



COMPLIANCE REVIEW REPORT

CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS

Compliance Review Unit
State Personnel Board
December 22, 2015

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INTRODUCTION

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

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

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

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of California Department of Consumer Affairs (DCA) personnel practices in the areas of examinations, appointments, EEO, and PSC's from January 1, 2014, through December 31, 2014. The DCA's Bureaus, Programs, and Divisions Unit and the Regulatory Boards Unit were reviewed. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Examinations Complied with Civil Service Laws and Board Rules	In Compliance
Appointments	Equal Employment Opportunity Questionnaires Were Not Separated from Applications	Very Serious
Appointments	Appointment Documentation Was Not Kept for the Appropriate Amount of Time	Serious
Appointments	Probationary Evaluations Were Not Provided for All Appointments	Serious

Area	Finding	Severity
Appointments	Applications Were Not Date Stamped	Non-serious or Technical
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules	In Compliance
Personal Services Contracts	Personal Services Contracts Complied with Procedural Requirements	In Compliance

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

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

BACKGROUND

The DCA is here to protect and serve California consumers while ensuring a competent and fair marketplace. The DCA helps consumers learn how to protect themselves from unscrupulous and unqualified individuals. The department also protects professionals from unfair competition by unlicensed practitioners.

To protect and serve consumers, the department issues licenses in more than 100 business and 200 professional categories, including doctors, dentists, contractors, cosmetologists, and automotive repair facilities. The DCA includes 41 regulatory entities (25 boards, nine bureaus, four committees, two programs, and one commission). These entities establish minimum qualifications and levels of competency for licensure. They also license, register, or certify practitioners, investigate complaints, and discipline violators. The committees, commission and boards are semiautonomous bodies whose members are appointed by the Governor and the Legislature. The DCA provides them administrative support. The DCA's operations are funded exclusively by license fees with approximately 3,500 employees.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing DCA examinations, appointments, EEO program, and PSC's from January 1, 2014, through December 31, 2015. The primary objective of the review was to determine if DCA personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

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

The review of the DCA EEO program included examining written EEO policies and procedures; the EEO officer's role, duties, and reporting relationship; the internal discrimination complaint process; the upward mobility program; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC). The CRU also interviewed appropriate DCA staff.

The DCA's PSCs were also reviewed.¹ It was beyond the scope of the compliance review to make conclusions as to whether DCA justifications for the contracts were legally sufficient. The review was limited to whether DCA practices, policies, and procedures relative to PSC's complied with applicable statutory law and board regulations.

On December 1, 2015, an exit conference was held with the DCA to explain and discuss the CRU's initial findings and recommendations. The DCA was given until December 9, 2015, to submit a written response to the CRU's draft report. On December 9, 2015, the CRU received and carefully reviewed the response, which is attached to this final compliance report.

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

FINDINGS AND RECOMMENDATIONS

Examinations

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

During the period under review, the DCA conducted 20 examinations. The CRU reviewed 15 of the examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Accounting Officer (Specialist)	Promotional	Education & Experience (E&E) ²	11/13/2014	11
Chief, Bureau of Automotive Repair, (CEA)	Open	Statement Of Qualifications ³	1/24/14	7

² In an education and experience (E&E) examination, one or more raters reviews the applicants' Standard 678 application forms, and scores and ranks them according to a predetermined rating scale that may include years of relevant higher education, professional licenses or certifications, and/or years of relevant work experience.

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

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Chief, Division of Programs & Policy Review (CEA)	Open	Application and SOQ	5/14/2014	7
Chief, Enforcement Division, California Board of Accountancy (CEA)	Open	Application and SOQ	11/14/2014	8
Deputy Chief Bureau of Automotive Repair Consumer Assistance, Licensing, and Administrative Support (CEA)	Open	SOQ	1/24/2014	13
Deputy Chief Bureau of Automotive Repair Consumer Assistance, Licensing, and Administrative Support (CEA)	Open	SOQ	1/24/2014	13
Deputy Chief, Investigations & Enforcement (CEA)	Promotional	Qualification Appraisal Panel ⁴	5/15/2014	8
Deputy Director, Medical Board of California (CEA)	Open	SOQ & QAP	8/22/2014	15
Deputy Director, Office of Administrative Services (CEA)	Open	SOQ	4/30/2014	15
Enforcement Representative I, CSLB	Open, Non Promotional	Written ⁵	4/21/2014	122
Inspector, Board of Pharmacy	Open	Training & Experience ⁶	Continuous	40

⁴ The qualification appraisal panel (QAP) interview is the oral component of an examination whereby competitors appear before a panel of two or more evaluators. Candidates are rated and ranked against one another based on an assessment of their ability to perform in a job classification.

⁵ A written examination is a testing procedure in which candidates' job-related knowledge and skills are assessed through the use of a variety of item formats. Written examinations are either objectively scored or subjectively scored.

⁶ The training and experience (T&E) examination is administered either online or in writing, and asks the applicant to answer multiple-choice questions about his or her level of training and/or experience performing certain tasks typically performed by those in this classification. Responses yield point values, which are totaled by the online system or a department exam analyst, and then assigned a percentage score.

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Private Postsecondary Education Administrator	Promotional	E&E	6/30/2014	5
Staff Services Analyst (Transfer Exam)	Promotional	Written	Continuous	17
Test Validation & Development Specialist I	Open	QAP	Continuous	11
Test Validation & Development Specialist II, DCA	Open	QAP	5/2/2014	2

FINDING NO. 1 – Examinations Complied with Civil Service Laws and Board Rules

The DCA administered 15 open examinations and 1 promotional examination to create eligible lists from which to make appointments. For all of the examinations, the DCA published and distributed examination bulletins containing the required information. Applications received by the DCA were accepted prior to the final filing date and were thereafter properly assessed to determine whether applicants met the minimum qualifications (MQ’s) for admittance to the examination. The DCA notified applicants as to whether they qualified to take the examination, and those applicants who met the MQ’s were also notified about the next phase of the examination process. After all phases of the examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The examination results listed the names of all successful competitors arranged in order of the score received by rank. Competitors were then notified of their final scores.

The CRU found no deficiencies in the examinations that the DCA conducted during the compliance review period. Accordingly, the DCA fulfilled its responsibilities to administer those examinations in compliance with civil service laws and board rules.

Appointments

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) Except as provided by law, appointments to vacant positions shall be made from employment lists. (*Ibid.*) Appointments made from eligible lists, by way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness, which requires consideration of each individual’s job-related

qualifications for a position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

During the compliance review period, the DCA made 1,205 appointments. The CRU reviewed 153 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Accountant Trainee	Certification List	Permanent	Full Time	1
Assistant Information Systems Analyst	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Certification List	Limited Term	Full Time	1
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	9
Athletic Inspector	Certification List	Permanent	Intermittent	2
Auditor I	Certification List	Permanent	Intermittent	1
Consumer Services Representative	Certification List	Permanent	Full Time	1
Data Processing Manager IV	Certification List	Limited Term	Full Time	1
Department of Consumer Affairs, Structural Pest Control	Certification List	Permanent	Full Time	1
Enforcement Representative I, Contractors State License Board	Certification List	Permanent	Full Time	2
Examiner in Barbering	Certification List	Permanent	Intermittent	1
Executive Assistant	Certification List	Permanent	Full Time	1
General Auditor III	Certification List	Permanent	Full Time	1
Graphic Designer III	Certification List	Permanent	Full Time	1
Inspector Board of Pharmacy	Certification List	Permanent	Full Time	1
Investigator	Certification List	Permanent	Full Time	1
Labor Relations Analyst	Certification List	Permanent	Full Time	1
Material & Stores Specialist	Certification List	Permanent	Full Time	1
Medical Consultant (Enforcement) Medical Board of California	Certification List	Permanent	Intermittent	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Nurse Education Consultant	Certification List	Permanent	Full Time	3
Office Assistant (Typing)	Certification List	Temporary	Full Time	2
Office Assistant (Typing)	Certification List	Temporary	Intermittent	1
Office Technician (General)	Certification List	Temporary	Full Time	1
Office Technician (Typing)	Certification List	Permanent	Full Time	5
Office Technician (Typing)	Certification List	Temporary	Intermittent	2
Office Technician (Typing)	Certification List	Temporary	Full Time	5
Personnel Selection Consultant I	Certification List	Permanent	Full Time	1
Private Postsecondary Education Administrator	Certification List	Permanent	Full Time	1
Private Postsecondary Education Senior Specialist	Certification List	Permanent	Full Time	1
Program Representative II	Certification List	Permanent	Full Time	1
Program Representative III (Specialist)	Certification List	Permanent	Full Time	1
Program Technician	Certification List	Permanent	Full Time	1
Program Technician II	Certification List	Intermittent	Full Time	1
Program Technician II	Certification List	Permanent	Full Time	1
Property Appraiser/Investigator	Certification List	Permanent	Full Time	2
Real Estate Counsel III (Specialist)	Certification List	Permanent	Full Time	1
Seasonal Clerk	Certification List	Temporary	Intermittent	1
Senior Accounting Officer (Specialist)	Certification List	Permanent	Full Time	2
Senior Information Systems Analyst (Supervisor)	Certification List	Permanent	Full Time	1
Senior Legal Typist	Certification List	Permanent	Full Time	1
Special Investigator	Certification List	Permanent	Full Time	1
Staff Information Services Analyst (Specialist)	Certification List	Permanent	Full Time	1
Staff Management Auditor	Certification List	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Staff Services Analyst (General)	Certification List	Limited Term	Full Time	1
Staff Services Analyst (General)	Certification List	Permanent	Full Time	6
Staff Services Manager I	Certification List	Limited Term	Full Time	1
Staff Services Manager I	Certification List	Permanent	Full Time	7
Staff Services Manager II (Managerial)	Certification List	Permanent	Full Time	1
Staff Services Manager III	Certification List	Permanent	Full Time	1
Supervising Attorney	Certification List	Permanent	Full Time	1
Supervising Program Technician II	Certification List	Limited Term	Full Time	1
Supervising Special Investigator (Non-Peace Officer)	Certification List	Permanent	Full Time	1
System Software Specialist II (Technical)	Certification List	Permanent	Full Time	1
Training Officer II	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Mandatory Reinstatement	Limited Term	Full Time	1
Associate Governmental Program Analyst	Mandatory Reinstatement	Permanent	Full Time	1
Information Systems Technician	Mandatory Reinstatement	Permanent	Full Time	1
Office Technician (Typing)	Mandatory Reinstatement	Permanent	Full Time	2
Program Technician	Mandatory Reinstatement	Permanent	Full Time	1
Senior Legal Typist	Mandatory Reinstatement	Permanent	Full Time	1
Special Investigator	Mandatory Reinstatement	Permanent	Full Time	1
Staff Services Analyst (General)	Mandatory Reinstatement	Permanent	Full Time	2
Staff Services Manager I	Mandatory Reinstatement	Permanent	Full Time	1
Test Validation & Development Specialist II	Mandatory Reinstatement	Permanent	Full Time	1
Associate Governmental Program Analyst	Permissive Reinstatement	Temporary	Intermittent	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Associate Management Auditor	Permissive Reinstatement	Temporary	Intermittent	1
Associate Management Auditor	Permissive Reinstatement	Temporary	Intermittent	1
General Auditor III	Permissive Reinstatement	Permanent	Full Time	1
Investigative Certified Public Accountant	Permissive Reinstatement	Temporary	Intermittent	1
Office Technician (General)	Permissive Reinstatement	Permanent	Full Time	1
Staff Services Analyst (General)	Permissive Reinstatement	Permanent	Full Time	1
Staff Services Manger III	Permissive Reinstatement	Permanent	Full Time	1
Assistant Examination Proctor	Temporary Authorization Utilization (TAU)	Temporary	Intermittent	1
Examination Proctor	TAU	Temporary	Intermittent	1
Accounting Technician	Transfer	Permanent	Full Time	1
Associate Budget Analyst	Transfer	Permanent	Full Time	1
Associate Business Management Analyst	Transfer	Permanent	Full Time	1
Associate Governmental Program Analyst	Transfer	Limited Term	Full Time	3
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	5
Attorney	Transfer	Permanent	Full Time	2
Enforcement Supervisor I	Transfer	Permanent	Full Time	1
General Auditor II	Transfer	Permanent	Full Time	1
Investigator	Transfer	Permanent	Full Time	2
Office Assistant (Typing)	Transfer	Permanent	Full Time	1
Office Technician (General)	Transfer	Permanent	Full Time	1
Office Technician (Typing)	Transfer	Permanent	Full Time	4
Office Technician (Typing)	Transfer	Permanent	Intermittent	2
Program Technician	Transfer	Permanent	Intermittent	1
Program Technician II	Transfer	Permanent	Full Time	5
Special Investigator	Transfer	Permanent	Full Time	1
Staff Services Analyst	Transfer	Permanent	Full Time	8

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Staff Services Analyst (General)	Transfer	Permanent	Full Time	1
Staff Services Manger I (Specialist)	Transfer	Permanent	Full Time	1

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

Summary: The DCA did not separate 168 EEO questionnaires from 6,953 STD. 678 employment applications.

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

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

Cause: The DCA states that this may be attributed to misinterpretation of the DCA Office of Human Resources (OHR) instruction to hiring managers to maintain records and copies of all documents applications relating to the hiring process. As part of our ongoing formal training efforts dating back to 2014, the OHR has clarified with DCA management to remove the EEO questionnaire and will

be including language in all advertisements for candidates to remove the questionnaire from their application packet.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the DCA submit to the CRU a written corrective action plan that the department will implement to ensure conformity with in the future that EEO questionnaires are separated from all applications. Copies of any relevant documentation should be included with the plan.

FINDING NO. 3 – Appointment Documentation Was Not Kept for the Appropriate Amount of Time

Summary: The DCA failed to retain personnel records such as NOPA's, and applications. Specifically, 27 out of 153 NOPA's were missing from the personnel files, and 12 of the 153 files reviewed were missing all of the applications with only the hired appointee's application retained.

Criteria: In relevant part, civil service laws require that the employment procedures of each state agency shall conform to the federal and state laws governing employment practices. (Gov. Code, § 18720.) State agencies are required to maintain and preserve any and all applications, personnel, membership, or employment referral records and files for a minimum period of two years after the records and files are initially created or received. (Gov. Code, § 12946.) State agencies are also required to retain personnel files of applicants or terminated employees for a minimum period of two years after the date the employment action is taken. (Ibid.)

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

Cause: The DCA states that they did not have a mechanism in place to ensure NOPAs were adequately tracked upon mailing to DCA management and a misinterpretation may have existed between DCA management and OHR on the necessary documents required in a hiring packet.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the DCA submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the record retention requirements of Government Code section 12946. Copies of any relevant documentation should be included with the plan.

FINDING NO. 4 – Probationary Evaluations Were Not Provided for all Appointments Reviewed

Summary: The DCA did not prepare, complete, and/or retain required probationary appraisals of performance for 43 of the 153 appointments reviewed by the CRU.

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Probation Reports
Accountant Trainee	Certification List	1	2
Assistant Information Systems Analyst	Certification List	1	1
Associate Governmental Program Analyst	Certification List	5	9
Athletic Inspector	Certification List	2	5
Consumer Services Representative	Certification List	1	1
Department of Consumer Affairs, Structural Pest Control	Certification List	1	1
Executive Assistant	Certification List	1	1
General Auditor III	Certification List	1	1
Investigator	Certification List	1	1
Labor Relations Analyst	Certification List	1	2
Medical Consultant (Enforcement) Medical Board of California	Certification List	1	3
Nursing Education Consultant	Certification List	1	2

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Probation Reports
Office Technician (Typing)	Certification List	1	2
Personnel Selection Consultant I	Certification List	1	2
Senior Accounting Officer (Specialist)	Certification List	2	6
Senior Information Systems Analyst (Supervisor)	Certification List	1	1
Senior Legal Typist	Certification List	1	3
Staff Services Manager I	Certification List	4	5
Staff Services Manager II (Managerial)	Certification List	1	2
Staff Services Manager III	Certification List	1	1
System Software Specialist II (Technical)	Certification List	1	1
General Auditor III	Permissive Reinstatement	1	3
Office Technician (General)	Permissive Reinstatement	1	1
Associate Business Management Analyst	Transfer	1	1
Associate Governmental Program Analyst	Transfer	1	1
General Auditor II	Transfer	1	2
Office Assistant (Typing)	Transfer	1	1
Office Technician (General)	Transfer	1	1
Office Technician (Typing)	Transfer	2	5
Program Technician II	Transfer	1	1
Staff Services Analyst	Transfer	3	4
Total		43	72

Criteria: A new probationary period is not required when an employee is appointed by reinstatement with a right of return. (Cal. Code Regs., tit. 2, § 322, subd. (d)(2).) However, the service of a probationary period is required when an employee enters state civil service by permanent appointment from an employment list. (Cal. Code Regs., tit. 2, § 322, subd. (a).) In addition, unless waived by the appointing power, a new probationary period is required when an employee is appointed to a position under the

following circumstances: (1) without a break in service in the same class in which the employee has completed the probationary period, but under a different appointing power; and (2) without a break in service to a class with substantially the same or lower level of duties and responsibilities and salary range as a class in which the employee has completed the probationary period. (Cal. Code Regs., tit. 2, § 322, subd. (c)(1) & (2).)

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

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

Cause: The DCA states that the OHR has made good faith efforts to provide clarity on the probationary period to all management within DCA. Specific outreach was done in the way of training on November 4, 2014, May 19, 2015, and November 3, 2015.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the DCA submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the probationary requirements of Government Code section 19172.

FINDING NO. 5 – Applications Were Not Date Stamped

Summary: The DCA accepted and processed 476 out of 6,953 applications that were not date stamped.

Criteria: California Code Regulations, title 2, section 174 (Rule 174) requires timely filing of applications: All applications must be filed at the place, within the time, in the manner, and on the form specified in the examination announcement.

Filing an application 'within the time' shall mean postmarked by the postal service or date stamped at one of the department's offices (or appropriate office of the agency administering the examination) by the date specified.

An application that is not postmarked or date stamped by the specified date shall be accepted, if one of the following conditions as detailed in Rule 174 apply: (1) the application was delayed due to verified error; (2) the application was submitted in error to the wrong state agency and is either postmarked or date stamped on or before the specified date; (3) the employing agency verifies examination announcement distribution problems that prevented timely notification to an employee of a promotional examination; or (4) the employing agency verifies that the applicant failed to receive timely notice of promotional examination. (Cal. Code Reg., tit. 2, § 174, suds. (a), (b), (c), & (d).) The same final filing date procedures are applied to the selection process used to fill a job vacancy.

Severity: Non-Serious or Technical. Final filing dates are established to ensure all applicants are given the same amount of time in which to apply for a job vacancy and to set a deadline for the recruitment. Therefore, although the acceptance of applications after the final filing date may give some applicants more time to prepare their application than other applicants who meet the final filing date, the acceptance of late applications may not impact the results of the job vacancy selection.

Cause: The DCA states that this may be attributed to the DCA's current process of receiving incoming mail. Currently, applications are received in the program areas in which the vacancy exists. OHR

staff have reiterated the importance of date stamping all documents to maintain the integrity of the merit system throughout the DCA's 39 various boards, bureaus, committees and commission.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the DCA submit to the CRU a written corrective action plan that the department will implement to ensure conformity with Rule 174. Copies of any relevant documentation should be included with the plan.

Equal Employment Opportunity (EEO)

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to equal employment opportunity; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with the California Department of Human Resources (CalHR) by providing access to all required files, documents and data. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO officer, who shall report directly to, and be under the supervision of, the director of the DCA to develop, implement, coordinate, and monitor the DCA's EEO program. (Gov. Code, § 19795.)

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

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

The CRU reviewed the DCA's EEO program that was in effect during the compliance review period. In addition, the CRU interviewed appropriate DCA staff.

FINDING NO. 6 – Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules

After reviewing the policies, procedures, and programs necessary for compliance with the EEO program's role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the DCA's EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the director of the DCA. In addition, the DCA has an established DAC that reports to the director on issues affecting persons with a disability. The DCA also provided evidence of its efforts to promote EEO in its hiring and employment practices, to increase its hiring of persons with a disability, and to offer upward mobility opportunities for its entry-level

Personal Services Contracts

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

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

During the compliance review period, the DCA had 11 PSC's that were in effect and subject to General Services (DGS) approval. The CRU reviewed 10 of these, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
Adapt Language Services	Multilingual Written Translation Services	6/17/2014 - 4/2/2017	\$100,000.00	Yes
Alere Toxicology Services Inc.	Statewide Drug Testing Services	1/1/2013 - 12/31/2015	\$135,165.00	Yes
Allen Alarm Systems Inc.	Alarm Monitoring and Maintenance	7/1/2014 - 6/30/2016	\$113,742.00	Yes
American Express	Credit Card Acceptance - Boards	7/1/2014 - 6/30/2015	\$505,000.00	Yes
Aramark Uniform & Career Apparel LLC	Uniform Rental Services	11/1/2013 - 10/31/2015	\$106,281.32	Yes
Elavon Systems Inc	On-line Credit Card Acceptance Services for BRE	1/1/2014 - 12/31/2014	\$530,000.00	Yes
Elavon Systems Inc	Credit Card Acceptance - Boards (1110)	7/1/2014 - 5/31/2015	\$2,011,000.00	Yes
Fenton Medical Transcription	Transcription of Audio Recordings	4/1/2013 - 6/30/2015	\$524,390.00	Yes
Prometric Inc.	Exam Development for Professional Land Surveyor	7/1/2014 - 6/30/2017	\$140,625.00	Yes
West Publishing Corporation	DCA Legal On-Line Legal Research	7/1/2014 - 6/30/2016	\$100,249.92	Yes

FINDING NO. 7 – Personal Services Contracts Complied with Procedural Requirements

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

The total dollar amount of all the PSC's reviewed was \$4,266,453.24. It was beyond the scope of the review to make conclusions as to whether DCA justifications for the contract were legally sufficient. For all PSC's reviewed, the DCA provided specific and detailed factual information in the written justifications as to how each of the 10

contracts met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the DCA PSC's complied with civil service laws and board rules.

DEPARTMENTAL RESPONSE

The DCA's response is attached as Attachment 1.

SPB REPLY

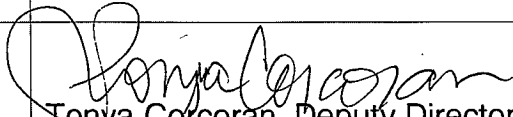
Based upon the DCA's written response, the DCA will comply with the CRU recommendations and findings and provide the CRU a corrective action plan.

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



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MEMORANDUM

DATE	December 9, 2015
TO	Compliance Review Unit, State Personnel Board
FROM	 Tonya Corcoran, Deputy Director for Administrative Services Department of Consumer Affairs
SUBJECT	Compliance Review Report – DCA Response

The Department of Consumer Affairs (DCA), Office of Human Resources (OHR) is in receipt of the State Personnel Board's (SPB) draft Compliance Review Report dated November 2015. DCA is unique in that under its purview are 39 boards, bureaus, committees and commission (clients) that operate semi-autonomously. OHR provides essential personnel services and educates and trains our clients on best hiring practices and requirements.

DCA's response to the specific findings is as follows:

Finding No. 1 – Examinations complied with civil service laws and Board rules. No corrective action necessary.

Finding No. 2 – Equal Employment Opportunity (EEO) questionnaires were not separated from applications. DCA did not separate 168 EEO questionnaires from 6,953 STD. 678 employment applications (2.4% out of the applications reviewed).

OHR has educated and trained hiring managers and Human Resources (HR) Liaisons extensively on the requirement to remove the EEO questionnaires from the applications and confidentially destroy them. The department has incorporated this requirement into its manager and supervisor training, HR Liaison training, and will be an item to be discussed at the HR Liaison meeting on an annual basis.

Specifically, outreach and/or training were given on the dates below.

Date	Type of Outreach
November 4, 2014	Hiring and Onboarding New Employees Training for Managers and Supervisors

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Date	Type of Outreach
May 19, 2015	Hiring and Onboarding New Employees Training for Managers and Supervisors
June 23 and 24, 2015	HR Liaison Training
August 4 and 5, 2015	HR Liaison Training
November 2, 2015	Recruitment Documents and Best Hiring Practices Memo to All Board Executive Officers, Chiefs, Senior Management, Hiring Managers and Supervisors and HR Liaisons
November 3, 2015	Hiring and Onboarding New Employees Training for Managers and Supervisors
November 10, 2015	Presentation to the Medical Board

Finding No. 3 – Appointment documentation was not kept for the appropriate amount of time. DCA failed to retain personnel records such as NOPAs and applications. Specifically, 27 out of 153 NOPAs were missing from the personnel files (18%), and 12 of the 153 files reviewed were missing all of the applications with only the hired appointee's application retained (8%).

OHR is in the process of developing a tracking mechanism to ensure NOPAs are sent to the programs and returned by them. Additionally, OHR staff will reiterate the need to retain all applications received in the recruitment file, as this was discussed in the HR Liaison Trainings.

Finding No. 4 – Probationary evaluations were not provided for all appointments reviewed. DCA did not prepare, complete, and/or retain required probationary appraisals of performance for 43 of the 153 appointments reviewed by the Compliance Review Unit (28%).

Currently, OHR provides advance notification to managers and supervisors when an employee's probationary period is due. Additionally, the OHR has educated and trained managers and supervisors on the requirement to complete probationary reports timely for all new hires. Specifically, training was given on the dates below.

Date	Type of Outreach
November 4, 2014	Hiring and Onboarding New Employees Training for Managers and Supervisors
May 19, 2015	Hiring and Onboarding New Employees Training for Managers and Supervisors
November 3, 2015	Hiring and Onboarding New Employees Training

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Finding No. 5 – Applications were not date stamped. DCA accepted and processed 476 out of 6,953 applications that were not date stamped (7%).

OHR will reiterate to the hiring programs the importance of ensuring all applications received are appropriately date stamped.

Finding No. 6 – Equal Employment Opportunity program complied with civil service laws and Board rules. No corrective action necessary.

Finding No. 7 – Personal services contracts complied with procedural requirements. No corrective action necessary.

On behalf of the department, I would like to thank SPB and the Compliance Review Unit for taking the time to review DCA's examination, appointment, EEO and personal services contract processes. My staff and I will continue to educate and train our client boards and bureaus on best hiring practices and requirements to ensure compliance with SPB's civil service merit system. The next two trainings on Hiring and Onboarding New Employees for managers and supervisors are scheduled for May 24, 2016 and November 8, 2016. Copies of the training and outreach material are available upon request.

If you have any questions or need additional information, please do not hesitate to call me at (916) 574-8200 or DCA's Personnel Officer, Ricardo DeLaCruz at (916) 574-8301.