

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE**  
DIVISION OF STAFFING SERVICES  
GENERAL INFORMATION BULLETIN No. 11-01

TO: Department and Agency Human Resource, Personnel and Affirmative Action Officers

FROM: Nancy Kiyonaga, Director of Commission Operations and Blaine Ryan-Lynch, Director of Staffing Services

SUBJECT: Results of Brynien v. Department of Civil Service, et al. – Status of Incumbents

DATE: March 30, 2011

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**Background**

On March 12, 2008, the New York State Civil Service Commission (the Commission) authorized the placement of certain licensed medical titles in the non-competitive jurisdictional class. Specifically:

Assistant Clinical Physician and Spanish Language  
Clinical Physician 1, Clinical Physician 2, Clinical Physician 3  
Clinical Physician 1, 2, (Spanish Language)  
Medical Specialists 1, 2, 3  
Assistant Psychiatrist  
Psychiatrist 1, 2, 3  
Psychiatrist 1, 2, (Children and Youth), (Chinese), (Spanish Language)  
Psychiatrist 2 (Research), (Deaf and Hearing Impaired)  
Psychiatrist 3 (Children & Youth)  
Pathologist 3  
Dentists 1,2,3,4  
Veterinarians 1, 2, 3

This resolution was signed by former Governor Paterson on November 13, 2008 and published in the State Register on December 17, 2008. The Public Employees Federation (PEF) brought an Article 78 proceeding against this Department, the Commission, et al. seeking to annul the Commission's determination. By decision of July 25, 2009, the Supreme Court, County of Albany, annulled the Commission's determination, and by decision of December 23, 2010, the Appellate Division, Third Department, affirmed the Supreme Court agreeing with its conclusion that based on the record before it, the Commission's determination that competitive testing is not practicable for the subject medical titles was not supported by a rational basis. The Court thus vacated the Commission's March 12, 2008 decision. Positions in the medical titles at issue must therefore be returned to the competitive jurisdictional class and the titles subject to this action will be removed from the list of non-competitive titles in Appendix 2 of the Civil Service Rules. Certain positions in these titles were classified

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as non-competitive before March 12, 2008 and those positions remain classified as non-competitive and are not subject to this General Information Bulletin.

On March 3, 2011, this Department and PEF signed a stipulation which contains a list of all persons appointed to the subject positions after March 12, 2008 while they were classified as non-competitive. The stipulation provides that this Department request that the Commission cover-in the listed persons as permanent appointees in competitive class positions without further examination as of the date of their initial appointment to their position, and that they shall have the rights and privileges of tenured competitive class employees, so long as they have passed the appropriate probationary period. For those employees who have not yet passed their probationary period, the stipulation provides that they shall maintain their original appointment dates for their current positions, continue to serve their probationary period and will obtain the rights and privileges of tenured competitive class employees upon successful completion of probation. At its meeting of March 23, 2011, the Commission approved the Department's request.

**Processing the Cover-In**

Based on the approval of the Commission, Department staff will be processing the necessary transactions to cover-in the listed persons and correct the histories of those employees who were appointed on a permanent competitive basis to these medical titles prior to the March 12, 2008 jurisdictional reclassification. Agencies will not be required to submit any transactions to effectuate these changes.

**Examinations and Future Appointments**

Current eligible lists for Veterinarians are available for canvass and appointment purposes. Eligible lists for Assistant / Clinical Physicians and Spanish Language parenthetics, Dentists, Medical Specialists, Pathologist 3, Psychiatrists and various parenthetics, have expired. Staff is working to issue new continuous recruitment examination announcements and revise existing rating scales as appropriate. We anticipate having those available to you for recruitment, selection, and appointment purposes within the next month.

If you have any further questions, please direct them to your Staffing Services Representative.