

**State of California
Office of Administrative Law**

In re:
State Personnel Board

Regulatory Action:

Title 02, California Code of Regulations

Adopt sections:

Amend sections: 66.1, 186, 190, 213.4,
548.49

Repeal sections: 202, 203.5

NOTICE OF APPROVAL OF REGULATORY
ACTION

Government Code Section 11349.3

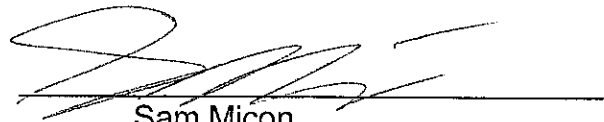
OAL Matter Number: 2023-0524-03

OAL Matter Type: Regular (S)

In this rulemaking action, the State Personnel Board updates the merit issue complaint and appeal process for regular and executive state employees. This includes the process and requirements for filing a merit issue complaint, the inspection of examination papers, appeals from examination results, and drug testing procedures and requirements.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 10/1/2023.

Date: July 6, 2023



Sam Micon
Attorney

For: Kenneth J. Pogue
Director

Original: Suzanne Ambrose, Executive
Officer

Copy: Michelle La Grandeur

NOTICE PUBLICATION/REGULATIONS SUBMISSION

STD. 400 (REV. 10/2019)

REGULAR

For use by Secretary of State only

ENDORSED - FILED
in the office of the Secretary of State
of the State of CaliforniaJUL 06 2023
1:51:PM

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-Z2022-1129-02	REGULATORY ACTION NUMBER 2023-0524-03S	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY California State Personnel Board			AGENCY FILE NUMBER (If any)

OFFICE OF ADMIN. LAW
2023 MAY 24 PM3:49**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE Merit Issue Complaint & Appeals Process		TITLE(S) 2	FIRST SECTION AFFECTED 66.1	2. REQUESTED PUBLICATION DATE December 9th 2022	
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Lori Gillihan		TELEPHONE NUMBER 916-651-1043	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER 2022, 49-2	PUBLICATION DATE 12/9/22	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) MIC & Appeals Process		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)			
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)					
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT			
TITLE(S)		AMEND			
2		66.1, 186, 190, 213.4, and 548.49			
3. TYPE OF FILING		REPEAL			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)		<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.		<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)		<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)		<input type="checkbox"/> File & Print	
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)		<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)	
<input type="checkbox"/> Print Only		4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1) 2/24/23-3/13/23 & 3/20/23 - 4/5/23			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)					
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))		<input type="checkbox"/> Effective on filing with Secretary of State		<input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify)	
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY					
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)		<input type="checkbox"/> Fair Political Practices Commission		<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify)					
7. CONTACT PERSON Michelle La Grandeur		TELEPHONE NUMBER 916-651-2740	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) michelle.lagrandeur.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE Suzanne M. Ambrose <small>Digitally signed by Suzanne M. Ambrose Date: 2023.05.22 17:04:45 -0700</small>	DATE
TYPED NAME AND TITLE OF SIGNATORY Suzanne M. Ambrose, Executive Officer	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUL 06 2023

Office of Administrative Law



FINAL TEXT

CALIFORNIA CODE OF REGULATIONS TITLE 2. ADMINISTRATION DIVISION 1. ADMINISTRATIVE PERSONNEL CHAPTER 1. STATE PERSONNEL BOARD SUBCHAPTER 1.2. HEARINGS AND APPEALS ARTICLE 9. MERIT ISSUE COMPLAINTS

§ 66.1. Merit Issue Complaints.

(a) Merit issue complaints are complaints that the State Civil Service Act or Board regulation or policy has been violated by a state agency. These complaints include but are not limited to, interference with promotional opportunities, interference with a person's access to any SPB appeals process, and the designation of managerial positions pursuant to Government Code section 3513. Merit issue complaints do not include appeals of actions that are specifically provided for elsewhere in law or in Board regulations.

(b) Each state agency shall establish and publicize to its employees the process for receiving and addressing merit issue complaints regarding its hiring and selection processes. That process shall include provisions for informing employees in writing of the state agency's decision and of the employee's right to appeal the state agency's decision on the merit issue complaint to the Appeals Division.

(c)(1) Prior to filing with the Appeals Division, Merit issue complaints shall first be filed with the state agency's human resources office, personnel officer or any unit/person designated to address merit issue complaints within three years of the alleged violation of Board regulation or policy, in the hiring and selection process.

(2) Persons may file a merit issue complaint themselves or designate an attorney or other authorized representative to represent them. No person(s) may file a merit issue complaint on behalf of another person(s) without their authorization.

(d) Each state agency shall inform employees or applicants at the time the complaint is received of their right to challenge the state agency's decision, denial of the complaint or failure to respond by filing a complaint with the Appeals Division and the timelines for filing according to section 66.1, subdivision (e).

(e) A merit issue complaint shall be filed with the Appeals Division within 30 days of the state agency's decision or denial of the complaint. Failure of a state agency to respond to

a merit issue complaint within 90 days of receipt of the complaint shall be deemed a denial of the complaint's allegations and shall release the appellant to file a merit issue complaint directly with the Appeals Division within 30 days of the 90th day.

(1) An appeal of a merit issue complaint filed with the Appeals Division shall:

(A) Include evidence of having filed a formal written complaint with the state agency's human resources office, personnel officer or any unit/person designated to address merit issue complaints.

(B) Include the original complaint submitted to the state agency.

(C) Identify any wrongdoing by the state agency supported by factual evidence and documentation.

(f) Merit Issue Complaints are assigned ~~for~~to investigative review by an Investigative Officer pursuant to section 53.2, ~~unless otherwise assigned pursuant to section 53.4.~~

(g) Persons not having competed in an examination or selection process who wish to file a complaint that the State Civil Service Act or Board regulation or policy has been violated by a state agency, may submit requests for review to the Board's Compliance Review Division.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 12940, 18675, 18952, 19701, 19702, 19230 and 19231, Government Code.

**CALIFORNIA CODE OF REGULATIONS
TITLE 2. ADMINISTRATION
DIVISION 1. ADMINISTRATIVE PERSONNEL
CHAPTER 1. STATE PERSONNEL BOARD
SUBCHAPTER 1.3. CLASSIFICATIONS, EXAMINATIONS, AND APPOINTMENTS
ARTICLE 8. EXAMINATIONS**

§ 186. Inspection of Examination Papers.

Examination papers shall be open to inspection only as provided by these regulations.

(a) Upon request to the Department and/or designated appointing power, competitors shall be allowed to inspect a keyed copy of their answers to the examination for the express purpose of ensuring their answers were correctly keyed. Such inspection shall occur during regular office hours in the seven calendar days beginning on the first working day after a written examination has been held and at any of the offices of the Department or such other places as may be designated by the Department.

(b) The following shall not be made available for review:

(1) Confidential examination materials pursuant to Government Code 18934.

(2) Keyed copies of copyrighted or standardized examinations.

(c) For examinations given to fill urgent and immediate vacancies in the state service, the Department may provide that there will be no key inspection privileges. Notice of the suspension of this privilege shall be made a part of the written examination instructions given to each competitor at the time of the written examination.

(d) The competitor may, during the period of inspection provided above, file with the Department a written appeal from any part of the written examination, citing the item or items against which the appeal is directed and stating the reason for such appeal. The written examination shall not be scored until all the disputed items have been reviewed and appropriate adjustment, if any, made by correction in the scoring key or elimination of the disputed items. In no event is the Department required to furnish keyed copies of questions of an essay or problem type when in the judgment of the Department such questions are not subject to scoring by an absolute standard.

(e) An appeal based on the results of the written examination may be filed with the Board's Appeals Division in accordance with California Code of Regulations, title 2, section 52.4 subdivision (e)(1)(L).

Note: Authority cited: Sections 18502, 18660 and 18701, Government Code. Reference: Section 18670, Government Code.

§ 190. Appeal from Written Examination.

~~(a) During regular office hours in the seven calendar days beginning on the first working day after a written examination has been held and at any of the offices of the Department or such other places as may be designated by the Department, any competitor may inspect a keyed copy of the questions in the competitor's examination for the express purpose of requesting review of such items as the competitor may believe are incorrectly or improperly keyed. Keyed copies of copyrighted or standardized examinations will not be available for review.~~

~~(b) For examinations given to fill urgent and immediate vacancies in the state service, the Department may provide that there will be no key inspection privileges. Notice of the suspension of this privilege shall be made a part of the written examination instructions given to each competitor at the time of the written examination.~~

~~(c) The competitor may, during the period of inspection provided above, file with the Department a written appeal from any part of the test, citing the item or items against~~

~~which the appeal is directed and stating the reason for such appeal. The examination shall not be scored until all the disputed items have been reviewed and appropriate adjustment, if any, made by correction in the scoring key or elimination of the disputed items. In no event is the Department required to furnish keyed copies of questions of an essay or problem type when in the judgment of the Department such questions are not subject to scoring by an absolute standard.~~

~~(d) In addition to the appeal herein above provided, a written appeal may be made from the result of the written examination on the grounds of fraud or clerical error in scoring the papers. Such appeal must be filed with the Board's Appeals Division within 60 days after notice of the result of the competitor's examination has been mailed to the competitor filing the appeal.~~

The provisions within this section apply to all types of exams, except CEA exams. The provisions to appeal CEA exams are provided in California Code of Regulations, title 2, section 548.49.

(a) Appeals of examinations may be submitted to the Board by the following individuals:

(1) Applicants who applied to compete in the examination, but were not admitted to the examination for reasons including, but not limited to, the following:

(A) the application was not received by the Department or designated appointing power by the final filing date and/or cut-off date;

(B) the Department or designated appointing power rejected the application; or

(C) the Department or designated appointing power denied the application having determined the application does not meet the minimum qualifications of the classification upon which the exam is based.

(2) Applicants who were admitted to and competed in the examination.

(b) Appeals of examinations submitted to the Board shall be based upon one or more of the following grounds: fraud, discrimination, erroneous interpretation of minimum qualifications or significant irregularities.

(1) In order to establish a cause of action for fraud, the competitor shall provide evidence demonstrating the following:

(A) a misrepresentation or a material omission of fact;

(B) which was false and known to be false by the appointing power;

(C) made for the purpose of inducing the competitor to rely upon the misrepresentation or material omission;

(D) justifiable reliance of the competitor on the misrepresentation or material omission;
and

(E) resulting injury.

(2) Appeals alleging discrimination in the examination process require evidence that demonstrates illegal discrimination on a basis prohibited under California's Fair Employment and Housing Act. (Gov. Code, §§ 12900, et seq.) The appeal shall establish a connection between the complained of activity and the individual's status as a member of a protected class.

(3) For purposes of this section, "erroneous interpretation of minimum qualifications" is considered to have occurred when the Department or designated appointing power makes an inaccurate analysis of the applicant's qualifications to compete in the examination and, as a result, an otherwise qualified applicant is not admitted to compete in the exam.

(4) A significant irregularity occurs when the examination is not administered as outlined on the bulletin, the examination method was not applied fairly to all competitors, or the examination does not test and determine the qualifications, fitness and ability of the competitors to perform the duties of the classification(s) in the exam.

(c) Appeals of examination shall be filed with the Board's Appeals Division in accordance with California Code of Regulations, title 2, section 52.4 subdivision (e)(1)(L).

(d) If the Board grants the appeal, the Board may order remedies including, but not limited to, voiding the examination, abolishing the eligibility list, and/or voiding any appointments made therefrom.

Note: Authority cited: Sections 18502, 18660 and 18701, Government Code. Reference: Section 18670, Government Code.

§ 202. Appeal from Qualifications Appraisal Panel. [Repealed]

~~(a) In examinations with two or more weighted portions, within 30 days after the notice of the result of the examination has been mailed, a competitor disqualified by a qualifications appraisal panel may appeal to the State Personnel Board to review that competitor's rating on the grounds that it was the result of failure to follow prescribed rating standards or procedures, or of erroneous interpretation or application of the~~

~~minimum qualifications prescribed for the class, or that it was the result of fraud, or of discrimination within the meaning of Sections 19702 or 19703 of the Government Code, or of other improper acts or circumstances. The appeal shall be in writing and shall state the facts, information, or circumstances upon which the appeal is based.~~

~~(b) In considering an appeal filed under subsection (a), the board shall:~~

~~(1) Sustain the rating; or,~~

~~(2) Grant the appeal and give a rating of 70 percent on education, experience, and personal qualifications; or,~~

~~(3) If it determines that the rating was the result of fraud, or of discrimination within the meaning of Sections 19702 or 19703 of the Government Code, give the competitor such passing rating as it may decide, or cancel part or all of the interview ratings given by that panel, arrange for reexamination of the appellant and other affected competitors by a different panel, and withhold part or all of the eligible list from certification until the reexamination is completed; or,~~

~~(4) Where it finds the existence of extraordinary circumstances in the conduct of the interview that it determines warrants referral of the request for review of the rating either to the original or to a new qualifications appraisal panel, it may make this referral with such instructions as it deems appropriate for reconsideration of the competitor's rating. On completion of such reconsideration, the qualifications appraisal panel either shall recommend that the rating be sustained or shall recommend a revised rating for the competitor. Following such recommendation, the Board may sustain the original rating or it may give the competitor a rating of 70 percent or the revised rating recommended by the qualifications appraisal panel.~~

~~(c) In examinations where the qualifications appraisal panel is the only weighted portion, within 30 days after the notice of the result of the examination has been mailed, a competitor who received a rating below the rating required for placement on the list may appeal to the State Personnel Board to review that rating on the grounds that it was the result of failure to follow prescribed rating standards or procedures, or of erroneous interpretation or application of the minimum qualifications prescribed for the class, or that it was the result of fraud, or of discrimination within the meaning of Sections 19702 or 19703 of the Government Code, or of other improper acts or circumstances. The appeal shall be in writing and shall state the facts, information, or circumstances upon which the appeal is based.~~

~~(d) In considering an appeal filed under subsection (c), the board shall:~~

~~(1) Sustain the rating; or,~~

- ~~(2) Grant the appeal and give a rating equal to that of the lowest eligible on the list; or,~~
- ~~(3) If it determines that the rating was the result of fraud, or of discrimination within the meaning of Sections 19702 or 19703 of the Government Code, give the competitor such passing rating as it may decide, or cancel part or all of the interview ratings given by that panel, arrange for reexamination of the appellant and other affected competitors by a different panel, and withhold part or all of the eligible list from certification until the reexamination is completed; or,~~
- ~~(4) Where it finds the existence of extraordinary circumstances in the conduct of the interview that it determines warrant referral of the request for review of the rating either to the original or to a new qualifications appraisal panel, it may make this referral with such instructions as it deems appropriate for reconsideration of the competitor's rating. On completion of such reconsideration, the qualifications appraisal panel either shall recommend that the rating be sustained or shall recommend a revised rating for the competitor. Following such recommendation, the board may sustain the original rating or it may give the competitor a rating equal to that of the lowest eligible on the list or the revised rating recommended by the qualifications appraisal panel.~~

~~Note: Reference: Section 18930, Government Code.~~

§ 203.5. Appeal from Employee Development Appraisal Rating. [Repealed]

~~(a) In examinations with two or more weighted portions, within 30 days after the notice of the result of the examination has been mailed, a competitor whose employee development appraisal rating was not qualifying may request a revision of that rating on the grounds that it was the result of failure to follow the prescribed rating standards or procedures, or of erroneous interpretation or application of minimum qualifications prescribed for the class, or that it was the result of fraud, or of discrimination within the meaning of Sections 19702 or 19703 of the Government Code, or of other improper acts or circumstances. The request shall be in writing and shall state the facts, information, or circumstances upon which the request is based.~~

~~(b) In considering an appeal filed under subsection (a), the Board shall:~~

~~(1) Sustain the rating; or,~~

~~(2) Grant the appeal and give a rating of 70 percent; or,~~

~~(3) If it determines that the rating was the result of fraud, or of discrimination within the meaning of Sections 19702 or 19703 of the Government Code, give the competitor such passing rating as it may decide, or cancel part or all of the ratings given, arrange for reexamination of the appellant and other affected competitors, and withhold part or all of the eligible list from certification until the reexamination is completed; or,~~

~~(4) Where it finds the existence of extraordinary circumstances in the conduct of the employee development appraisal process that it determines warrant referral of the request for review of the rating either to the original or to a new employee development appraisal rating committee, it may make this referral with such instructions as it deems appropriate for reconsideration of the competitor's rating. On completion of such reconsideration, the rating committee either shall recommend that the rating be sustained or shall recommend a revised rating for the competitor. Following such recommendation, the Board may sustain the original rating or it may give the competitor a rating of 70% or the revised rating recommended by the employee development appraisal rating committee.~~

~~(c) In examinations where the employee development appraisal rating is the only weighted portion of an examination, within 30 days after the notice of the result of the examination has been mailed, a competitor whose employee development appraisal rating was below that of the lowest eligible on the list may request a revision of that rating on the grounds that it was the result of failure to follow the prescribed rating standards or procedures, or of erroneous interpretation or application of minimum qualifications prescribed for the class, or that it was the result of fraud, or of discrimination within the meaning of Sections 19702 or 19703 of the Government Code, or of other improper acts or circumstances. The request shall be in writing and shall state the facts, information, or circumstances upon which the request is based.~~

~~(d) In considering an appeal filed under subsection (c), the Board shall:~~

~~(1) Sustain the rating; or,~~

~~(2) Grant the appeal and give a rating equal to that of the lowest eligible on the list; or,~~

~~(3) If it determines that the rating was the result of fraud, or of discrimination within the meaning of Sections 19702 or 19703 of the Government Code, give the competitor such passing rating as it may decide, or cancel part or all of the ratings given, arrange for reexamination of the appellant and other affected competitors, and withhold part or all of the eligible list from certification until the reexamination is completed; or,~~

~~(4) Where it finds the existence of extraordinary circumstances in the conduct of the employee development appraisal process that it determines warrant referral of the request for review of the rating either to the original or to a new employee development appraisal rating committee, it may make this referral with such instructions as it deems appropriate for reconsideration of the competitor's rating. On completion of such reconsideration, the rating committee either shall recommend that the rating be sustained or shall recommend a revised rating for the competitor. Following such recommendation, the Board may sustain the original rating or it may give the competitor~~

~~a rating equal to that of the lowest eligible on the list or the revised rating recommended by the employee development appraisal rating committee.~~

Note: Reference Section 18930, Government Code.

§ 213.4. Required Components for Drug Testing.

Any drug testing or retesting procedure conducted pursuant to sections 213 or 213.2 must be approved by the Department and shall include all of the following:

(a) The drug screening methodology to be used, which shall be a type of immunoassay, except that another method may be used if a department can demonstrate that it is equally reliable as immunoassay;

(b) The drugs to be tested which shall include at least the following drugs of abuse:

(1) Amphetamines and Methamphetamines

(2) Cocaine

(3) Marijuana/Cannabinoids (THC)

(4) Opiates (narcotics)

(5) Phencyclidine (PCP)

(c) Cutoff levels for screening tests that will identify positive samples while minimizing false positive test results;

(d) An authorization to test form which shall include at least the following:

(1) A list of the specific drugs to be tested for, and a description of the consequences of failing the drug test as specified in section 213.5;

(2) A signature block, to be signed by the applicant before the drug test begins, authorizing the test to proceed and authorizing the necessary disclosure of medical information pursuant to section 213.4.

(3) A statement that applicants who decline to sign the form or decline to be tested will be disqualified from the examination.

(e) (1) A requirement that the applicant disclose on a form, separate from the authorization to test form, all drugs and other medications taken, whether prescribed or not, within the 14 days prior to testing. This information shall be examined only by the appointing power and only if the applicant has a positive confirmatory drug test, except

that for purposes of administering section 213.6, this information may be examined by the Board and staff authorized to investigate and/or hear appeals.

(2) A requirement that the appointing power utilize a Medical Review Officer, who shall be a licensed physician with knowledge of substance abuse, to review and interpret positive results of confirmatory tests and the information submitted by the applicant pursuant to section 213.4(e)(1), determine whether the result may have been caused for any medically acceptable reason, such as prescribed or over the counter medications, and report to the appointing power his/her opinion as to the cause of the positive drug test. In the process of making this decision, the Medical Review Officer may request the applicant to provide additional information regarding all drugs and other medications taken.

(f) Specimen chain of custody provisions which shall include at least the following:

(1) A procedure to assure that a valid specimen is acquired, the donor is properly identified, and that no tampering or mishandling of the specimen occurs from initial collection to final disposition.

(2) A written log in which is recorded the name, signature, time of receipt, and time of release of each person handling, testing or storing each specimen, or reporting test results.

(3) Collection of specimen samples in a clinical setting such as a laboratory collection station, doctor's office, hospital or clinic, or in another setting approved by the Department on the basis that it provides an equally secure and professional collection process.

(g) Procedure for confirmation of positive screening test results utilizing gas chromatography/mass spectrometry (GC/MS);

(h) Notices to the applicant which shall be written and based on the following:

(1) If the screening test result is negative, the test is concluded, and the applicant has passed the drug test.

(2) If the necessary confirmatory test result is negative, the test is concluded, and the applicant has passed the drug test.

(3) If both the screening test and the confirmatory test results are positive and the Medical Review Officer's opinion is that the positive test results are not because of prescribed or over the counter medication or for any other medically acceptable reasons, the applicant has failed the drug test.

(i) The written notice shall inform the applicant of their right to file an appeal with the Board.

(ij) Specimen retention and retesting procedure which shall include at least the following:

(1) Retention of all confirmed positive specimens and related records by the testing laboratory in secure frozen storage for at least one year following the test or until all appeals or litigation are concluded, whichever is longer.

(2) Provisions for retesting of confirmed positive specimens by any laboratory authorized to conduct drug testing pursuant to section 213.3, at the request of an applicant and at the applicant's expense, provided that the request is received within 30 days of notifying the applicant of his/her disqualification. Retesting shall correspond exactly with the initial testing methods and procedures.

(jk) Provisions for maintaining the confidentiality of test results, which shall include at least the following:

(1) The results of any test conducted pursuant to sections 213, 213.2 or 213.4(ji)(2) shall be given only to the applicant who was tested, the appointing power or the Department, and cannot be revealed to any other party without the written authorization of the applicant except that for the purposes of administering (A) section 213.5, the Department shall reveal a failed drug test to other State appointing powers who administer an examination for which drug testing is required and for which the individual is an applicant; or (B) section 213.6, the Department may reveal a failed drug test and other relevant information to the Board and staff authorized to investigate and/or hear appeals.

(2) The results of any test conducted pursuant to section 213.2 shall not be used in any adverse action proceedings.

(3) The information disclosed by the applicant pursuant to section 213.4(e)(1) shall be examined only the appointing power and only if the applicant has a positive confirmatory drug test, except that for purposes of administering section 213.6, this information may be examined by the Board and staff authorized to investigate and/or hear appeals.

(4) Drug test results which are positive shall be purged from all records one year from the date the drug test specimen is given except as follows:

(A) The retention period for drug test results which are positive for a drug as specified in section 213.5(b) shall be ten years from the date the drug test specimen is given;

(B) If a disqualification from an examination as the result of a positive test is appealed or litigated, the drug test results shall be retained until the appeal or litigation is resolved.

Note: Authority cited: Sections 18502 and 18701, Government Code. Reference: Section 18930, Government Code; and Section 56.20(c), Civil Code.

Barclays California Code of Regulations
Title 2. Administration
Division 1. Administrative Personnel
Chapter 1. State Personnel Board
Subchapter 2. Career Executive Assignment Rules (Refs & Annos)
Article 5. Examinations

§ 548.49. Appeals from CEA Examinations.

(a) Appeals from CEA examinations shall be filed in accordance with subchapter 1.2, article 2, section 52.4, subdivision (e)(1)(L) ~~of the these regulations~~. The appeal may be based upon allegations of improprieties in the examination process, including but not limited to, fraud, ~~illegal~~ discrimination, erroneous interpretation of minimum qualifications or other improper acts or circumstances significant irregularities.

(1) In order to establish a cause of action for fraud, the competitor shall provide evidence demonstrating the following:

(A) a misrepresentation or a material omission of fact;

(B) which was false and known to be false by the appointing power;

(C) made for the purpose of inducing the competitor to rely upon the misrepresentation or material omission;

(D) justifiable reliance of the competitor on the misrepresentation or material omission;
and

(E) resulting injury.

(2) Appeals alleging discrimination in the examination process require evidence that demonstrates illegal discrimination on a basis prohibited under California's Fair Employment and Housing Act. (Gov. Code, §§ 12900 et seq.) The appeal must establish a connection between the complained of activity and the individual's status as a member of a protected class.

(3) For purposes of this section, "an erroneous interpretation of minimum qualifications" is considered to have occurred when there is an inaccurate analysis of the applicant's qualifications to compete in the examination and, as a result, an otherwise qualified applicant is not permitted to compete.

(4) A significant irregularity occurs when the examination is not administered as outlined in the bulletin, the examination method was not applied fairly to all competitors, or the examination does not test and determine the qualifications, fitness, and ability of the competitors to perform the duties of the CEA position.

~~(b) If the Board grants the appeal, the Board may order remedies including, but not limited to, voiding the examination, abolishing the eligibility list, and voiding any appointments made therefrom.~~

Note: Authority cited: Section 18701, Government Code. Reference: Sections 19889, 19889.2 and 19889.3, Government Code.