



Quality Assurance Review
of the
CALIFORNIA DEPARTMENT OF VETERANS AFFAIRS

FINAL REPORT
June 2001



State of California

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

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**VI. California Department of Veterans Affairs
Response to SPB Review(Attached)**

I. Background

At the request of California Senator John Burton, the State Personnel Board (SPB) conducted a review and investigation of the California Department of Veterans Affairs' (CDVA) personnel practices. This request was, in part, a result of concerns brought forward at the May 2000 Senate Confirmation Hearings of the former Secretary, CDVA, Mr. Tomas Alvarado.

In January 2001, a review team from SPB conducted on-site reviews in the Veterans Home of California, Barstow and Yountville and CDVA Headquarters Office in Sacramento. The review included the Department's processes and practices regarding examinations, appointments, disciplinary actions, extensions of probationary periods, equal employment opportunity (EEO)/discrimination/retaliation complaints, and the use of administrative time off (ATO). The SPB review focused on two calendar years, January 1, 1999 through December 31, 2000. The findings from this review, as well as SPB directives to CDVA are provided in this report.

II. Scope of Review and Methodology

The CDVA Headquarters administers examinations for both the Sacramento location and the Veterans Home of California, Barstow. CDVA Headquarters also administers all Career Executive Assignment (CEA) examinations for the Department. The Veterans Home of California, Yountville administers exams for their site, excluding CEA examinations. To determine if personnel practices of CDVA adhere to the State's laws, regulations and policies pertaining to examinations, SPB reviewed examination history files including examination planning documents, examination bulletins, competitors' state applications, selection instruments (qualifications appraisal panel [QAP] interview questions, written examinations, etc.) job analysis information, rating criteria, scoring methods, bottom line hiring data and resulting eligible lists. Prior to the on-site review, a listing of examinations administered by CDVA during the review period was produced via SPB's on-line system. CDVA examinations were selected for review based on SPB appeals filed, issues raised at the May 2000 Senate Confirmation Hearings, and randomly, ensuring that samples of various classifications, levels and types of examinations were reviewed. Based on the listing of examinations produced by SPB, 82 examinations (excluding CEA examinations) were administered by CDVA during the review period and 34 were reviewed by SPB, nine of which were CEA examinations.

Prior to the on-site review, SPB prepared and reviewed a listing¹ of all appointments made by CDVA during the review period. SPB identified 68 appointments for review including permanent and limited term appointments made from eligible lists, temporary authorization appointments (TAU), transfers within state service, training and development (T&D) assignments, and mandatory reinstatements. Appointments were selected for review based on issues raised at the Senate Confirmation Hearings, SPB appeals filed, and randomly, ensuring a sample of various types of appointments. The review included certifications from eligible lists, appointment documents, employee history information and official personnel files.

The SPB reviewed information and documentation relating to the disciplinary process and ATO procedures and practices to determine if CDVA complies with State laws, regulations and policies.

¹ This list was produced using the State Controller's Office employee history data via SPB's internal automated appointment tracking system.

Prior to the on-site review, SPB reviewed a list of employees that were disciplined or separated from CDVA during the review period. SPB also reviewed disciplinary actions appealed to SPB by CDVA employees and the testimony and allegations of improper disciplinary practices raised at the Senate Confirmation Hearings. In response to allegations raised that CDVA used the ATO process to retaliate against employees, SPB reviewed the use of ATO in the Department. SPB identified employees placed on ATO, reviewed the duration of ATO, whether extensions of ATO were approved by the Department of Personnel Administration (DPA), the basis for placing employees on ATO and whether any action was subsequently taken on the employee. Official personnel files, employee history reports, performance evaluations, as well as other departmental files relating to disciplinary actions and ATO were reviewed in each location (Headquarters, Barstow and Yountville).

In order to determine if CDVA follows legal requirements for extending employees' probationary periods, SPB reviewed documentation relating to the extension of seven probationary periods statewide. Documents reviewed included a listing of probationary periods extended, official personnel files and employee history information.

In order to identify the number and types of discrimination complaints filed by CDVA employees and applicants, SPB reviewed the Department's quarterly reports of formal complaints filed. In response to allegations that CDVA retaliates against employees who complain, SPB compared a list of disciplinary actions taken during the review period to discrimination complaints and grievances filed.

In addition to the documentation review process described above, SPB met with 24 employees and management staff at the Veterans Home of California, Barstow and Yountville as well as managers in CDVA Headquarters to discuss the personnel practices of CDVA and concerns raised by employees.

III. Summary of Findings

The SPB identified a number of concerns with the personnel practices of CDVA and the manner in which they carry out the merit aspects of the civil service system.

SPB identified 26 employees placed on ATO during the review period, 11 of which were placed on ATO for over 30 days. There was no evidence that CDVA obtained DPA approval to extend ATO beyond 30 days in two of these 11 instances. The circumstances relating to employees placed on ATO were not consistently well documented. Based on documentation reviewed, seven of the 26 cases of ATO reviewed lacked supporting documentation and there was no evidence that any investigation or action was subsequently taken on these employees. In July 2000, the CDVA issued an Administrative Directive, which required greater oversight of the use of ATO within the department.

Based on the documentation reviewed, CDVA did not demonstrate that it consistently maintains supporting documentation for disciplinary actions. However, this determination is made without judgment in support or opposition of the actions taken. Although CDVA has recently implemented a statewide training program on progressive discipline and updated its Progressive Discipline Manual,

there is inconsistent interpretation of the Department's review and approval process for taking disciplinary action against employees.

The CDVA did not demonstrate that the conditions in Government Code §19170 and California Code of Regulations §321(c) for extending probationary periods were met when it extended probationary periods in four of the seven rejections during probation reviewed. One probationary period was extended up to two months.

The CDVA did not demonstrate that it informs employees of their rights to seek EEO Counseling as required by California Code of Regulations §54.2. As a result of the current organizational level of the EEO Manager in the Department, CDVA is not in compliance with Government Code §19795(a) which requires that the EEO Manager report directly, and be under the supervision of, the director of the department.

Based on interviews with employees of the Veterans Home of California, Barstow, there are concerns with issues of pre-selection, favoritism and retaliation.

The CDVA did not consistently ensure that all participants in its examinations met the minimum qualifications of the class as required by Government Code §18900. Based upon applications and documentation reviewed by SPB, CDVA did not demonstrate, in six of the 34 examinations reviewed, that all candidates who participated in CDVA's examinations met the minimum qualifications of the class.

The CDVA did not demonstrate that all of its examinations, including selection instruments and rating criteria were "...competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to actually perform the duties of the class..." as required by Government Code §18930. Some examinations did not provide for objective comparison among candidates and the rating criteria, if used, was subjective. In some examinations, the rating criteria provided an advantage to either CDVA employees or current civil service employees.

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

Based on the documentation reviewed, CDVA did not demonstrate that two appointments were made and accepted in good faith as required by California Code of Regulations §8. CDVA also did not demonstrate that it complied with California Code of Regulations §§548.96 or 548.70 when it made two appointments to the CEA classification without evidence of the appointees' eligibility or participation in a competitive examination.

The CDVA did not demonstrate that it consistently appoints employees from appropriate ranks as required by Government Code §§19057, 19057.1, 19057.2 and 19057.4 and California Code of Regulations §254.2. There was no documentation in five of the 46 certifications reviewed to

demonstrate that CDVA cleared ranks for appointments of 19 individuals who were not in the top three ranks.

The CDVA did not demonstrate that it appoints individuals from the certifications with the same location/tenure of the position as required by California Code of Regulations §251. Two individuals were appointed from certifications requested for a different location or tenure than the vacancies to be filled.

Based on appointment documentation reviewed relating to 24 appointments made by transfers and mandatory reinstatement, CDVA Headquarters, the Veterans Homes of California, Yountville and Barstow all demonstrated that they met legal requirements for appointments made by transfer and reinstatement.

The CDVA's inability to demonstrate that it consistently complies with civil service laws and rules is, to some extent, due to lack of documentation. The Department could not locate examination history files for two CEA examinations. Due to lack of documentation, CDVA did not demonstrate that it publicizes its examinations within a reasonable period of time before the scheduled examination date, as required by Government Code §18933. CDVA did not demonstrate that it consistently notifies applicants of the approval or disapproval of his/her application, as required by California Code of Regulations §175. Due to lack of documentation, CDVA did not demonstrate that its examinations do not result in adverse impact to certain groups of candidates. Other records missing from examination files reviewed include examination bulletins, eligible lists, QAP interview questions, rating criteria, and bottom line hiring reports. Also due to lack of documentation, CDVA did not demonstrate that two appointments to demotional classifications met legal requirements. CDVA could not locate certifications used to make three appointments as required by Government Code §19052.

IV. SPB Significant Findings and Directives

A. Administrative Time Off

In response to allegations that CDVA uses the ATO process to retaliate against employees, SPB reviewed the use of ATO in the Department. SPB looked at the basis for placing employees on ATO, the duration of the ATO, and whether extensions of ATO were approved by DPA.

REQUIREMENTS

Government Code §19991.10 states, "Where there exists no statutory authority to grant a paid leave of absence, **no paid leave of absence shall exceed five working days without prior approval of the department.**" For purposes of this section, "department" refers to the Department of Personnel Administration (DPA). **(emphasis added)**

Based on a review of the delegation agreement with DPA, the CDVA was delegated the authority to extend ATO up to 30 days without DPA approval.

FINDINGS

1. **CDVA, Headquarters** - The SPB reviewed documentation relating to five employees of CDVA Headquarters that were placed on ATO. Of the five employees sent home on ATO, two were sent home pending evaluations of performance, one was sent home until the effective date of their rejection on probation, another pending completion of a medical evaluation and there was no reason identified for one employee placed on ATO. Four of the five employees ultimately received some form of disciplinary action, and there was no evidence that the Department initiated an investigation or took any action against one employee placed on ATO.
2. One of the five employees was placed on ATO beyond the 30 days allowed by DPA, however, the Department did obtain approval from DPA for this extension.
3. In July 2000, CDVA issued an "Administrative Directive" providing greater oversight of the Department's use of ATO.
4. **Veterans Home of California, Yountville** - The SPB identified seven employees of the Veterans Home of California, Yountville that were placed on ATO. SPB reviewed documentation relating to six of these seven employees; one employee file was not available for SPB review. Each of the six employees placed on ATO were sent home pending "investigation of accusations" and ultimately received some form of disciplinary action.
5. Two of the seven employees were placed on ATO beyond the 30 days delegated by DPA. In one of these cases, the ATO beyond the 30 days was approved by DPA; a determination in the second case could not be made since the employee file was not made available to SPB.
6. **Veterans Home of California, Barstow** - The SPB reviewed documentation which related to 14 employees of the Veterans Home of California, Barstow placed on ATO. Of the 14 employees sent home on ATO, three of them were sent home pending investigation of their fitness for duty, seven pending evaluation of their performance, three with allegations of unprofessional conduct, and one employee was placed on ATO with no reason documented. Eleven of the 14 employees ultimately received some form of disciplinary action. There was no evidence of an investigation or evaluation of performance for three employees placed on ATO and all three either voluntarily resigned or retired. The duration of these three employees placed on ATO was:
 - Employee #1 30 days
 15 days (two months later)

Employee was placed on ATO pending evaluation of performance. Employee resigned while on ATO with no reason stated on the letter of resignation. There was no additional documentation to demonstrate reasons for the ATO or resignation.
 - Employee #2 78 days

Employee was placed on ATO pending evaluation of performance (allegations of poor performance and negligence). Immediately following the ATO, employee requested and

was granted annual leave for an additional six weeks pending retirement. There was no additional documentation to demonstrate reasons for the ATO or retirement.

- Employee #3 67 days

Employee was placed on ATO pending evaluation of performance. Employee accepted an appointment to another state agency while on ATO. There was no additional documentation to demonstrate reasons for the ATO or the employee's separation from CDVA.

7. Eight of the 14 employees were placed on ATO beyond the 30 days allowed by DPA. CDVA obtained approval from DPA to extend ATO beyond the 30 days in seven of the eight cases reviewed. There was no evidence, in one case, that the Department obtained approval from DPA to extend ATO beyond 30 days.
8. In several cases where employees alleged the reasons for the ATO was retaliation, CDVA did not demonstrate, due to lack of documentation, that the ATO was justified. Based on discussions with employees, there is belief that retaliation did occur in the Department, primarily under previous CDVA management.

CONCLUSIONS

The reasons for placing employees on ATO were not always well documented. Due to lack of documentation, CDVA did not demonstrate that it appropriately uses the ATO process.

SPB ACTION REGARDING ATO

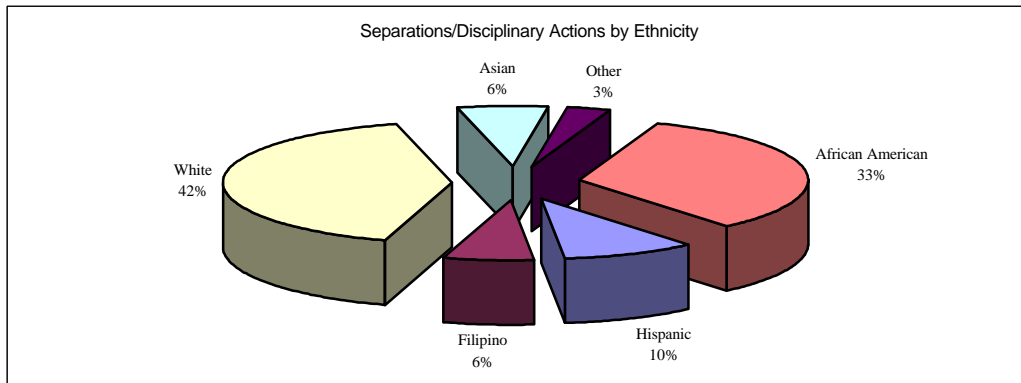
Since DPA is the agency responsible for the ATO process, SPB will defer to DPA the ATO findings for resolution. (*Ref. Findings A1, A5, A6, A7 & A8*)

B. Separations/Disciplinary Actions

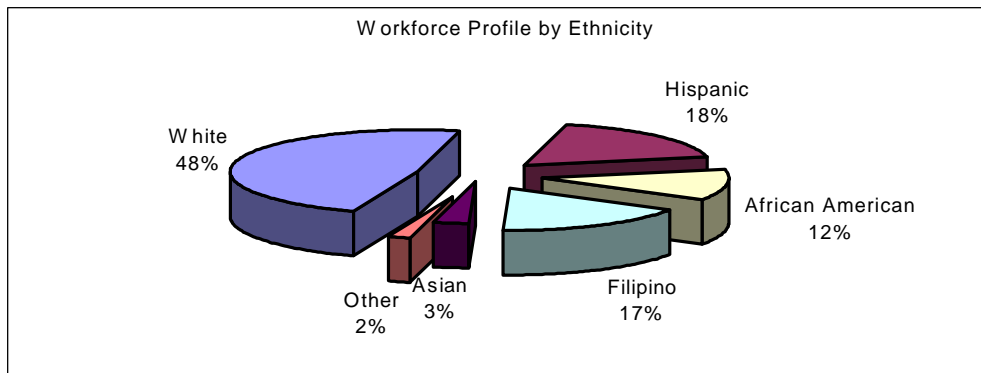
The SPB reviewed information and documentation relating to specific separations and disciplinary actions proposed by CDVA during the review period including:

- 13 employee dismissals
- 6 separations for failure to meet conditions of employment
- 6 absent without leave (AWOL) separations
- 3 punitive suspensions
- 17 employees separated pending investigation of injury or illness
- 14 separations relating to disability
- 5 separations for medical reasons

Below is the ethnic breakdown of the aforementioned separations and disciplinary actions, as well as the Department's workforce:



Source: Listing of separations from the State Controllers Office, employee history data for 1999-2000



Source: SPB Report 5102 as of 6/30/00

REQUIREMENTS

Government Code §19570 states, “As used in this article ‘adverse action’ means dismissal, demotion, suspension, or other disciplinary action...”

Government Code §19571 states, “In conformity with this article and the board rule, disciplinary action may be taken against any employee, or person whose name appears on any employment list for any cause for discipline specified in this article.”

Government Code §19572 specifies twenty-four causes that may be used to take disciplinary action against an employee.

In addition to the sections of law noted above, CDVA has a zero tolerance policy regarding patient abuse or neglect. This policy specifies that disciplinary action shall be taken against any employee that abuses or intentionally neglects any resident of a Veterans Home. A copy of this policy is provided and explained to every new employee and the employee must sign a statement attesting to the fact that they have read and understand the policy.

FINDINGS

1. Although CDVA has taken steps to train its supervisors and managers on the disciplinary process, the review and approval process for taking disciplinary action against employees does not appear consistent in the Department. Some of the disciplinary action files were well documented, others lacked supporting documentation. Procedures for recommending disciplinary action are documented, however, there are differences of opinion by Department staff as to the process, level and type of review required.
2. In July 2000, CDVA issued an Administrative Directive, which implemented greater oversight of disciplinary actions proposed for its employees. The Department has recently implemented a statewide training program on progressive discipline and updated its Progressive Discipline Manual in August 2000.
3. **CDVA Headquarters** – The SPB reviewed four disciplinary actions initiated by CDVA Headquarters. Of the four actions taken, two were dismissals and two were demotions.

The causes identified in the disciplinary actions were:

- insubordination
- improper political activity
- inefficiency
- inexcusable neglect of duty
- willful disobedience
- dishonesty
- fraud
- misuse of state property, and
- incompetence

4. **Veterans Home of California, Yountville** - The SPB reviewed 12 disciplinary actions taken against employees of the Veterans Home of California, Yountville. Of the 12 actions reviewed, nine were dismissals, one was a salary reduction, and two were separations for being absent without leave (AWOL). The Veterans Home of California, Yountville uses a Disciplinary Action Review Committee to review and make determinations on proposed disciplinary actions.

The causes identified in the various dismissal and salary reduction disciplinary actions include:

- Patient abuse
- Patient neglect
- Poor attendance
- Sexual harassment of subordinate employee
- Failure to pass required training

5. **Veterans Home of California, Barstow** - The SPB reviewed 18 disciplinary actions taken against employees of the Veterans Home of California, Barstow. Of the 18 actions, there were seven dismissals, seven letters of reprimand, two demotions and two suspensions.

The causes identified in the actions included:

- Failure to provide accurate charting and observations
- Unsatisfactory performance of duties (i.e. not meeting deadlines)
- Inexcusable absence without leave
- Insubordination
- Disrupting work environment
- Failure to follow direct instructions and general directives
- Jeopardizing/endangering safety of home residents
- Failure to identify problems and effect change
- Failure to supervise and evaluate performance of personnel
- Excessive absences
- Unprofessional behavior causing hostile work environment
- Incompetency
- Willful disobedience
- Improper/delayed dispensing of prescription medication
- Alcohol abuse
- Failure to act, untimely action or errors made
- Failure to pass on critical information
- Dishonesty (i.e. falsifying official records)

CONCLUSION

Based on the documentation reviewed, CDVA did not demonstrate that it consistently maintains supporting documentation for disciplinary actions. However, this determination is made without judgment in support or opposition of the actions taken.

SPB DIRECTIVES REGARDING DISCIPLINARY ACTIONS

Effective immediately, CDVA shall ensure disciplinary actions include supporting documentation. SPB's determination is made without judgment in support or opposition of the actions taken. (*Ref. Finding B1*)

The CDVA shall ensure that all supervisory and managerial staff are aware of the Department's disciplinary procedures. CDVA shall develop and provide to SPB by August 13, 2001, a training plan to ensure all supervisory and managerial staff are trained in the Department's disciplinary procedures. (*Ref. Finding B2*)

C. Equal Employment Opportunity/Discrimination/Retaliation**REQUIREMENT**

Government Code §19795 states, "(a) The secretary of each state agency and the director of each state department shall appoint an affirmative action officer, other than the personnel officer, except in a department with less than 500 employees the affirmative action officer may be the personnel officer who shall report directly, and be under the supervision of, the director of the department, to develop, implement, coordinate, and monitor the agency or departmental affirmative action program..."

FINDINGS

1. The AA/EEO Manager for CDVA is at the third organizational level, reporting to the Chief, Legislative/Public Affairs Office.

CONCLUSION

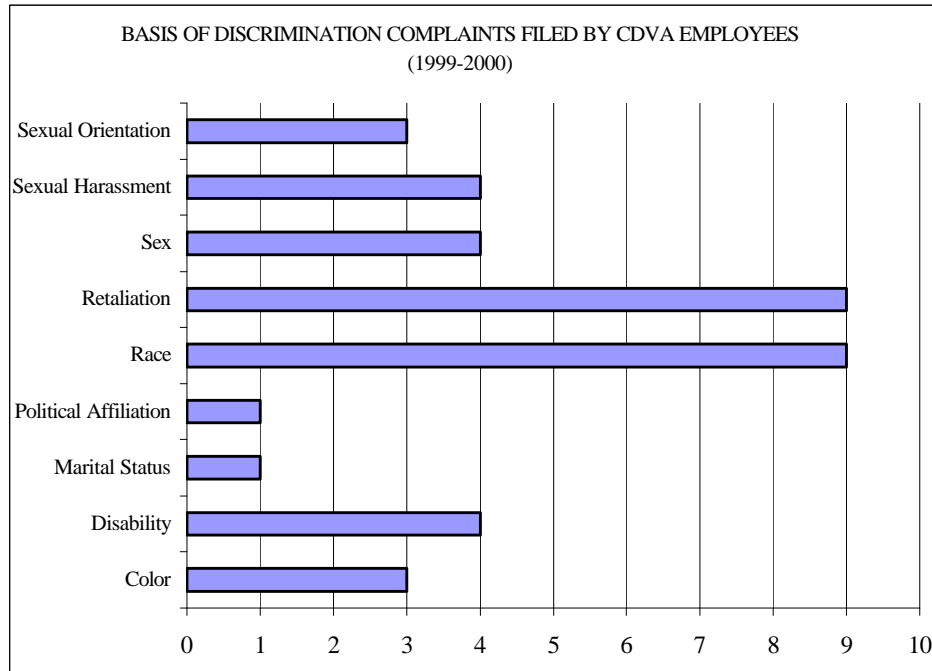
As a result of the current organization level of the AA/EEO Manager, the CDVA is not in compliance with Government Code §19795(a).

REQUIREMENT

Government Code §19702 (g) states, "Any person claiming discrimination ...may submit a complaint which shall be in writing ...The complaint shall be filed with the appointing authority or, in accordance with board rules, with the board itself."

FINDINGS

2. The SPB identified 18 discrimination complaints filed by employees or applicants of CDVA during the review period. The allegations related to these complaints include issues of working conditions, hostile work environment, denial of reasonable accommodation, disability, failure to appoint, and retaliation. The following chart displays the basis (e.g. race discrimination, sex discrimination, etc.) of the complaints filed. NOTE: Most of the complaints alleged more than one basis for the complaint.



Source: CDVA Quarterly Reports to SPB on Discrimination Complaints filed during review period.

3. According to CDVA, an overview of the discrimination complaint process is provided as part of the training to new supervisors and sexual harassment prevention training is mandatory for all supervisory and managerial employees.

REQUIREMENTS

Government Code §19702 (a) states, “A person shall not be discriminated against under this part because of sex, race, religious creed, color, national origin, ancestry, marital status, physical disability, or mental disability. A person shall not be retaliated against because he or she has opposed any practice made an unlawful employment practice, or made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. For purposes of this article, "discrimination" includes harassment...”

FINDINGS

4. As a result of allegations raised by employees that they were retaliated against for filing complaints, SPB compared a list of employees that filed discrimination complaints during the review period with formal actions taken against these same employees. There were no disciplinary actions taken against CDVA Headquarters employees who filed discrimination complaints. One employee of the Veterans Home of California, Yountville was rejected on probation subsequent to filing a discrimination complaint. The basis for the rejection during probation was failure to demonstrate merit, efficiency, fitness and moral responsibility. There

were three disciplinary actions and one rejection during the probationary period initiated by the Veterans Home of California, Barstow subsequent to employees filing discrimination complaints. The basis for these actions were well documented and included dismissal based on poor nursing practices, 5-day suspension for use of profanity, a letter of warning and informal reprimand for unacceptable/inappropriate behavior, and a rejection on probation for dishonesty and violation of patients' rights. Two CDVA employees filed appeals with SPB alleging retaliation. Both employees were from the Veterans Home of California, Barstow. One appeal was dismissed by SPB and subsequently, a Request to File Charges was filed by the same employee and SPB granted a Petition for Rehearing. The second employee filed a Request to File Charges with SPB which was subsequently withdrawn by the employee due to a stipulated agreement.

5. Based on discussions with employees at various levels of the Department, there is belief that retaliation did take place in the Department in a number of instances, however, it was primarily under previous CDVA management. Most employees interviewed in the Veterans Home of California, Barstow indicated that they are fearful of retaliation by management and lack confidence in the discrimination complaint process and personnel functions of the Department. Based on interviews conducted, there appears to be a general distrust of management, however, primary concerns raised relate to prior Veterans Home of California, Barstow and Department management.
6. In response to allegations that CDVA retaliates against employees who complain, SPB identified grievances filed during the review period and compared them to disciplinary actions taken against employees. Based on information provided by CDVA, SPB identified 56 grievance complaints filed with the Department during the review period. With the exception of the Veterans Home of California, Barstow, there were no formal disciplinary actions taken against these same employees subsequent to filing their grievances. However, CDVA did not provide SPB with dates of the seven grievances filed in the Veterans Home of California, Barstow in order to make this comparison. The dates of the seven grievances were not provided because the Veterans Home of California, Barstow could not locate this information.

CONCLUSIONS

Based on the documentation reviewed, there was no clear evidence that disciplinary actions taken by CDVA resulted from grievances or EEO complaints filed; however, not all documentation was available for review. Based on discussions with employees, there is belief that retaliation did occur in the Department primarily under previous CDVA management.

REQUIREMENT

California Code of Regulations §54.2 states, "Each appointing power discrimination complaint review shall:

- (a) Provide for satisfying the complaint with a minimum of formal procedural requirements, by an organizational level closest to the employee concerned. Such provisions shall include the opportunity for the employee to receive counseling on a confidential basis by an employee who is qualified to give counseling in matters pertaining to discrimination...
- (c) Assure that the employee's complaint will receive preferred, timely and full consideration at each level of review, that investigation into the circumstances surrounding the complaint will be

performed by qualified and impartial persons, and the employee will be informed of all rights at each step of the process, including the right of appeal to the board or to file with the appropriate state or federal agency or court having jurisdiction...”

FINDINGS

7. More than half of the employees interviewed were not aware of EEO Counselors available in the Department or the discrimination complaint process. There was no information regarding EEO Counselors on bulletin boards viewed. The Department did indicate that it is in the process of appointing and training new EEO Counselors statewide.

CONCLUSION

Based on employees interviewed, CDVA did not demonstrate that it notifies employees of the role and availability of EEO Counselors in the Department or provides information about the discrimination complaint process.

SPB DIRECTIVES REGARDING EEO/DISCRIMINATION/RETALIATION

The CDVA shall, by August 13, 2001, provide SPB with information to demonstrate compliance with Government Code §19795(a) in terms of the reporting relationship of the Department’s EEO/AA Manager. (*Ref. Finding C1*)

The CDVA shall develop a training plan to train its supervisory and managerial staff on what constitutes retaliation, and distribute information to all employees regarding their rights. The training plan shall be provided to SPB by August 13, 2001. (*Ref. Findings C4, C5 & C6*)

The CDVA shall, by August 13, 2001, provide SPB with the dates of all grievances filed during the review period in the Veterans Home of California, Barstow. (*Ref. Finding C6*)

The CDVA shall by August 13, 2001, distribute to all employees a listing of the Department’s EEO Counselors, their phone numbers, and information about their role in the discrimination complaint process. (*Ref. Finding C7*)

The CDVA shall ensure that all EEO Counselors are trained as required by California Code of Regulations §54.2(a). By August 13, 2001, CDVA shall provide SPB with a list of EEO Counselors and Investigators and include the status of their training. (*Ref. Finding C7*)

D. Extensions and Rejections During Probationary Periods

In order to determine if CDVA follows legal requirements for extending employees' probationary periods, SPB reviewed documentation relating to the extension of seven probationary periods statewide. Each of the seven extensions of probation was processed prior to rejecting employees during probation.

REQUIREMENTS

California Government Code §19170 states, “The board shall establish for each class the length of the probationary period...The board may provide by rule: (a) for increasing the length of individual

probationary periods by adding thereto periods of time during which an employee while serving as a probationer **is absent from his position**; or (b) for requiring an additional period not to exceed the length of the original probationary period when a probationary employee returns after an extended period of absence and the remainder of the probationary period is insufficient to evaluate his current performance.” **(emphasis added)**

California Government Code §19171 describes the conditions under which the service of a probationary period is required.

California Government Code §19172 requires that during the probationary period the appointing power or his or her officially delegated representative shall evaluate the work and efficiency of a probationer in the manner and at such periods as the Department of Personnel Administration rules may require.

California Government Code §19173 states, “Any probationer may be rejected by the appointing power during the probationary period for reasons relating to the probationer's qualifications, the good of the service, or failure to demonstrate merit, efficiency, fitness, and moral responsibility, but he or she shall not be rejected for any cause constituting prohibited discrimination as set forth in §§19700 through 19703, inclusive. (b) (1) A rejection during probationary period is effected by the service upon the probationer of a written notice of rejection which shall include: (a) an effective date for the rejection that shall not be later than the last day of the probationary period; and (B) a statement of the reasons for the rejection. Service of the notice shall be made prior to the effective date of the rejection, as defined by board rule for service of notices of adverse actions. Notice of rejection shall be served prior to the conclusion of the prescribed probationary period. **The probationary period may be extended when necessary to provide the full notice period required by board rule...**” **(emphasis added)**

California Government Code §19175 provides that the board at the written request of a rejected probationer, **filed within 15 calendar days** of the effective date of rejection, may investigate with or without a hearing the reasons for rejection...” **(emphasis added)**

California Code of Regulations §52.3 states, “(a) Prior to any adverse action, rejection during the probationary period or the demotion, termination or transfer between classes of an employee for medical reasons, the appointing power...shall give the employee written notice of the proposed action. This notice shall be given to the employee **at least five working days** prior to the effective date of the proposed action...” **(emphasis added)**

California Code of Regulations §321(a) states, “In the event a probationer has not, during a prescribed calendar length of the probationary period, worked the hours set forth below, probation will automatically be extended until the probationer has worked the required number of hours.

- (1) 840 if serving a six months' probationary period; or
- (2) 1260 if serving a nine months' probationary period; or
- (3) 1680 if serving a one year probationary period.

Vacation, sick leave, military leave or other leave of absence, compensating time off, suspension or other separations, including separations subsequently voided or otherwise set aside, shall not be

considered working time...”

California Code of Regulations §321(b) states, “If a probationer has had a continuous period of absence of 60 or more working days and upon return from such absence the appointing power determines that the remaining portion of the probationary period is insufficient to evaluate that probationer’s current performance the appointing power may extend the probationary period with the approval of the executive officer...”

California Code of Regulations §321(c) states, “The probationary period may be extended when necessary to provide the full notice period required by Section 52.3 for rejection during probation. Prior to the completion of the probationary period, the appointing power shall notify the employee that the probationary period is being extended under this section and of the length of the extension. Employees whose probationary periods are extended under this provision must also, over the entire course of their original and extended probationary periods, meet the minimum service requirements specified in part (a) of this section.”

FINDINGS

The SPB reviewed seven rejections during probationary periods processed by CDVA statewide, of which six were extended. There were concerns with six of the seven rejections/extensions reviewed as follows:

1. The Program Technician classification has a probationary period of 6 months. The first probation report was not available in any of the files reviewed. The reviewing officer did not sign the second probation report. On the last day of the employee’s probationary period, the Personnel Office issued a memo stating, “...probation is being extended due to adverse action. Please do not process the permanent appointment...” The employee’s probationary period was extended 31 calendar days. The employee’s third probation report was signed 22 calendar days after the probationary period expired and a statement by the supervisor indicated, “It is my intention to pursue rejection of your probation.” The rejection during probation document was served 36 days after the probationary period expired. There was no documentation or information to support that the extension of the probationary period was a result of the conditions outlined in California Code of Regulations §321. In addition, the appeal rights provided in the Notice of Rejection were incorrect stating, in part, “you have the right to file a written appeal...no later than thirty (30) calendar days...” The appropriate appeal period is 15 days. The employee was rejected during probation 46 days after the end of the probation period.
2. The probationary period of a second Program Technician was extended 17 days. The rejection during probation was served ten days after the employee’s probationary period expired. Eighteen days after the expiration of the probationary period, the Department reinstated the employee to the former position but failed to document the rejection during probation on the employee’s employment history. The Department attached inappropriate documentation to the Notice of Rejection During Probation. Two memos addressed concerns with the employee’s work habits prior to appointment to the Program Technician classification. There was no documentation or information to support that the extension of the probationary period was a result of the conditions outlined in California Code of Regulations §321. In addition, the appeal rights provided to the

employee were incorrect. The appeal rights in the Notice of Rejection stated, in part, “you have the right to file a written appeal...no later than thirty (30) calendar days...” The appropriate appeal period is 15 days.

3. The Assistant Property Agent classification has a probationary period of 6 months. No probation reports were found or attached to the rejection during probation document. Four days prior to the end of the probationary period, the employee was notified of a 30-day extension of the probationary period. There was no documentation or information to support that the extension of the probationary period was a result of the conditions outlined in California Code of Regulations §321. The rejection during probation was served four days after the probationary period expired and effective three days later. The employee returned to the former department two weeks after the probationary period expired. After concerns with this rejection were raised by the employee’s former department, CDVA subsequently withdrew the rejection and the employee returned to the Department. In addition, the appeal rights in the Notice of Rejection were incorrect, stating, in part, “you have the right to file a written appeal...no later than thirty (30) calendar days...” The appropriate appeal period is 15 days.
4. The Psychiatric Social Worker classification has a probationary period of 12 months. The first and second probation reports reflect good ratings. Prior to completing probation, the employee accepted a promotion to a different class but then returned to the Psychiatric Social Worker position, which required completion of probation. The third probation report indicated an overall rating of unacceptable. The rejection during probationary period was effective 2 months after the required 12-month period. There was no documentation or information to support the employee remaining on probation this additional period of time.
5. The Management Services Technician classification has a probationary period of 12 months. The rejection during probation occurred after the employee served ten months in the classification. There were no probation reports found or attached to the rejection during probation document. The appeal rights provided to the employee were incorrect. The appeal rights in the Notice of Rejection stated, in part, “you have the right to file a written appeal...no later than thirty (30) calendar days...” The appropriate appeal period is 15 days.

CONCLUSION

There was no information or supporting documentation in the files reviewed to demonstrate that the extensions of probationary periods met the legal requirements described in Government Code §19170 and California Code of Regulations §321.

The CDVA did not comply with Government Code §19175 when it provided inaccurate information to candidates regarding their appeal rights following rejections on probation.

The CDVA did not demonstrate compliance with Government Code §19173 when it served a notice of rejection on probation to an employee subsequent to the conclusion of the prescribed probationary period.

Due to missing probationary reports in the files reviewed, CDVA did not demonstrate compliance with California Code of Regulations §52.3.

SPB DIRECTIVES REGARDING EXTENSIONS AND REJECTIONS DURING PROBATION

The CDVA shall, by August 13, 2001, provide SPB with information and documentation to support the reasons that the four aforementioned probationary periods were extended beyond authority granted by Government Code §19170, California Code of Regulations §§321 and 52.3. (*Ref. Findings D1 - D4*)

Effective immediately, CDVA shall ensure that extensions of probationary periods meet the legal requirements of Government Code §19170, California Code of Regulations §§321 and 52.3. (*Ref. Findings D1 - D4*)

Effective immediately, CDVA shall provide accurate information regarding appeal rights to employees rejected during probation in accordance with Government Code §19175. (*Ref. Findings D1, D2, D3, D5*)

Effective immediately, CDVA shall serve all notices of rejection on probation prior to the conclusion of the prescribed probationary period, as required in Government Code section 19173 and California Code of Regulations §§52.3 and 321(c). (*Ref. Findings D1 – D3*)

Appointments

California Department of Veterans Affairs, Headquarters, Sacramento

A total of 18 appointments were reviewed in CDVA Headquarters including employee transfers within the state civil service, TAU appointments, CEA appointments and T&D assignments.

***E. CEA
Appointments***

REQUIREMENTS

California Code of Regulations §548.70 requires that eligibility for appointment to a Career Executive Assignment position be established as the result of competitive examination of persons with permanent status in the civil service who are well qualified to perform high administrative and policy-influencing functions.

California Code of Regulations §548.96 allows, with the approval of the executive officer and concurrence of the affected employee, an appointing power to transfer an employee who has permanent status in a civil service classification to transfer to a position in the career executive assignment category which is at substantially the same level of salary as the general civil service class.

FINDINGS

1. The employee history information reviewed for one CEA appointment reflects the appointment was a result of a CEA examination. However, the appointment documents indicate that the Department's intent was to place

the employee in a temporary, "Acting" assignment and there was no documentation to demonstrate that the employee had competed in an examination resulting in eligibility for appointment to the CEA classification.

2. Another employee was transferred to the CEA classification, but there was no documentation to demonstrate that the appointee had eligibility for this appointment or that SPB had approved this transaction.

CONCLUSION

The CDVA did not demonstrate that it complied with California Code of Regulations §§548.70 or 548.96 when it made two appointments to the CEA classification without evidence of the appointees' eligibility.

SPB DIRECTIVES REGARDING APPOINTMENTS

The CDVA shall provide SPB, by August 13, 2001, information and documentation to demonstrate how the aforementioned CEA appointments met State requirements. (*Ref. Findings E1 & E2*)

F. Certification from Eligible Lists

The SPB reviewed 13 certifications including:

Accountant I (Supervisor)
Associate Personnel Analyst
Assistant Property Agent
Associate Property Agent (2 reviewed)
Key Data Operator
Office Technician (Typing)
Patient Benefit & Insurance Officer II (Supervisor)
Program Technician (2 reviewed)
Staff Counsel (2 reviewed)
Staff Services Manager I

REQUIREMENT

California Code of Regulations §251 states, "Whenever a vacancy is to be filled...the appointing power shall make written request for certification unless otherwise prescribed by the executive officer. Such request shall ...include a statement of the ...location of the position."

FINDINGS

1. One employee was appointed in CDVA Headquarters to the Key Data Operator classification from a certification list ordered for the city of Yountville. There was no documentation to clarify why CDVA used a certification list from a location other than the one to which the employee was appointed.

CONCLUSION

The CDVA did not demonstrate that it complied with California Code of Regulations §251 when it appointed an eligible from a certification that was not the same location as the appointment.

SPB DIRECTIVES REGARDING CERTIFICATION

The CDVA shall provide SPB, by August 13, 2001, with information and documentation to support the appointment of a Key Data Operator in CDVA Headquarters using a certification list for the Yountville area. (*Ref. Finding F1*)

G. Short Duration Appointments**REQUIREMENT**

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**)

FINDINGS

1. On April 10, 2000, an employee was appointed from an eligible list to the Program Technician classification. On April 17, 2000, this employee transferred to the Office Technician (Typing) classification. According to the position number, the to and from positions existed in the same unit.
2. On August 14, 2000, an employee was appointed from an eligible list to the Key Data Operator, Range B, classification in the Department of Motor Vehicles. On August 15, 2000, this same employee was appointed from an eligible list to the Key Data Operator, Range B classification in the Veterans Home of California, Yountville. On August 16, 2000, this employee was transferred to a Key Data Operator, Range B classification in CDVA Headquarters. On November 11, 2000, this employee was transferred to the Office Technician (Typing) classification in CDVA Headquarters.

CONCLUSION

Based on documentation reviewed, CDVA did not demonstrate that the aforementioned short duration appointments were made in good faith as required by California Code of Regulations §8.

SPB DIRECTIVES REGARDING SHORT DURATION APPOINTMENTS

The CDVA shall, by July 2, 2001, provide SPB with information and documentation to justify that the aforementioned short duration appointments were legal and made in good faith as required by California Code of Regulations §8. (*Ref. Findings G1 & G2*)

**Appointments
Veterans Home of California, Yountville**

A total of 27 appointments were reviewed including permanent and limited term appointments made from eligible lists, TAU appointments, employee transfers within the state civil service, T&D assignments and mandatory reinstatements.

H. Certification from Eligible Lists SPB reviewed 23 certification lists requested by the Veterans Home of California, Yountville including:

Assistant Director of Dietetics
Associate Information Systems Analyst (Specialist)
Certified Nursing Assistant (4 reviewed)
Food Service Worker I (2 reviewed)
Food Services Supervisor II
Key Data Operator (5 reviewed)
Laundry Supervisor II
Library Technician Assistant II
Materials & Stores Specialist
Medical Supply Technician
Patient Benefit & Insurance Officer I
Stock Clerk (3 reviewed)
Supervising Nurse II

REQUIREMENT

California Code of Regulations §251 states, "Whenever a vacancy is to be filled...the appointing power shall make written request for certification unless otherwise prescribed by the executive officer. Such request shall ...include a statement of the...tenure, and location of the position."

FINDINGS

1. A "permanent, full-time" Stock Clerk certification (dated 6/7/00) indicated that the certification was "used to canvass LT interest..." A limited term certification for this same class, ordered one month later, was used to hire one eligible into a permanent full-time appointment.

CONCLUSION

The CDVA did not demonstrate that it consistently appoints individuals from certifications with the same tenure as the vacancy being filled as required by California Code of Regulations §251.

REQUIREMENTS

Government Code §19057.1 states, "...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..."

FINDINGS

2. In four of the certifications reviewed, there was no documentation to demonstrate how CDVA cleared ranks for appointments of 17 individuals who were not in the top three ranks as required by Government Code §19057.1 and California Code of Regulations §254.2. The four certifications are:
 - Certified Nursing Assistant (dated 9/21/99) - seven appointments from Ranks 4 through 6
 - Certified Nursing Assistant (dated 9/29/00) - six appointments from Ranks 4 through 9
 - Key Data Operator (dated 10/16/00) – three appointments from Ranks 4 and 6
 - Stock Clerk (dated 8/1/00) - one appointment from Rank 6

CONCLUSION

The CDVA did not demonstrate that employees were appointed from appropriate ranks or compliance with Government Code §19057.1 and California Code of Regulations §254.2.

SPB DIRECTIVES REGARDING CERTIFICATION

The CDVA shall, by August 13, 2001, provide SPB with information and documentation to demonstrate that the individual hired in the Stock Clerk

position on a permanent full-time basis was eligible for the appointment. (*Ref. Finding H1*)

The CDVA shall, by August 13, 2001, provide SPB with information and documentation to demonstrate how or if eligibles on the following certification lists were contacted regarding their interest in employment and each eligible's response:

- Stock Clerk (dated 8/1/00)
- Certified Nursing Assistant (dated 9/21/99, 9/29/00)
- Key Data Operator (dated 10/16/00) (*Ref. Finding H2*)

Appointments Veterans Home of California, Barstow

A total of 23 appointments were reviewed from the Veterans Home of California, Barstow including employee transfers within the state civil service, TAU appointments, demotions, and T&D assignments.

The SPB interviewed a number of employees regarding the personnel practices of the Veterans Home of California, Barstow. Employees, in general, indicated continued concern with appointments made including the pre-selection of individuals for appointments, favoritism, especially for promotional opportunities, and lack of publicity for vacant positions. In response to the latter, a second bulletin board was installed for posting of vacancy information. The Veterans Home of California, Barstow has also indicated that they are currently in the process of implementing publicity procedures for filling vacant positions.

I. Certification from Eligible Lists

The SPB reviewed the use of 10 certification lists requested by the Veterans Home of California, Barstow including:

Automotive Equipment Operator I (3 reviewed)
 Certified Nursing Assistant
 Chief of Plant Operations I
 Coordinator of Nursing Services
 Institutional Personnel Officer II
 Office Technician (Typing)
 Personnel Services Specialist I
 Supervising Registered Nurse

REQUIREMENT

Government Code §19057 states, "...there shall be certified to the appointing power the names and addresses of the three persons standing highest on the promotional employment list for the class..."

FINDINGS

1. There was no documentation in the certification file reviewed to demonstrate how the Office Technician (Typing) certification (dated November 17, 1999) was cleared to reach eligibles in lower ranks. Appointments were made from the sixth and seventh ranks which would have required that CDVA clear at least three of the first five ranks and four of the first six ranks, in order for the appointees to be from the highest three eligibles as required by Government Code §19057. There was no information to clarify whether eligibles in the highest ranks were contacted about their interest in this position or if and how they responded.

CONCLUSION

The CDVA did not demonstrate that it complied with Government Code §19057 when two appointments were made from the Office Technician (Typing) eligible list.

SPB DIRECTIVES REGARDING CERTIFICATION

The CDVA shall provide information and supporting documentation to SPB by August 13, 2001 to demonstrate how individuals in lower ranks were appointed from the November 17, 1999, certification for the Office Technician (Typing) classification. (*Ref. Finding II*)

In order to demonstrate that CDVA hires from reachable ranks, CDVA shall, effective immediately, ensure that appropriate clearance of certifications are obtained, documented, and maintained for at least three years in accordance with the State Administrative Manual. (*Ref. Finding II*)

Examinations**California Department of Veterans Affairs, Headquarters, Sacramento**

The SPB reviewed 19 examinations administered by CDVA Headquarters, primarily during the 1999 and 2000 calendar year. The examinations reviewed were:

Associate Governmental Program Analyst (12/99)
 Automotive Equipment Operator I (2/00)
 Automotive Equipment Operator II (2/00)
 CEA, Chief, Administrative Services Division (10/99)
 CEA I, Chief, Personnel Management Division (12/96)
 CEA I, Deputy Administrator, Chula Vista (6/99)
 CEA I, Chief, Veterans Services Division (7/99)
 CEA II, Deputy Administrator, Barstow (1/01)
 CEA II, Chief Law Division (Date Unknown)
 CEA II, Chief, Division of Farm and Home Purchases (4/99)
 CEA II, Deputy Administrator, Yountville (7/99)
 CEA II, Deputy Administrator, Yountville (6/00)

Chief of Plant Operations (3/99)
Coordinator of Nursing Services (1/00)
Institutional Personnel Officer II (7/00)
Office Technician (Typing) (5/99)
Residential Care Unit Leader (4/00)
Residential Care Unit Leader (6/00)
Respiratory Care Practitioner (Continuous)

J. Rating Criteria

REQUIREMENTS

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..."

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, fitness and ability of competitors actually to perform the duties of the position to be filled. The person appointed...must be well qualified."

FINDINGS

1. There was no information in any of the CEA examination history files reviewed to demonstrate what criteria was used to rate candidates' qualifications and abilities. The Department maintained a separate file containing various CEA interview questions, however, these documents did not indicate if the questions were used and if so, for what examinations.
2. There was no documentation in the examination history files for the Associate Governmental Program Analyst classification to demonstrate what criteria was used to rate candidates. The Department indicated that a separate file was maintained with various QAP interview questions; however, it was not located. Absent a review of the interview questions, the Department could not demonstrate that the examination was fair, competitive and evaluated the qualifications, fitness, and ability of the competitors.

CONCLUSION

Due to lack of documentation, CDVA did not demonstrate that it complied with Government Code §18930 when it administered the Associate Governmental Program Analyst examination.

Due to lack of documentation in the examination files, CDVA did not demonstrate that any of the CEA examinations reviewed were competitive and fairly tested the qualifications of competitors as required by Government Code §19889.3 and California Code of Regulations §548.40.

SPB DIRECTIVES REGARDING RATING CRITERIA

Effective immediately, CDVA shall maintain rating criteria in every examination history file and ensure those ratings are competitive. (*Ref. Findings J1 & J2*)

The CDVA shall, by August 13, 2001, provide SPB with information and documentation to demonstrate the criteria used in each of the aforementioned CEA and Associate Governmental Program Analyst examinations. (*Ref. Findings J1 & J2*)

K. Application Review

REQUIREMENTS

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, fitness and ability of competitors actually to perform the duties of the position to be filled...The person appointed...must be well qualified."

FINDINGS

1. Based on documentation reviewed in the CEA, Chief, Administrative Services Division; CEA II, Deputy Administrator, Yountville (7/99); and CEA II, Deputy Administrator, Yountville (6/00) examinations, the candidates were instructed to file, in addition to a standard application, a separate statement of qualifications specifying how the candidate's background and experience relates to the applicant's ability to perform in the specific position. Two applications from each of the three CEA examinations (six total) were accepted without a statement of qualifications. Two of these applicants were subsequently appointed.

CONCLUSION

The CDVA did not demonstrate that the aforementioned three CEA examinations were competitive and of such character as fairly to test and determine the qualifications, fitness and ability of competitors when it did not ensure that all applicants submit the documentation requested in the examination bulletin. Thus, the Department did not demonstrate that it complied with Government Code §19889.3 and California Code of Regulations §548.40.

REQUIREMENTS

Government Code §18900 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..."

FINDINGS

Based on the applications reviewed, some of the candidates who participated in the following examinations did not meet the minimum qualifications of the class.

2. In the Chief of Plant Operations examination, it was not clear from one application reviewed if an applicant's experience was full-time, part time, or intermittent.
3. Based on the applications and resumes reviewed for the Chief of Plant Operations examination, one of the candidates who participated in the examination, and ultimately hired, did not meet the minimum qualifications of the class.
4. The minimum qualifications for the Coordinator of Nursing Services requires applicants to possess specialized training in providing services to mentally or developmentally disabled persons. Applications and resumes reviewed in the examination file did not reflect whether candidates possessed this specialized training, yet CDVA accepted them into the examination. One of these applicants was subsequently hired from the resulting eligible list.
5. One applicant in the Residential Care Unit Leader examination (4/00) was rejected for not meeting minimum qualifications. Based on the review of this candidate's application, she did appear to meet minimum qualifications. This applicant was accepted into the next administration of this examination, two months later.
6. The CDVA could not locate the examination files for the CEA I, Personnel Management Division and CEA II, Chief Law Division. Therefore, CDVA could not demonstrate that all applicants accepted into these examinations met the minimum qualifications.
7. Two applicants accepted into the Associate Governmental Program Analyst examination did not meet minimum qualifications. Both applicants were subsequently hired.

CONCLUSION

The CDVA did 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 and 18932.

SPB DIRECTIVES REGARDING APPLICATION REVIEW

By August 13, 2001, CDVA shall provide to SPB in writing the criteria used to rate candidates in the CEA, Chief, Administrative Services Division; CEA II, Deputy Administrator, Yountville (7/99); and CEA II, Deputy Administrator, Yountville (6/00) examinations and provide documentation to support its findings. CDVA shall also provide information and documentation to demonstrate that candidates accepted into the examinations that did not submit the required Statement of Qualifications were evaluated and rated on the same basis as other competitors. (*Ref. Finding K1*)

Effective immediately, CDVA shall carefully review each competitor's qualifications to ensure that minimum qualifications (or early filing requirements) are met prior to allowing candidates to participate in any current or future examinations as required by Government Code §18900. CDVA staff who review applications for minimum qualifications should indicate on the application how candidates met or did not meet the minimum qualifications of each examination. Clarification of a candidate's time-base (full-time, part-time, or intermittent) should also be noted on the application since this may impact whether candidates meet minimum qualifications. (*Ref. Finding K2*)

The CDVA shall re-evaluate the qualifications of candidates who participated in and/or were hired from the Chief of Plant Operations examination to ensure that all competitors and eligibles on the list met minimum qualifications in order to avoid potential illegal appointments. The CDVA shall notify SPB in writing of its findings by August 13, 2001, and provide documentation to support its findings, including all appointments made from this eligible list. If illegal appointments are identified, CDVA shall work with SPB to take the appropriate corrective action. (*Ref. Finding K3*)

The CDVA shall re-evaluate the qualifications of candidates who participated in and/or were hired from the Coordinator of Nursing Services examination to ensure that all competitors and eligibles on the list met minimum qualifications in order to avoid potential illegal appointments. CDVA shall notify SPB in writing of its findings by August 13, 2001, and provide documentation to support its findings, including all appointments made from this eligible list. If illegal appointments are identified, CDVA shall work with SPB to take the appropriate corrective action. (*Ref. Finding K4*)

The CDVA shall re-evaluate the qualifications of candidates who were rejected from the Residential Care Unit Leader (4/00) examination to ensure they were not erroneously rejected. CDVA shall notify SPB in writing of its findings by August 13, 2001, and provide documentation to support its findings. (*Ref. Finding K5*)

The CDVA shall re-evaluate the qualifications of candidates who participated in and/or were hired from the Associate Governmental Program Analyst examination to ensure that minimum qualifications were met by all competitors and eligibles on the list in order to avoid potential illegal appointments. CDVA shall notify SPB in writing of its findings by August 13, 2001, and provide documentation to support its findings, including all appointments made from this eligible list. If illegal appointments are identified, CDVA shall work with SPB to take the appropriate corrective action. (*Ref. Finding K7*)

Examinations Veterans Home of California, Yountville

The SPB reviewed 15 examinations administered by the Veterans Home of California, Yountville. The examinations reviewed were:

Assistant Director of Dietetics (2/99)
Automotive Equipment Operator I (1/99)
Chief, Domiciliary Services (5/00)
Chief Medical Officer (Continuous)
Janitor Supervisor II (2/00)
Occupational Therapy Assistant (Continuous)
Occupational Therapist (Continuous – Four testing periods reviewed)
Pathologist (Continuous)
Personnel Services Specialist I (9/99)
Personnel Services Supervisor II (9/99)
Residential Care Unit Leader (8/99)
Registered Nurse (Continuous)

L. Rating Criteria

REQUIREMENTS

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..."

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...”

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..."

FINDINGS

1. The QAP interview questions were contained in the Chief, Domiciliary Services examination history file; however, a competitive rating report, listing candidates' names and final score, indicated the examination method was an evaluation of education and experience (E&E). Rating criteria for a QAP interview or E&E was not contained in the examination history file.
2. There was no information in the examination history files to document how candidates were rated in the Occupational Therapy Assistant or the Automotive Equipment Operator I examinations, both administered by CDVA as a QAP interview 100%. Thus, a determination of the competitiveness or fairness of these examinations could not be made.
3. The examination method used more frequently than others is an E&E. SPB found significant problems with the rating criteria that CDVA developed for these types of examinations. For example:
 - The rating criteria contained in the Assistant Director of Dietetics examination history file stated the examination was conducted on an open, continuous basis; however, based on the examination bulletin, it was conducted on a departmental promotional basis with a final filing date. Candidates who met the minimum qualifications under Pattern I (work experience gained within state civil service) were placed in Rank 1. Rank 1 did not contain any criteria for those candidates who met the minimum qualifications under Pattern II (work experience gained outside state civil service).
 - The rating criteria for the Janitor Supervisor II examination, however, does not make allowance for that requirement. The qualifications for the Janitor Supervisor II include both an inside pattern (Pattern I - experience gained within civil service) and an outside pattern (Pattern II - experience gained outside of civil service). Candidates meeting the qualifications under Pattern II would not be eligible for Ranks 2 or 3 as the rating criteria requires the candidate's experience to be within civil service only (Pattern I). These same candidates would not be eligible for Rank 1 either, as the criteria for this rank calls for more experience than what is required in the minimum qualifications. Subsequently, candidates who qualified for this examination under Pattern II do not

meet the criteria in any of the three ranks. Furthermore, the rating criteria for Rank 1 is unclear as it requires the candidate to have over three years of experience, but does not specify in what capacity or classification.

- Minimum qualifications for the Residential Care Unit Leader examination include both an inside pattern (Pattern I – experience gained within civil service) and an outside pattern (Pattern II – experience gained outside of civil service). The rating criteria for Rank 3 includes the qualifications under Pattern I only, and does not include the ability to substitute experience for educational requirements, which is a part of the minimum qualifications. The rating criteria for Rank 2 consists of only the minimum qualifications under Pattern II. Rank 1 does not allow candidates with experience outside of state service to be eligible for this rank. This eliminates the possibility for non-civil service employees as well as non-CDVA employees to be placed in Rank 1, as CDVA is the only state agency who utilizes this classification. This examination was administered on an open basis.
- The rating criteria for the Chief, Medical Officer examination placed candidates in Rank 1 who met the minimum qualifications under Pattern I (qualifying experience at the Veterans Home and Medical Center). This criteria provided an unfair advantage to current CDVA employees; applicants who qualified for this examination under Pattern II (work experience gained outside of state service), were not eligible for Rank 1. This examination was administered on an open basis.

CONCLUSION

Due to the lack of documentation in the Chief, Domiciliary Services; Occupational Therapy Assistant; and Automotive Equipment Operator I examination history files, CDVA did not demonstrate these examinations were competitive and fairly tested the qualifications and abilities of competitors, as required in Government Code §18930 and California Code of Regulations §193.

Based on the documentation reviewed in the Assistant Director of Dietetics; Janitor Supervisor II; Residential Care Unit Leader; and Chief, Medical Officer examinations, CDVA did not demonstrate these examinations were competitive and fairly tested the qualifications and abilities of competitors as required by Government Code §18930 and California Code of Regulations §198.

SPB DIRECTIVES REGARDING RATING CRITERIA

The CDVA shall provide SPB by August 13, 2001, a copy of the rating criteria used in the Chief, Domiciliary Services, Occupational Therapy Assistant, and Automotive Equipment Operator I examinations. (*Ref. Findings L1 & L2*)

Effective immediately, CDVA shall establish and maintain rating criteria for every examination and ensure those ratings are made on a competitive basis as required by California Code of Regulations §198 and Government Code §18930. The rating criteria shall not allow for preferential treatment to CDVA or current civil service employees. All 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 L1 – L3*)

The CDVA shall discontinue using the practice of giving absolute preference to civil service employees based on the fact that they are civil service employees, unless it can provide justification that this is an accurate means for accessing the qualifications of candidates. (*Ref. Finding L3*)

The CDVA shall review the rating criteria for the Janitor Supervisor II examination to determine why the rating criteria does not allow candidates who meet the minimum qualifications under Pattern II to be placed in Ranks 1, 2, or 3. CDVA shall notify SPB in writing of its findings by August 13, 2001, and provide documentation to support its findings. (*Ref. Finding L3*)

The CDVA shall review the rating criteria for the Residential Care Unit Leader examination to determine why Rank 3 does not include any experience gained outside of state service and why the ability to substitute experience for educational requirements was not included. CDVA shall determine why Rank 2 does not provide a rating for experience gained within civil service as well as why Rank 1 does not include any experience gained outside of civil service. CDVA shall notify SPB in writing of its findings by August 13, 2001, and provide documentation to support its findings. (*Ref. Finding L3*)

The CDVA shall review the rating criteria for the Chief Medical Officer examination to determine why current state employees that just met the minimum qualifications under Pattern I were placed in Rank 1 and why the rating criteria for Rank 1 did not allow for experience gained outside of state service. CDVA shall notify SPB in writing of its findings by August 13, 2001, and provide documentation to support its findings. (*Ref. Finding L3*)

***M. Application
Review*****REQUIREMENT**

Government Code §18900 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..."

FINDINGS

1. Based on the applications reviewed, some of the candidates who participated in the following examinations, did not meet the minimum qualifications of the class.
 - Applications reviewed from the Automotive Equipment Operator I and Chief Medical Officer examinations did not indicate whether the experience listed by applicants was full-time, part-time, or intermittent. One application/resume reviewed from the Chief Medical Officer examination listed the "to" and "from" dates in years only, without months and days. This applicant was given full credit for those years listed. Some of the applications reviewed were not "coded" by CDVA staff to demonstrate how candidates met minimum qualifications.
 - Four candidates were accepted into the Automotive Equipment Operator I examination that did not meet the minimum qualifications of the class. Two additional candidates indicated they had performed the duties of an Automotive Equipment Operator I while in another classification. Both of these applications did not indicate the dates or hours spent performing these duties, and there was no out-of-class experience documentation to verify these duties. Two of these candidates were hired from the resulting eligible list.
 - An applicant in the Occupational Therapist (3/18/99 and 6/29/99 testing periods) examinations met the qualifications under the early filing feature requirement. CDVA staff did not "flag" these candidates' applications to ensure all minimum qualifications are met prior to hire.

CONCLUSION

The CDVA did 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 and 18932.

SPB DIRECTIVES REGARDING APPLICATION REVIEW

Effective immediately, CDVA shall carefully review each competitor's qualifications to ensure that minimum qualifications are met prior to allowing candidates to participate in any current or future examinations as required by Government Code §18900. CDVA staff who review applications for minimum

qualifications, should indicate on the application how candidates met or did not meet the minimum qualifications of each examination. Clarification of a candidate's experience in terms of month, day, and year worked, as well as time-base (full-time, part-time, or intermittent), should also be noted on the application since this may impact whether candidates meet minimum qualifications. (*Ref. Finding M1*)

The CDVA shall re-evaluate the qualifications of candidates who participated in and/or were hired from the Automotive Operator Equipment I and Chief Medical Officer examinations to ensure that minimum qualifications were met by all competitors and eligibles on the list in order to avoid potential illegal appointments. CDVA shall notify SPB in writing of its findings by August 13, 2001, and provide documentation to support its findings, including all appointments made from this eligible list. If illegal appointments are identified, CDVA shall work with SPB to take the appropriate corrective action. (*Ref. Finding M1*)

The CDVA shall re-evaluate the qualifications of candidates who participated in and/or were hired from the Occupational Therapist examinations to determine if candidate's who met the early filing requirement were properly "flagged." CDVA shall notify SPB in writing of its findings by August 13, 2001, and provide documentation to support its findings, including all appointments made from this eligible list. If illegal appointments are identified, CDVA shall work with SPB to take the appropriate corrective action. (*Ref. Finding M1*)

V. SPB Additional Findings and Directives

Appointments

California Department of Veterans Affairs, Headquarters, Sacramento

A total of 18 appointments were reviewed in CDVA Headquarters including employee transfers within the state civil service, TAU appointments, CEA appointments and T&D assignments.

A. *Certification from Eligible Lists*

The SPB reviewed 13 certification lists at CDVA, Headquarters, including:

- Accountant I (Supervisor)
- Associate Personnel Analyst
- Assistant Property Agent
- Associate Property Agent (2 reviewed)
- Key Data Operator
- Office Technician (Typing)
- Patient Benefit & Insurance Officer II (Supervisor)

Program Technician (2 reviewed)
Staff Counsel (2 reviewed)
Staff Services Manager I

GUIDELINES

Departments who participate in 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.

FINDINGS

1. Four of the certifications reviewed did not have clear notations (e.g. cert not used or cancelled) or clearance codes (e.g. hired, active waiver) to document how CDVA used and cleared certifications: These specific certifications are Office Technician (Typing) dated 8/22/00, Patient Benefit and Insurance Officer II (Supervisor) dated 9/23/99, Staff Services Manager I dated 8/23/00, and Staff Counsel (LEAP) dated 3/7/00.
2. An Assistant Property Agent certification requested for two appointments was used to make six hires without amending the number of appointments authorized by the certification.
3. The SPB reviewed a certification file for the Staff Counsel (LEAP) classification. "Employment Inquiry" forms were located in the certification file, however, there was no corresponding certification.

CONCLUSION

The CDVA did not consistently maintain clear records or proper documentation relating to its certification lists.

SPB DIRECTIVES REGARDING CERTIFICATION

In order to demonstrate that CDVA appropriately and legally uses certification lists, CDVA shall, effective immediately, ensure that certification lists are properly documented and maintained with supporting documentation for at least three years in accordance with the State Administrative Manual. (*Ref. Findings A1 – A3*)

Appointments**Veterans Home of California, Yountville**

A total of 27 appointments were reviewed including permanent and limited term appointments made from eligible lists, TAU, employee transfers within the state civil service, T&D assignments and mandatory reinstatements.

B. Transfers**REQUIREMENTS**

Government Code §18525.3 states, "Transfer means both of the following: (a) The appointment of an employee to another position in the same class but under another appointing power. (b) The appointment of an employee to a position in a different class that has substantially the same level of duties, responsibility, and salary, as determined by board rule, under the same or another appointing authority."

California Code of Regulations §§425, 430-433, 435 and 444 establish the Board's standards for transfers between classes and agencies.

Government Code §19140.5 outlines conditions for mandatory reinstatement of permanent employees after termination of a temporary or limited-term appointment.

FINDINGS

1. Ten appointments resulting from employee transfers to the Veterans Home of California, Yountville and two appointments made by mandatory reinstatement were reviewed by SPB. There were no concerns identified with the appropriateness or legality of these 12 appointments.

CONCLUSION

The CDVA, Veterans Home of California, Yountville demonstrated that it complies with State requirements for employee transfers and mandatory reinstatements.

C. Training and Development Assignments**REQUIREMENTS**

Government Code §19050.8 states, "The board may prescribe rules governing the temporary assignment or loan of employees within an agency or between agencies for not to exceed two years or between jurisdictions for not to exceed four years for any of the following purposes: (a) To provide training to employees. (b) To enable an agency to obtain expertise needed to meet a compelling program or management need. (c) To facilitate the return of injured employees to work..."

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.

(2) The training and development class has a promotional salary range provided that: (A) **The higher salaried class is the class in the desired occupational area nearest in salary to the employee's current class that will provide an appropriate training experience;** and... (C) The training and

development class is not in the same class series as the employee's present class..." (**emphasis added**)

FINDINGS

1. A Patient Benefit & Insurance Officer was placed on a two-year T&D assignment to the classification of Associate Information Systems Analyst (Specialist). There are classifications in the series (Information Systems Analyst and Assistant Information Systems Analyst) that are nearest in salary to the employee's current class that would have provided the appropriate training experience. The employee was subsequently appointed from an Associate Information Systems Analyst (Specialist) eligible list. As a result, this incumbent now qualifies for the Staff Information Systems Analyst (Specialist) and (Supervisor) examinations allowing the incumbent to promote in less time than it would take if the incumbent progressed through the normal promotional process.

CONCLUSION

Based on the documentation reviewed, CDVA did not demonstrate that it complied with California Code of Regulations §438 (A) when it placed a Patient Benefit Insurance Officer on a T&D assignment to the Associate Information Systems Analyst classification.

SPB DIRECTIVE REGARDING T&D ASSIGNMENTS

The CDVA shall, by August 13, 2001, provide SPB with justification to support the above T&D assignment. (*Ref. Finding C1*)

D. Temporary Authorization Appointments

REQUIREMENTS

Government Code §19058 states, in part, "When there is no employment list from which a position may be filled, the appointing power, with the consent of the board, may fill the position by temporary appointment....When temporary appointments are made to permanent positions, an appropriate employment list shall be established for each class to which a temporary appointment is made before the expiration of the appointment."

Government Code §19059 states, in part, "A person who does not possess the minimum qualifications for the class to which the position belongs shall not be appointed under a temporary appointment...."

California Code of Regulations §265 states, in part, "If fewer than three names of persons willing to accept appointment are on the open eligible list for the class to which a position belongs and no other employment list for such class is available the executive officer may authorize the appointing authority to make a temporary appointment."

FINDINGS

1. The appointment documents for one appointment to the Automotive Equipment Operator I classification indicate that the intent of this transaction was to place the employee in a TAU appointment. However, a review of the employee's employment history entered into the State Controller's database indicates that this transaction was not accurately entered as a TAU appointment. The transaction was documented as a reinstatement/transfer appointment; however, based on a review of the employee's application, this employee does not have eligibility for either.

CONCLUSION

The CDVA did not demonstrate that it accurately documented the appointment of Automotive Equipment Operator I in the State Controller's employee history database.

SPB DIRECTIVE REGARDING TAU APPOINTMENTS

The CDVA shall, by August 13, 2001, provide SPB with information and documentation to clarify the discrepancy between appointment documents to the Automotive Equipment Operator I classification and the appointed employee's employment history. (*Ref. Finding D1*)

E. Certification from Eligible Lists

The SPB reviewed 23 certification lists requested by the Veterans Home of California, Yountville including:

Assistant Director of Dietetics
 Associate Information Systems Analyst (Specialist)
 Certified Nursing Assistant (4 reviewed)
 Food Service Worker I (2 reviewed)
 Food Services Supervisor II
 Key Data Operator (5 reviewed)
 Laundry Supervisor II
 Library Technician Assistant II
 Materials & Stores Specialist
 Medical Supply Technician
 Patient Benefit & Insurance Officer I
 Stock Clerk (3 reviewed)
 Supervising Nurse II

REQUIREMENT

Government Code §19052 states, "Whenever a vacancy in any position is to be filled and not by transfer, demotion, or reinstatement, the appointing power shall...request that the names of persons eligible for appointment to the position be certified."

FINDINGS

1. There were no certification lists in the files reviewed to demonstrate the eligibility of individuals appointed to Automotive Equipment Operator I (effective 5/13/99), Food Service Worker I (effective 2/10/99 and 6/1/00), and Supervising Rehabilitation Therapist (effective 5/10/99).

CONCLUSION

The CDVA did not maintain certifications to demonstrate the legality and appropriateness of appointments made from the above eligible lists. Thus, CDVA did not demonstrate compliance with Government Code §19052.

REQUIREMENT

California Code of Regulations §258 states, "It shall be the duty of every eligible to respond within a reasonable time to an inquiry to ascertain his interest in appointment to a position. The following standards shall constitute reasonable response time frames: (1) Telephone: two days' response time following the initial contact...(4) Mail (in town): four days, exclusive of Saturdays, Sundays, and legal holidays, after the date the notice is sent; (5) Mail (out of town): six days, exclusive of Saturdays, Sundays, and legal holidays, after the date the notice is sent. If the eligible is unavailable for employment within 30 calendar days following the date of the job interview, the appointing power may consider this a waiver for the position."

FINDINGS

2. There was no documentation to demonstrate that eligibles on the following certification lists were allowed a reasonable time to respond to employment inquiries per California Code of Regulations §258. Notes written on two of the certifications indicated eligibles were contacted by phone but there was no evidence that a written confirmation was sent to eligibles.
 - Two Stock Clerk certifications (dated 6/7/00 and 7/7/00).
 - Certified Nursing Assistant (dated 9/21/99)
3. There was no documentation to demonstrate how or if eligibles were contacted from the following certifications or that they were given reasonable response time.
 - Key Data Operator (dated 5/26/99)
 - Stock Clerk (dated 8/1/00)

CONCLUSION

The CDVA did not maintain documentation to demonstrate that it complies with California Code of Regulations §258.

GUIDELINES

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

FINDINGS

4. Four of the certifications reviewed did not have clear notations (e.g. not used, canceled) or clearance codes (e.g. hired, active waiver) to document how CDVA used the certifications:
 - A Key Data Operator certification (dated 5/26/99) was coded for the hire of an eligible hired from a different certification (same class).
 - A Stock Clerk certification (dated 6/7/00) was cleared for the hire of an eligible hired from a different certification (same class).
 - A Food Service Worker I certification (dated 7/21/00) indicated one eligible was appointed; however, according to the employee's employment history, the eligible has not been hired.
 - A Certified Nursing Assistant certification (dated 6/14/99) had unclear notations, e.g. "H7" for clearance codes and there was no supporting documentation to clarify the codes.

CONCLUSION

The CDVA does not consistently maintain clear records or proper documentation regarding the use of certification lists.

REQUIREMENT

Government Code §19704 states, "It is unlawful to require, permit or suffer any notation or entry to be made upon or in any application, examination paper or other paper, book, document, or record used under this part indicating or in any wise suggesting or pertaining to the race, color religion, sex, or marital status of any person...in no event shall any notation, entry, or record of such data be made on papers or records relating to the examination, appointment, or promotion of an individual."

FINDINGS

5. A Food Service Worker I certification (dated 7/21/00) had the notation "No English" next to an eligible's name.

CONCLUSION

Based on the documentation reviewed, CDVA did not demonstrate compliance with §19704.

SPB DIRECTIVES REGARDING CERTIFICATION

The CDVA shall, by August 13, 2001, provide SPB with copies of certification lists used to make appointments from the Automotive Equipment Operator I, Food Service Worker I, and the Supervising Rehabilitation Therapist eligible lists. (*Ref. Finding E1*)

The CDVA shall, effective immediately, maintain written documentation to demonstrate employment inquiries are made and that it allows eligibles reasonable response time when contacted regarding their interest in job vacancies. (*Ref. Finding E2*)

The CDVA shall, by August 13, 2001, provide SPB with information and documentation to demonstrate how or if eligibles on the Key Data Operator (dated 5/26/99) and Stock Clerk (dated 8/1/00) certification lists were contacted regarding their interest in employment and each eligible's response. (*Ref. Findings E3*)

In order to demonstrate that CDVA hires from reachable ranks, CDVA shall, effective immediately, ensure that certifications are properly documented, supported by documentation, and maintained for at least three years in accordance with the State Administrative Manual. (*Ref. Findings E1 – E4*)

The CDVA shall, by August 13, 2001, clarify in writing to SPB the reason a certification for the Food Service Worker I classification included the notation “No English” next to the name of one eligible on the list. (*Ref. Finding E5*)

Appointments

Veterans Home of California, Barstow

A total of 23 appointments were reviewed from the Veterans Home of California, Barstow including employee transfers within the State civil service, TAU appointments, demotions, and T&D assignments.

***F. Transfers &
Mandatory
Reinstatements***

REQUIREMENTS

Government Code §18525.3 states, “Transfer means both of the following: (a) The appointment of an employee to another position in the same class but under another appointing power. (b) The appointment of an employee to a position in a different class that has substantially the same level of duties, responsibility, and salary, as determined by board rule, under the same or another appointing authority.”

California Code of Regulations §§425, 430-433, 435 and 444 establish the Board's standards for transfers between classes and agencies.

Government Code §19140.5 outlines conditions that entitle a permanent employee to mandatory reinstatement after termination of a temporary or limited-term appointment.

FINDINGS AND CONCLUSIONS

1. The CDVA, Veterans Home of California, Barstow demonstrated compliance with State requirements for employee transfers and mandatory reinstatements.

G. Temporary Authorization Appointments

REQUIREMENT

Government Code §19059 states, in part, "A person who does not possess the minimum qualifications for the class to which the position belongs shall not be appointed under a temporary appointment..."

FINDINGS

1. One TAU appointment was made to the classification of Protestant Chaplain. In order to determine if the appointee met the minimum qualifications for the class, SPB attempted to locate a State application for employment; however, it was not located in any of the documentation reviewed.

CONCLUSION

Due to lack of documentation, CDVA did not demonstrate that the appointee possessed the minimum requirements for the classification of Protestant Chaplain as required by Government Code §19059.

SPB DIRECTIVES REGARDING TAU APPOINTMENTS

The CDVA shall provide SPB by August 13, 2001, a copy of the employee's application for temporary appointment to the Protestant Chaplain classification. (*Ref. Finding G1*)

Effective immediately, CDVA shall maintain documentation to demonstrate that TAU appointments meet minimum qualifications of the class prior to appointment. (*Ref. Finding G1*)

H. Demotions

REQUIREMENTS

Government Code §18525.2 defines "Demotion" as the appointment of an employee to a position in a different class with a lower salary range.

Government Code §19253 allows appointing powers, with the concurrence or at the request of an employee, to voluntarily demote such employees to a

vacant position or for medical reasons as provided by §19253.5 or by disciplinary action as provided by §19570.

FINDINGS

1. One employee transferred from the classification of Certified Nursing Assistant to that of Launderer, a demotional class. Based on a review of documentation relating to this appointment, CDVA did not demonstrate that the employee was demoted voluntarily, for medical reasons, or by disciplinary action.
2. A second employee transferred from the classification of Nurse Instructor to that of Registered Nurse, which is also considered a demotion.
3. There was no documentation to demonstrate how these demotions met the legal requirements.

CONCLUSION

Based on a review of documentation relating to the two aforementioned appointments, CDVA did not demonstrate that these demotions met the requirements of Government Code §§19253, 19253.5, or 19570.

SPB DIRECTIVES REGARDING DEMOTIONS

The CDVA shall provide SPB with information and documentation by August 13, 2001, to demonstrate how the aforementioned demotions met legal requirements. (*Ref. Findings H1 – H3*)

Effectively immediately, CDVA shall maintain documentation to demonstrate how demotions meet legal requirements. (*Ref. Finding H3*)

Examinations

California Department of Veterans Affairs, Headquarters, Sacramento

The SPB reviewed 19 examinations administered by CDVA, Headquarters, primarily during the 1999 and 2000 calendar year. The examinations reviewed were:

Associate Governmental Program Analyst (12/99)
 Automotive Equipment Operator I (2/00)
 Automotive Equipment Operator II (2/00)
 CEA, Chief, Administrative Services Division (10/99)
 CEA I, Chief, Personnel Management Division (12/96)
 CEA I, Deputy Administrator, Chula Vista (6/99)
 CEA I, Chief, Veterans Services Division (7/99)
 CEA II, Deputy Administrator, Barstow (1/01)
 CEA II, Chief Law Division (Date Unknown)
 CEA II, Chief, Division of Farm and Home Purchases (4/99)

CEA II, Deputy Administrator, Yountville (7/99)
 CEA II, Deputy Administrator, Yountville (6/00)
 Chief of Plant Operations (3/99)
 Coordinator of Nursing Services (1/00)
 Institutional Personnel Officer II (7/00)
 Office Technician (Typing) (5/99)
 Residential Care Unit Leader (4/00)
 Residential Care Unit Leader (6/00)
 Respiratory Care Practitioner (Continuous)

***I. Job Analysis/
 Examination
 Method***

REQUIREMENTS

Government Code §18930 states that examinations will be "...competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to actually 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..."

FINDINGS

1. Of the 19 examinations reviewed, four consisted of QAP interviews 100%: the Office Technician (T); Automotive Equipment Operator I/II; and Associate Governmental Program Analyst. Six of the examinations were E&E weighted 100%: Institutional Personnel Officer II; Respiratory Care Practitioner; Residential Care Unit Leader (4/00 and 6/00); Coordinator, Nursing Services; and Chief of Plant Operations. Due to the lack of examination history files for the CEA I, Personnel Management Division and the CEA II, Chief, Law Division examinations, SPB was unable to determine the selection methods used. Due to the lack of documentation in the examination history files for the remaining seven CEA examinations, SPB was unable to determine the job relatedness of the selection methods used.
2. The SPB was unable to locate the QAP interview questions for the Associate Governmental Program Analyst classification, thus, CDVA did not demonstrate job relatedness of the examination questions used.
3. There was no information in the examination files reviewed to demonstrate that any of CDVA examinations were based on job analyses.

CONCLUSION

Due to lack of documentation and the absence of any job analyses, CDVA did not demonstrate that its examinations are competitive, fairly assess the

qualifications of candidates, and accurately assess the required knowledge and abilities of competitors as required by Government Code §18930.

The examination files for the CEA I, Personnel Management Division and CEA II, Chief Law Division could not be located. Therefore, CDVA could not demonstrate that the appropriate examination method was used in these examinations.

SPB DIRECTIVES REGARDING JOB ANALYSES

Effective immediately, CDVA shall maintain all selection instruments (e.g. interview questions, written examinations, etc.) until completion of a new examination, and in accordance with SPB's Selection Manual Section 3120, Examination Security and Records Retention Guidelines. (Ref. Findings I2)

By August 13, 2001, CDVA shall provide SPB with a plan to conduct job analyses to ensure that all future examinations fairly test and determine the qualifications, fitness and ability of competitors actually to perform the duties of the class as required by Government Code §18930. (Ref. Finding I3)

J. Publicity

REQUIREMENTS

Government Code §18933, states, "Within a reasonable time before the scheduled date...a designated appointing power shall announce or advertise examinations for the establishment of eligible lists."

California Code of Regulations §171 states, "...The executive officer shall direct the preparation of every examination and the publication of an announcement thereof..."

California Code of Regulations §548.41 states, "It is the policy of the State Personnel Board that examinations for appointment to Career Executive Assignment positions shall be publicized as wide as appears practicable..."

FINDINGS

1. There was no documentation available in any of the examination history files or other records reviewed to demonstrate the publicity of any of the examinations reviewed.
2. The examination files for the CEA I, Personnel Management Division and CEA II, Chief Law Division could not be located. Therefore, CDVA could not demonstrate the publicity of these examinations.

CONCLUSION

Due to the lack of documentation, CDVA did not demonstrate that it advertises its examinations as required by Government Code §18933 and California Code of Regulations §§171 and 548.41.

SPB DIRECTIVES REGARDING PUBLICITY

Effectively immediately, CDVA shall maintain information regarding the publicity of each examination and distribution of examination bulletins in all examination history files. This information will 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 J1)

The CDVA shall provide SPB with a publicity plan to demonstrate that all examinations will be advertised in accordance with Government Code §18933 and California Code of Regulations §§171 and 548.41. The plan will include information regarding CDVA's proposed bulletin distribution. At a minimum, open examinations shall be advertised on SPB's website and job information line, and examination bulletins shall be posted in SPB's Information Center. CDVA shall distinguish between publicity differences for open and promotional examinations. CDVA's plan shall be submitted to SPB by August 13, 2001, for approval. (Ref. Finding J1)

The CDVA shall, by August 13, 2001, provide SPB with information to demonstrate the publicity of each of the examinations listed above. (Ref. Finding J2)

**K. Examination
Bulletins****REQUIREMENTS**

Government Code §18971 – §18979 pertain to the granting of veterans preference credit in entrance examinations for State civil service.

Government Code §18973.5 defines "entrance examination" as any open competitive examination other than one for a class having a requirement of both college graduation and two or more years of experience.

FINDINGS

1. The examination bulletins for the Respiratory Care Practitioner and Residential Care Unit Leader (4/00 and 6/00) classifications incorrectly stated that veterans preference credits would not be granted in these examinations. However, CDVA appropriately applied veterans preference points and scores were accurately reflected.

CONCLUSION

Although no adverse effect resulted, CDVA did not include accurate information on the Respiratory Care Practitioner and Residential Care Unit Leader (4/00 and 6/00) examination bulletins regarding the application of veterans preference points.

REQUIREMENTS

Government Code §18933, states, "Within a reasonable time before the scheduled date...a designated appointing power shall announce or advertise examinations for the establishment of eligible lists...Such announcement shall contain such information...concerning: (a) The date and place of the examination..."

California Code of Regulations §171 requires, in part, that the examination announcement specify the basis for competition and method of evaluating the education and experience.

FINDINGS

2. The examination bulletin for the Respiratory Care Practitioner classification indicated that the examination would consist of a QAP interview only, weighted 100%. However, documentation in the examination history file indicated this examination was an E&E weighted 100%. This examination was also advertised as continuous filing, however, there was no information on the examination bulletin or in the examination history file to demonstrate how or if the Department notified candidates of the examination date or change in examination method.

CONCLUSION

The CDVA was not in compliance with Government Code §18933 or California Code of Regulations §171 when it did not identify the evaluation method and proper basis of competition.

SPB DIRECTIVES REGARDING EXAMINATION BULLETINS

Effectively immediately, CDVA shall ensure that examination bulletins contain accurate information about the application of veterans preference credit in appropriate examinations. (*Ref. Finding K1*)

The CDVA shall, by August 13, 2001, provide SPB with information and documentation to clarify why the examination bulletin for the Respiratory Care Practitioner classification indicated that the examination would consist of a QAP interview only, weighted 100%, yet the documentation in the examination history file indicated this examination was an E&E weighted 100%. CDVA shall inform SPB as to whether applicants for the Respiratory Care Practitioner examination were notified that the examination method would consist of an E&E and if all applicants were afforded the opportunity to submit additional information regarding their qualifications. (*Ref. Finding K2*)

L. Rating Criteria**REQUIREMENTS**

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 "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..."

FINDINGS

1. The criteria used to rate candidates in the examinations for the Office Technician (Typing) and Respiratory Care Practitioner classifications was subjective in that measurable distinctions could not be made between the ratings (e.g., qualified and well-qualified).
2. The examination method used more frequently than others is an E&E. While in many instances, the use of an E&E may be appropriate, SPB found significant problems with the rating criteria that CDVA developed for these E&E examinations. For example:
 - In the Coordinator of Nursing Services examination, the rating criteria for Rank 3 required 4 years experience, Rank 2 required 8 years and Rank 1 required 10 years of experience. The experience required to obtain eligibility in Ranks 1 or 2 in this examination is too large of a disparity from the minimum qualifications of the class. The rating criteria for Rank 2 required candidates qualifying under Pattern III to possess twice as much experience (8 years) than the minimum qualifications require (4 years). Rank 1 required 10 years of experience. There was no information in the examination file to justify this criteria.
 - The criteria used to rate candidates in the Residential Care Unit Leader (4/00 and 6/00) examinations did not include clear distinctions between the ratings and overlapped.

CONCLUSION

The CDVA did not demonstrate in the aforementioned examinations that it fairly tested and determined the qualifications of competitors as required by Government Code §18930.

SPB DIRECTIVES REGARDING RATING CRITERIA

Effective immediately, CDVA shall include measurable distinctions in all rating criteria to ensure fairness and competitiveness in its examinations. (*Ref. Finding L1 and L2*)

The CDVA shall, by August 13, 2001, provide SPB in writing the job-related reasons for the disparity and amount of experience required to rate and rank candidates in the Coordinator of Nursing Services examination. (*Ref. Finding L2*)

M. Application Review**REQUIREMENT**

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."

FINDINGS

1. Not all of the applications reviewed from the Residential Care Unit Leader (6/00); Associate Governmental Program Analyst; Chief of Plant Operations; Institutional Personnel Officer II; Office Technician; Coordinator of Nursing Services; and CEA II, Deputy Administrator, Yountville (7/99) examinations were date stamped or included proof of postmark.

CONCLUSION

The CDVA could not demonstrate that all candidates met filing requirements or that it complied with California Code of Regulations §174 in the aforementioned examinations.

REQUIREMENT

California Code of Regulations §174 identifies conditions that must be met in order for applications to be accepted after the final filing date.

FINDINGS

2. There was no information to support that any of these conditions were met when applications from the Residential Care Unit Leader (4/00); CEA II, Deputy Administrator, Yountville (6/00); and CEA I, Deputy Administrator, Chula Vista were accepted after the final filing date. Two of the candidates who submitted late applications were subsequently hired.

CONCLUSION

The CDVA did not demonstrate that all candidates met filing requirements or that it complied with California Code of Regulations §174 in the aforementioned examinations.

REQUIREMENT

Government Code §§19704, 19705, 19792, 19233 and California Code of Regulations §§174.6-8 prohibit an applicant's ethnic, disability and other confidential information from being disclosed or available to any member of an examination panel, appointing power or individual empowered to influence the appointment prior to the offer of employment.

FINDINGS

3. Ethnicity and gender information was not removed from applications found in the Coordinator of Nursing Services; CEA I, Deputy Administrator, Chula Vista; CEA, Chief, Administrative Services Division; CEA II, Chief, Division of Farm and Home Purchases; and CEA II, Deputy Administrator, Yountville (6/00) prior to proceeding with the examination process.

CONCLUSION

The CDVA did not comply with Government Code §§19704, 19705, 19792, 19233 and California Code of Regulations §§174.6-8 when it did not remove the ethnicity and gender information from candidates' applications in the aforementioned examinations.

SPB DIRECTIVES REGARDING APPLICATION REVIEW

Effective immediately, CDVA shall date stamp all applications for examinations or maintain postmarked envelopes to comply with California Code of Regulations §174. (*Ref. Finding M1*)

Effectively immediately, CDVA shall ensure that all competitor applications received after the final filing date meet the conditions outlined in California Code of Regulations §174 for accepting late applications. CDVA shall retain documentation for at least two years, or until the next administration of the exam(s), whichever is later, with each corresponding application to demonstrate how the conditions were met. (*Ref. Finding M2*)

By August 13, 2001, CDVA shall provide to SPB in writing the conditions for which late applications were accepted in the examinations for the Residential Care Unit Leader (4/00); CEA II, Deputy Administrator, Yountville (6/00); and CEA I, Deputy Administrator, Chula Vista. (*Ref. Finding M2*)

Effective immediately, CDVA shall designate a staff person, who is not directly involved in the selection process, to remove the voluntary ethnic, gender, and disability document/flap attached to the state application form.

This shall be done prior to forwarding the applications to the appointing powers as required by Government Code §§19704, 19705, and 19792 and California Code of Regulations §§174.6-8. (*Ref. Finding M3*)

N. Scoring

REQUIREMENTS

Government Code §18930 states, “Examinations...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...”

Government Code §18936 states, "The final earned rating of each person competing in any examination shall be determined by the weighted average of earned ratings on all phases of the examination..."

California Code of Regulations §§205 and 206 provide information regarding scoring of examinations.

FINDINGS

1. An eligible list was not found in the Respiratory Care Practitioner examination file to demonstrate the final results of this examination.

CONCLUSION

Based on information reviewed in the examination files, CDVA did not demonstrate that it used appropriate scoring methods in the Respiratory Care Practitioner examination or that it complied with the requirements of Government Code §§18930, 18936 and California Code of Regulations §§205 and 206.

SPB DIRECTIVES REGARDING SCORING

Effective immediately, CDVA shall maintain in every examination history file the final list of all successful eligibles. This final results list will 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 N1*)

O. Notices

REQUIREMENT

Government Code §18938.5 states, “... each competitor shall be notified in writing of the results of the examination...”

California Code of Regulations §175 states that “Each applicant shall be notified of the approval or disapproval of his application...”

FINDINGS

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).

1. There was no documentation in the Nursing of Coordinator Services or Associate Governmental Program Analyst to demonstrate that all applicants were notified of the approval or disapproval of their application as required by California Code of Regulations §175 or that competitors were notified of their examination results in the Nursing of Coordinator Services and Residential Care Unit Leader (4/00 and 6/00) examinations, as required by Government Code §18938.5.
2. Based on documentation reviewed in the Associate Governmental Program Analyst examination, not all applicants received notification of a scheduled QAP interview.

CONCLUSION

The CDVA did not demonstrate that it appropriately notifies candidates as required by California Code of Regulations §175 and Government Code §18938.5.

SPB DIRECTIVES REGARDING NOTICES

Effective immediately, CDVA shall maintain documentation in every examination history file to demonstrate that all applicants are notified of the approval or disapproval of their application; all applicants are notified of the final results of the examination; and all candidates are notified when to appear for an examination as required by Government Code §18938.5 and 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. Findings O1 & O2*)

P. Adverse Impact**REQUIREMENTS**

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..."

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, "(a) 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..."

FINDINGS/CONCLUSION

1. There was no indication that CDVA reviews or analyzes data prior to or after the administration of each examination to determine if adverse impact results from any CDVA examination. This analysis is necessary in order to ensure that CDVA examinations are not discriminatory. Absent such an analysis, this determination cannot be made.

SPB DIRECTIVES REGARDING ADVERSE IMPACT

Effective immediately, CDVA 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 3120, Examination Security and Retention Guidelines. Where adverse impact is identified, CDVA will either re-evaluate selection procedures prior to releasing eligible lists or identify the job-relatedness of selection procedures by a supportable job analysis. (*Ref. Finding P1*)

The CDVA shall review all examinations where current eligible lists exist to determine if adverse impact resulted from any phase of the selection process. CDVA shall notify SPB in writing of its findings by August 13, 2001, and maintain relevant documentation in the corresponding examination files. (*Ref. Finding P1*)

Examinations
Veterans Home of California, Yountville

The SPB reviewed 15 examinations administered by the Veterans Home of California, Yountville. The examinations reviewed were:

Assistant Director of Dietetics (2/99)
Automotive Equipment Operator I (1/99)
Chief, Domiciliary Services (5/00)
Chief Medical Officer (Continuous)
Janitor Supervisor II (2/00)
Occupational Therapy Assistant (Continuous)
Occupational Therapist (Continuous – Four testing periods reviewed)
Pathologist (Continuous)
Personnel Services Specialist I (9/99)
Personnel Services Supervisor II (9/99)
Residential Care Unit Leader (8/99)
Registered Nurse (Continuous)

***Q. Job Analysis/
Examination
Method***

REQUIREMENTS

Government Code §18930 states that examinations will be "...competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to actually perform the duties of the class for which they seek appointment..."

Government Code §18933 states, "Within a reasonable time before the scheduled date, the board or a designated appointing power shall announce or advertise examinations for the establishment of eligible lists. Such announcement shall contain such information as the board deems proper and information concerning:

- (a) The date and place of the examination.
- (b) The nature of the minimum qualifications.
- (c) The general scope of the examination.
- (d) The relative weight of its several parts if more than one type of test is to be utilized."

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..."

FINDINGS

Of the 15 examinations reviewed, three consisted of QAP interviews 100%: Automotive Equipment Operator I; Occupational Therapy Assistant; and

Registered Nurse. The remaining 12 examinations were evaluations of E&E weighted 100%.

1. There was no information in the examination files reviewed to demonstrate that CDVA examinations were based on a job analysis.
2. The examination method for the Chief Medical Officer, Veterans Home and Medical Center consisted of an E&E weighted 100%. This high level position, with a current salary of \$9, 715.00 – \$11,135.00, is responsible for planning, organizing, and directing the medical care program of the facility. The candidates were rated on the number of years of experience they possessed practicing medicine or performing duties as a physician or surgeon at the Veterans Home and Medical Center. For a position of this level, simply quantifying a candidate's work experience lacks sufficient substantive information on which to base ratings. Furthermore, this position requires possession of the legal requirements for the practice of medicine in California. Because this specialized need exists, further evaluation of the candidate group by interview or other examination method is warranted.

CONCLUSION

In the absence of job analyses, CDVA did not demonstrate it uses appropriate testing methods or that its examinations are competitive, fairly assess the qualifications of candidates, and accurately assess the required knowledge and abilities of competitors as required by Government Code §18930.

SPB DIRECTIVE REGARDING JOB ANALYSES

By August 13, 2001, CDVA shall provide SPB with a plan to conduct job analyses to ensure the appropriate examination method is used for all future examinations and that these examinations fairly test and determine the qualifications, fitness and ability of competitors actually to perform the duties of the class as required by Government Code §18930. (*Ref. Findings Q1 & Q2*)

R. Publicity

REQUIREMENTS

Government Code §18933, states, "Within a reasonable time before the scheduled date...a designated appointing power shall announce or advertise examinations for the establishment of eligible lists."

California Code of Regulations §171 states, "...The executive officer shall direct the preparation of every examination and the publication of an announcement thereof..."

FINDINGS

1. There was no documentation available in any of the examination history files to demonstrate the distribution of examination bulletins or the publicity of each of the examinations reviewed. The Veterans Home of California, Yountville did provide SPB with a copy of a standard distribution list for examination bulletins but it was not evident from the documentation reviewed that these standards were followed for each of examinations reviewed.
2. All but three of the Veterans Home of California, Yountville examinations reviewed were administered on an open basis. The examinations for Chief, Domiciliary Services; Occupational Therapist; Registered Nurse; Pathologist; and Residential Care Unit Leader classes resulted in a limited number of applicants which raises concern about adequate publicity.
3. An examination bulletin for the Personnel Services Specialist II and Personnel Services Supervisor I was not found in the examination history file. The examination bulletin for the Automotive Equipment Operator I did not contain a bulletin release date and there was no other documentation in the file to demonstrate the publicity of this examination.

CONCLUSION

Due to the lack of documentation, the Veterans Home of California, Yountville did not demonstrate that it advertises its examinations for a reasonable period of time as required by Government Code §18933.

SPB DIRECTIVES REGARDING PUBLICITY

Effective immediately, CDVA shall maintain in every examination history file information regarding the publicity of each examination and distribution of examination bulletins. This information will 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. Findings R1 - R3*)

The CDVA shall provide SPB with a publicity plan to demonstrate that all examinations will be advertised in accordance with Government Code §18933 and California Code of Regulations §171. The plan will include information regarding CDVA's proposed bulletin distribution. At a minimum, open examinations shall be advertised on SPB's website and job information line, and examination bulletins shall be posted in SPB's Information Center. CDVA shall distinguish between publicity differences for open and promotional examinations. CDVA's plan will be submitted to SPB by August 13, 2001, for approval. (*Ref. Finding R1 & R2*)

Effectively immediately, CDVA shall maintain all examination bulletins 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. Finding R3*)

***S. Examination
Bulletins***

REQUIREMENTS

Government Code §18971 – §18979 pertain to the granting of veterans preference credit in entrance examinations for state civil service.

Government Code §18973.5 defines “entrance examination” as any open competitive examination other than one for a class having a requirement of both college graduation and two or more years of experience.

FINDINGS

1. Of the examination bulletins reviewed, the Residential Care Unit Leader incorrectly stated that veterans preference credits would not be granted.

CONCLUSION

Although no adverse effect resulted, CDVA did not include accurate information on the Residential Care Unit Leader examination bulletin regarding the application of veterans preference points.

REQUIREMENTS

California Code of Regulations §171 requires that the announcement and publication of examinations and announcements to specify...other information as the executive officer may deem proper...”

Government Code §18933 states the examination “...announcement shall contain such information as the board deems proper and information concerning: (a) The date and place of examination...”

FINDINGS

2. The Pathologist examination is continuous testing. The examination bulletin does not specify the testing periods and/or the date of examination. Absent this information, candidates will not know the appropriate time to contact CDVA in the event they did not receive a notice to appear, as the general information on the reverse side of the bulletin instruct candidates to do.
3. Based on documentation reviewed for the Pathologist examination, the examination bulletin stated the examination would consist of a QAP interview only, weighted 100%. However, documentation in the history file indicate this examination was an E&E weighted 100%. There was no information on the examination bulletin or examination history file to demonstrate how or if the Department notified candidates of the change in examination method.

SPB DIRECTIVES REGARDING EXAMINATION BULLETINS

Effectively immediately, CDVA shall ensure that examination bulletins contain accurate information about the application of veterans preference credit in appropriate examinations. (Ref. Finding S1)

Effective immediately, CDVA shall ensure that all continuous filing and/or testing examinations contain the testing periods and/or the date of the examination on the bulletins. (Ref. Finding S2)

The CDVA shall, by August 13, 2001, provide SPB with information and documentation to clarify why the examination bulletin for the Pathologist examination indicated that the examination would consist of a QAP interview only, weighted 100%, yet the documentation in the examination history file indicated this examination was an E&E weighted 100%. CDVA shall inform SPB as to whether applicants for the Pathologist examination were notified that the examination method would consist of an E&E and if all applicants were afforded the opportunity to submit additional information regarding their qualifications. (Ref. Finding S3)

T. Rating Criteria**REQUIREMENTS**

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..."

FINDINGS

1. The Personnel Services Specialist II and Personnel Services Supervisor I rating criteria placed candidates in Rank 2 with two to four years experience. Rank 1 requires candidates to have more than five years of experience. There is no criteria that defines what rating a candidate will receive who possesses between four and five years of experience.

CONCLUSION

Based on the documentation reviewed in the Personnel Services Specialist II, Personnel Services Supervisor I, and Occupational Therapist examinations, CDVA did not demonstrate these examinations were competitive and fairly tested the qualifications and abilities of competitors as required by Government Code §18930, and California Code of Regulations §198.

SPB DIRECTIVES REGARDING RATING CRITERIA

The CDVA shall review the rating criteria for the Personnel Services Specialist II and Personnel Services Supervisor I and determine how candidates were/would have been rated if they possessed four years and six months applicable experience. CDVA shall notify SPB in writing of its findings by August 13, 2001, and provide documentation to support its findings. (*Ref. Finding T1*)

U. Application Review**REQUIREMENT**

California Code of Regulations §174 requires that applications for state examinations be maintained for two years.

FINDINGS

1. Applications and resumes were reviewed in each of the 15 examinations for appropriate application of minimum qualifications, timeliness, and record-keeping requirements. When comparing the applications in the files to the list of individuals interviewed, rated, or identified on the information lists, an application was discovered missing from the Occupational Therapist examination.
2. The application of an applicant rejected from the Janitor II Supervisor examination was not found in the examination history files.

CONCLUSION

The CDVA did not maintain applications for two years as required by California Code of Regulations §174 in two of the examinations reviewed.

REQUIREMENT

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."

FINDINGS

3. Not all of the applications reviewed from the Automotive Equipment Operator I; Occupational Therapist; Personnel Services Specialist II; Personnel Services Supervisor I; Residential Care Unit Leader; Registered

Nurse; Pathologist; Assistant Director of Dietetics; and Occupational Therapy Assistant examinations were date stamped or included proof of postmark.

CONCLUSION

The CDVA did not demonstrate that all candidates met filing requirements or that it complied with California Code of Regulations §174 in the aforementioned examinations.

REQUIREMENT

Government Code §§19233, 19704, 19705, 19792 and California Code of Regulations §§174.6-8 prohibit an applicant's ethnic, disability and other confidential information from being disclosed or available to any member of an examination panel, appointing power or individual empowered to influence the appointment prior to the offer of employment.

FINDINGS

4. Ethnicity and gender information was not removed from applications found in the Occupational Therapist; Automotive Equipment Operator I; Personnel Services Specialist II; Personnel Services Supervisor I; Residential Care Unit Leader; Chief, Domiciliary Services; Pathologist; Assistant Director of Dietetics; and Chief Medical Officer prior to proceeding with the examination process.

CONCLUSION

The CDVA did not comply with Government Code §§19233, 19704, 19705, 19792, and California Code of Regulations §§174.6-8 when it did not remove the ethnicity and gender information from candidates' applications in the aforementioned examinations.

SPB DIRECTIVES REGARDING APPLICATION REVIEW

Effective immediately, CDVA shall maintain all state applications submitted by competitors for all CDVA examinations for at least two years from the effective date of the eligible list as required by California Code of Regulations §174. (*Ref. Findings U1 & U2*)

Effective immediately, CDVA shall date stamp all applications/resumes for examinations or maintain postmarked envelopes to comply with California Code of Regulations §174. (*Ref. Finding U3*)

Effective immediately, CDVA shall designate a staff person, who is not directly involved in the selection process, to remove the voluntary ethnic, gender, and disability document/flap attached to the state application form. This shall be done prior to forwarding the applications to the appointing powers as required by California Code of Regulations §174.6, §174.7, and

§174.8, and Government Code §19704, §19705, and §19792. (*Ref. Finding U4*)

V. Scoring

REQUIREMENTS

Government Code §18930 states, "Examinations...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..."

Government Code §18936 states, "The final earned rating of each person competing in any examination shall be determined by the weighted average of earned ratings on all phases of the examination..."

California Code of Regulations §§205 and 206 provide information regarding scoring of examinations.

FINDINGS

1. Eligible lists were not found in any of the examination files reviewed to demonstrate the results of each examination administered.

CONCLUSION

Based on information reviewed in the examination files, CDVA did not demonstrate that it uses appropriate scoring methods or that it complies with the requirements of Government Code §§18930, 18936 and California Code of Regulations §§205 and 206.

SPB DIRECTIVES REGARDING SCORING

Effective immediately, CDVA shall maintain in every examination history file, the final list of all successful eligibles. This final results list will 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 VI*)

W. Notices

REQUIREMENT

California Code of Regulations §175 states that "Each applicant shall be notified of the approval or disapproval of his application..." Government Code §18938.5 states, "... each competitor shall be notified in writing of the results of the examination..."

FINDINGS

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 qualifications appraisal interview, and notices of examination results, (either a passing score or disqualification).

1. One applicant in the Registered Nurse examination was disqualified. The notification regarding the results of the examination showed a score of "0" and Rank as "None" however, the body of the letter said, "Congratulations on your success in the examination..."
2. An applicant in the Personnel Services Supervisor I examination did not meet minimum qualifications. A notification was sent by CDVA staff that stated, "Candidates with the most desirable qualifications and background were interviewed. I am sorry to inform you that were not selected for the position." This applicant should have received a notice of rejection for not meeting minimum requirements.

CONCLUSION

The CDVA did not demonstrate that it appropriately notifies candidates as required by California Code of Regulations §175 and Government Code §18938.5.

SPB DIRECTIVES REGARDING NOTICES

Effective immediately, CDVA shall maintain documentation in every examination history file to demonstrate that all notifications to applicants regarding the results of the examination and notices of approval or disapproval of his/her application contain the appropriate information. (*Ref. Findings W1 & W2*)

X. Adverse Impact

REQUIREMENTS

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..."

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, "(a) 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..."

FINDINGS/CONCLUSION

1. There was no indication that CDVA reviews or analyzes data prior to or after the administration of each examination to determine if adverse impact results from any CDVA examination. This analysis is necessary in order to ensure that CDVA examinations are not discriminatory. Absent such an analysis, this determination cannot be made.

SPB DIRECTIVES REGARDING ADVERSE IMPACT

Effective immediately, CDVA 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 3120, Examination Security and Retention Guidelines. Where adverse impact is identified, CDVA will either re-evaluate selection procedures prior to releasing eligible lists or identify the job-relatedness of selection procedures by a supportable job analysis. (*Ref. Finding XI*)

The CDVA shall review bottom line hiring data for each examination where current eligible lists exist to determine if adverse impact resulted from any phase of the selection process. CDVA shall notify SPB in writing of its findings by August 13, 2001, and maintain relevant documentation in the corresponding examination files. (*Ref. Finding XI*)

Memorandum

TO: Kathie Vaughn, Chief
Policy Division
State Personnel Board

FROM: OFFICE OF THE SECRETARY
(916) 653-2158

SUBJECT: Response to Preliminary Report

DATE: May 9, 2001

The California Department of Veterans Affairs (CDVA) has reviewed the preliminary report of the State Personnel Board's (SPB) Review of CDVA dated April 13, 2001.

Overall, we concur that our personnel procedures and methods could be more defined and orderly; however, we found some minor areas of disagreement and I will address them in our Corrective Action Plan which will be completed by June 29, 2001.

We have developed appropriate methods to correct the areas identified as deficient in the report. We have procedures in place to ensure that all examinations are advertised appropriately, appropriate staff will be trained by SPB on Job Analyses and CDVA will conduct job analyses prior to administering its examinations. All applications will be date stamped and we will work with SPB staff to ensure veterans preference points are applied appropriately. Hires made from certification lists will be more clearly documented in the future and procedures will be put in place to ensure all applicants are notified of the approval or disapproval of his/her application. As of May 1, 2001, CDVA hired an additional personnel analyst and an office assistant to provide the support needed in the aforementioned areas. It is clear that consistent documentation must be a priority for personnel management in CDVA.

Regarding administrative time off (ATO), headquarters now has greater oversight of the use of ATO in the Department.

With respect to progressive discipline and how it is being applied, we will continue to provide training and reference material to our supervisors and managerial staff.

Regarding extension of probationary periods, I recognized that staff was not interpreting the Government Code (GC) and California Code of Regulations (CCR) appropriately. The Department of Personnel Administration (DPA) has provided us with the proper application and interpretation of the GC and CCR on probationary period extensions. We have put a procedure in place to ensure the GC and CCR are applied appropriately and meet the legal requirements in the future.

Kathie Vaughn
State Personnel Board
May 9, 2001

CDVA is in the process of identifying a minimum of 3 EEO Counselors and Investigators for each Veterans Home, headquarters and its field offices. Each counselor and investigator will be provided training in house, through SPB or the State Training Center. We anticipate that all counselors and investigators will be in place by June 29, 2001. In the meantime, CDVA employees will continue to seek counseling directly from the EEO Officer and the counselors currently in place at each Veterans Home.

The report indicated that the current organizational placement of the EEO/AA Manager is not in compliance with Government Code Section 19795(a). CDVA will take the necessary steps to place the EEO/AA Manager appropriately to be in compliance with the Government Code Section no later than June 29, 2001.

Regarding the perception of pre-selection and favoritism by staff interviewed at the Veterans Home in Barstow, the EEO/AA Manager will work with the Personnel Manager to ensure all examination and hiring interview panels provide equal access and an equal opportunity to all applicants. Training will also be provided to all supervisors and managers in this regard.

CDVA has implemented some of the SPB directives and will implement the remaining directives within the timeframes contained in the SPB Review Report. CDVA will comply with the requirements and deadlines identified in the SPB Review Report. In addition, the Personnel Manager will work closely with SPB staff to correct or clarify the issues identified in the review.

Your review has provided CDVA with the framework to refine personnel procedures in a manner that will assist in providing more efficient and consistent service to our staff, veterans and the public.



BRUCE THIESEN
Interim Secretary

cc: Gerald Rucker, Undersecretary
Joy Hempstead, Personnel Manager