

# CALIFORNIA VETERANS BOARD

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## ***Without a Clear Understanding of the Extent of Its Authority, the Board Has Not Created Sufficient Policies Nor Provided Effective Oversight to the Department of Veterans Affairs***

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### ***Audit Highlights . . .***

*Our review of the California Veterans Board (board) revealed that:*

- The board has not established itself as an effective policy-maker for the Department of Veterans Affairs (department).*
- The board lacks the independent counsel to minimize the legal risks of its policy-making and appeals actions.*
- The board's appeal process needs to ensure that veterans' appeals are handled consistently and appropriately.*
- The board's effectiveness is hindered by its reduced membership and lack of training on its responsibilities.*

*Although the department has implemented eight of the 14 recommendations that were reviewed from our previous audits, it has not given sufficient attention to a key recommendation regarding the long-term viability of the Cal-Vet program.*

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### **REPORT NUMBER 2002-120, JUNE 2003**

**California Veterans Board's response as of January 2004 and the Department of Veterans Affairs' response as of February 2004**

The Joint Legislative Audit Committee (audit committee) requested that we review the California Veterans Board's (board) oversight of the Department of Veterans Affairs (department). Specifically, the audit committee was concerned that the board may not always exercise independent oversight and guidance of the department in a manner that would further the department's mission and goals. Additionally, the audit committee wanted to know the effectiveness of corrective actions the department has taken on our recommendations from previous audits.

### **Finding #1: The board is not an effective policy-maker for the department.**

Although state law gives the board considerable policy-making authority over the department, the board of seven volunteers has established itself as an ineffective policy-maker, unable to strengthen weaknesses in the department's administration of veterans' programs that the Bureau of State Audits (bureau) has reported over the past three years. As an example of the board's inability to effect strong policy, only half of its 32 policies provide direction for departmental operations. Further, although the bureau and other oversight agencies have identified a number of problems within the department, the board has no clearly defined policies to guide and monitor the department's corrective actions. The board has also not used the services of the inspector general for veterans affairs (inspector general) to review the department's operations in areas where board policy could improve the department's delivery of services to veterans.

We recommended that the board assert its policy-making authority by actively identifying areas of the department's operations that it feels need guidance or direction and developing meaningful policies that provide the department with the guiding principles necessary to complete its mission. Using the issues raised in our previous audits and by the inspector general would be a good start for the development of specific policies.

We also recommended that the board monitor the department's corrective actions on external audits by establishing a policy requiring the department to regularly report its progress in implementing corrective actions and when needed, create policies to guide the department's corrective actions.

***Board Action: Partial corrective action taken.***

The board states that it is currently developing a board training manual and researching training programs that will encompass policy-making guidelines. The board believes that these training efforts, along with the assistance of independent counsel, will allow it to develop meaningful policies to provide the department with guiding principles. In addition, the board realizes that the corrective actions from external audits will provide direction for the department's goals and objectives. The board has been working with the department to obtain funding for independent counsel. However, on February 2, 2004, the interim secretary for veterans' affairs declined the board's request for independent counsel, indicating to the board that balanced against the difficult fiscal challenges that all Californians now face, it is his position that the department's attorneys are providing legal advice, counsel on appeals, and aid to the board in a legally acceptable manner consistent with the law and free of conflicts.

**Finding #2: The board has no independent counsel to provide legal advice on its responsibilities.**

Despite the board's important responsibilities for making policy and ruling on veterans' appeals of services that the department has denied, the board does not have an independent counsel it requires to minimize the legal risks of its actions. Instead, the board relies on the department's legal staff for advice. Although they are probably knowledgeable on these laws, the department's legal staff are not the appropriate advisors for the board on policies

under consideration because the board's policies govern the department. Further, the board's rulings on veterans' appeals should have an independent and fair consideration of the department's actions and the veterans' rights to services. Currently, the board must rely on the department's legal staff for advice on appeals, a practice that introduces questions of fairness and impartiality on appeal decisions.

We recommended that to improve the board's ability to independently make decisions on policies and appeals, and to reduce the legal risk created by its present practices, the board should establish a policy to obtain the services of an independent counsel to assist with its policy-making and appeal responsibilities.

***Board Action: Partial corrective action taken.***

The board indicates that it passed a policy citing the need for independent counsel on July 18, 2003, and that as of January 2004 a retired attorney sits on its select committee on policies and procedures. However, as noted previously, on February 2, 2004, the interim secretary for veterans' affairs declined the board's request for independent counsel.

**Finding #3: The board lacks formal written procedures for conducting appeals in a fair and consistent manner.**

Despite the board's existence since 1946, it has no formal written procedures outlining or detailing instructions for processing appeals at an operational level. Further, the board does not have a clear understanding of the type of appeal procedures it should follow, which could result in the board conducting a more formal hearing on an appeal than is warranted or not giving veterans an adequate degree of protection. Without a set of formalized procedures, the board cannot ensure that its members have the same understanding of how to conduct appeals, nor can it be certain that members' actions are consistent. However, to give veterans the fair treatment they deserve and expect, and to avoid legal risks, the board must be able to process all veterans' appeals consistently and professionally. In addition, the board relies upon the department's chief counsel to preside over formal hearings on appeals. However, as a member of the department's management team and potentially a participant in the decisions to deny services, the chief counsel is not in a position to act in an unbiased manner.

To ensure that the board consistently and fairly reviews veterans' appeals of services that the department has denied, we recommended that the board should create a policy establishing formal written procedures for conducting appeals. In addition, to ensure that every veteran's appeal is heard in the proper forum, the board should acquire the expertise to determine the appropriate type of hearing for each appeal. In addition, to avoid the appearance of bias in its appeal decisions, the board should discontinue having the department's chief counsel preside over formal hearings.

***Board Action: Partial corrective action taken.***

The board states that it is currently developing a training manual that will include specific steps for reviewing and conducting appeals. Further, to avoid the appearance of partiality in the appeal process, the board was working with the department to obtain the services of independent counsel. However, as noted previously, on February 2, 2004, the interim secretary for veterans' affairs declined the board's request for independent counsel.



**Finding #4: With a reduced membership, the board may lack the expertise the Legislature intended and may be unable to hold meetings.**

The board's effectiveness has been hindered over the past few years because it has rarely comprised the seven members authorized by the Military and Veterans Code. The governor appoints board members and five board members must have expertise in a particular area required by law. Without these expert members, the board might be limited in its understanding of departmental issues and veterans' appeals. Additionally, its reduced membership could prevent it from meeting the quorum of four required by board policy to conduct business.

To assist the governor in promptly appointing members to fill both the current and future vacancies, we recommended that the board proactively identify possible board members when vacancies occur.

***Board Action: Pending.***

The board states that there are three vacancies on the board as of January 15, 2004 and it is waiting for the Governor to appoint new members. It currently receives calls from veterans interested in joining the board, and redirects those veterans to the Governor's appointment office.

**Finding #5: To be an effective oversight and policy-making body, the board needs to adequately train its members.**

Contributing to the board's deficiencies as a policy-making and oversight body is the fact that members receive no formal training regarding the laws and regulations controlling veterans' affairs; board policies, duties, and authority, including how to conduct appeals; departmental operations; state laws regarding open meetings; and state laws regarding the privacy of medical information. Insufficient training may have caused the board to violate state open-meeting laws and possibly resulted in two instances of the board discussing veterans' confidential medical records in public board sessions.

To enable board members to perform their oversight functions effectively, we recommended that the board provide ongoing training to its members in topics related to their responsibilities.

***Board Action: Partial corrective action taken.***

The board states that it is currently developing a training manual that will include areas on policy making, duties and authority, the appeal process, department operations, state laws regarding open meetings, and state laws regarding the privacy of medical information. However, at this time the board can only send board members to ethics training due to budget constraints.

**Finding #6: Despite implementing many recommendations we made in previous audits, the department has not sufficiently addressed an important issue for the Cal-Vet program.**

The board's weak policy-making deprives a problem-prone department of needed assistance in improving on weaknesses documented in reviews by the bureau and other oversight agencies.

Our follow-up on recommendations we made to the department in two previous audits revealed that the department has implemented eight of the 14 recommendations we could reasonably expect the board to address. However, the department has not given sufficient attention to a key recommendation regarding the long-term viability of the Cal-Vet program, the department's loan program that helps veterans purchase farms or homes. As mentioned in our previous audits, unless there is a change in federal tax laws, fewer and fewer veterans will benefit from the Cal-Vet program because federal tax restrictions have limited eligibility for loans backed by the bonds that supply the majority of the program's funding. Despite two previous unsuccessful efforts, the department is attempting to change federal tax laws to make more veterans eligible for the Cal-Vet program. However, the department has not performed sufficient contingency planning for the potential reduction in the Cal-Vet program's funding should its efforts fail again.

To ensure effective and efficient operations, the department should continue to address the recommendation of our prior audits, especially the recommendations regarding the long-term viability of the Cal-Vet program.

***Department Action: Pending.***

Although we anticipated that the department would respond to this finding, the board submitted a response to us. The board indicates that it will continue to address the bureau's concerns regarding the Cal-Vet program once it obtains independent counsel.