



COMPLIANCE REVIEW REPORT

MENTAL HEALTH SERVICES OVERSIGHT AND ACCOUNTABILITY COMMISSION

Compliance Review Unit
State Personnel Board
March 11, 2016

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INTRODUCTION

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

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authority's personnel practices in five areas: examinations, appointments, equal employment opportunity (EEO), personal services contracts (PSC's), and mandated training 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 Mental Health Services Oversight and Accountability Commission (MHSOAC) personnel practices in the areas of examinations, appointments, EEO, PSC's, and mandated training from September 1, 2014, through August 31, 2015. The following table summarizes the compliance review findings.

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

Area	Finding	Severity
Personal Services Contracts	Personal Services Contracts Complied with Procedural Requirements	In Compliance
Mandated Training	Mandated Training Complied with Statutory 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 Mental Health Services Act (MHSA/Proposition 63) established the Mental Health Services Oversight and Accountability Commission (MHSOAC) to oversee the MHSA and the community mental health systems of care. One of the priorities for the MHSOAC is to oversee and account for the MHSA in ways that support increased local flexibility and result in reliable outcome information documenting the impact of the MHSA on the public community mental health system in California.

The MHSOAC is comprised of 16 Commissioners that include: the Attorney General or his or her designee, the Superintendent of Public Instruction or his or her designee, the Chairperson of the Senate Health and Human Services Committee or another member of the Senate selected by the President pro Tempore of the Senate, the Chairperson of the Assembly Health Committee or another member of the Assembly selected by the Speaker of the Assembly and 12 Governor's appointees that represent specific statutory statewide interests. As of 2015, the MHSOAC has a total of 30 positions including, Consulting Psychologist, Researchers, Mental Health Experts, and Administrative.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing MHSOAC examinations, appointments, EEO program, PSC's, and mandated training from September 1, 2014, through August 31, 2015. The primary objective of the review was to determine if MHSOAC 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 MHSOAC 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 MHSOAC provided, which included examination plans, examination bulletins, job analyses, 511b's, scoring results, notice of personnel action 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 MHSOAC 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).

MHSOAC PSC's were also reviewed.¹ It was beyond the scope of the compliance review to make conclusions as to whether MHSOAC justifications for the contracts were legally sufficient. The review was limited to whether MHSOAC practices, policies, and procedures relative to PSC's complied with procedural requirements.

In addition, the MHSOAC's mandated training was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, and that all supervisors were provided supervisory and sexual harassment training within statutory timelines.

On March 3, 2016, an exit conference was held with the MHSOAC to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the MHSOAC's written response on March 3, 2016, which is attached to this final compliance review report.

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

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.

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 (MQ's) 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 MQ's. (*Ibid.*) Every applicant for examination shall file an application in the office of the department 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 MHSOAC conducted three examinations. The CRU reviewed all of these examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Deputy Director, Program, Legislation and Technology	Career Executive Assignment (CEA)	Supplemental Application (SA) ²	2/2/2015	3
Deputy Director, Evaluation and Program Operations	CEA	SA	2/2/2015	3
Deputy Director, Evaluation and Program Operations	CEA	SA	6/22/2015	6

² In a supplemental application (SA) examination, applicants are not required to present themselves in person at a predetermined time and place. SA's are in addition to the regular application and must be completed in order to remain in the examination. SA's are also known as "rated" applications.

FINDING NO. 1 – Equal Employment Opportunity Questionnaires Were Not Separated From Applications

Summary: Out of three examinations reviewed, one examination included applications where EEO questionnaires were not separated from the STD 678 employment application. Specifically, five of the 12 applications reviewed included EEO questionnaires that were not separated from the STD 678 employment application.

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 voluntarily provide 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 MHSOAC states that inadequate instruction on personnel procedures lead to Equal Employment Opportunity questionnaires not being removed from some applications.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the MHSOAC 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.

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.) 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 MHSOAC made seven appointments. The CRU reviewed all of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Deputy Director, Program, Legislation and Technology	Information List	CEA	Full Time	1
Deputy Director, Evaluation and Program Operations	Information List	CEA	Full Time	2
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	2
Staff Services Manager I	Certification List	Permanent	Full Time	1
Staff Services Analyst	Transfer	Permanent	Full Time	1

FINDING NO. 2 – Appointment Documentation Was Not Kept for the Appropriate Amount of Time

Summary: Specifically, of the seven appointments reviewed, the MHSOAC did not retain responses to interview questions and scored interview rating sheets for one appointment made from a designated three-rank eligible list.

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1

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.)

Severity: Serious. Without documentation, the CRU could not verify if the appointment was properly conducted.

Cause: The MHSOAC states that the interview responses and scores for the appointment in question were misplaced by both panel members. Both of these individuals are no longer working at the MHSOAC.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the MHSOAC 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.

Equal Employment Opportunity

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 EEO; 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 department to develop, implement, coordinate, and monitor the department'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. In a state agency with less than 500 employees, like the MHSOAC, the EEO Officer may be the Personnel Officer.

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 MHSOAC EEO program that was in effect during the compliance review period.

FINDING NO. 3 – 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 MHSOAC'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 MHSOAC. In addition, the MHSOAC has an established DAC. The MHSOAC 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 staff. Accordingly, the MHSOAC EEO program complied with civil service laws and board rules.

Personal Services Contracts

A 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 PSC's achieve cost savings for the state. PSC's 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 PSC's, a state agency is required to notify the 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 MHSOAC had 25 PSC's that were in effect. The CRU reviewed six of those contracts, which were subject to the Department of General Services (DGS) approval and thus our procedural review, and are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
All American Reporting	Meeting Transcription Services	7/1/2015 - 6/30/2017	\$28,000	Yes
Crossings TV, KBTW Sacramento	Television Commercial Air Time	4/8/2015 - 6/30/2016	\$140,000	Yes
Mental Health Data Alliance	Data Collection and Evaluation Services	11/21/2014 - 6/30/2017	\$327,313	Yes
Trylon Associates, Inc.	Evaluation Services	6/29/2015 – 6/30/2017	\$75,000	Yes

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
California Association of Mental Health Peer-Run Organizations	Advocacy Services	6/30/2015 – 6/30/2016	\$547,950	Yes
Geiss Consulting	Financial Analysis and Consulting Services	7/1/2015 – 6/30/2018	\$12,000	Yes

FINDING NO. 4 – 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 amount of all the PSC’s reviewed was \$1,130,263. It was beyond the scope of the review to make conclusions as to whether MHSOAC justifications for the contract were legally sufficient. For all PSC’s subject to DGS approval, the MHSOAC provided specific and detailed factual information in the written justifications as to how each of the six contracts met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the MHSOAC PSC’s complied with procedural requirements.

Mandated Training

Each state agency shall offer at least semiannually to each of its filers an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, § 11146.1.)

Each department must provide its new supervisors supervisory training within 12 months of appointment. (Gov. Code, § 19995.4 subd. (b) and (c).) The training must be a minimum of 80 hours, 40 of which must be structured and given by a qualified instructor. The other 40 hours may be done on the job by a higher-level supervisor or manager. (Gov. Code, § 19995.4 subd. (b).)

Additionally, each department must provide its supervisors two hours of sexual harassment training every two years. New supervisors must be provided supervisory training within six months of appointment. (Gov. Code, § 12950.1 subd. (a).)

The CRU reviewed the MHSOAC's mandated training program that was in effect during the compliance review period.

FINDING NO. 5 – Mandated Training Complied with Statutory Requirements

The MHSOAC provided semiannual ethics training to its 24 filers during the two-year calendar year period commencing in 2013. The MHSOAC also provided supervisory training to its three new supervisors within 12 months of appointment. In addition, the MHSOAC provided sexual harassment training to its three new supervisors within six months of appointment, and sexual harassment training to its one existing supervisor every two years. Thus, the MHSOAC complied with mandated training requirements within statutory timelines.

DEPARTMENTAL RESPONSE

The MHSOAC response is attached as Attachment 1.

SPB REPLY

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

It is further recommended that the MHSOAC 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.



Mental Health Services
Oversight & Accountability Commission

Attachment 1



STATE OF CALIFORNIA
EDMUND G. BROWN JR., Governor

VICTOR CARRION, M.D.
Chair

JOHN BUCK
Vice Chair

TOBY EWING
Executive Director

March 2, 2016

To Whom It May Concern:

Below is the Mental Health Services Oversight and Accountability Commission's (MHSOAC) response to the State Personnel Board's (SPB) Compliance Review Report dated March 2016.

Response to Finding 1

Explanation: The staff member who was the lead on the examination in question is newer to the State personnel process. She was not given adequate instruction on what to do with the Equal Employment Opportunity (EEO) questionnaires by her direct manager. As a result of this, she was not aware that the EEO questionnaire must be separated from the application prior to the examination.

Follow-Up: All staff members in the Human Resources section have now received written and verbal instruction on how to handle EEO questionnaires (for both examinations and appointments) to ensure that this issue does not reoccur.

Response to Finding 2

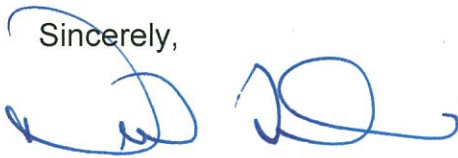
Explanation: A candidate was scheduled to be interviewed on December 12, 2014 for an AGPA position within the Evaluation Unit at the MHSOAC. The two interviewers were the Director of Research and Evaluation and the Deputy Executive Director. The day before the interview, the Director of Research and Evaluation informed the Human Resources section that she would like to call in to the interview because her child was ill. This was arranged after a member of the Human Resources section spoke to the candidate to inform her of the change and offer her the option of rescheduling the interview. E-mails were included in the documentation submitted to SPB to support the MHSOAC's assertion that the interview went well, references were checked, and the standard hiring process was followed. Unfortunately, the Director of Research and Evaluation never turned in her interview notes to the Human Resources section and she was unable to locate them. The Deputy Executive Director also never turned in his interview notes, and recalled that he had given them to the Director of Research and Evaluation. Both the Director of Research and Evaluation and the Deputy Executive Director are no longer working at the MHSOAC.

Follow-Up: Prior to the discovery that the interview notes were missing from this file, the MHSOAC had already put into place additional procedures to ensure a better interview and hiring process. A member of Human Resources staff is now present during all interviews. Additionally, instruction was given to Human Resources section staff and MHSOAC managers that interview notes and materials be collected by Human Resources staff immediately after the interview takes place. Due to these additional procedures, this error is unlikely to reoccur.

Conclusion

The MHSOAC would like to thank the SPB for the hard work they did in conducting the Compliance Review Report. The MHSOAC takes the deficiencies brought to light in the report very seriously. We believe the follow-up actions described above will ensure MHSOAC compliance with all applicable Human Resources laws and rules.

Sincerely,



NORMA PATE
Deputy Director
Program, Legislation and Technology
Mental Health Services
Oversight and Accountability Commission