



# California Fair Political Practices Commission

February 23, 1988

George E. Hargrave, Ph.D.  
P.O. Box 1418  
Fair Oaks, CA 95628

Re: Your Request for Advice  
Our File No. A-88-041

Dear Dr. Hargrave:

This is in response to your letter requesting advice regarding your responsibilities under the Political Reform Act (the "Act").<sup>1/</sup>

## QUESTION

Now that you have left your position as senior psychologist with the California Highway Patrol (CHP), are you prohibited from becoming a subcontractor for Occupational Health Services, the corporation under contract with the CHP to provide pre-employment psychological screening services?

## CONCLUSION

You are not prohibited under the Political Reform Act from subcontracting with OHS to provide services pursuant to their contract with the CHP, although some restrictions would apply. However, other conflict-of-interest provisions of California law, including Section 1090, et seq., and Public Contract Code Section 10410, et seq., may preclude your entering into a contract with OHS. We cannot provide advice as to the applicability of these statutes since they are not part of the Act.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

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### FACTS

You have recently retired from state service. For the past three years you have held the position of senior psychologist for the California Highway Patrol (CHP). As senior psychologist you administered the program of pre-employment psychological screening of state traffic officer cadets (STOC).

The pre-employment screening process includes two objective psychological tests and a background history questionnaire for all STOC's. Candidates who show deviation, based on scoring of these documents, undergo an interview by a psychologist. If an interviewed candidate is found to have no clinical psychopathology, he or she is certified as psychologically suitable. If, however, a candidate is found to have possible psychopathology, he or she is referred for an additional interview to a panel of psychologists made up of the senior psychologist, two contract psychologists and an observer from State Personnel Board (SPB). Panel recommendations are submitted to the SPB state psychologist who makes the final determination as to suitability of the candidate.

Approximately 30 percent of the clinical interviews are conducted by the CHP senior psychologist. The other 70 percent are conducted by contract psychologists who are independent practitioners subcontracting with and supervised by Occupational Health Services (OHS), the entity which is under contract to provide these screening services for the CHP.

Candidates found to be unsuitable receive a notification of disqualification, accompanied by a document which advises the candidate of his or her appeal rights. Should the candidate choose to appeal the decision, an SPB panel would review the documents and receive arguments on behalf of the candidate and the CHP. The senior psychologist and OHS represent the CHP at such appeals hearings.

The original contract with OHS was entered into in fiscal year 1986 and extended for fiscal year 1987. As senior psychologist, you participated in the original proceeding whereby OHS was awarded the 1986 contract for services with the CHP, and you represented the CHP in negotiations for the 1987 extension. You also participated in training, approved payment for contract services, and were the official link between OHS and the CHP. Additionally, you worked side-by-side with the contract psychologists on the interview panels described above.

Now that you have retired from state service, you intend to go into private practice as a psychologist. One of the options

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open to you is subcontracting with OHS to do pre-employment psychological interviews for the CHP.

#### ANALYSIS

In California there are a number of laws which protect against possible conflicts of interests on the part of state employees. In addition to the Political Reform Act, you should be aware of Section 1090, et seq., and Public Contract Code Section 10410, et seq., which may prohibit you from contracting with OHS. Neither of these statutes come within the jurisdiction of the Commission, thus we have no authority to provide advice interpreting their applicability in your situation. Therefore, as I mentioned over the phone, I suggest you contact the Attorney General's office for additional legal advice regarding your present circumstance.

With regard to the Act, Sections 87401 and 87402 provide:

No former state administrative official, after the termination of his or her employment or term of office, shall for compensation act as agent or attorney for, or otherwise represent, any other person (other than the State of California) before any court or state administrative agency or any officer or employee thereof by making any formal or informal appearance, or by making any oral or written communication with the intent to influence, in connection with any judicial, quasi-judicial or other proceeding if both of the following apply:

(a) The State of California is a party or has a direct and substantial interest.

(b) The proceeding is one in which the former state administrative official participated.

#### Section 87401.

No former state administrative official, after the termination of his or her employment or term of office shall for compensation aid, advise, counsel, consult or assist in representing any other person (except the State of California) in any proceeding in which the official would be prohibited from appearing under Section 87401.

#### Section 87402.

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As the former senior psychologist for the CHP, the restrictions in Sections 87401 and 87402 apply to your situation. (Section 87400(b).) Consequently, you may not represent, aid, advise, counsel or assist in representing OHS in any "proceeding" in which you participated as a CHP employee. A "proceeding" is "any proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in any court or state administrative agency." (Section 87400(c) (emphasis added).)

Applying the law to your facts, we find that the awarding of the contract in fiscal years 1986 and 1987, and overseeing performance of the contracts on behalf of the CHP are proceedings in which you participated as a state employee. As a consequence you are prohibited from representing OHS before any court or state agency in connection with the contract between the CHP and OHS. For example, should there be a controversy over particular terms of the contract, or payment under the contract, you are prohibited from representing, advising or assisting OHS in any way relative to such a dispute. (See Mayer Advice Letter, No. I-86-187, copy enclosed.)

Additionally, because your responsibility as senior psychologist was to oversee the pre-employment psychological screening program, you are also prohibited from participating in any action regarding a candidate whose screening was initiated during your tenure as senior psychologist. In other words, you cannot represent OHS on a screening panel or in an appeal in a case which originated while you were with the CHP because you "participated" in the proceeding involving the candidate by virtue of your supervisorial responsibility for the program. (See Advice Letters to Sanford, No. A-85-182, and Chacon, No. A-87-197, copies enclosed.)

Each individual candidate's psychological screening process becomes a new proceeding, for purposes of the Act. Therefore, based on your description of the services to be performed as a contract psychologist for OHS, there does not appear to be any conflict with the Act if you participate in psychological screenings for CHP candidates who began the screening process after you left state service.

George E. Hargrave, Ph.D.

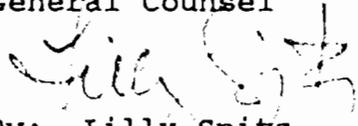
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I hope this discussion clarifies the applicability of the Act to your circumstance. If I can be of further assistance, please call me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

  
By: Lilly Spitz  
Counsel, Legal Division

DMG:LS:plh  
Enclosures

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GEORGE E. HARGRAVE, Ph.D.  
CONSULTING AND CLINICAL PSYCHOLOGY

POST OFFICE BOX 1418  
FAIR OAKS, CALIFORNIA 95628

916 / 635-4531

CALIFORNIA LICENSE PA 7475

JAN 21 1988

January 18, 1988

Diane Griffiths  
General Counsel  
Fair Political Practices Commission  
428 "J" Street, Suite 800  
Sacramento, CA 95814

Dear Ms. Griffiths:

For the past three years, I have held the position of Senior Psychologist for the California Highway Patrol (CHP). On January 31, 1988, I will retire from State service and go into independent practice as a consulting psychologist. The question recently arose as to whether I could work as a sub-contractor for the corporation currently providing contract psychological screening services for CHP. I spoke to Ms. Altamirano in your office on several occasions, and she suggested I write you for a formal opinion as to whether working in this capacity would constitute a conflict of interest.

The accompanying attachment details the duties I performed at CHP, my role in the psychological screening contract, and the function served by the contract psychologists. If there is no conflict of interest, I would become a sub-contractor for the corporation providing contract screening services. My duties would be the same as those outlined for sub-contractors in the accompanying attachment. CHP has expressed no reservations in performing these duties as long as there is no conflict of interest.

I would appreciate it if you would give me an opinion as to whether I will be prohibited from performing these duties by Government Code 87400 or other statutes. If you need any other information, please contact me at CHP (322-5380) or at 635-4531. If you need any other information from CHP, Chief John Clements or Personnel Commander George Adams are familiar with the duties I have performed for the agency.

Very truly yours,

  
GEORGE E. HARGRAVE, Ph.D.

As Senior Psychologist for the California Highway Patrol, I administered the program of preemployment psychological screening of State Traffic Officer Cadets (STOC). This program was delegated by the State Personnel Board (SPB) who retained authority for developing/approving all procedures and responsibility for making all final decisions. The specific screening process consisted of the following steps:

1. STOC candidates were administered two objective psychological tests and a background history questionnaire. Proctors giving the tests were uniformed officers who followed written guidelines developed jointly by SPB and CHP.
2. Completed answer sheets were returned to the clerical staff of CHP who checked them for completeness, coded them with an identifying number, and forwarded them to scoring sources outside of State service. The scoring sources returned the materials in the form of psychological profiles.
3. The senior Psychologist reviewed the profiles to determine which candidates should receive a clinical interview. This review consisted of applying rules for profile interpretation to the applicants' test profiles. The general rules for interpretation are contained in SPB Standards which govern all procedures used in the psychological screening of State peace officer candidates.
4. STOC candidates who showed no significant statistical deviation in their psychological profiles were "passed" without further psychological evaluation. Candidates who showed deviations, however, were subsequently interviewed by a psychologist who met the educational/experience standards set forth in Government Code Section 1031(f).
5. Approximately 30% of the clinical interviews were conducted by the CHP Senior Psychologist. The interviews were approximately 45 minutes long and were semi-structured in format, following guidelines established and/or approved by SPB. The basis for psychological disqualification adopted by SPB consisted of identifying in the candidate's history or interview demeanor behavioral evidence of clinical psychopathology which could be expected to imminently impair the safe and effective performance of peace officer duties. The psychological test profiles were viewed as reflecting potential problems; the clinical interview was adopted as the procedure used to verify the behavioral existence of such problems. SPB specified that the guidelines for assessing behavior was the Diagnostic and Statistical Manual (DSM-III) developed by the American Psychiatric Association. Overall, the task of the interviewing

psychologist was to assess behavior suggested by psychological test profiles, using the semi-structured format (e.g., questions to be asked), to determine if it met a criterion of psychopathology as put forth in DSM III. SPB also specified that the determination of potential for imminently unsafe and ineffective performance would be made using such guidelines as those contained in a manual published by the Commission on Peace Officer Standards and Training (POST).

6. If an interviewed candidate was found to have no clinical psychopathology, the Senior Psychologist certified him/her as being psychologically suitable without any further review. If, however, a candidate was found to have possible psychopathology, he/she was referred to a panel of psychologists who reviewed the case. Approximately 50% of individuals interviewed were reviewed by the panel, and approximately 33% of the candidates interviewed were subsequently recommended by the panel for disqualification. The panel typically consisted of the Senior Psychologist, two other contract psychologists, and an observer from SPB. The panel reviewed all the test and interview data, discussing each case until a unanimous recommendation was reached. The panel did not have anyone designated as the chair, and all members had equal voting status. When the panel determined that sufficient behavioral basis for interfering psychopathology existed, the candidate was recommended for disqualification to the SPB. The SPB State Psychologist reviewed a summary of the interview, the interviewer's notes, the psychological test data, and background history information. He then made the final disposition decision. (Since final authority for these disqualification decisions rests with the State Medical Officer, in some cases he made the final decision.) Although the vast majority of the CHP panel's recommendations were upheld by SPB, in a small percentage of cases they either were not or the decision was deferred until more information was obtained. Once SPB made a final determination, the State Medical Officer notified the CHP Senior Psychologist who, in turn, notified the candidate and certified the him/her as unsuitable.
7. A notification of disqualification was accompanied by a document which advised the candidate of his/her appeal rights. All appeal procedures were administered by SPB with CHP personnel providing whatever information was required to the candidate and SPB staff.

Approximately 70% of the clinical interviews were conducted by contract psychologists. The present contract for these services was bid in 1986 and was extended in 1987. The following provides details of the contracting process.

1. Under supervision of the CHP Personnel Officer (Staff Services Manager III), the Senior Psychologist served as coordinator for the Request for Proposals (RFP). Several staff contributed to the development of the RFP, and it was signed by the Personnel Officer. The RFP detailed requirements for psychologists to conduct 30-minute clinical interviews of 700 applicants in three State locations. The 1987 contract extension increased the number of applicants and interview sites (to accommodate increased Academy class size), provided for written reports, and, at SPB's request, increased the length of the interview to 45 minutes.
2. Three bids for the contract were received. A three-member committee reviewed the proposals on June 4, 1986. The committee consisted of the Personnel Officer, who chaired the committee, his supervisor the Assistant Chief for Personnel and Training, and the Senior Psychologist. One proposal was found to be incomplete in several areas: insufficient staff were identified to accomplish the task, it was unclear as to what the bid amount included; and the bidder had no experience in conducting a State-wide program. This proposal was essentially deemed incomplete, and the review focus was upon the other two. Of the remaining two proposals, there was a large difference between the bid amounts (\$154.50 per hour versus \$77.00 per hour). Since both bidding agencies had sufficient experience to accomplish the task, the low bidder, Occupational Health Services (OHS), was selected.
3. The contract (86-0123) was written by the CHP Contracts Section and signed by the Administrative Services Officer. The Senior Psychologist was designated as the individual who approved payment for contract services. Approval for payment of contract services was a clerical task of comparing the number of candidates requiring interview by the contract psychologists to the number the contractor reported having conducted; this duty was subsequently assumed by an Associate Government Analyst who functioned as the Personnel Officer's administrative assistant.

The professional activities of contract psychologists were supervised by the Clinical Director of OHS. She selected individuals who met Government Code, SFE, and POST guidelines, and these individuals were informally approved by CHP. The psychologists were trained by the OHS Clinical Director in SFE procedures, and she monitored each psychologist's performance. The interviews performed by the contract psychologists were the same as those described previously for the CHP Senior Psychologist. The OHS Clinical Director is an employee of OHS; the other contract psychologists, however, are independent

practitioners who work part-time for OHS as sub-contractors. These individuals typically provide direct contract services for multiple departments. The following will describe how contract duties were performed for CHP:

1. There was no formal supervisory structure between OHS and CHP. The contract providers operated in accordance with SPB Standards. Since OHS performs other such psychological screening services directly for SPB, the Clinical Director of OHS has full knowledge of SPB Standards and procedures. It was her responsibility to ensure that OHS sub-contractors were in compliance with SPB Standards. Whenever the OHS sub-contractors completed their interviews, the Clinical Director would coordinate setting up the panel review. The review was conducted at OHS facilities. The CHP Senior Psychologist and the sub-contractors attended as participants, and an SPB representative attended as an observer. After the panel review, each interviewing psychologist prepared summary reports on candidates being recommended for disqualification. Those reports prepared by the OHS sub-contractors were supervised by the OHS Clinical Director. After the reports were reviewed by the Clinical Director, they were forwarded to the CHP Senior Psychologist who combined them with whatever other materials were necessary and, in turn, forwarded them to the SPB Medical Office. The CHP Senior Psychologist did not serve in any supervisory capacity over the professional activities of the OHS Clinical Director or OHS sub-contractors.
2. The CHP Senior Psychologist's primary responsibility in the screening program was to oversee administrative procedures for giving the written psychological tests, applying SBP rules to psychological profiles to determine who should be interviewed, maintaining records on the status of each applicant (e.g., when and where interviewed), conducting clinical interviews, and coordinating procedures (e.g., scheduling, receipt of reports, etc.) between the CHP Personnel Bureau, OHS, and SPB. The agency function served by the Senior Psychologist was essentially to oversee the functions provided by the clerical staff and to serve as one of the clinical interviewers. Clerical oversight was subsequently assumed by the Personnel Officer's administrative assistant. At that time, the Senior Psychologist's role was essentially that of a consultant. The Senior Psychologist had no direct supervisory responsibility for any departmental employee. Clerical support was performed by individuals in the clerical pool of Employment Services; this unit is under the overall supervision of a Staff Services Manager II, who reported to the Personnel Officer.

Approximately one-third to one-half of the Senior Psychologist's time was devoted to psychological screening activities. The remainder of this individual's time was devoted to other activities which did not relate to psychological screening. Such activities included consultation with area commanders throughout the State, teaching instructional blocks at the Academy, providing training at commanders' conferences throughout the State, and serving in other administrative capacities. For the first 26 months of OHP services, the Senior Psychologist reported to the Personnel Officer (Staff Services Manager III); for the final nine months the Senior Psychologist position was directly under the Chief of Personnel and Training Division. Administrative responsibility for the psychological services contract was under the Personnel Officer during the entire time; likewise, all administrative services were provided by staff under the Personnel Officer. The position of Senior Psychologist was not designated with a conflict of interest category as were all management positions in the Division.



California  
Fair Political  
Practices Commission

January 22, 1988

George E. Hargrave, Ph.D.  
Consulting and Clinical Psychology  
P.O. Box 1418  
Fair Oaks, Ca 95628

Re: 88-041

Dear Dr. Hargrave:

Your letter requesting advice under the Political Reform Act was received on January 21, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Lilly Spitz, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths  
General Counsel

DMG:plh