



Quality Assurance Review
of the
BOARD OF PRISON TERMS

FINAL REPORT
December 2001



State of California

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State Personnel Board
Final Report of Quality Assurance Review
(December 2001)

BOARD OF PRISON TERMS

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I. Background

In September 2001, the State Personnel Board (SPB) conducted a legislatively mandated review of the Board of Prison Terms (BPT). The on-site review was a result of Senate Bill 778 which directed SPB to conduct a quality assurance review of the Department's personnel practices with particular emphasis on the Deputy Commissioner, BPT classification. The review included an assessment of the Department's processes and practices regarding examinations and appointments, including but not limited to, hiring, transfers, promotions and adverse actions. SPB's review focused on the period of July 1, 1999 through June 30, 2001, although appointments made as a result of the Deputy Commissioner, BPT examination administered in 1998 by SPB were also reviewed. The findings from this review, as well as SPB directives to BPT, are provided in this report.

II. Scope of Review and Methodology

The audit performed by SPB was conducted to assess the extent to which BPT's personnel practices conformed to State personnel laws, regulations, and policies. The audit consisted of a review of examination history files including job analysis data, examination planning documents, examination bulletins, competitors' state applications, selection instruments, qualification appraisal panel (QAP) interview questions, QAP interview tapes, panel member rating sheets and notes, rating criteria, scoring methods, bottom-line hiring data, and eligible lists. This information was obtained and reviewed for the six examinations that were administered by BPT during the audit period of July 1, 1999 through June 30, 2001.

In addition to a review of the examination history files, an evaluation of a random sample of appointments that were made by BPT during the audit period was conducted. Appointments reviewed as part of the audit process consisted of Career Executive Assignment (CEA) appointments, permanent and limited-term appointments from eligible lists, transfers within state service, mandatory reinstatements, training and development assignments, short duration appointments, and emergency appointments. Data for this review was obtained from certifications from eligible lists, appointment documents, employee history information, and other documents contained in official employee personnel files.

A third aspect of the BPT audit involved a review of adverse actions taken by BPT during the audit period. Only one adverse action was taken during this period. This action was reviewed for compliance with applicable laws, regulations, and policies.

III. Summary of Findings

The audit conducted by SPB identified serious concerns with the personnel management practices of BPT, primarily relating to the administration of the examination for the Deputy Commissioner, BPT classification and an appointment to the CEA 4, Executive Officer position due to BPT's inability to demonstrate an examination was administered for this CEA position. Other examinations administered by BPT failed to demonstrate competitiveness as required by Government Code §18930; the rating method used to evaluate competitors in several examinations was highly subjective and did not provide for objective assessment of candidates' qualifications. In other examinations, BPT could not demonstrate what criteria was used to rate candidates.

A review of the Deputy Commissioner, BPT examination process raises concern about the integrity and lawfulness in which ratings and final scores were assigned to competitors. The rating criteria found in the examination file was ambiguous, subjective, and likely resulted in unreliable ratings. The final scores assigned to competitors were inconsistent with ratings documented on the interview panels' rating sheets for responses to the QAP questions and written exercise. Some competitors were disqualified from the examination even though interview panel rating sheets revealed passing ratings assigned to the QAP questions and written exercise. BPT could not demonstrate how competitors' final scores were determined. One panel member did not attend several QAP interviews; however, scores were entered for this panel member on the Competitive Rating Report, a form used to document final scores and establish the eligible list. In addition, BPT did not demonstrate that all participants in the examination met the minimum qualifications of the class, as required by Government Code §18900(a). As a result of SPB's review of this examination, SPB is recommending that the Deputy Commissioner, BPT eligible list established in May 2001 be abolished; no permanent appointments will be allowed from this eligible list. BPT will be directed to re-administer the Deputy Commissioner, BPT examination with assistance from SPB staff.

Based on the review of documentation relating to 29 appointments made by BPT, most appointments complied with State statutes. However, there was no documentation to demonstrate that one CEA appointment met legal requirements. In the absence of BPT providing evidence that a CEA 4 examination was administered for this position, the resulting CEA appointment was unlawful. BPT could not demonstrate that one of the 29 appointments was made and accepted in good faith as required by California Code of Regulations §8. One appointment made as a result of a training and development assignment did not meet the legal requirements. Mandatory reinstatements reviewed during the period and most appointments made by transfer were found to be in compliance with State laws and regulations.

There was no evidence that BPT conducted job analyses prior to administering its examinations. In the absence of job analyses, it is not clear whether BPT used appropriate testing methods or that examinations accurately assess the required knowledge, skills, abilities, and qualifications of competitors.

A review of 20 certification lists used by BPT during the audit period found that most lists were well documented. The BPT could not demonstrate, however, in two of the certification lists that the individuals hired were from appropriate ranks as required by Government Code §§19057.1, 19057.4 and California Code of Regulations §254.2.

One adverse action was taken by BPT during the review period. No concerns were identified with this action.

Lack of documentation resulted in BPT's inability to demonstrate, in some cases, that it complied with civil service laws and rules.

Due to the emphasis placed on the Deputy Commissioner, BPT classification by SB 778, this report is divided into two sections: "*SPB Findings and Directives, Deputy Commissioner, BPT*" and "*SPB Additional Findings and Directives.*"

IV. SPB Findings and Directives

Deputy Commissioner, BPT Examination

A. *Job Analysis/ Examination Method*

REQUIREMENT(S)

Government Code §18930 states, "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 for which they seek appointment..."

Government Code §19702.2 states, "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..."

FINDING(S)

1. There was no information in the Deputy Commissioner, BPT examination file to demonstrate this examination was based on a job analysis.
2. The Deputy Commission, BPT examination was administered on an open, non-promotional basis. The examination file contained five interview questions; however, only three questions were used in the examination process which did not reflect the critical class requirements. The Post Examination Evaluation completed by one of the Chairpersons stated, "The panel was given more questions than time allowed, and to maintain schedule had to use only half of the questions." Based on documentation reviewed, 20 minutes was allowed for the interview process and 30 minutes for the written exercise. Government Code §18930 requires examinations to "...fairly...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..." To determine the competitors' ability to perform the duties of the Deputy Commissioner, BPT classification, additional questions for this high-level position were warranted.

CONCLUSION(S)

In the absence of a job analysis, BPT could not demonstrate this examination was job-related, competitive, and fairly assessed the qualifications of competitors as required by Government Code §§18930 and 19702.2.

BPT could not demonstrate the selection instrument adequately assessed the ability of competitors to perform the duties of the Deputy Commissioner, BPT classification.

SPB DIRECTIVE(S)/RECOMMENDATION(S) REGARDING JOB ANALYSIS/EXAMINATION METHOD

For all future Deputy Commissioner, BPT examinations that are administered as a QAP, weighted 100%, it is recommended BPT use additional interview questions to accurately and competitively determine competitors' knowledge and abilities to perform the duties of the class, as required by Government Code §18930. (*Ref. Finding A2*)

***B. Rating Criteria/
Competitiveness***

REQUIREMENT(S)

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

Government Code §18930 states, "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..."

California Code of Regulations §193 states, "In any examination, the appraisal of education and experience of the competitors may be made by formula applied to the information and data given on their official applications..."

California Code of Regulations §198 states, "Ratings of 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 in relation to the comparable qualifications of other competitors...When rating competitor's education and experience, interviewers shall consider the quality, length, and pertinence of such education and experience, and the degree to which competitor's total education and work histories represent suitable preparation for the work of the class."

FINDING(S)

1. The Deputy Commissioner, BPT examination was administered as a QAP, weighted 100%. One component of the QAP interview was a written exercise in which competitors were to provide an essay response to a hypothetical situation. Based on a review of the interview panels' rating sheets, this written

exercise was scored as an additional QAP question. The rating criteria for the written exercise and interview questions was not clearly defined and did not allow for objective and reliable ratings. BPT could not demonstrate how competitors' final ratings were determined. A Post Examination Evaluation completed by one panel member indicated she was not always able to judge the adequacy of the response, but relied on the expertise of the other two panel members.

2. The SPB reviewed 22 tape recordings of the QAP interviews. Competitors were informed during the interview that their final score would be determined by the competitiveness of their answers in comparison to other competitors as well as their level of education and work experience. Based on documentation reviewed, competitors were assigned ratings for their level of education, work experience, and their responses to the interview questions; however, there was no information in the examination file to demonstrate the criteria that was used to determine the ratings for competitors' level of education and work experience. Thus, the competitiveness and fairness of these ratings could not be determined. While reviewing two of the interview tape recordings, it appeared that the tape recorder was turned on and off several times, which raises additional concerns about the fairness and competitiveness of this examination.
3. To determine the fairness and competitiveness of ratings assigned to competitors, SPB requested the rating sheets of each panel member. The interview panel consisted of the Executive Officer, a retired annuitant (former Executive Officer) and two retired annuitants that shared the responsibility of Chairperson. BPT provided the rating sheets of two panel members. However, rating sheets were only received from one Chairperson, as the second Chairperson indicated she could not locate the rating sheets. Based on documentation reviewed, panel members were to assign a score between 65 and 94 for each of the following: the competitors' level of education; work experience; written exercise; and three QAP interview questions. SPB reviewed randomly selected rating sheets. In many cases, panel members did not document on all rating sheets a score for each question, written exercise, level of education, or work experience; some rating sheets indicated a final score only. Significant irregularities were found in the ratings assigned to competitors as follows:
 - In many cases, the final score of competitors was higher than the individual ratings assigned for responses to each QAP question, the written exercise, and level of education and work experience. In contrast, it was also found that competitors were disqualified by panel members even though passing ratings were assigned to responses to QAP questions, the written exercise, level of education and/or work experience.

- Ratings assigned to competitors for education and experience were inconsistent. For example, the same rating was assigned to a competitor with a Bachelor's degree as another competitor with a Bachelors, Masters, and Juris Doctorate degrees. Ratings assigned to competitors' work experience were also inconsistent. The following charts illustrate some of the inconsistencies identified in the ratings assigned to competitors' level of education and experience:

RATINGS OF EDUCATION

MA	BS/BA	AA	JD/ Law	No Degree	Score
X Political Science	X American Studies	X Police Science			91
X Public Admin.	X Criminal Justice	X Sociology			88
X Behavioral Science	X Psychology				85
X Admin Of Justice	X Literature		X		82
	X Business Admin.				88
	X Business Admin.				82
			X		85
		X Police Science			70
				X	73

RATINGS OF EXPERIENCE

Classification	Years	Score
Attorney	1.8	76
Hearing Officer (working in capacity of staff counsel)	2.3	
Assistant District Attorney	8.0	
Attorney	7.6	81
Panel Attorney for BPT	1.7	82
Assistant District Attorney	7.9	
BPT Commissioner	1.6	82
BPT Commissioner	8.0	82
BPT Commissioner	1.0	65
Executive Director	21.0	

The final scores of some candidates were inconsistent with the ratings assigned by panel members for the various components of the examination. The following chart illustrates some of the discrepancies and irregularities found in the scoring of the Deputy Commissioner, BPT examination of May 2001. Missing scores are the result of a rater failing to provide a score.

Com- petitor	Raters	Question 1	Question 2	Question 3	Written Exercise	Educa- tion	Exper- ience	Rater's Score on Individual Rating Sheet*	Rater's Score on CRR**	Final Score
1	Rater 1	65	65	65	65	65	65	70	65	65
	Rater 2						65	65	65	
	Rater 3	76		76			70	73	65	
2	Rater 1	79	73	73	79	79	82	65	65	65
	Rater 2	65		65	65	65	65	65	65	
	Rater 3							65	65	
3	Rater 1	89.5	87.5	89.5	80.5	82	79	94	94	94
	Rater 2	88	88	88	88	88		94	94	
	Rater 3		88	91	85			94	94	
4	Rater 1	79	82	85	79	88	82	94	94	94
	Rater 2	90.5	88	88	82.5	88	88	94	94	
	Rater 3	88	88	91				94	94	
5	Rater 1	92.5	89.5	88	82	82	80.5	94	94	94
	Rater 2	87.5	89.5			88		91	94	
	Rater 3	91	88	88	88			94	94	
6	Rater 1	87.5	85	88	79	82	79	91	91	91
	Rater 2				82	87.5		91	91	
	Rater 3		85	91	79			91	91	
7	Rater 1	82	79	76	70	82	76	91	91	91
	Rater 2	85	88	82	73	82	85	91	91	
	Rater 3	70		76		85	88	91	91	
8	Rater 1	89.5	88	90.5	65	88	79	91	91	91
	Rater 2	85	85	85	76	87.5	87.5	91	91	
	Rater 3	88	88	91	70	91		88	91	
9	Rater 1	79	82	88	82	79	91	88	91	91
	Rater 2			87.5	80.5		91		91	
	Rater 3	79	85			91	85	91	91	

* Reflects final score assigned by each panel member as indicated on their individual rating sheet.

** Reflects final score of each panel member entered on the Competitive Rating Report form, which is used to establish the eligible list.

4. The SPB reviewed randomly selected tape recordings of the QAP interviews and compared competitors' responses with the ratings assigned. Again, discrepancies and inconsistencies in how ratings were assigned by panel members were discovered.
 - Competitors' responses to the QAP interview questions were compared to the general benchmarks provided on the rating criteria. Based on SPB review, ratings assigned to some competitors' responses to questions were inconsistent with the benchmarks provided.
 - When comparing the ratings assigned to six competitors for one question, two competitors answered three of the four suggested responses identified on the rating criteria, yet received different ratings of 82 and 73. Two candidates provided all of the suggested responses and received ratings of 82 and 73.
 - One competitor was assigned a rating of 76 and 79 for two of the interview questions. This competitor's responses were comparable to another competitor, who received a rating of 88 for each of the two questions.
5. An "Interview Summary Sheet" consisting of a rating scale and rating dimensions was maintained in the examination file. The performance dimensions included knowledge of issues; experience; communication; and problem solving. A rating scale of 65 to 94 included benchmarks to determine a candidate's rating; however, it was unclear if or how this document was used in determining a competitor's final score, as there is no relationship between these benchmarks and the QAP interview questions. Furthermore, this document indicates that a candidate cannot receive a score higher than 79 for work experience, yet numerous competitors did receive a score that exceeded 79. SPB discussed this rating sheet with the panel Chairpersons for this examination, who stated this document was not used to rate candidates.

CONCLUSION(S)

BPT could not demonstrate this examination was competitive and fairly tested the qualifications and abilities of competitors as required by The Constitution of the State of California, Article VII, Section 1(b), Government Code §18930 and California Code of Regulations §§193 and 198.

REQUIREMENT(S)

California Code of Regulations §196 states, "Each qualifications appraisal panel shall include...(a) One or more persons within the state service, preferably from the agency or agencies for which the employment list is being established, who are familiar with the job requirements of the class for which the examination is being held..."

FINDING(S)

6. Panel members for the Deputy Commissioner, BPT examination consisted of the current and former BPT Executive Officer and two retired annuitants that shared the responsibility of Chairperson.
7. One panel member was a subordinate of one competitor in the Deputy Commissioner, BPT examination and participated in rating that candidate which raises concern about the objectivity of the rating.

SPB DIRECTIVE(S)/RECOMMENDATION(S) REGARDING RATING CRITERIA/COMPETITIVENESS

Effective immediately, BPT shall develop measurable, objective rating criteria for all examination components to ensure fairness and competitiveness in its examinations, as required by The Constitution of the State of California, Article VII, Section 1(b), Government Code §18930 and California Code of Regulations §193 and 198. Rating criteria shall be maintained in the appropriate examination file until completion of a new examination and in accordance with SPB's Selection Manual Section 3120, Examination Security and Records Retention Guidelines. *(Ref. Findings B1 -B5)*

The Deputy Commissioner, BPT classification reports directly to the Associate Chief Deputy Commissioner with the second-line supervisor being the Chief Deputy Commissioner. Therefore, it is recommended that the composition of panel members for the Deputy Commissioner, BPT examination include a first or second-line supervisor. *(Ref. Finding B6)*

In order to ensure fairness and integrity of the examination process, it is recommended BPT ensure QAP panel members do not interview and rate their supervisor or manager. *(Ref. Finding B7)*

C. Application Review**REQUIREMENT(S)**

Government Code §18934 states, "Every applicant for examination shall file a formal signed application..."

FINDING(S)/CONCLUSION(S)

1. Approximately 45 applications were reviewed for compliance with State laws and rules. BPT accepted three applications that did not contain the applicants' signatures. Thus, BPT could not demonstrate compliance, in these three instances, with Government Code §18934.

REQUIREMENT(S)

California Code of Regulations §174 states, "All applications must be filed...within the time...specified in the examination announcement...Filing an application "within the time" shall mean postmarked by the postal service or date stamped

at...(the appropriate office of the agency administering the examination) by the date specified."

FINDING(S)/ CONCLUSION(S)

2. Based on documentation reviewed, two of the 45 applications reviewed were not date stamped or included proof of postmark. Thus, BPT could not demonstrate compliance, in two instances, with California Code of Regulations §174.

REQUIREMENT(S)

Government Code §18900(a) states that examinations shall be open to persons who meet the minimum qualifications of the class.

Government Code §18932 states, "...Any person possessing all the minimum qualifications for any state position is eligible...to take any civil service examination..."

California Code of Regulations §171.1 requires applicants to complete the minimum time required by the experience component in the minimum qualifications prescribed for the class.

FINDING(S)

3. Applications accepted into the Deputy Commissioner, BPT examination did not indicate whether applicants' experience was full-time, part-time, or intermittent. This information is necessary to accurately determine candidates' eligibility.
4. Of the 45 applications reviewed, SPB identified nine applicants accepted into the examination that did not appear to meet the minimum qualifications of the class.

CONCLUSION(S)

The BPT could not demonstrate that it consistently requires candidates to meet the minimum qualifications of the classification for which they are examined as required by Government Code §§18900(a), 18932 and California Code of Regulations §171.1.

SPB DIRECTIVE(S) /RECOMMENDATION(S) REGARDING APPLICATION REVIEW

Effective immediately, BPT shall ensure that all applicants for all examinations submit a signed State application as required by Government Code §18934. (*Ref. Finding C1*)

Effective immediately, BPT shall date stamp all applications/resumes for examinations or maintain postmarked envelopes to demonstrate applicants met filing requirements as required by California Code of Regulations §174. (*Ref. Finding C2*)

Effective immediately, BPT shall carefully review each applicant's qualifications to ensure that minimum qualifications (or early filing requirements) are met prior to allowing applicants to participate in all examinations as required by Government Code §§18900, 18932 and California Code of Regulations §171.1. BPT staff who review applications for minimum qualifications should indicate on each application how applicants met or failed to meet the minimum qualifications of each examination. Clarification of an applicant's time-base (full-time, part-time, or intermittent) and hours worked per week should also be noted on the application since this may impact whether applicants meet minimum qualifications. (*Ref. Findings C3, C4*)

***D. Competitive
Rating Report***

REQUIREMENT(S)

Government Code §18930 states, "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..."

Government Code §19680 states, "It is unlawful for any person...(b)Wilfully and falsely to mark, grade, estimate, or report upon the examination or proper standing of any person examined or certified under this part or board rule, or to aid in so doing, or make any false representation concerning the same or the person examined..."

FINDING(S)

1. Based on documentation reviewed, one panel member did not attend five QAP interviews; however, scores were entered for this panel member on the Competitive Rating Report. SPB discussed this issue with the Chairperson who could not recall why this occurred.
2. Competitors' final scores entered on the Competitive Rating Report are not consistent with the scores indicated on panel members' individual rating sheets. There was no documentation found in the examination file to clarify these discrepancies.
 - Two competitors had a final score of 79 entered on a panel member's rating sheet. However, the Competitive Rating Report indicates a score of 82 was assigned by this panel member.
 - One competitor had a score of 91 on a panel member's rating sheet. The Competitive Rating Report indicates a score of 94 was assigned by this panel member.

- One competitor had a final score of 85 on a panel member's rating sheet. The Competitive Rating Report indicates a score of 88 was assigned by this panel member.
- One competitor had a final score of 73 on a panel member's rating sheet. The Competitive Rating Report indicates a score of 70 was assigned by this panel member.

CONCLUSION(S)

Based on documentation reviewed, BPT could not demonstrate compliance with Government Code §19680 when it entered five final scores on the Competitive Rating Report for a panel member who did not participate in these five QAP interviews.

The BPT did not maintain appropriate documentation to demonstrate why competitors' final scores on panel members' rating sheets were not consistent with the scores indicated on the Competitive Rating Report.

SPB DIRECTIVE(S)/RECOMMENDATION(S) REGARDING COMPETITIVE RATING REPORT

Effective immediately, BPT shall ensure competitors' final scores are entered on the Competitive Rating Report for only the panel members that were present during the QAP interview. (*Ref. Finding D1*)

Effective immediately, BPT shall ensure competitors' final scores on the Competitive Rating Report are consistent with those scores reflected on panel members' rating sheets or maintain appropriate documentation to clarify any discrepancies. (*Ref. Finding D2*)

E. Scoring**REQUIREMENT(S)**

Government Code §18950.1 states, "...full-time employees of the state who are exempt from state civil service...shall be eligible to receive three career credits...In order to be eligible to receive credits, such employees...must have 12 consecutive months of service in an exempt position."

Government Code §18951 states, "In an examination held on an open, nonpromotional basis...a competitor, who has permanent civil service status, or who has a mandatory right of reinstatement to a position with permanent civil service status, and who attains the passing mark established for the examination...shall have three credits added to his or her earned score."

FINDING(S)

Based on documentation reviewed, one competitor that was awarded three career credits was not eligible to receive them.

CONCLUSION(S)

The BPT could not demonstrate compliance with Government Code §§18950.1 and 18951 when it awarded three career credits to a competitor who was not eligible to receive them.

SPB DIRECTIVE(S)/RECOMMENDATION(S) REGARDING SCORING

Effective immediately, BPT shall ensure all competitors who are awarded career credits meet the eligibility requirements set forth in Government Code §§18950.1 or 18951. (*Ref. Finding E*)

F. Notices**REQUIREMENT(S)**

California Code of Regulations §175 states, "Each applicant shall be notified of the approval or disapproval of his application..."

FINDING(S)

Several notices are sent to candidates throughout the examination process and may include notices of rejection for not meeting minimum requirements, notices of a scheduled QAP interview, and notices of examination results (either a passing score or disqualification).

There was no documentation in the examination file to demonstrate that all applicants were notified of the disapproval of their application as required by California Code of Regulations §175.

CONCLUSION(S)

Due to lack of documentation, BPT could not demonstrate that it appropriately notifies candidates as required by California Code of Regulations §175.

SPB DIRECTIVE(S)/RECOMMENDATION(S) REGARDING NOTICES

Effective immediately, BPT shall maintain documentation in every examination history file to demonstrate that all applicants are notified of the disapproval of his/her application as required by California Code of Regulations §175. Such documentation shall be maintained until completion of a new examination and in accordance with SPB's Selection Manual Section 3120, Examination Security and Records Retention Guidelines. (*Ref. Finding F*)

G. Adverse Impact**REQUIREMENT(S)**

Government Code §19702.2 states, "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."

Government Code §19705 states, "...the SPB may, after public hearing, adopt a system in which applicants for employment in the state civil service shall be asked to provide, voluntarily, ethnic data about themselves where such data is determined

by the board to be necessary to an assessment of the ethnic and sex fairness of the selection process..."

California Code of Regulations §174.7(a) states, "Ethnic, sex and disability information shall not be used in a discriminatory manner in the selection process. (b) Such information shall only be used for one or more of the following purposes: (1) research and statistical analysis to assess the fairness of the selection process in regard to ethnicity, sex, and the disabled; or (2) to provide a basis for corrective action when adverse effect is present..."

FINDING(S)/CONCLUSION(S)

There was no indication that BPT reviewed or analyzed data prior to or after the administration of this examination to determine if adverse impact resulted from the current Deputy Commissioner, BPT examination process. This analysis is necessary in order to ensure that BPT examinations are not discriminatory. Absent such an analysis, this determination cannot be made.

SPB DIRECTIVE(S)/RECOMMENDATIONS(S) REGARDING ADVERSE IMPACT

Effective immediately, BPT shall review and maintain applicant and hiring data for every examination administered to determine if adverse impact has resulted from any phase of the examination process. Such documentation shall be maintained until completion of a new examination and in accordance with SPB's Selection Manual 3120, Examination Security and Retention Guidelines. Where adverse impact is identified, BPT shall either re-evaluate the selection instrument prior to releasing eligible lists or identify the job-relatedness of the selection instrument by a supportable job analysis. (*Ref. Finding G*)

***H. Confidentiality/
Examination
Security***

REQUIREMENT(S)

Government Code §18930 states, "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..."

California Code of Regulations §178 states, "...Before the commencement of an examination, competitors will be required to hand to the examiner any unauthorized printed or written matter in their possession that might serve to aid them in the examination..."

FINDING(S)

1. One component of the QAP interview process was a written exercise in which competitors were to provide an essay response to a hypothetical situation using a laptop computer. Competitors were allotted 30 minutes to complete the exercise. Instructions to the competitors stated, "Do not attempt to save your typed response, the receptionist will be responsible for saving your response to a disk...There may be up to two applicants preparing their response to this

exercise at the same time. If you complete the exercise in less than the allotted time, please exit quietly and notify the receptionist.” Should a competitor complete the written exercise in less than the allotted time and leave the examining room to notify the receptionist, this may leave another competitor in the room who will have access to the other competitor’s response to the written exercise.

2. An allegation was made that a competitor in this examination had his/her notes in their possession while taking the written exercise portion of this examination. SPB spoke with BPT staff, who verified that an examination proctor was not present during this phase of the examination. Thus, several competitors may have been in the same room completing the examination without proctor supervision.

CONCLUSION(S)

The BPT could not demonstrate compliance with Government Code §18930 when the written exercise portion of the examination was conducted with two competitors in the same room without the presence of an examination proctor.

SPB DIRECTIVE(S)/RECOMMENDATION(S) REGARDING CONFIDENTIALITY/EXAMINATION SECURITY

Effective immediately, to demonstrate compliance with Government Code §18930, BPT shall ensure that an examination proctor is present when there are multiple competitors completing a written exercise or examination simultaneously.

(Ref. Finding H1)

Effective immediately, BPT shall ensure that all competitors provide the proctor with any material in their possession that might serve to aid them in the examination, as required by California Code of Regulations §178. *(Ref. Finding H2)*

OVERALL SPB DIRECTIVE REGARDING THE DEPUTY COMMISSIONER, BPT EXAMINATION

The BPT shall consult with SPB staff to re-administer the Deputy Commissioner, BPT examination as soon as possible. All applicants for the Deputy Commissioner, BPT examination shall be notified that a new examination will be administered. SPB will recommend to the Five Member State Personnel Board that the Deputy Commissioner, BPT eligible list be abolished and will hold a public hearing to allow comments from BPT, applicants, and other interested parties. There shall be no permanent appointments made from the current Deputy Commissioner, BPT eligible list.

Deputy Commissioner, BPT Appointments

I. List

Appointments

REQUIREMENT(S)

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

Government Code §18900(a) states, "Eligible lists shall be established as a result of...competitive examinations open to persons...who meet the minimum qualifications requisite to the performance of the duties of that position as prescribed by the specification."

Government Code §18932 states, "...Any person possessing all the minimum qualifications for any state position is eligible...to take any civil service examination..."

FINDING(S)/CONCLUSION(S)

Two applicants appointed from the 1998 Deputy Commissioner, BPT eligible list, did not meet the minimum qualifications of the classification. Both applications indicate the applicant was initially rejected for not meeting the experience requirements in the class specification; however, both were allowed to participate in the examination and were subsequently hired.

SPB DIRECTIVE(S)/RECOMMENDATION(S) REGARDING LIST APPOINTMENTS

The BPT shall carefully review the qualifications of all individuals who participated in and were subsequently hired from the 1998 Deputy Commissioner, BPT examination to ensure qualifications were met. BPT shall notify SPB, in writing, of its findings by March 1, 2002, and provide documentation to support its findings. If illegal appointments are identified, BPT shall work with SPB to take the appropriate corrective action. (*Ref. Finding I*)

J. Short Duration *Appointments*

REQUIREMENT(S)

California Code of Regulations §8 states, "To be valid, a civil service appointment must be made and accepted in "good faith"... (a) **In order to make an appointment in "good faith," an appointing power...must:** (1) Intend to observe the spirit and intent of the law (2) Make a reasonable and serious attempt to determine how the law should be applied; and (3) Assure that positions are properly classified; and (4) Assure that appointees have appropriate civil service appointment eligibility; and (5) **Intend to employ the appointee in the class, tenure and location** to which appointed under the conditions reflected by the appointment...and (7) Act in a manner that does not improperly diminish the rights and privileges of other persons affected by the appointment, including other eligibles...(b) **In order to accept an appointment in "good faith," an employee must:** (1) **Intend to serve in**

the class to which the employee is being appointed under the tenure, location and other elements of the appointment as reflected by the appointment document..." **(emphasis added)**

FINDING(S)/CONCLUSION(S)

Based on documentation reviewed, one individual was appointed from a Deputy Commissioner, BPT eligible list effective September 1, 1999. A 30-day training and development assignment to the Staff Services Manager II (Managerial) classification, also effective September 1, 1999, was attached to the individual's appointment documents. However, the training and development assignment was not reflected on the employee's employment history.

SPB DIRECTIVE(S)/RECOMMENDATION(S) REGARDING SHORT DURATION APPOINTMENTS

The BPT shall provide SPB with information to clarify whether the employee was placed on a training and development assignment to the Staff Services Manager II classification the same day as the appointment to the Deputy Commissioner, BPT classification and, if so, describe the circumstances surrounding the same day appointment, the duration of the training and development assignment, and explain why the appointment was not reflected on the employee's employment history. BPT shall, by March 1, 2002, notify SPB in writing and provide documentation to support their response. *(Ref. Finding J)*

K. Certification from Eligible Lists

The SPB reviewed a total of 20 certification lists used by BPT, ten of which were Deputy Commissioner, BPT. The SPB did not identify any deficiencies when it reviewed these certification lists.

V. SPB Additional Findings and Directives

Examinations

In addition to the Deputy Commissioner, BPT examination, SPB reviewed five additional examinations administered by BPT during the period of July 1, 1999 through June 30, 2001. The examinations reviewed were:

Associate Chief Deputy Commissioner (Open Examination, 3/99)
 Chief Deputy Commissioner, CEA 3 (Promotional Exam, 11/99)
 Executive Officer, CEA 4 (5/99)
 Office Technician (Typing) (Promotional Exam, 5/01)
 Staff Counsel III (Promotional Exam, 8/99)

***L. Job Analysis/
Examination
Method***

REQUIREMENT(S)

Government Code §18930 states, “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 for which they seek appointment....”

Government Code §19702.2 states, “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....”

Government Code §19889.3 states, “Eligibility for appointment to positions in the career executive assignment category shall be established as a result of competitive examination....”

California Code of Regulations §548.40 states, “Examinations for appointment to Career Executive Assignment positions shall be competitive and of such character as fairly to test and determine the qualifications of candidates actually to perform the duties of the position to be filled.”

FINDING(S)

1. There was no information in any of the civil service examination files reviewed to demonstrate that BPT examinations were based on job analyses.
2. There was no documentation in the Chief Deputy Commissioner, CEA 3 examination file to demonstrate what, if any, examination instrument was used. Thus, SPB was unable to determine the fairness and competitiveness of this examination.

CONCLUSION(S)

In the absence of job analyses, BPT could not demonstrate that its civil service examinations used appropriate examination methods or were job-related, competitive, and fairly assessed the qualifications of competitors as required by Government Code §§18930 and 19702.2.

Due to lack of documentation in the Chief Deputy Commissioner, CEA 3 examination file, BPT could not demonstrate the examination instrument used was competitive and fairly tested the qualifications of competitors as required by Government Code §19889.3 and California Code of Regulations §548.40.

***SPB DIRECTIVE(S)/RECOMMENDATION(S) REGARDING JOB
ANALYSIS/EXAMINATION METHOD***

By March 1, 2002, BPT shall provide SPB with a plan to conduct job analyses to ensure that all future examinations are job-related, competitive, and fairly test and determine the qualifications, fitness, and ability of competitors actually to perform

the duties of the classification, as required by Government Code §§18930 and 19702.2. (Ref. Finding L1)

Effective immediately, in order to demonstrate that its CEA examinations are fair and competitive, BPT shall maintain all selection instruments (e.g. interview questions, written examinations) in accordance with California Code of Regulations §548.40. (Ref. Finding L2)

**M. Examination
Bulletins**

REQUIREMENT(S)

California Code of Regulations §171 states, "...The announcement shall specify the basis of competition...An examination may be given on a promotional-only basis, a combined open and promotional basis, an open-only basis, or an open, nonpromotional basis. Each announcement shall state the...salary range...and such additional information as the executive officer may deem proper."

FINDING(S)

1. The Office Technician (Typing) examination bulletin did not contain the salary range of the classification.
2. The Associate Chief Deputy Commissioner examination bulletin indicated the examination would be conducted on an open basis. However, the reverse side of the examination bulletin stated that two eligible lists would be established, a promotional and open list. During the on-site review, SPB verified that only an open list was established.
3. The Chief Deputy Commissioner, CEA 3 examination bulletin did not contain the salary range of the classification.

CONCLUSION(S)

The BPT could not demonstrate compliance with California Code of Regulations §171 when it did not indicate the salary range on the Office Technician (Typing) examination bulletin.

REQUIREMENT(S)

Government Code §18936 states, "The final earned rating of each person competing in any examination shall be determined by the weighted average of the earned ratings on all phases of the examination, according to the weights for each phase established by the board or a designated appointing power in advance of the giving of the examination **and published as a part of the announcement of the examination...**" (emphasis added)

FINDING(S)

4. The Associate Chief Deputy Commissioner examination bulletin did not indicate the final earned rating a competitor must attain in order to obtain a position on the eligible list as required by Government Code §18936.

CONCLUSION(S)

The BPT could not demonstrate compliance with Government Code §18936 when it failed to indicate on the Associate Chief Deputy Commissioner examination bulletin the final earned rating a competitor must attain in order to obtain a position on the eligible list.

REQUIREMENT(S)

California Code of Regulations §548.41 states, "...The executive officer may authorize appointing powers...to establish standards for the review and interpretation of such minimum qualifications as the board may establish for the Career Executive Assignment category..."

FINDING(S)

5. A Key Position Description is established for each CEA examination on a position-by-position basis, which identifies minimum qualifications, duties and responsibilities, in addition to the desired knowledge, abilities and personal characteristics of each position. A Key Position Description was not found in the examination file for the Chief Deputy Commissioner, CEA 3.

CONCLUSION(S)

Due to lack of documentation, BPT could not demonstrate that the examination bulletin for the Chief Deputy Commissioner, CEA 3 contained the appropriate minimum qualifications or other job-related qualifications as required by California Code Regulations §548.41.

SPB DIRECTIVE(S)/RECOMMENDATION(S) REGARDING EXAMINATION BULLETINS

Effective immediately, BPT shall include on all examination bulletins all information required by Government Code §18936 and California Code of Regulations §171. (*Ref. Findings M1, M4*)

Effectively immediately, BPT shall ensure that all information contained on the examination bulletin relating to the testing class is accurate. (*Ref. Finding M2*)

It is recommended BPT include the salary range on all CEA examination bulletins. (*Ref. Finding M3*)

Effective immediately, to comply with California Code of Regulations §548.41 and to ensure appropriate minimum qualifications and other job-related qualifications are contained on examination bulletins, BPT shall establish and maintain in all examination files the Key Position Description for CEA examinations. (*Ref. Finding M5*)

***N. Rating Criteria/
Competitiveness***

REQUIREMENT(S)

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

Government Code §18930 states, “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...”

California Code of Regulations §198 states, “Rating of 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 in relation to the comparable qualifications of other competitors...”

California Code of Regulations §548.40 states, “Examinations for appointment to Career Executive Assignment positions shall be competitive and of such character as fairly to test and determine the qualifications of candidates actually to perform the duties of the position to be filled.”

FINDING(S)

1. The Office Technician (Typing) examination was administered as a QAP, weighted 100%. The criteria for a Well-Qualified/Satisfactory rating stated, “Competitor will be able to identify the most obvious steps.” This criteria did not include a rating scale, is subjective, and does not allow for objective and reliable ratings. There was no information in the examination file to demonstrate how competitors’ ratings were determined.
2. The Associate Chief Deputy Commissioner examination was administered as a QAP, weighted 100%. The rating criteria consisted of a “passing response” and “superior response” only. The criteria did not include a rating scale, is subjective, and does not allow for objective and reliable ratings. There was no information in the examination file to demonstrate how competitors’ ratings were determined.
3. There was no information in the Chief Deputy Commissioner, CEA 3 examination file to demonstrate what, if any, criteria was used to rate competitors. Thus, BPT could not demonstrate this examination was competitive and fairly tested the qualifications of competitors, as required by California Code of Regulations §548.40.

4. The BPT could not locate the examination file for the Executive Officer, CEA 4. During the on-site review, BPT supplied a copy of the examination bulletin, but was unable to provide any other documentation. Thus, BPT could not demonstrate this examination was competitive and fairly tested the qualifications of competitors as required by California Code of Regulations §548.40.

CONCLUSION(S)

The BPT could not demonstrate in the aforementioned examinations that it fairly tested and determined the qualifications of competitors as required by The Constitution of the State of California, Article VII, Section 1(b), Government Code §18930 and California Code of Regulations §§198 and 548.40.

SPB DIRECTIVE(S)/RECOMMENDATION(S) REGARDING RATING CRITERIA/COMPETITIVENESS

Effective immediately, BPT shall develop distinct, measurable rating criteria for all examinations to ensure ratings are objective and made on a fair and competitive basis as required by The Constitution of the State of California, Article VII, Section 1(b), Government Code §18930 and California Code of Regulations 198. (*Ref. Findings N1, N2*)

By March 1, 2002, BPT shall provide to SPB, in writing, information and supporting documentation to demonstrate how competitors' ratings were determined for the Office Technician (Typing) and Associate Chief Deputy Commissioner examinations. (*Ref. Findings N1, N2*)

Effective immediately, BPT shall establish and maintain rating criteria for all CEA examinations and ensure those ratings are made on a competitive basis and maintained in the appropriate examination file as required by California Code of Regulations §548.40. (*Ref. Findings N3, N4*)

By March 1, 2002, BPT shall provide SPB with the criteria used to rate competitors in the Chief Deputy Commissioner, CEA 3 and Executive Officer, CEA 4 examinations. (*Ref. Findings N3, N4*)

The BPT shall, by March 1, 2002, provide SPB with the date(s) of the Executive Officer, CEA 4 examination; the names of the individual(s) who conducted the examination; and any other additional information to demonstrate an examination for the Executive Officer, CEA 4 was administered to appoint the incumbent. (*Ref. Finding N4*)

O. Application Review

FINDING(S)

The SPB did not identify any deficiencies when it reviewed the applications in the Associate Chief Deputy Commissioner; Chief Deputy Commissioner, CEA 3; Office Technician (Typing); and Staff Counsel III examinations.

*P. Adverse
Impact*

REQUIREMENT(S)

Government Code §19702.2 states, “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.”

Government Code §19705 states, “...the State Personnel Board may, after public hearing, adopt a system in which applicants for employment in the state civil service shall be asked to provide, voluntarily, ethnic data about themselves where such data is determined by the board to be necessary to an assessment of the ethnic and sex fairness of the selection process...”

Government Code §19792 states, “The State Personnel Board shall...(h) Maintain a statistical information system designed to yield the data and the analysis necessary for the evaluation of progress in...equal employment opportunity within the state civil service...(i) Data analysis shall include...(5) Data on the number of women and minorities recruited for, participating in and passing state civil service examinations...”

California Code of Regulations §174.7(a) states, “Ethnic, sex and disability information shall not be used in a discriminatory manner in the selection process. (b) Such information shall only be used for one or more of the following purposes: (1) research and statistical analysis to assess the fairness of the selection process in regard to ethnicity, sex, and the disabled; or (2) to provide a basis for corrective action when adverse effect is present...”

FINDING(S)/CONCLUSION(S)

There was no documentation in any of the civil service examination files to indicate BPT reviewed or analyzed data prior to or after the administration of each examination to determine if adverse impact resulted. This analysis is necessary in order to ensure that BPT examinations are not discriminatory. Absent such an analysis, this determination cannot be made.

SPB DIRECTIVE(S)/RECOMMENDATION(S) REGARDING ADVERSE IMPACT

Effective immediately, BPT shall review and maintain applicant and hiring data for every examination administered to determine if adverse impact has resulted from any phase of the selection process. Such documentation shall be maintained until completion of a new examination and in accordance with SPB’s Selection Manual Section 3120, Examination Security and Retention Guidelines. Where adverse impact is identified, BPT will either re-evaluate selection procedures prior to releasing eligible lists or identify the job-relatedness of selection processes by a supportable job analysis. (*Ref. Finding P*)

The BPT shall review all examinations where current eligible lists exist to determine if adverse impact resulted from any phase of the selection processes. BPT shall notify SPB, in writing, of its findings by March 1, 2002, and maintain relevant documentation in the corresponding examination files. (*Ref. Finding P*)

Appointments

A total of 29 appointments made by BPT were reviewed including CEA appointments, promotions, transfers within state service, mandatory reinstatements, training and development assignments, emergency appointments, and permanent and limited-term appointments made from eligible lists (list appointments).

Q. CEA Appointments

REQUIREMENT(S)

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

California Code of Regulations §548.70 states, “...eligibility for appointment to a Career Executive Assignment position shall be established as the result of competitive examination...”

FINDING(S)

The Executive Officer, BPT position is allocated at the CEA 4 level. However, a review of the current¹ Executive Officer’s employment history does not reflect an appointment to the CEA 4 position; the most recent appointment documented from an eligible list was to the CEA 3 position of Chief, Deputy Commissioner effective July 1, 1998. SPB reviewed documentation to appoint the Executive Officer to the CEA 4 level, effective September 1, 1999; however, this appointment document was not processed even though the incumbent assumed the duties of the position and was compensated. While the appointment to a CEA 4 level is not reflected on the Executive Officer’s employment history, a salary adjustment effective September 1, 1999 is documented. As noted in the Examination section of this report, there was no documentation to demonstrate that a CEA 4 examination was administered for the Executive Officer position.

CONCLUSION(S)

In the absence of BPT providing evidence that an examination was administered for the CEA 4, Executive Officer position, permitting the employee to assume the duties and compensation of the CEA 4 position is unlawful and violates The Constitution of the State of California, Article VII, Section 1(b) and California Code of Regulations §548.70.

¹ Reference appointment at the time of SPB Review.

SPB DIRECTIVE(S)/RECOMMENDATIONS REGARDING CEA APPOINTMENTS

The BPT shall clarify in writing to SPB why the appointment of the Executive Officer, BPT was not documented on the incumbent's employment history and provide information to support the additional compensation provided to the Executive Officer effective September 1, 1999. As requested in the Examination section of this report, BPT shall provide evidence that an examination for this position was administered. BPT shall, by March 1, 2002, notify SPB in writing of their findings and provide supporting documentation. (*Ref. Finding Q*)

R. Transfers**REQUIREMENT(S)**

Government Code §18931 states, "The board shall establish minimum qualifications for determining the fitness and qualifications of employees for each class of position...It may require ... evidence of identification, fitness, and qualification."

California Code of Regulations §172 states, "...The board may prescribe alternative or additional qualifications for individual classes and such shall be made a part of the class specifications."

California Code of Regulations §433 states, "Unless specifically prohibited ...appointing powers may allow employees to voluntarily transfer between classes when the employee possesses any licenses, certificates, or registration required in the "to" class..."

FINDING(S)

Based on appointment document reviewed, two employees transferred to the Office Technician (Typing) classification without meeting the special requirements of the class. The Office Technician (Typing) class specification requires the ability to type at a speed of not less than 40 words per minute. While employees who transfer to other classes are not required to meet the minimum qualifications of the class, they must meet any special requirements identified in the class specifications. There was no documentation with the appointment records to demonstrate that the employees met the typing requirement prior to transfer. BPT staff also could not demonstrate that hiring offices maintained verification that employees met the typing requirement.

CONCLUSION(S)

Due to lack of documentation, BPT could not demonstrate that it complied with Government Code §18931 and California Code of Regulations §433 when it transferred two employees to the Office Technician (Typing) classification without documentation to verify they met the requirements of the class.

SPB DIRECTIVE(S)/RECOMMENDATION(S) REGARDING TRANSFERS

By March 1, 2002, BPT shall provide SPB with documentation to demonstrate employees who transferred into the Office Technician (Typing) classification possessed the typing requirement of the class. (*Ref. Finding R*)

S. Training and Development Assignments**REQUIREMENT(S)**

California Code of Regulations §438 states, "...(b) Employees shall be allowed to accept training and development assignments involving the duties of a different class only as outlined below...**(1) The training and development class is a class with substantially the same salary to which the employee could voluntarily transfer under the provisions of this article.**" (emphasis added)

FINDING(S)

Based on documentation reviewed, an employee was appointed from an eligible list to the Office Assistant (General) classification and subsequently transferred to a Benefits Program Specialist, Range A, and later received a range change to Range B. The employee was then placed on a 12-month training and development assignment with BPT to the Office Technician (Typing) classification.

CONCLUSION(S)

The appointment of this employee to a training and development assignment to the Office Technician (Typing) classification did not meet the criteria set forth in California Code of Regulations §§438(b)(1). The Office Technician (Typing) was not a classification to which the employee could voluntarily transfer, as required by California Code of Regulations §438(b)(1). Additionally, the Office Technician (Typing) classification would not provide appropriate training experience, as the employee already met the minimum qualifications of the Office Technician (Typing) classification prior to the training and development assignment. Thus, BPT could not demonstrate compliance with California Code of Regulations §438(b)(1).

SPB DIRECTIVE(S)/RECOMMENDATION(S) REGARDING TRAINING AND DEVELOPMENT ASSIGNMENTS

The BPT shall, by March 1, 2002, notify SPB, in writing, and provide supporting documentation to justify the training and development assignment of an employee to the Office Technician (Typing) classification at BPT. If it is determined the training and development assignment did not meet the criteria set forth in California Code of Regulations §438(b)(1), and the appointment is deemed illegal, BPT shall work with SPB to take the appropriate corrective action. (*Ref. Finding S*)

***T. Short Duration
Appointments***

REQUIREMENT(S)

California Code of Regulations §8 states, “To be valid, a civil service appointment must be made and accepted in "good faith"... (a) **In order to make an appointment in "good faith," an appointing power...must:** (1) Intend to observe the spirit and intent of the law...(3) Assure that positions are properly classified; and (4) Assure that appointees have appropriate civil service appointment eligibility; and (5) **Intend to employ the appointee in the class, tenure and location** to which appointed under the conditions reflected by the appointment...and (7) Act in a manner that does not improperly diminish the rights and privileges of other persons affected by the appointment, including other eligibles...(b) **In order to accept an appointment in "good faith," an employee must:** (1) **Intend to serve in the class** to which the employee is being appointed under the tenure, location and other elements of the appointment as reflected by the appointment document...” **(emphasis added)**

FINDING(S)

Based on documentation reviewed, an individual who was appointed from an eligible list to a Key Data Operator, Range B effective June 7, 2000 subsequently transferred to an Office Technician (Typing) classification in the same unit effective August 17, 2000.

CONCLUSION(S)

Based on a review of the documentation, SPB’s questions whether this appointment was made and accepted in good faith as required by California Code of Regulations §8.

***SPB DIRECTIVE(S)/RECOMMENDATION(S) REGARDING SHORT
DURATION APPOINTMENTS***

The BPT shall, by March 1, 2002, provide SPB with information and documentation to justify that the appointment of an individual to Key Data Operator, Range B was legal and made in good faith, as required by California Code of Regulations §8. *(Ref. Finding T)*

***U. Emergency
Appointments***

REQUIREMENT(S)

Government Code §19888.1 states, “The appointing power, to prevent the stoppage of public business when an actual emergency arises, or because the work will be of limited duration, not to exceed 60 working days, may make emergency appointments without utilizing persons on employment lists...emergency appointments shall be restricted by the State Personnel Board by rule so as to prevent the use of emergency appointments to circumvent employment lists...”

California Code of Regulations §301 states, “When emergency appointments are made under Government Code Section 19888.1, the appointing power shall establish and retain records consisting of the name of the appointee, the duties of the position, the reason for the appointment and such further data as may be required by the executive officer for the purpose of ensuring compliance with the provision of this article.”

California Code of Regulations §302.3 states, “The executive officer may authorize appointing powers to make emergency appointments on an acting basis to established positions for 20 to 60 working days...”

FINDING(S)

Based on the appointment documents reviewed, an emergency appointment was made to the Graduate Legal Assistant classification; however, there was no justification found to support the emergency appointment.

CONCLUSION(S)

BPT could not demonstrate compliance with Government Code §19888.1 and California Code of Regulations §§301 and 302.3 when an emergency appointment was made to the Graduate Legal Assistant classification.

SPB DIRECTIVE(S)/RECOMMENDATION(S) REGARDING EMERGENCY APPOINTMENTS

The BPT shall, by March 1, 2002, provide to SPB, documentation to validate and support an emergency appointment to the Graduate Legal Assistant classification. *(Ref. Finding U)*

***V. Certification
from Eligible
Lists***

The SPB reviewed a total of 20 certification lists used by BPT, which resulted in 31 list appointments. In addition to ten Deputy Commissioner, BPT certification lists, SPB reviewed the following:

1. Associate Chief Deputy Commissioner, BPT, dated 8/24/00
2. Associate Governmental Program Analyst, dated 1/18/01
3. Executive Assistant, dated 10/6/00
4. Office Services Supervisor II, dated 11/30/00
5. Office Technician (Typing), dated 3/14/00
6. Parole Agent II, Adult Parole (Specialist), dated 10/11/00
7. Parole Agent III, Adult Parole, dated 8/2/00
8. Parole Agent III, Adult Parole, dated 2/5/01
9. Staff Counsel III, dated 9/20/00
10. Staff Services Manager I, dated 7/19/99

REQUIREMENT(S)

Government Code §19057.1 states, "...for positions in classes designated by the board as professional, scientific, or administrative, or for any open employment list, there shall be certified to the appointing power the names and addresses of all those eligibles whose scores, at time of certification, represent the three highest ranks on the employment list for the class..."

California Code of Regulations §254.2 states, "The number of names certified to an appointing power to fill vacancies...shall... be one of the following: (1) All eligibles in the highest three ranks..."

FINDING(S)

1. The BPT appointed an individual, effective 8/31/00, in Rank 4 from the Executive Assistant certification list, dated 10/06/00. A telephone confirmation notice attached to the certification list documented a waiver by an eligible in Rank 1, dated 10/10/00, which is after the appointment date of the individual hired.

CONCLUSION(S)

The BPT did not demonstrate that the individual hired in Rank 4 was in the highest three ranks on 8/31/00, the effective date of the appointment. Thus, BPT could not demonstrate compliance with Government Code §19057.1 and California Code of Regulations §254.2.

REQUIREMENT(S)

Government Code §19057.4 states, "...for positions in classes which are designated by the board as supervisory...there shall be certified to the appointing power the names and addresses of all those eligible whose scores, at the time of certification, represent the highest rank on the employment list for the class..."

GUIDELINES

Departments that utilize the SPB on-line certification system are provided training by SPB on certification list maintenance and usage, and appropriate use of the on-line system. Guidelines provided by SPB instruct departments to use specific clearance codes and maintain supporting documentation to demonstrate legality of appointments.

FINDING(S)

2. Employment Inquiry forms are sent to eligibles on certification lists to solicit their interest in appointments. BPT did not indicate on the Office Services Supervisor II certification list, dated 11/30/00, how some eligibles responded to employment inquiries. Consequently, BPT could not demonstrate that one appointment made from Rank 8 was lawful.

CONCLUSION(S)

Due to lack of documentation, BPT could not demonstrate that it complied with Government Code §19057.4 when it appointed an eligible in Rank 8 on the Office Services Supervisor II certification list.

SPB DIRECTIVE(S)/RECOMMENDATION(S) REGARDING CERTIFICATION FROM ELIGIBLE LISTS

The BPT shall, by March 1, 2002 notify SPB, in writing, and provide supporting documentation to demonstrate the individual hired from the Executive Assistant certification list, dated 10/6/00, was eligible for appointment on 8/31/00. (*Ref. Finding V1*)

The BPT shall, by March 1, 2002, notify SPB, in writing, and provide supporting documentation to demonstrate the individual hired from the Office Services Supervisor II certification list, dated 11/30/00, was eligible for appointment. (*Ref. Finding V2*)

In order to demonstrate the legality of appointments and appropriate use of certification lists, BPT shall, effective immediately, ensure that certification lists are properly documented and maintained with supporting documentation. BPT shall maintain these records for at least three years, in accordance with the State Administrative Manual, Records Management Section (*Ref. Finding V2*)

VI. FOLLOW-UP

As a result of the findings identified in this report and SPB's concern about the integrity of the examinations administered by BPT, SPB questions whether to continue BPT's decentralized examination authority. Therefore, BPT shall by January 7, 2002, provide SPB with a plan to ensure the integrity of its examinations and compliance with the California Constitution, State laws, regulations, and merit principles which require that all examinations be administered on a competitive basis and fairly test and determine the qualifications of competitors. The plan shall also address the development of sound rating criteria to produce reliable ratings, assurance that chairpersons and panel members participating in all examinations have been adequately trained and that documentation is maintained to demonstrate compliance with civil service statutes. In the absence of such a plan, SPB shall withdraw from BPT its decentralized examination authority effective March 1, 2002. Until the plan is approved by SPB, BPT shall not administer any examinations without obtaining prior SPB approval of the examination. SPB shall implement a monitoring cycle for reviewing BPT's continued compliance with civil service laws and rules.

Memorandum

Date: December 14, 2001

To: Walter Vaughn
Executive Officer
State Personnel Board

Subject: STATE PERSONNEL BOARD'S QUALITY ASSURANCE REVIEW PRELIMINARY REPORT

The Board of Prison Terms (BPT) has reviewed the preliminary report of the State Personnel Board (SPB) quality assurance review conducted in September 2001.

The audit team found that most of the BPT's appointments complied with State laws and regulations and that most certification lists were well documented. However, the audit identified serious concerns primarily relating to the administration of the examination for the Deputy Commissioner, BPT classification and an appointment to the CEA 4, Executive Officer position.

This response will address those issues raised in the audit where an immediate response or action was directed by the audit team. The remaining issues listed will be researched and a response will be provided by February 1, 2002 as directed by the audit team.

The audit team findings indicated the Qualifications Appraisal Panel (QAP) interviews for the Deputy Commissioner, BPT examination resulted in inconsistent scores for the participants. This information was initially shared with BPT verbally on November 14, 2001, at which time BPT immediately requested that the list be abolished and a new examination be scheduled. BPT staff is currently working with SPB on the process which will include a re-review of all applications and all qualified applicants will be scheduled for new qualifications appraisal interviews.

In response to particular findings relative to the most recent Deputy Commissioner examination, the following responses are offered:

A. Job Analysis/Selection Instrument

- The BPT acknowledges the importance and legal requirements of providing a fair test environment for all examinations. The BPT agrees that future examinations for the classification of Deputy Commissioner, BPT will include sufficient questions to accurately and competitively determine competitors' knowledge and ability to perform the duties of the class.

Mr. Walter Vaughn
December 14, 2001
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- The BPT will ensure that appropriate staff, including the interview chairperson and panel members, are clearly instructed as to the duties, expectations, and requirements of the panel.

B. Rating Criteria/Competitiveness

- BPT staff is currently working with SPB staff to ensure the rating criteria used in the next examination satisfies the requirements of the Government Code and California Code of Regulations.
- BPT concurs with SPB's recommendations that typically a first or second line supervisor should serve as a panel member. BPT also concurs and will ensure that a panel member will not be in a position to interview or rate his/her supervisor or manager. While the BPT strives to provide the appropriate level of State Service Representative, due to the BPT's organizational structure, this goal is often difficult to accomplish. BPT will explore other acceptable alternatives and/or seek advice from SPB staff when facing similar situations in the future.

C. Application Review

- The BPT is currently re-reviewing all applications for the Deputy Commissioner examination to ensure applicants meet qualifications, including a review of part-time/full-time experience.
- The BPT is aware of the processes for date stamping and ensuring candidates' signatures are on the applications. As part of the review process, BPT will ensure that all staff involved is appropriately trained to ensure these processes are followed for all future examinations.

D. Competitive Rating Report

- BPT concurs with the audit team's conclusion that compliance with Government Code Section 19680 was not demonstrated when five final scores were entered for a panel member who was not present during those interviews.
- BPT also concurs that documentation is required to justify final scores on the Competitive Rating Report that are not consistent with panel members' rating sheets.
- The BPT will ensure, by oral and written instructions to all future QAP interview chairpersons and panel members, and by appropriate follow-up, of these requirements.

E. Scoring

- BPT is aware of the importance in appropriately assigning career credits. Without specific information, the BPT is unable to validate a finding that one candidate was awarded three career credits but was not eligible. The BPT agrees to ensure that all competitors awarded career credits are eligible.

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F. Notices

- BPT maintains copies of all notices/correspondence sent to applicants for an examination in the exam file. Without specific information, BPT is unable to respond to or validate the finding that disapproval notices were not maintained.

G. Adverse Impact

- BPT does maintain and review applicant and hiring data for every examination. The BPT will ensure that documentation of the review of data is maintained in the official examination file.

H. Confidentiality/Examination Security

- BPT will ensure that a proctor is present during all phases of any examination conducted by BPT and will ensure that any "exam aid" materials are not allowed to be maintained by any competitor during any phase of the exam.

Overall Directive

- As stated earlier in this memo, BPT concurs with the SPB recommendation to abolish the existing Deputy Commissioner list. BPT staff is currently working closely with SPB staff to re-administer the exam as soon as possible. No appointments were made from the existing list.

In response to issues regarding the 1998 Deputy Commissioner examination and in response to other "Additional Findings and Directive" identified in the audit report, the following responses are offered.

I. List Appointments

- BPT agrees to re-review all applications of persons appointed from the 1998 Deputy Commissioner examination to ensure that qualifications were met. It should be noted that the State Personnel Board conducted the 1998 Deputy Commissioner examination for the BPT on a contractual basis. A job analysis was not completed during that examination process and minimum qualifications for applicants were determined by SPB staff.

L. Job Analysis/Examination Method

- BPT agrees to ensure maintenance of all selection instruments used for CEA exams in the exam files.

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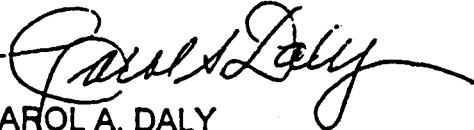
M. Examination Bulletin

- BPT concurs that all bulletins should contain information required by Government Code and California Code of Regulations and that CEA salary information is to be included in CEA bulletins. BPT does maintain Key Position Descriptions and will ensure that copies are maintained in exam files.

N. Rating Criteria/Competitiveness

- BPT agrees to develop distinct, measurable rating criteria for all exams. BPT staff is currently working closely with SPB staff to establish rating criteria for CEA exams. BPT will ensure competitiveness and maintain appropriate exam files.

The BPT agrees to research and provide additional information/responses to the remaining issues identified by the audit team by February 1, 2002 as requested in the preliminary audit report. BPT also agrees to work with SPB staff to develop and submit a plan, by January 7, 2002, to ensure the integrity of its exams and compliance with the California Constitution, State laws, regulations and merit principle.


CAROL A. DALY
Chairperson

cc: Robert Presley, YACA