for the classification; determining whether an eligible list is necessary to fill the position; advertising the position, which may include certifying the eligible list; receiving applications, and if no applications are received, re-advertising the position with increased recruitment efforts; screening applications to determine which candidates meet minimum qualification requirements and are eligible for appointment; and conducting hiring interviews. (MSM, § 1200, pp. 1200.7-1200.8; Cal. Code Reg., tit. 2, § 50.)

Regardless of whether an appointment is an additional appointment, SPB rules require that appointments to positions in state civil service by way of transfer and reinstatement be made on the “basis of merit and fitness, defined exclusively as the consideration of each individual’s job-related qualifications for a position...as determined by candidate performance in selection procedures, including, but not limited to, hiring interviews, reference checks, background checks, and/or any other procedures, which assess job-related qualifications” (Cal. Code Reg., tit. 2, § 250, subd. (a).)

Further, Government Code section 12946 states, in pertinent part:

“It shall be an unlawful practice for employers, labor organizations, and employment agencies subject to the provisions of this part to fail to maintain and preserve any and all applications, personnel, membership, or employment referral records and files for a minimum period of two years after the records and files are initially created or received, or for employers to fail to retain personnel files of applicants or terminated employees for a minimum period of two years after the date of the employment action taken....”

In addition, all applications for a state civil service position must be maintained and preserved on file for at least two years. (Cal. Code Reg., tit. 2, §174.)

The documentation provided by DSH did not contain materials such as job announcements, current applications, duty statements, screening criteria for accepting

applications, or rating criteria for the hiring interview process for all additional appointments. A few of the facilities provided a copy of previously submitted applications (STD 678). These applications, however, were not for the additional appointment classifications as evidenced by the date stamp and classification title on the applications.

Several files provided by DSH contained memoranda justifying the need for the additional appointments. One memorandum outlined the need for six physicians and surgeons to work 8 to 10 hours per month, mostly on their regular days off, to meet the court's monitored medical auditing requirements.

Although DSH had documentation showing the reasons for the additional appointments, those justifications alone did not alleviate the necessity for a formal recruitment process. Due to the lack of recruitment documentation provided, it is clear DSH did not follow a formal recruitment process for the additional appointments.

DSH provided documentation from each of its seven facilities that had supervisors and/or managers in additional appointments as rank-and-file employees. SPB created categories to review and analyze the documentation provided. The categories included, but were not limited to, the following criteria: advertisement of positions, applications (received/reviewed), duty statements, application screening criteria, interview rating criteria, notice of personnel action, and any correspondence related to the additional appointments. The additional appointments were made at the request of the hospital administrators or the request of hospital staff who volunteered for an additional appointment. One DSH facility provided a memorandum addressed to DSH Headquarters. The memorandum instructed that a unit supervisor's request for an additional appointment as a Psychiatric Technician be approved to help the facility reduce overtime costs. Consequently, these additional appointments did not follow a formal selection process and were approved at the request of its recipients. The documentation provided by DSH failed to show that the additional appointments were based on merit principles and/or according to the state's selection standards.

A majority of the additional appointments were funded through DSH's temporary help blanket fund. Nine of the 173 additional appointments were not funded via the temporary help blanket fund. Civil service laws and rules apply to all appointments, unless expressly exempted from civil service, regardless of how the positions are funded (i.e., funded through DHS's regular/on-going position budget or funded through DHS's temporary help position budget).

DSH should verify the effective dates for all the additional appointments and report to CalHR its findings. DSH and CalHR should work cooperatively to determine whether any of the additional appointments may be voided or otherwise resolved. In addition, the current recruitment efforts do not appear to meet the demands of the number of vacant positions. Therefore, an updated recruitment plan should be created in which new methods, such as holding career fairs at local educational institutions, can be utilized to create awareness of the vacant positions.

In addition, while departments are currently prohibited from appointing managers and supervisors to additional appointments (CalHR's Policy Memo 2013-015), this policy could be changed or modified in the future. Accordingly, it is recommended that DSH review, and if necessary, update its personnel policies and procedures to ensure that all additional appointments, regardless of the funding source, comply with civil service laws and rules, and merit principles, unless the additional appointment is expressly exempt from civil service. Further, DSH should provide its personnel managers and staff with information and/or training on the laws, rules, and policies related to additional appointments and retention of hiring documents.

DEPARTMENTAL RESPONSE

DSH was provided a draft copy of the initial report to review. A copy of DSH's response is attached as Attachment 1.

DSH recognizes the deficiencies uncovered in the SPB compliance review and is committed to following appropriate processes and practices in utilizing additional appointments in the future. DSH requests continued discussion on separating those additional appointments that were permanent intermittent appointments.

SPB REPLY

Based upon DSH's written response, it is recommended that DSH work cooperatively with CalHR to determine whether any of the additional appointments may be voided or otherwise resolved.

It is further recommended that DSH comply with the afore-stated recommendations within 60 days of the Board's Resolution and submit to the SPB a written report of compliance.

The SPB appreciates the professionalism and cooperation of DSH during this special investigation.



Memorandum

Date: April 24, 2013

To: Jim Murray, Chief
SPB Compliance Review Division

From: Kathy Darling, Chief
Human Resources Branch

Subject: SPB Special Investigation Departmental Response

The State Personnel Board (SPB) provided the Department of State Hospitals (DSH) with an initial draft of their Special Investigation Findings regarding Additional Appointments on Friday, April 19, 2013. SPB met with DSH management on Tuesday, April 23, 2013 to discuss the recommendations and to confirm that a departmental response would be provided by today. Following is the DSH response to the SPB recommendations.

The DSH uses additional appointments to meet licensed staffing minimum ratios and licensing regulations under Title 22 of the California Code of Regulations, hospital accreditation service standards as defined by the Joint Commission, to ensure adequate patient care, and to meet other critical health and safety needs. The purpose of these licensing and accreditation requirements is to ensure good patient care as well as employee and patient safety. If these requirements are not met, hospitals could be cited for non-compliance with licensing and accreditation which could lead to fines and hospital closure.

DSH recognizes the deficiencies uncovered in this SPB review in regards to the Merit process and is committed to following appropriate processes and practices in utilizing additional positions in the future. This would include proper advertising and a competitive hiring process when filling additional positions. In addition, DSH will review our current additional appointments to assess our staffing needs and will determine our ability

to separate these appointments over a two year period. In researching the ability to separate these additional appointments, we would like to discuss Precedential Board Decision No. 94-15, and how it pertains to the separation of Permanent-Intermittent appointments.

In closing, DSH is committed to a long-term solution to comply with the proper merit process as directed by SPB. DSH cannot implement a plan to separate additional appointments without first receiving CalHR approval to continue using additional appointments. These positions are needed to continue to provide for patient care, and patient and employee safety.

If additional information is needed or if you wish to discuss further, please contact me at (916) 654-3591.

**BOARD RESOLUTION ADOPTING
SPECIAL INVESTIGATION REPORT AND FINDINGS BY SPB
COMPLIANCE REVIEW DIVISION OVER ADDITIONAL APPOINTMENTS OF
SUPERVISORIAL AND MANAGERIAL EMPLOYEES IN
THE DEPARTMENT OF STATE HOSPITALS**

WHEREAS, the State Personnel Board (SPB or the Board) at its duly noticed meeting of May 16, 2013, carefully reviewed and considered the attached Special Investigation Report submitted by SPB's Compliance Review Division concerning additional appointments of supervisory and managerial employees in the Department of State Hospitals.

WHEREAS, the Report was prepared following a special investigation that was conducted in response to the Legislature's request to examine whether the practice of appointing supervisory and/or managerial employees in additional rank-and-file positions within the Department of State Hospitals violates civil service laws.

WHEREAS, each Report details the background, scope and methodology of the review, the findings and recommendations, and the affected department's response.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby adopts the Report, including all findings and recommendations contained therein, and authorizes the issuance of the Report to the Legislature in response to its request for review. A true copy of the Report shall be attached to this Board Resolution and the adoption of the Board Resolution shall be reflected in the record of the meeting and the Board's minutes.

* * * * *

The foregoing Board Resolution was made and adopted by the State Personnel Board during its meeting on May 16, 2013, as reflected in the record of the meeting and Board minutes.



SUZANNE M. AMBROSE
Executive Officer