# COUNTY OF LOS ANGELES
## DEPARTMENT OF HUMAN RESOURCES

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**MICHAEL J. HENRY**
DIRECTOR OF PERSONNEL


October 20, 2008

To: Each Supervisor

From: Michael J. Henry
Director of Personnel

Subject: **FINAL REPORT – IMPLEMENTATION OF THE AUDITOR-CONTROLLER'S RECOMMENDATIONS REGARDING MARTIN LUTHER KING JR., MACC, EMPLOYEES WITH CRIMINAL HISTORY**

On July 22, 2008, the Board instructed the Auditor-Controller (Auditor) to investigate the personnel review process that was conducted of Department of Health Services (DHS) employees who were assigned to Martin Luther King, Jr. – Harbor, now referred to as Martin Luther King Jr., Multi-Service Ambulatory Care Center (MACC). On September 8, 2008, the Auditor reported their investigative findings to the Board and recommended that DHS work with the Department of Human Resources (DHR) to implement corrective action to address specific findings. This is to provide you with a final report on our actions to date.

The corrective action to be implemented required DHR to further audit DHS Performance Management (PM) records, which was initiated on September 10, 2008. The Auditor's September 8, 2008 report informed you that of the 1,356 employees that had a record of being Live Scanned, the Department of Justice (DOJ) reported arrests/criminal convictions, or DOJ notifications, on 152 employees. DHR reviewed the job nexus determinations of the 99 cases DHS previously determined to have "no job nexus", reviewed the status of any "in process" cases, and confirmed the termination/transfer of those employees who were identified to be out-of-service. The process utilized by DHR was in accordance with the November 25, 1998 memo to all departments, which incorporates the Board Resolution regarding access of criminal history information in connection with employment in sensitive positions and included DHR policy and procedures to implement the Resolution. In summary, DHR utilized a two-phase process: Phase I) Analysis of potentially disqualifying job related offenses (job nexus determination); and, Phase II) Evaluation of hiring standards (determination of employee's suitability for employment). Phase II includes providing a recommended course of disciplinary action to DHS, if required, or providing the employee with notice of the department's determination of suitability for employment.

## FINDINGS

### "No Job Nexus" Determinations

DHR's assessment established a job nexus for 71 of the 99 cases where DHS determined "no job nexus." In 12 of the 99 cases, we agreed that there was "no job nexus." Table I, in the attached report illustrates our analysis in more detail and provides a side-by-side comparison of the determinations made by DHS and DHR's assessment. Table II in the report represents DHR's proposed administrative action for each of the 71 job nexus determinations. DHS, as the appointing authority, will make the final decision on all DHR recommended administrative actions.

Of the 99 cases that DHS determined to be suitable for continued employment (i.e., "no job nexus"), DHR found the following:

- 9 cases were not suitable for continued employment and DHR recommends discharge.
- 28 cases are recommended by DHR to receive some level of discipline (i.e., suspension of 1-30 days, reprimand, or warning). This includes 4 cases with no job nexus determinations, who were recommended to receive Letters of Warning for failure to disclose conviction(s).
- 9 cases were found to be dismissed pursuant to Section 1203.4 of the Penal Code.
- 53 cases did not result in any recommendation for discipline.

Of the (entire) 152 cases, DHR determined that 19 were unsuitable for employment and recommends discharge. In 45 cases, discipline is recommended ranging from Letters of Warning to Suspension. Table III in the report provides further detail on the numbers for each proposed administrative action.

### Failure to Disclose

The Auditor reported that 29 of the 152 employees failed to disclose at least one prior conviction. In these cases, DHR recommended that such employees be issued a Letter of Warning, even in cases where there was <u>not</u> a job nexus. For those with a job nexus determination, more substantive discipline was proposed. The only employees exempted from discipline, includes those who did not disclose convictions that were subsequently dismissed pursuant to Section 1203.4 of the Penal Code, as employees are not required to report convictions dismissed under this Penal Code Section.

**CONCLUSION**

The attached report provides you with detail regarding DHR's review process, and information on the probable course of action on the cases pending confirmation of convictions by way of court minute order. To date, we have 7 cases remaining, 2 of which are pending court proceedings. For the remaining 5, we have determined a probable course of action, but are pending verification of conviction through receipt of a minute order. These cases required additional follow-up and/or research for various reasons, i.e., records have been ordered destroyed by the court pursuant to Government Code 68153, records involve aliases used by employees, records involve out-of-County courts, or court certification required of "no record found" of the case or the subject employee. Once we receive a certified court document to demonstrate due diligence has been completed, DHR can move forward with the appropriate recommendation.

Implementation of the above actions within a short period of time is collectively attributed to the number of DHR staff and resources made available to this effort, the cooperation of DHS management and staff, and the collaboration of Superior Court administration to respond to our request for court-related documents in an expedited manner.

DHR is committed to providing ongoing training to DHS on its process to evaluate criminal history information. Additionally, DHR has initiated a process to provide Countywide mandatory training in the area of criminal background investigations which should commence in early December 2008 and ongoing until all appropriate department HR staff have been trained. DHR has also advised departments that it is initiating a Countywide review of departments' Live Scan process in order to increase accountability and ensure compliance with the Board Resolution.

If you have any questions, please let me know, or you may contact Epifanio Peinado, Senior Human Resources Manager, at (213) 893-0872.

MJH:STS
EP:CN

Attachment

c: Chief Executive Officer
Deputy Chief Executive Officers
County Counsel
Interim Director, Department of Health Services
Acting Auditor-Controller
Executive Officer, Board of Supervisors

**DEPARTMENT OF HUMAN RESOURCES**

# FINAL REPORT ON IMPLEMENTATION OF THE AUDITOR-CONTROLLER'S RECOMMENDATIONS IN REGARD TO CRIMINAL HISTORY INFORMATION OF DEPARTMENT OF HEALTH SERVICES (DHS) EMPLOYEES

***REPORT OF FINDINGS AND ACTIONS***

## I. BACKGROUND

On July 22, 2008, the Board instructed the Auditor-Controller (Auditor) to investigate the personnel review process that was conducted of Department of Health Services (DHS) employees who were assigned to Martin Luther King, Jr. – Harbor, now referred to as Martin Luther King Jr., Multi-Service Ambulatory Care Center (MACC). On September 8, 2008, the Auditor reported their investigative findings to the Board and recommended that DHS work with the Department of Human Resources (DHR) to implement corrective action to address specific findings.

A component of the Auditor's Board-ordered investigation required a review of DHS' Live Scan process, employee criminal history information, the process used by DHS to determine whether criminal convictions had a job nexus, and any subsequent (disciplinary) actions taken, as a result. In part, the Auditor's September 8, 2008 report informed you that of the 1,356 employees that had a record of being Live Scanned, the Department of Justice (DOJ) reported arrests/criminal convictions, or DOJ notifications, on 152 employees.

The Auditor reviewed DHS' Performance Management (PM) files for the 152 employees and reported the following findings:

**Determination of Job Nexus by DHS**

Based on documentation of the DHS PM files, the Auditor reported that DHS made the following job nexus determinations for the 152 employees with criminal convictions:

| DHS OUTCOME / FINDING | EMPLOYEES | % OF TOTAL |
|---|---|---|
| No Job Nexus | 99 | 65% |
| In Process (due to Job Nexus) | 30 | 20% |
| Out of Service / Transferred | 8 | 5% |
| Conviction Dismissed and Set Aside by The Court Per 1203.4 of the Penal Code | 15 | 10% |
| **TOTAL** | **152** | **100%** |

**Auditor Conclusion: PM records contained insufficient documentation to justify/support the "no job nexus" determinations.**

### 1. Failure to Disclose Criminal History

Twenty-nine of the 152 employees failed to disclose at least one prior conviction.

**Auditor Conclusion: DHS did not take disciplinary action on these employees who failed to disclose; rather, evidence found that at least 16 employees were afforded a second opportunity to self-disclose by submitting another Employee Information Sheet.**

As a result of the above findings, the Auditor recommended that DHS work with DHR to review the job nexus decisions and "In Process" determinations and expedite required actions in relation to the DOJ hits. Additionally, the Auditor recommended that DHS consult with DHR about taking possible disciplinary action against employees who failed to accurately disclose criminal convictions.

## II. DHR REVIEW PROCESS / ACTIONS

On September 10, 2008, DHR initiated a review of DHS' PM records in order to evaluate the 99 "no job nexus" determinations made by DHS. The process utilized by DHR was in accordance with the November 25, 1998 memo to all departments, which incorporates the Board Resolution regarding access of criminal history information in connection with employment in sensitive positions and included DHR policy and procedures to implement the Resolution. In summary, DHR utilized a two-phase process: Phase I) Analysis of potentially disqualifying job related offenses (job nexus determination); and, Phase II) Evaluation of hiring standards (determination of employee's suitability for employment). Phase II includes providing a recommended course of disciplinary action to DHS, if required, or providing the employee with notice of the department's determination of suitability for employment.

DHS subsequently advised DHR that the "no job nexus" determinations documented in the DHS PM records represented the (total) conclusion of the case review, including both the job nexus and suitability for employment components of the review. Thus, DHS' determination of "no job nexus" for the 99 employees indicated a decision that the employees were otherwise suitable for continued employment. However, there was insufficient documented evidence to support the analysis.

Phase I involved a review of the information documented in DHS' PM files to determine whether the record supported the no job nexus determination. Thereafter, DHR conducted its own analysis of the DOJ notification, and all related information on file to determine if the conviction(s) were potentially disqualifying offenses based on the employee's job function and duties. In cases where this was affirmed, a job nexus was established and further analysis was conducted in Phase II to determine whether the employee was acceptable for continued employment. In Phase II, a review of the County's hiring standards, incorporating the department's mission and other factors, is outlined in further detail in the following sections.

**Phase I: Analysis of Potentially Disqualifying Job Related Offenses (Job Nexus Determination)**

DHR completed its review of the 152 employees with criminal history information reported on the DOJ notification and analyzed the conviction(s) in relation to job function and duties. In accordance with the November 25, 1998 memo referenced earlier in the report, DHR made determinations of the 99 "no job nexus" employees, and reviewed PM records for the remaining 53. The table below provides a side-by-side comparison of DHS and the Board- ordered DHR determinations.

*TABLE I*

| DETERMINATION | DHS Analysis EMPLOYEES | DHR Analysis EMPLOYEES |
|---|---|---|
| No Job Nexus | 99 | 12 |
| Job Nexus – Preliminary Assessment | - | 71 |
| In Process | 30 | 34 |
| Out-of-Service / Transferred | 8 | 11* |
| 1203.4 Penal Code Dismissal | 15 | 24 |
| **TOTAL** | **152** | **152** |

*3 transferred to non-DHS departments and were subsequently Live Scanned by the new department.

As indicated in the above table, of the 99 employees DHS determined to have "no job nexus," DHR concurred with the department in 12 cases. However, in 71 of the 99 cases, DHR's analysis of the conviction in relation to job function and duties established that there was a job nexus based upon the Board Resolution.

For the remaining 16 employees, review of the PM files determined that:

- Four cases were "In Process" since DHS had initiated follow-up action on the conviction information
- Three employees had transferred to another County department

- Nine DOJ records indicated court dismissal of the conviction pursuant to Section 1203.4 of the Penal Code.

Based on DHR's new determinations of the 152 employees, we implemented Phase II of our review process.

**Phase II: Evaluation of Hiring Standards (Determination of Employee's Suitability For Employment)**

In order to determine whether an employee with a criminal conviction is acceptable for continued employment, DHR initiated immediate action to obtain the following information and documentation:

1. Employee's written statement regarding the conviction(s)
2. Certified court docket/minute order to verify convictions in DOJ notification.
3. Copy of previous Employee Information Sheet/County application to determine whether employee previously disclosed, if applicable.

Action to obtain this information was required as this information/documentation was not found in the department's PM files for the cases DHS determined to have no job nexus, as well as most of the cases that were classified as "In Process." As a result, approximately 75 letters requesting employee written statements were prepared, and a request for minute orders on 194 cases (convictions) in regard to 140 employees was requested from approximately 25 court locations, five of which were outside of Los Angeles County's jurisdiction.

DHR did not use criminal history information on the DOJ report as the sole basis for proposing an administrative action without confirmation of convictions by way of a certified minute order/court docket. DHR has found, in some cases that the DOJ notification contained incomplete information, i.e., court dockets have reflected dismissal of a conviction, or have reflected additional convictions, not reported on the DOJ notification. The effect of confirmation of convictions and/or dismissals through court-related documents serves as a guide to determine the administrative course of action in these cases. As such, criminal history information on the DOJ report is considered preliminary, and is followed up with a case-by-case analysis.

It is important to note that employment laws prohibit the use of information on convictions set aside and dismissed pursuant to Section 1203.4 of the Penal Code for determining the suitability for employment. In addition, convictions dismissed pursuant to this Penal Code Section are not required to be disclosed.

Upon receipt of employee's written statement and verification of the conviction(s), DHR evaluated the conviction against the Department's mission and in conformance with the Board Resolution for:

1) nature of the offense in relation to the employee's job duties
2) seriousness of the offense
3) recency of the offense

4) age of employee at time of offense/conviction
5) extent of employee's criminal record
6) extent of rehabilitation by employee
7) period of stability subsequent to convictions

When required, a review of the official employee personnel file was conducted to obtain information on employment history, performance and prior discipline. In addition to these factors, an employee's failure to disclose was also considered and used as a basis for proposing administrative action.

After completion of the above analysis, if discipline is warranted, DHR proposed a course of action to DHS to include one of the following:

- Written Warning or Written Reprimand
- Suspension of 1 – 30 Days
- Discharge from Service

It should be noted that employees were issued a Letter of Warning or a Letter of Reprimand for failure to disclose convictions, even in those cases where there was not a job nexus. For those with a job nexus determination, more substantive discipline was imposed.

The recommendations resulting from the above analysis are summarized in the following sections:

Of the 99 cases that DHS determined to be suitable for continued employment (i.e., "no job nexus"), DHR found the following:

- 9 cases were not suitable for continued employment and DHR recommends discharge.

- 28 cases are recommended by DHR to receive some level of discipline (i.e., suspension of 1-30 days, reprimand, or warning). This includes 4 cases with no job nexus determinations, who were recommended to receive Letters of Warning for failure to disclose conviction(s).

- 9 cases were found to be dismissed pursuant to Section 1203.4 of the Penal Code.

- 53 cases did not result in any recommendation for discipline.

In cases where discipline was not recommended, Letters of Determination and Notice of Expectations are recommended, which reflects a non-disciplinary measure and documents closure of the case. More importantly, these non-disciplinary letters serve to provide notice to the employee of the department's awareness of criminal history, and inform of the department's determination of suitability for continued employment and communicate its ongoing expectation to remain free of convictions during County employment.

The proposed actions resulting from DHR's evaluation of the 152 cases are provided in the following two tables. Table II provides the proposed actions on the DHR job nexus determinations for the 71 employees. Table III provides DHR's proposed administrative actions for the 152 cases.

***TABLE II***
**DEPARTMENT OF HUMAN RESOURCES**
**SUMMARY OF RECOMMENDED ACTIONS FOR 71 DHR "JOB NEXUS" DETERMINATIONS**

| ACTION PLAN BASED ON THE PRELIMINARY "JOB NEXUS" DETERMINATIONS | NUMBER | % OF TOTAL |
|---|---|---|
| DISCHARGE | **9*** | 13% |
| SUSPENSION OF:<br>▪ 6 – 30 DAYS<br>▪ 1 – 5 DAYS | <br>**5**<br>**7*** | 17% |
| WARNINGS or REPRIMANDS | **12** | 17% |
| LETTERS OF DETERMINATIONS and NOTICE OF EXPECTATIONS (Non-disciplinary outcome of review) | **38*** | 53% |
| **TOTALS** | **71** | **100%** |

*Includes (possible) recommended courses of action that are awaiting minute order.

| *TABLE III*<br>DEPARTMENT OF HUMAN RESOURCES<br>PHASE II: RECOMMENDATIONS (152 OF 152 RECORDS) | | |
|---|---|---|
| **ACTION PLAN BASED ON THE PRELIMINARY "JOB NEXUS" DETERMINATIONS** | **NUMBER** | **% OF TOTAL** |
| DISCHARGE | **19*** | 13% |
| SUSPENSION OF:<br>• 6 – 30 DAYS<br>• 1 – 5 DAYS | <br>**14**<br>**8*** | 15% |
| WARNINGS or REPRIMANDS | **23** | 15% |
| LETTERS OF DETERMINATIONS and NOTICE OF EXPECTATIONS | **75*** | 49% |
| CONFIRMED OUT OF SERVICE or TRANSFER | **11** | 7% |
| COURT PROCEEDINGS PENDING<br>(Note: DOJ Arrest Information only, pending further court proceedings) | **2** | 1% |
| **TOTALS** | **152** | **100%** |

*Includes (possible) recommended courses of action that are awaiting minute order.

To date, we have 7 cases remaining, 2 of which are pending court proceedings. For the remaining 5, we have determined a probable course of action, but are pending verification of conviction through receipt of a minute order. These cases required additional follow-up and/or research for various reasons, i.e., records have been ordered destroyed by the court pursuant to Government Code 68153, records involve aliases used by employees, records involve out-of-County courts, or court certification required of "no record found" of the case or the subject employee. Once we receive a certified court document to demonstrate due diligence has been completed, DHR can move forward with the appropriate recommendation.

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