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September 8, 2008

TO: Supervisor Yvonne B. Burke, Chair
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FROM: Wendy L. Watanabe
Acting Auditor-Controller

SUBJECT: **INVESTIGATION OF THE PERSONNEL REVIEW OF MARTIN LUTHER KING, JR.-HARBOR HOSPITAL EMPLOYEES – CASE #2008-2726**

On July 22, 2008, the Board instructed the Auditor-Controller (A-C) to investigate the personnel review process that was conducted pursuant to an August 13, 2007 Board Order. Specifically, the Board requested the A-C to investigate: (1) the roles and responsibilities of all County departments involved in the personnel review of the 1,602 Martin Luther King-Harbor (MLK-Harbor) employees; (2) identify the time at which the involved departments became aware of MLK-Harbor employees with disciplinary records and criminal histories, what steps should have been taken to deal with those employees and by whom, and what was actually done; (3) analyze why certain steps were not taken; (4) analyze failures in the reporting process to County management; and (5) make recommendations for improvement to ensure that departments review and monitor employees on a consistent and timely basis, so that competent and qualified employees remain in County service.

To address the Board's request, Investigators from the A-C's Office of County Investigations (OCI) examined evidentiary documents obtained from the Department of Health Services (DHS), the Chief Executive Office (CEO) and the Department of Human Resources (DHR) pertaining to the CEO/DHR personnel review of MLK-Harbor employees. To determine the time at which the involved departments became aware of employees with disciplinary records and criminal histories, we reviewed and reconciled Live Scan Logs and supporting documents for MLK-Harbor employees obtained from the Martin Luther King, Jr. Multi-Service Ambulatory Care Center (MACC) and DHS' Performance Management Unit (PM). We also evaluated the process used to

determine whether criminal convictions had a job nexus and the mechanism for communicating these findings to County managers.

During our review, we noted policy and organizational weaknesses at DHS and deficiencies in the competency testing process that were not previously addressed. These deficiencies also raised questions as to the consistency of competency testing that was administered to MLK-Harbor patient care staff. As a result, we conducted a more in-depth review of the competency testing process.

OCI Investigators interviewed approximately 30 managers, staff, consultants and former employees from the CEO, DHR, County Counsel and DHS who participated in these reviews or were responsible for actions mandated by the Board. We categorized our report into three parts: Review of Disciplinary Records and Criminal History Data, Personnel Review of MLK-Harbor Employees and Organizational Issues. Our findings are discussed in more detail in the attached report.

Summary and Conclusions

REVIEW OF DISCIPLINARY RECORDS AND CRIMINAL HISTORY DATA

Although the Board order reported 1,602 employees, Live Scan records obtained from MLK-Harbor and DHS staff identified a total population of 1,604 MLK-Harbor employees. As the discrepancy is insignificant, we did not determine the reason for the difference. We found that 1,356 of the 1,604 employees signed in and were Live Scanned between August 25 and September 30, 2007. Of the 1,356 employees, 152 had Department of Justice arrests/criminal convictions (DOJ Hits), six employees' results have not been received, and three employees' fingerprints were rejected by DOJ because they were unclear. DOJ reported no negative results for the remaining 1,195 MLK-Harbor employees. MACC Human Resources (MACC-HR) staff told investigators that the three employees whose Live Scans were rejected are on extended leave and will be Live Scanned upon their return to work.

We also found that the 248 individuals on the No Show Log were not Live Scanned for mostly acceptable administrative reasons, including long-term absence, prior transfer to other DHS facilities or other County departments or separation from County service.

Included in the 152 employees with DOJ Hits are 16 of the 17 individuals Dr. John Schunhoff, Interim Director, DHS, referred to us for investigation in his July 14, 2008 letter. Subsequent to Dr. Schunhoff's letter, we found other pending DOJ Hits and included as part of the 152 employees in our review. Specifically, for these employees with DOJ Hits, we 1) analyzed whether DOJ Hits were processed timely by MACC-HR and PM staff; 2) evaluated the job nexus decisions PM staff made for employees with criminal convictions; and 3) conducted a detailed review of PM files for those employees who failed to disclose arrests/convictions on Employee Information Sheets.

Timeliness of DOJ Hit Processing

Given the large number of employees that were Live Scanned and the logistics involved in organizing such an operation, the Live Scan process conducted by MACC-HR staff appears to have been completed in a timely manner. However, once a DOJ Hit was received and forwarded to PM for further action and/or investigation, job nexus determinations were not always made timely. Specifically, we found 14 cases where PM's review took six to 12 months to complete. This delayed the removal of at least one employee with a disqualifying criminal conviction. In addition, there are 30 in-process DOJ Hits where determinations are still pending, some of which have also been outstanding for at least six months. Those 30 cases are discussed in the table in the following section.

PM staff attributed these delays to several factors, including an insufficient number of staff allocated to reviewing/researching DOJ Hits and vacancies in key management positions in DHS Human Resources (DHS-HR). Our review also disclosed a number of organizational issues at DHS-HR, which are addressed in the Organizational Issues section of the attached report.

Determination of Job Nexus

Our review of PM files as of August 27, 2008 disclosed that PM made the following job nexus determinations for the 152 employees with criminal convictions:

DHS ANALYSIS OF EMPLOYEES WITH ARRESTS/CONVICTIONS (152)

BASED ON DETERMINATIONS MADE BY PERFORMANCE MANAGEMENT AS OF AUGUST 27, 2008

OUTCOME / FINDING	EMPLOYEES	% OF TOTAL
NO JOB NEXUS	99	65%
IN PROCESS • Eighteen have been re-assigned to home pending an administrative investigation. • Ten are pending PM's determination. • Two are pending Court hearings to determine guilt (i.e. recent arrests).	30	20%
OUT OF SERVICE / BEING DISCHARGED	8	5%
CONVICTION DISMISSED AND SET ASIDE BY THE COURT PER 1203.4 OF THE PENAL CODE	15	10%
TOTALS	**152**	**100%**

We conducted a more detailed review of seven of the most severe cases from the 99 instances where PM staff made a no job nexus determination and noted a number of issues that raise questions about the decisions and judgment of the staff involved. For example, we found that PM staff determined there was no job nexus for a Custodian who was convicted of first degree burglary and felony grand theft. While there may be mitigating circumstances justifying such a determination, the records we obtained from PM did not include detailed justifications supporting their decisions. Consequently, we

could not evaluate if PM staff made appropriate job nexus determinations. DHR has agreed to assist DHS in reviewing the 129 cases in the No Job Nexus (99) and In Process (30) categories. DHR estimates that this process will take several months.

Failure to Disclose Criminal History

We noted that 29 of the 152 employees with DOJ Hits failed to disclose at least one prior conviction. However, instead of being referred for disciplinary action, some of these employees were given a second chance by DHS-HR to accurately disclose past criminal history by resubmitting a new Employee Information Sheet. Our investigation found evidence that at least 16 employees were given the opportunity and at least 11 of them took advantage of the second chance offer.

The failure of 29 employees to accurately disclose their criminal history indicates possible integrity problems with those staff, and we question the judgment of managers who did not pursue disciplinary action against them. Although we could not identify the executive/manager responsible for ordering that employees be given a second chance, we also question the judgment of the two managers who implemented this course of action. MLK-Harbor employees who failed to disclose their convictions should have been disciplined in the same manner as employees from any other facility.

PERSONNEL REVIEW OF MLK-HARBOR EMPLOYEES (COMPETENCY TESTING)

We found that the CEO and DHR complied with the Board's August 13, 2007 order in that they completed a review of employee files and competency testing records for prospective MLK-Harbor transferees and reported those findings to the Board. Investigators did not find any evidence to contradict the CEO/DHR review teams' findings that most MLK-Harbor employees had competent and current performance evaluations prior to being transferred to other DHS facilities. We also concur that competency examination results they reviewed indicated that staff with patient care duties had competent ratings. However, we found policy and organizational weaknesses at DHS and deficiencies in the competency testing process that may have prevented information on employee competency from being reported to the CEO and the Board.

Vacancies in key positions within DHS-HR and other organizational deficiencies resulted in a lack of guidance and support to MLK-Harbor, and later the MACC, in such areas as discipline and performance management. These organizational issues are discussed later in the attached report. In addition, competency test results indicate that some current MACC nurses may not be performing at the level of their counterparts at the Harbor-University of California Los Angeles (Harbor-UCLA) Medical Center.

We noted that each DHS facility we reviewed has independently developed mechanisms to assess the competency of nursing and skilled professional staff, and that transferees from MLK-Harbor were tested prior to being assigned patient care duties. We also found that competency examination results are generally being

documented and that each DHS facility we reviewed gathers adequate information through the examination process to identify staff who require remedial training or cannot meet the requirements of their assigned positions.

However, the lack of consistency in testing practices between facilities and the absence of Department-wide standards codifying minimum skill levels for all patient care classifications, what basic skills should be tested, how examinations are administered and how results are aggregated and reported, makes a direct comparison of results impossible. The lack of a codified limit on the number of times a patient care employee may fail and retake a competency examination compromises the testing process and impairs imposition of effective discipline.

ORGANIZATIONAL ISSUES

Significant vacancies in key positions throughout DHS-HR, combined with the absence of a coherent scheme for either centralizing or delegating key departmental HR operations, may have contributed to delays in reporting and acting on critical personnel, policy and competency issues, as well as disciplinary cases identified in this report. Former DHS executives also stated that weaknesses in the Department's PM Unit impaired their ability to take timely disciplinary action.

OCI Investigators noted a lack of HR leadership at MLK-Harbor and later the MACC. Specifically, former DHS executives indicated that the HR manager assigned to the MACC should have been centrally involved in handling disciplinary matters related to the competency examination and Live Scan processes. While HR managers at all DHS facilities may have lacked clear guidance from DHS-HR concerning their job function and responsibilities, DHS executives told us that HR managers at the other facilities have taken more initiative in assuming fundamental HR duties and dealing with various personnel issues, rather than acting simply as facilitators for information.

DHS recently filled three key management vacancies in HR, including the Director and the Head of PM. In their July 21, 2008 memorandum to the Board, the Department acknowledged that "unacceptable delays in acting on MLK-Harbor criminal background checks, and other recent events, demonstrate that DHS must improve management over its discipline cases". The Department is aware of deficiencies in HR and has enlisted CEO assistance to evaluate their HR operations.

Recommendations

Review of Disciplinary Records and Criminal History Data

DHS should immediately re-Live Scan employees with outstanding DOJ results and ensure that employees who were not Live Scanned because they were administratively reassigned and/or are on leave are Live Scanned upon their return to work at any DHS facility. In addition, to improve the Live Scan process and ensure that employees with criminal convictions are timely and appropriately investigated, DHS should codify

procedures for documenting job nexus determinations, centralize the receipt of Live Scan results within DHS-HR and designate staff who are expressly responsible for analyzing DOJ information. The Department should also work with DHR to review the job nexus decisions for the 129 employees with No Job Nexus and In Process determinations, and expedite processing those DOJ Hits still under PM's review. In addition, DHS should consult with DHR about the possibility of taking disciplinary action against those employees who failed to accurately disclose criminal convictions. Finally, DHS should evaluate the propriety of actions by the PM staff who processed the DOJ Hits and the two managers involved in the second chance process to determine if corrective and/or disciplinary action is warranted.

Personnel Review of MLK-Harbor Employees (Competency Testing)

To address deficiencies in the competency testing process, we recommend that DHS conduct a detailed analysis of training/education programs for patient care staff, and develop core curricula for competency examinations based on Department and industry best practices. DHS should also immediately implement minimum testing standards for patient care workers at all facilities and codify limits on the number of times staff may fail a competency test before being referred for discipline. In addition, DHS needs to implement independent oversight for competency examinations and centralize the aggregation and reporting of test results. Finally, DHS should administer competency examinations to all MACC employees with patient care duties using the newly codified uniform standards for testing and remediation.

Organizational Issues

To address the global HR issues that resulted in the deficiencies noted in the attached report, DHS should expedite the implementation of staffing and organizational changes and other reforms arising from the DHS/CEO review. DHS should also examine the duties and responsibilities of HR managers at the MACC, and consider reorganizing personnel, discipline and performance management operations at that facility.

We discussed our findings with representatives from the CEO, County Counsel, DHR and DHS. These departments indicated their general agreement with our conclusions and recommendations. We thank the managers and staff from these Departments for their assistance in completing this investigation.

Please call me if you have any questions.

WLW:MMO:MR
R-2008-2726

Attachment

c: William T Fujioka, Chief Executive Officer
Sachi Hamai, Executive Officer, Board of Supervisors
Raymond G. Fortner, County Counsel
Michael J. Henry, Director, Department of Human Resources
John F. Schunhoff, Ph.D., Interim Director, Department of Health Services
Audit Committee
Public Information Office

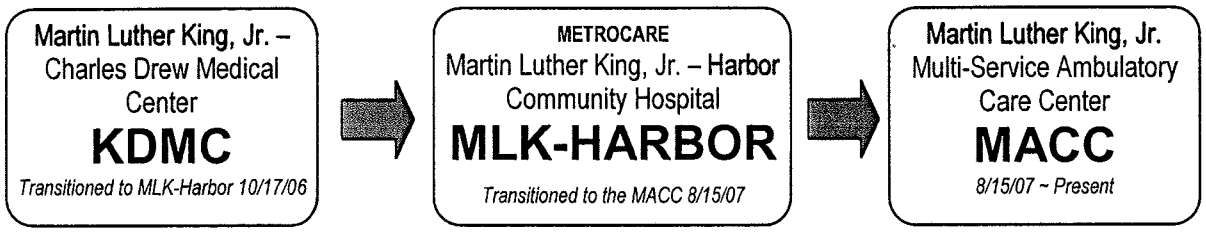
Investigation of the Personnel Review of MLK-Harbor Hospital Employees

Background

On August 10, 2006, the Centers for Medicare and Medicaid Services (CMS) recommended discontinuation of federal funding for Martin Luther King, Jr./Charles Drew Medical Center (KDMC) effective March 1, 2007. Subsequently, CMS accepted a proposal by the Department of Health Services (DHS) to create a new organizational structure under a plan termed Metrocare. Under that plan, the Harbor-University of California Los Angeles (Harbor-UCLA) Medical Center's Chief Medical Officer and Chief Nursing Officer would have direct leadership responsibility for the downsized Martin Luther King, Jr.-Harbor Community Hospital (MLK-Harbor). The initial goals of Metrocare were to remediate various deficiencies and to achieve a competent rating in a follow-up CMS survey. Harbor-UCLA committed substantial resources and staff time to assist MLK-Harbor in a variety of areas including implementing a comprehensive quality assurance plan, establishing an annual nurse competency testing program, and assisting in several specialty areas of clinical practice.

On July 27, 2007, CMS completed a final survey of MLK-Harbor and determined that MLK-Harbor was not in compliance with a number of Medicare "Conditions of Participation" and terminated MLK-Harbor's Medicare provider agreement on August 15, 2007. This resulted in the closure of MLK-Harbor, the termination of inpatient and emergency services and the transition of that facility to a Multi-Service Ambulatory Care Center (MACC). The diagram below summarizes these organizational changes.

ACRONYMS (IN BOLD)FOR FACILITY DESCRIPTIONS, AS USED THROUGHOUT THIS REPORT



On August 13, 2007, the Board instructed the Chief Executive Office (CEO), DHS and the Department of Human Resources (DHR) to prepare for the closure of MLK-Harbor. Specifically, these departments were asked to prepare a detailed plan to conduct an independent assessment of the competency of (1) staff remaining at MLK-Harbor and (2) staff to be transferred to other County facilities. The Board Expected MLK-Harbor staff to be held to the same competency level of staff at other DHS facilities in corresponding classifications. The Board also directed that MLK-Harbor staff who fail to meet expected competency levels not be transferred to other DHS facilities, including the MACC, until they can demonstrate competency in their assigned duties or until DHS finds a position commensurate with the employee's skill level. Finally, CEO, DHS and DHR were to ensure that appropriate resources would be allocated to support, monitor and follow-up on transferred MLK-Harbor employees at their new work locations.

On July 22, 2008, the Board instructed the Auditor-Controller (A-C) to investigate the personnel review process that was conducted pursuant to an August 13, 2007 Board

Order. Specifically, the Board requested the A-C to: (1) investigate the roles and responsibilities of all County departments involved in the personnel review of the 1,602 MLK-Harbor employees; (2) identify the time at which the involved departments became aware of MLK-Harbor employees with disciplinary records and criminal histories, what steps should have been taken to deal with those employees and by whom, and what was actually done; (3) analyze why certain steps were not taken; (4) analyze failures in the reporting process to County management; and (5) make recommendations for improvement to ensure that departments review and monitor employees on a consistent and timely basis, so that competent and qualified employees remain in County service.

Scope

Pursuant to the July 22, 2008 Board order, staff from the Auditor-Controller's Office of County Investigations (OCI) conducted a detailed review and reconciliation of Live Scan files for MLK-Harbor employees that were separately maintained by the hospital and at DHS' Performance Management (PM) Unit. We also examined PM's job nexus determination process for employees with criminal backgrounds, and the mechanism by which these findings were or should have been communicated to DHS and County executives.

We reviewed and analyzed DHS and County policies/procedures, and the current alignment of DHS' Human Resources (DHS-HR) function to formulate recommendations addressing deficiencies in organization and communication that resulted in certain information on employee competency, discipline and criminal history not being timely acted upon or reported to County executives. Our review also included the examination of evidentiary documents obtained from DHS and the CEO including employee competency testing protocols and procedures, test instruments and summary analyses of results, guidelines for remediation and training, as well as meeting minutes and correspondence related to the competency testing and personnel review processes. Finally, OCI investigators interviewed approximately 30 managers, staff, consultants and former employees from the CEO, DHR, County Counsel and DHS who participated in these reviews or were responsible for overseeing activities mandated by the Board. To address all concerns raised by the Board, we categorized our report in two major parts: Review of Disciplinary Records and Criminal History Data and Personnel Review of MLK-Harbor Employees.

Findings and Conclusions

REVIEW OF DISCIPLINARY RECORDS AND CRIMINAL HISTORY DATA

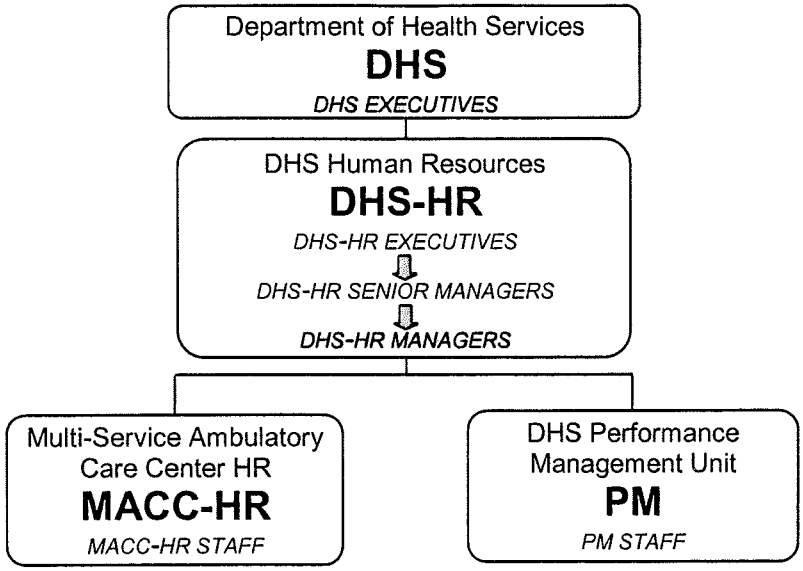
DHR Policy and Procedure No. 514 requires that all new hires, current employees who transfer to another department or are promoted to sensitive positions, and contract personnel in sensitive positions be Live Scanned.

To determine if all MLK-Harbor employees were Live Scanned and whether appropriate action was taken for those with criminal backgrounds, we interviewed management and staff from the MACC, DHR, PM and County Counsel. In addition, we reviewed documents that the MACC and PM maintained for employees with positive Live Scan

results and the policies/criteria used by PM for determining job nexus and disciplinary action. The chart below details the management reporting structure at DHS for position titles we use to describe those involved in the Live Scan process as of August 2007.

DHS MANAGEMENT REPORTING STRUCTURE FOR LIVE SCAN PROCESS AT THE MACC

AS OF AUGUST 2007 – FOR ACRONYMS AND ORGANIZATIONAL TITLES USED THROUGHOUT THIS REPORT



Live Scan Process

DHS personnel conducted Live Scans between August 25 and September 30, 2007. To accommodate the large number of employees and the various work shifts, MACC-HR staff scheduled extended hours for the first week of the scanning process. Walk-ins were also accommodated during normal business hours throughout September 2007.

As part of the Live Scan process, employees were required to complete at least three forms: (1) a California Request for Live Scan Service, (2) an Employee Information Sheet that requires employees to disclose prior arrest and/or criminal conviction, and (3) a Departmental Background Investigation Policy form that includes notification that arrests/criminal convictions not disclosed by employees on employment applications and/or Employee Information Sheets may constitute grounds for immediate termination.

MACC-HR staff provided OCI Investigators three spreadsheets including a roster (Employee Roster) of MLK-Harbor employees present when the hospital closed in August 2007, a list of employees who had been Live Scanned (Sign-in Log), and a list of employees who failed to submit for a Live Scan (No Show Log). Investigators reconciled the three spreadsheets and found numerous inconsistencies, including employees that were listed both on the Sign-in and No Show Logs, and individuals on the Employee Roster who did not appear on either Log. With the help of MACC-HR staff, we researched each inconsistency and adjusted the Sign-in and No Show Logs accordingly. The revised Sign-in Log (1,356 employees) and the revised No-Show Log (248 employees) total 1,604 employees. However, the Employee Roster lists 1,603 full and part time MLK-Harbor employees. As these discrepancies are insignificant, we did not determine the reason for the difference.

Employees Not Live Scanned (No Show Log)

Our review of the revised No Show Log and County Wide Timekeeping and Payroll Personnel System (CWTAPPS) records (as of July 28, 2008) indicates that the 248 No Show employees were not Live Scanned for the following reasons:

TABLE I – ANALYSIS OF NO SHOW LOG (248 EMPLOYEES)

OUTCOME / FINDING	EMPLOYEES	PERCENTAGE
REASSIGNED TO DHS ADMINISTRATION • 36 of these employees have since left County service.	117	47%
TRANSFERRED TO OTHER DHS FACILITIES	54	22%
LEFT COUNTY SERVICE	43	17%
WORKED AT MULTIPLE DHS FACILITIES CONCURRENTLY AND STOPPED WORKING AT MLK-HARBOR	10	4%
ON LEAVE FROM MLK-HARBOR • Five remain on Leave. • Four have left County service. • One has transferred to another department. • One has returned to work and was reassigned to LAC+USC.	11	5%
FAILED TO SUBMIT FOR A LIVE SCAN • Four subsequently left County service. • One transferred to another County department. • One is a temporary employee who has not worked for an extended period of time. • One continues to work at MACC and was Live Scanned in December 2007.	7	3%
LIVE SCANNED PRIOR TO AUGUST 2007	6	2%
TOTALS	**248**	**100%**

To determine if MLK-Harbor employees were live scanned when they transferred to another DHS facility, Investigators selected a sample of six of the 56 transferred employees. We verified that these six employees, who transferred to the Los Angeles County+University of Southern California (LAC+USC) Medical Center or Harbor-UCLA, were Live Scanned by the respective facility.

In summary, of the 248 employees discussed above, we determined that most had acceptable administrative or HR reasons for not being Live Scanned at MLK-Harbor. Specifically, 87 employees left County service, 56 transferred to other DHS facilities or other County departments, ten employees who used to work at multiple facilities have since left the MACC but remain employed at other DHS locations, eight have since been Live Scanned, six have not worked for an extended period of time, and 81 were re-assigned to DHS Administration and/or are on leave. DHS should ensure that these 81 employees have been Live Scanned or will be Live Scanned upon their return from leave.

Results of Employee Live Scans (Sign-in Log)

Our review of the Sign-in Log and Department of Justice (DOJ) results disclosed that 1,356 MLK-Harbor employees were Live Scanned. Of the 1,356 employees, 152 had arrests/criminal convictions (DOJ Hits), six employees' results have not yet been received, and three employees' fingerprints were rejected by DOJ because they were unclear. DOJ reported no negative results for the remaining 1,195 MLK-Harbor employees. MACC-HR staff told us that the three employees whose Live Scans were rejected are on extended leave and will be Live Scanned upon their return to work.

Included in the 152 DOJ Hits are 16 of the 17 employees Dr. John Schunhoff, Interim Director, DHS, referred to us for investigation on July 14, 2008. Of the 17, we excluded one employee from our review because he/she transferred to the MACC after the August 25 through September 30, 2007 Live Scan process. Subsequent to Dr. Schunhoff's letter, we found other pending DOJ Hits and included them as part of the 152 employees in our review.

OCI Investigators conducted three different analyses of the 152 employees with DOJ Hits. Specifically, we 1) analyzed whether DOJ Hits were processed timely by MACC-HR and PM staff; 2) evaluated the job nexus decisions PM staff made for employees with criminal convictions; and 3) conducted a detailed review of PM files for those employees who failed to disclose arrests/convictions on Employee Information Sheets.

1) Timeliness of DOJ Hit Processing

MACC-HR received DOJ Live Scan results within several hours to several months after the Live Scan submissions. When MACC-HR staff received a DOJ Hit, they provided the Live Scan results and corresponding Employee Information Sheets to PM for review and determination of job nexus. Our review disclosed that MACC-HR staff generally submitted DOJ Hits to PM within several days after receiving them and that PM staff processed the majority of DOJ Hits within 90 days. However, we noted that in 14 of the 152 cases PM's review took from six to twelve months to complete. PM staff attributed these delays to several factors, including an insufficient number of staff allocated to reviewing/researching DOJ Hits and vacancies in key management positions in DHS-HR. Our review also disclosed a number of organizational issues at DHS-HR which are addressed at the conclusion of this report.

Overall we found that MACC-HR staff processed most Live Scan results timely. However, we noted that PM's review of DOJ Hits in 14 cases took as long as 12 months, and this delayed the removal of at least one employee with a disqualifying criminal conviction. In addition, there are 30 in-process DOJ Hits where determinations are still pending, some of which have also been outstanding for at least six months. Those 30 cases are discussed in the table in the following section.

2) Determination of Job Nexus

PM staff told us that they used guidelines provided by DHR to determine job nexus for the 152 employees with DOJ Hits. DHR's Policy No. 514, dated November 2, 2007,

details offenses that may be incompatible with specific work functions, including the potentially disqualifying conviction of theft for those employees whose job function provides them unrestricted access to most County property. Once PM is notified that an employee has a criminal history, PM conducts an investigation to determine whether a job nexus exists and if any disciplinary action is required. The steps taken by PM include requesting the employee to provide additional details regarding their arrest/conviction and obtaining relevant documents from the Court. Our review of PM's files as of August 27, 2008, is detailed in the table below, and indicates:

TABLE II – STATUS OF JOB NEXUS DETERMINATION FOR EMPLOYEES WITH DOJ HITS (152)

OUTCOME / FINDING	EMPLOYEES	% OF TOTAL
NO JOB NEXUS	99	65%
IN PROCESS • Eighteen have been re-assigned to home pending an administrative investigation. • Ten are pending PM's determination. • Two are pending Court hearings to determine guilt (i.e. recent arrests).	30	20%
OUT OF SERVICE / BEING DISCHARGED	8	5%
CONVICTION DISMISSED AND SET ASIDE BY THE COURT PER 1203.4 OF THE PENAL CODE.[1]	15	10%
TOTALS	**152**	**100%**

1. Convictions can be dismissed by the Court pursuant to section 1203.4 of the California Penal Code. Although the conviction remains on the individual's record for criminal purposes, it has been DHR's practice to not use previously dismissed convictions in employment related decisions.

We conducted a more detailed review of seven of the most severe cases from the 99 instances where PM staff made a no job nexus determination and noted a number of issues that raise questions about the decisions and judgment of the staff involved. For example, we found that PM staff determined there was no job nexus for a Custodian who was convicted of first degree burglary and felony grand theft. While there may be mitigating circumstances justifying a no nexus determination in each of the seven cases, the records we obtained from PM did not include detailed justifications for their decisions. Consequently, we could not evaluate if PM staff made appropriate job nexus determinations.

To ensure proper job nexus determinations for the 129 DOJ Hits that were previously classified as having no job nexus (99) or are still in progress (30), DHR has agreed to assist DHS in re-evaluating/completing a review of the 129 cases. DHR estimated that this process will take several months to complete.

3) Failure to Disclose Criminal History

Prior to being Live Scanned, DHS employees were required to complete a Departmental Background Investigation Policy form acknowledging that the failure to disclose criminal convictions on their Employee Information Sheet may constitute grounds for termination. DHR management agreed that non-disclosure of prior arrests/convictions can be grounds for disciplinary action separate from the conviction/job nexus determination.

We noted that 29 of the 152 employees with DOJ Hits failed to disclose at least one prior conviction, and that the employees were not disciplined for the non-disclosures. Two individuals at DHS-HR told us that they concurred these employees should be referred for possible discipline. One of the individuals told us that a DHS-HR manager changed his/her initial recommendations and offered employees who failed to disclose prior convictions an opportunity to complete a new Employee Information Sheet.

The DHS-HR manager told OCI Investigators that a DHS-HR executive and a DHS-HR senior manager instructed him/her to meet with employees who failed to disclose criminal convictions and give these employees an opportunity to complete a new Employee Information Sheet (second chance). We found evidence that at least 16 of the 29 employees were given this opportunity and at least 11 of them took advantage of the second chance offer.

The DHS-HR executive adamantly denied authorizing or knowing that the manager was instructed to give employees who failed to disclose a conviction an opportunity to complete a new Employee Information Sheet. The DHS-HR senior manager admitted instructing the manager to give employees a second chance after having him/her consult with County Counsel, and stated that CEO and DHS executives were aware of this. The senior manager stated that the reason for giving those employees a second chance to disclose criminal convictions was because they were poor, did not hold high level positions, and may have forgotten prior convictions.

The Deputy County Counsel who was consulted recalled at least one discussion with DHS personnel concerning this issue but did not remember specific details. CEO and DHS executives told us they were not aware that some employees were given a second chance and indicated their disagreement with such a decision. Ultimately, we could not identify the person(s) responsible for ordering this course of action.

The failure of 29 employees to accurately disclose their criminal history indicates possible integrity problems with those staff, and we question the judgment of two managers who did not pursue disciplinary action against them. We also question the decision to give employees a second chance to complete an Employee Information Sheet, particularly when such action was predicated on their job classification and economic status. MACC-HR employees who failed to disclose their prior convictions should have been subject to discipline in the same manner as employees from any other facility, without regard to their economic status or position.

Conclusion

Given the large number of employees that were Live Scanned and the logistics involved in organizing such an operation, the Live Scan process administered by MACC-HR appears to have been conducted in a timely manner. However, once an employee was found to have a criminal history and that information was forwarded to PM for investigation, job nexus determinations were not always made timely. This delayed the timely removal of at least one employee with a disqualifying criminal conviction.

DHS-HR employees involved in the Live Scan process attributed these delays, in part, to a lack of management and staffing. Specifically, it appears that until recently, PM had only one staff person responsible for investigating all DHS employees with DOJ Hits, including obtaining Court documents and employee statements, and gathering other pertinent information critical to deciding whether a job nexus existed. This staff person told us that he/she was not able to perform his/her Live Scan duties exclusively because he/she had a variety of other HR responsibilities. In addition, current DHS management indicated that PM did not have a manager for approximately 18 months. Our review also disclosed a number of organizational issues at DHS-HR, which are addressed in the Organization Issue section of this report.

Although we could not identify the executive/manager responsible for ordering that employees be allowed to complete a second Employee Information Sheet, we question the judgment of the two managers who implemented this course of action. Specifically, the decision not to hold MLK-Harbor employees accountable for failing to disclose criminal convictions indicates a lack of judgment by those involved. We also have concerns about possible integrity problems with the employees who failed to disclose their criminal history.

DHS should immediately re-Live Scan the nine employees with outstanding DOJ results, and ensure that all employees on extended leave are Live Scanned upon their return to work. In addition, to improve the Live Scan process and ensure that employees with criminal convictions are timely and appropriately investigated, DHS should codify procedures for documenting job nexus determinations and centralize the receipt of all DOJ results within DHS-HR, and designate staff who are expressly responsible for analyzing this information. The Department should also work with DHR to review the job nexus decisions for the 129 employees with No Job Nexus and In Process determinations and expedite processing those DOJ Hits still under PM's review. Finally, DHS should consult with DHR about the possibility of taking disciplinary action against those employees who failed to accurately disclose criminal convictions, and evaluate the propriety of actions by the PM staff who processed the DOJ Hits and the two managers involved in the second chance process.

Recommendations

DHS Management:

1. **Re-Live Scan the six employees whose DOJ results remain outstanding, the three employees whose DOJ results could not be processed because of unclear prints. Ensure that the 81 employees from the No Show Log who were re-assigned to DHS Administration and/or are on leave have been Live Scanned or will be Live Scanned upon their return from leave.**

2. **Codify procedures for documenting job nexus determinations including a detailed justification for each decision.**

3. **Consider consolidating the collection of DOJ information by centralizing the receipt of all DOJ results within DHS-HR, and designate staff who are expressly responsible analyzing this information.**

4. **Work with DHR to review the Job Nexus decisions for the 99 employees in the No Job Nexus category and expedite the review of the 30 DOJ Hits that are classified as In Process.**

5. **Consult with DHR about the possibility of taking disciplinary action against those employees who failed to accurately disclose criminal convictions.**

6. **Evaluate the propriety of actions by the PM staff who processed the DOJ hits and the two managers involved in the second chance process, and determine if corrective and/or disciplinary action is warranted.**

PERSONNEL REVIEW OF MLK-HARBOR EMPLOYEES (COMPETENCY TESTING)

On August 15, 2007, a team of approximately 30 staff, including representatives from the CEO, DHR and DHS, initiated a review of competency test results for patient care workers and personnel records for 1,602[1] MLK-Harbor employees to identify staff who were eligible for mitigation to other facilities. The CEO reported results to the Board in a series of memoranda, the last of which was dated October 26, 2007, and included results for the 1,394 MLK-Harbor employees that were subject to review. An additional 202 employees were identified as "Credentialed and Privileged" (physicians) and were not part of this process. An additional six employees were either new hires, transferred to other facilities, or still pending determination by DHS. Of the 1,394 employees that were subject to review, they found that 1,032 employees had satisfactory performance evaluations, 271 employee performance evaluations were missing or pending completion, 88 employees were on leave of absence and three employees were still in their six month probationary period. The CEO determined that the lack of a verified current performance evaluation should not preclude the transfer of an employee to a new job location or assignment, and 567 MLK-Harbor employees were subsequently mitigated to other facilities.

The CEO also reported that 632 of the 1,394 employees had direct patient care duties and were therefore subject to competency testing, and that all but three of the 632 staff passed required tests. CEO staff based those findings on their review of competency examination results from tests initially administered by Harbor-UCLA in April 2007, and subsequently continued/completed by MLK-Harbor staff.

We determined that the CEO and DHR complied with the Board's August 13, 2007 order in that they assembled a team comprised of non-DHS staff and reviewed employee files for prospective MLK-Harbor transferees that included performance evaluations, as well as competency testing records for staff with patient care duties. We

[1] The CEO/DHR review identified an MLK-Harbor population of 1,602 employees. The Employee Roster lists 1,603 full and part-time employees. The revised Sign-in and No-Show Logs total 1,604 employees. As these discrepancies are insignificant, we did not determine the reason for the difference.

also noted that the review included all MLK-Harbor staff as of the date the hospital closed.

Investigators did not find any evidence to contradict the CEO/DHR review teams' findings that most MLK-Harbor employees had competent and current performance evaluations prior to being transferred to other DHS facilities. We also concur that competency examination results they reviewed indicated that all but three staff with patient care duties had competent ratings. However, our investigation found deficiencies in the competency testing process and policy and organizational weaknesses at DHS, which may have prevented information on employee competency from being reported to the CEO and the Board. These deficiencies also raised questions as to the consistency of competency testing that was administered to MLK-Harbor patient care staff. As a result of these findings, we conducted a more in-depth review of the competency testing process.

Competency Testing at MLK-Harbor

Under the Metrocare plan, Harbor-UCLA nurse managers and training personnel were enlisted to develop and assist in administering competency examinations to MLK-Harbor employees and registry nursing staff who were assigned patient care duties. Harbor-UCLA held eight testing sessions at MLK-Harbor beginning in April 2007. Staff were tested in three phases: 1) Non-licensed patient care staff on basic skills applicable to their level of practice; 2) All registered nurses (RNs) and licensed vocational nurses (LVNs) on basic nursing skills generic to nursing practice, and; 3) RNs and LVNs who work in specialty areas on basic skills required to practice in their specialty.

The curriculum used was based on that administered annually to Harbor-UCLA staff, which several former DHS executives characterized as rigorous and representative of best practices within the County hospital system. Tests were challenge-based, resulting in either a "pass" or "fail" score, and employees who could not demonstrate competency in a specific skill were offered remedial instruction before retesting. Harbor-UCLA proposed and MLK-Harbor agreed that staff should be tested and remediated only twice and be referred for appropriate administrative action after a third failing score. However, it does not appear that DHS and MLK-Harbor management codified a standard or provided guidance for appropriate disciplinary or other action to be taken when staff repeatedly failed one or more tests.

When Harbor-UCLA concluded their involvement with the initial round of competency testing, they prepared a detailed summary of results that was provided to Metrocare executives. Harbor-UCLA reported attendance problems at some specialty testing sessions and high failure rates in some core skills that caused them to question whether MLK-Harbor nurses, some of whom required as many as four attempts to pass a test station, retained sufficient mastery of basic skills to apply them in practice. The Harbor-UCLA summary stated "...this generic competency assessment reflects that a majority of the staff do not have a basic working knowledge or skills to perform the generic competencies in a simulated environment. The knowledge and skills tested are truly basic."

Harbor-UCLA also prepared a list of 95 MLK-Harbor licensed patient care workers (74 County employees and 21 registry staff) who they determined required additional competency assessment, and presented this list to Metrocare managers on July 12, 2007. Metrocare meeting minutes also document that Harbor-UCLA managers raised concerns about competency testing at MLK-Harbor on a number of other occasions. However, some former DHS executives who were in attendance (per the minutes) told OCI Investigators that while they remembered general discussions concerning nurse competency they could not recall receiving the list, and we found no evidence that Harbor-UCLA's findings were disseminated to the CEO or the Board.

In addition to competency issues, Harbor-UCLA staff also reported to Metrocare executives that five MLK-Harbor employees engaged in questionable/improper conduct, including at least one instance of outright cheating, during competency testing. However, we could not find any evidence that these employees were disciplined. Two of the employees currently work at the MACC, two are on leave and one was a relief nurse who subsequently left County service. We referred this issue to DHS-HR for additional follow up.

Follow-Up on Nurses with Reported Competency Issues

The Board's August 13, 2007 order directed the CEO, DHR and DHS to follow-up and monitor transferred MLK-Harbor employees at their new work locations. However, current DHS management told us that until recently they did not understand that the Board directive required them to separately track MLK-Harbor transferees. Consequently, summary information for this group was not accumulated in a separate, consolidated database.

Investigators found that during initial testing administered by Harbor-UCLA in April 2007, MLK-Harbor nurses with previously reported competency issues failed, on average, more than 19% of their competency examinations on the first attempt. We also noted that some nurses required as many as four attempts at a test station before they could successfully demonstrate a particular skill. Harbor-UCLA executives characterized these as high rates of failure of MLK-Harbor nurses would not meet the standard for patient care staff at their own facility. However, in the absence of Department-wide standards for testing and remediation, or codified limits on the number of times an employee was allowed to repeat an examination, these nurses were eventually remediated and allowed to retake examinations. All such nurses who remained at the MACC or were mitigated ultimately received a passing score. The table below identifies the current work location for each of the County nurses who appeared on Harbor-UCLA's list.

TABLE III - CURRENT ASSIGNMENTS OF MITIGATED MLK-HARBOR NURSES WITH PREVIOUSLY REPORTED COMPETENCY ISSUES

COUNTY EMPLOYEES - FROM COMPETENCY TESTING CONDUCTED BY HARBOR/UCLA STAFF IN APRIL 2007

CURRENT LOCATION	# OF STAFF
DHS Administration (ON LONG-TERM OR MEDICAL LEAVE)	2
LAC+USC	7
Harbor-UCLA	8
MLK MACC	39
Rancho Los Amigos	4
Other DHS Facilities	3
Other County Departments	2
Left County Service	9
TOTAL	74

Investigators noted that MLK-Harbor's management assumed competency testing responsibility in June 2007. A former MLK-Harbor administrator told OCI investigators that all patient care staff, including those identified by Harbor-UCLA as having competency issues, eventually received remedial training and passed required examinations or were referred to PM. In addition, we noted that transferees from MLK-Harbor were tested at their new facilities prior to being assigned patient care duties. However, considering the lack of codified standards limiting the number of times an employee could be remediated, we question whether the passing scores at MLK-Harbor conferred the same level of competency as is required of nurses at Harbor-UCLA.

2008 Testing of Employees at MACC

Because each facility administers its own unique battery of competency examinations specific to the practice of that hospital or clinic, and no DHS standard exists codifying core skills that must be tested or how test results are aggregated and reported, it was not possible to directly compare results between facilities. However, we did review results from the first round of annual competency tests administered to MACC nurses in March and April 2008, and noted what appears to be a higher than average rate of first attempt failure in some key competencies.

Specifically, for the 171 licensed nurses tested at the MACC in 2008, including the 39 nurses previously identified by Harbor-UCLA as requiring additional competency assessment, we found that 57% failed at least one competency on their first try, and 21% failed three or more skills on the first attempt. In addition, approximately 30% failed the Medication Safety test and 18% could not successfully complete the Mock Code Blue station on their first try. According to Harbor-UCLA executives, these results are significantly worse than for their own employees (failure rates of 3% for Medication Safety and 0% for Mock Code Blue, from testing completed in October 2007), and do not meet their performance expectations. According to MACC management, all staff who failed skills tests were remediated on proper techniques and eventually passed required competencies.

The variances in test results between nurses at the MACC and those at Harbor-UCLA indicate that not all County nurses are being held to a consistent competency standard. This is contrary to the Board's instruction in their August 13, 2007 order that MLK-Harbor staff be held to the same competency level expected of all others in the system. This also highlights the need for immediate action to codify consistent competency testing and remediation standards for all County nurses.

Conclusion

We found that the CEO and DHR complied with the Board's August 13, 2007 order in that they completed a review of employee files and competency testing records for prospective MLK-Harbor transferees and reported findings to the Board. Investigators did not find any evidence to contradict the CEO/DHR review teams' findings that most MLK-Harbor employees had competent and current performance evaluations prior to being transferred to other DHS facilities. We also concur that competency examination results they reviewed indicated that all but three staff with patient care duties had competent ratings. However, we found policy and organizational weaknesses at DHS and deficiencies in the competency testing process that were not previously addressed, and which may have prevented information on employee competency from being reported to the CEO and the Board.

Vacancies in key positions within DHS-HR and other organizational deficiencies resulted in a lack of guidance and support to MLK-Harbor in such areas as discipline and performance management, which are addressed in the following section. In addition, competency test results indicate that some current MACC nurses may not be performing at the level of their counterparts at Harbor-UCLA.

Overall, we noted that each DHS facility we reviewed has independently developed mechanisms to assess the competency of nursing and skilled professional staff, and that transferees from MLK-Harbor were tested prior to being assigned patient care duties. We also found that competency examination results are generally being documented and that each facility gathers adequate information through the examination process to identify staff that requires remedial training or cannot meet the requirements of their assigned positions. However, the lack of consistency in testing practices between facilities and the absence of Department-wide standards codifying minimum skill levels for all patient care classifications, what basic skills should be tested, how examinations are administered and how results are aggregated and reported, makes a direct comparison of results impossible. The lack of a codified limit on the number of times a patient care employee may fail and retake a competency examination compromises the testing process and impairs imposition of effective discipline.

To improve competency testing of patient care staff and ensure that all employees assigned to patient care duties meet a uniform minimum competence standards, DHS should conduct a detailed analysis of staff training and continuing education with the objective of developing and codifying standardized curricula for nurse and skilled support staff competency examinations. This standardized curricula should be developed based on DHS and industry best practices, such as those used at Harbor-

UCLA, and be predicated where possible on standards promulgated by licensing or credentialing authorities.

The Department should also establish policies ensuring that minimum testing standards are applied to patient care workers at all facilities, and limiting the number of times an employee may fail testing in a particular competency before they are reassigned, retrained, and/or referred for discipline. Finally, once testing standards have been codified, management should administer follow-up examinations to all MACC employees with patient care duties using the newly codified uniform standards for testing and remediation. Staff who fail to meet the new standards should be relieved of patient care duties and referred for appropriate action.

To ensure that minimum basic skills are objectively tested, reduce the potential for exam malfeasance and enhance the transparency and integrity of the testing process, DHS should consider implementing some form of independent oversight for competency examinations, either through the use of a third party proctor or via direct supervision by nurse educators from a different medical facility than the examinees. The Department should also consider central reporting and aggregation of competency test results to identify facilities or specialty areas of practice that require additional training and support. Results from a standardized battery of tests would also provide a more meaningful basis for cross-facility comparison and assist in evaluating the effectiveness of organizational and policy changes on staff competency, knowledge retention and performance.

Recommendations

DHS Management:

7. **Conduct a detailed analysis of staff training and continuing education programs for patient care staff across DHS facilities.**

8. **Develop and codify core curricula for nurse and patient care staff competency examinations based on DHS and industry best practices, and predicated where possible on standards promulgated by licensing or credentialing authorities.**

9. **Establish policies ensuring that minimum testing standards are applied to patient care workers at all facilities.**

10. **Codify guidelines limiting the number of times a patient care worker may fail testing in a particular competency before being reassigned, retrained, and/or referred for discipline.**

11. **Examine the feasibility of implementing independent oversight for competency examinations, possibly through a third-party proctor or via direct supervision by nurse educators from a different medical facility than the examinees.**

12. **Centralize the aggregation and reporting of competency test results.**

13. **Administer competency examinations to all MACC employees with patient care duties using the newly codified uniform standards for testing and remediation.**

ORGANIZATIONAL ISSUES

Significant vacancies in key positions throughout DHS-HR, combined with the absence of a coherent scheme for either centralizing or delegating key departmental HR operations, may have contributed to delays in reporting and acting on critical personnel and policy issues, as well as disciplinary cases identified in this report. Former DHS executives also stated that weaknesses in the Department's PM Unit impaired their ability to take timely disciplinary action.

We noted that DHS recently filled three key management vacancies in HR, including the Director and the Head of Performance Management. In their July 21, 2008 memorandum to the Board, the Department acknowledged that "unacceptable delays in acting on MLK-Harbor criminal background checks, and other recent events, demonstrate that DHS must improve management over its discipline cases." The Department is aware of deficiencies in HR and has committed to addressing these issues. To that end, DHS has enlisted the CEO's assistance to evaluate HR operations. The Department should expedite the implementation of staffing and organizational changes and other reforms arising from the CEO's review to address the HR weaknesses underlying the findings in this report.

OCI Investigators noted a lack of HR leadership at MLK-Harbor and later the MACC. Specifically, former DHS executives indicated that the HR manager assigned to the MACC should have been centrally involved in handling disciplinary matters related to the competency examination and Live Scan processes. While HR managers at all DHS facilities may have lacked clear guidance from DHS-HR concerning their job function and responsibilities, DHS executives told us that HR managers at the other facilities have taken more initiative in assuming fundamental HR duties and dealing with various personnel issues, rather than acting simply as facilitators for information.

As part of the recently initiated HR review process, DHS management should examine the duties and responsibilities of HR staff currently assigned to the MACC, and consider reorganizing HR operations at that facility to better meet the needs of the Department. At a minimum, DHS should provide clear direction to HR managers at the MACC as to their assignments and responsibilities.

Recommendations

DHS Management:

14. **Expedite the implementation of staffing and organizational changes and other reforms arising from the DHS/CEO HR review.**

15. Examine the duties and responsibilities of HR managers at the MACC.

16. Consider reorganizing personnel, discipline and performance management operations at the MACC as part of the DHS/CEO HR review.