

California Victim Compensation and Government Claims Board
Open Meeting Minutes
June 20, 2013, Board Meeting

The California Victim Compensation and Government Claims Board (Board) convened its meeting in open session at the call of Leslie Lopez, Deputy Secretary and General Counsel, State and Consumer Services Agency, at 400 R Street, Sacramento, California, on Thursday, June 20, 2013, at 10:00 a.m. Also present was Board member Richard Chivaro, Chief Counsel, acting for and in the absence of John Chiang, Controller. Board member Michael Ramos, San Bernardino County District Attorney, was absent.

Board staff present included Julie Nauman, Executive Officer; Kathy Cruz, Chief Deputy Executive Officer; and Wayne Strumpfer, Chief Counsel. Tisha Heard, Board Liaison, recorded the meeting.

The Board meeting commenced with the Pledge of Allegiance.

Item 1. Approval of Minutes of the May 16, 2013, Board Meeting

The Board approved the minutes of the May 16, 2013, Board meeting.

Item 2. Public Comment

The Board opened the meeting for public comment. No public comment was given.

Item 3. Executive Officer's Statement

California State Information Officers Council (SiOC) 2013 Awards

The SiOC is a not-for-profit organization dedicated to providing support, education, information, networking, and other opportunities to the public information and communication professionals working for and with the State of California. The SiOC held its Excellence in State Government Communications 2013 Awards contest highlighting the "best of the best" in State public information. The VCGCBs Public Affairs team entered 4 of 29 award categories. The team received three gold awards and one silver award in the following categories at the SiOCs annual awards luncheon held on May 14:

- Special Projects Category (Event) - Gold award for the 2012 "Crime Victims' Rights Month Rally and March: Giving a Voice to Victims." The gold award was given for CalVCPs poignant speakers and strong community involvement.
- Special Projects Category (Public-Private Partnerships) - Gold award for CalVCPs 2012 "Suited for Success: Partnering to Aid Survivors of Domestic Violence." CalVCP partnered with the California Partnership to End Domestic Violence to host a 15-day clothing drive to benefit victims of domestic violence.
- Graphics and Photography Category (Infographic & Technical Illustration) - Gold award for "All in a Year's Work: 2012 Data Made Relevant through Visual Storytelling." The 2012 Accomplishments Slideshow was viewed at the VCGCB's January 2013 all staff meeting. The award acknowledged the Public Affairs team's creative approach to creating sophisticated visuals while displaying key data.
- Internet Communications & Social Media Category (Social Media) - Silver award for "The Right Tweet at the Right Time: CalVCPs Social Media Strategy." Since the Board's launch into social media, its success and methods have been coveted by public and private groups alike. The silver award for Social Media speaks to the Board's leading example of how to utilize multiple platforms effectively, winning the loyalty of online followers both in and out of State government. Individuals and organizations energetically engage with CalVCP feeds because CalVCP provides timely content about relevant crime victim issues and resources. CalVCP is active on Facebook, Twitter, Google+, YouTube, Tumblr, Pinterest, and Flickr.

Executive Officer Nauman congratulated the Public Affairs team on their accomplishments.

CalVCP Guidelines Forum

On June 19, 2013, CalVCP conducted a Mental Health and Complementary Medical Guidelines Forum for providers and advocates. The forum was modeled after a similar discussion held on May 16, 2013, which addressed CalVCP regulations. VCGCB Chief Counsel Wayne Strumpfer and VCGCB Deputy Executive Officer Mindy Fox facilitated the two-hour forum at headquarters. The well-received and well-attended forum was comprised of advocates, providers, and local government staff who gathered from across the state and via teleconference to examine CalVCPs current guidelines on provider rates and limitations. CalVCP received input from stakeholders regarding rates, policies, and limits. All suggestions from the discussion are currently under review and the proposed changes to the guidelines involving policies and limits are being drafted as a result of the feedback. Proposed changes will be brought to the Board and any changes approved by the Board will be filed with the Secretary of State.

Item 4. Contract Report

Julie Nauman, Executive Officer, presented the Contract Report, which included the following three contracts:

Kiefer Consulting, Inc.

The Board approved the six-month contract in the amount of \$610,500 for application development and architecture services to complete the CaRES Modification Project.

Western Integrated Systems

The Board approved the three-year contract in the amount of \$59,985 for on-call software maintenance and support consulting services for the VCGCB's existing Kofax document capture and document management system.

Shandam Consulting, Inc.

The Board approved the second amendment to the contract in the amount of \$55,000. The amendment will add time and money to the VCGCBs contract to complete the CaRES Modification Project's infrastructure support tasks, including completion of the end-to-end test environment.

Chairperson Lopez asked Executive Officer Nauman whether the contract with Kiefer Consulting, Inc. was the final step in completing the project and, if so, when she anticipated the project would be completed.

Executive Officer Nauman explained that CalVCP is currently in Phase 2 of the project. In December 2012, CalVCP completed Phase 1, which was the successful cutover of the modified database into the production environment. Ms. Nauman stated that the contracts with Kiefer Consulting, Inc. and Shandam Consulting, Inc. would enable CalVCP to bring the project to completion therefore she did not anticipate any additional contracting. She further stated that the project would be completed in February 2014, as specified in the schedule.

Item 5. Legislative Update

Jon Myers, Deputy Executive Officer, Legislation and Public Affairs Division, reported the following:

AB 235 (Gatto), the VCGCB's first Government Claims Bill of 2013 that appropriates \$1,080,580.70 to pay 343 claims approved by the Board from May 2012 through December 2012, is scheduled to be heard in the Senate Appropriations Committee next week.

SB 369 (De Leon), the VCGCB's second Government Claims Bill of 2013 that will appropriate funds to pay claims approved by the Board from January 2013 through April 2013, has not been scheduled to be heard.

SB 60 (Wright) expands eligibility for the Victim Compensation Program by adding victims of human trafficking to those eligible for compensation when only emotional injury has occurred.

SB 580 (Leno) requires the VCGCB to administer a program to award, upon appropriation by the Legislature and funded from the Restitution Fund, up to \$2 million in grants per year to trauma recovery centers that provide victim services. AB 76, the Budget Trailer Bill on State Government, includes the same provisions provided in SB 580. The Budget Act, AB 110, appropriates \$2 million from the Restitution Fund for the purpose of the grant program. SB 580 is scheduled to be heard in the Assembly Public Safety Committee next week. Additionally, it is anticipated that SB 71, a new trailer bill, will be resubmitted to the Governor to take the place of AB 71. If that occurs, the same language that mirrors SB 580 would be in the same trailer bill language.

SB 618 (Leno) makes changes to the process by which the VCGCB considers claims for the compensation of erroneously convicted individuals of \$100 per day of incarceration. The provisions include setting timeframes for the consideration of a claim, removing the requirement that claimants prove they did not contribute to their own arrests or convictions, requiring a recommendation to pay without a hearing when a court has made specified findings on innocence, and changes to conform to public safety realignment. The bill is in the Assembly Public Safety Committee awaiting a hearing.

SB 384 (Gaines) reopens eligibility for the California Memorial Scholarship Program, which provided scholarships to surviving dependents of California residents killed during the terrorist attacks of September 11, 2001. The bill also requires the VCGCB to identify all persons who are eligible for scholarships and to notify them of their eligibility by July 1, 2014. It requires that eligible participants execute participation agreements by July 1, 2015. The bill is in the Assembly Appropriations Committee awaiting a hearing.

Item 6. Government Claims Program

Consent Agenda (Nos. 1- 417)

The Board adopted the staff recommendations for item numbers 1-417, with the following exceptions: item numbers 112, 117, and 122 were continued to the August 15, 2013, meeting; item 177 was continued pending review of additional information received by staff; and item numbers 105, 108, 167, and 402 were removed to allow the claimants an opportunity to address the Board.

Consent Agenda Appearance

Item 105, 607997

Claim of John Hayes

John Hayes, claimant, addressed the Board and submitted a packet of information to the Board in support of his claim. Bryan Bruno addressed the Board on behalf of the California Department of Human Resources, Benefits Division. There was no representation provided by the California Department of Transportation.

Nicholas Wagner, Government Claims Program Manager, explained that John Hayes sought compensation from the California Department of Transportation (Caltrans) in the amount of \$5,752.44 for medical benefits and out-of-pocket expenses. He stated that Government Claims Program staff recommended that the Board reject the claim.

Mr. Hayes explained that he continually asked Roger Everett, Caltrans manager, whether his temporary authorization (TAU) appointment came with benefits. He stated that Mr. Everett informed him that he was unfamiliar with the TAU position, but he would find out then let him know. He stated that when he was given a start date of October 8, 2012, he again asked Mr. Everett whether the position came with benefits and Mr. Everett advised him that it did. He explained that he was under the assumption that, according to the job announcement, he was hired on a full-time time base with a temporary tenure of nine months. He stated that he was not informed that it was not the position

he received until after he had been working for the State for two months. Mr. Hayes directed the Board to the information he submitted regarding benefit eligibility. He stated that, according to the information on CalHR's website, active employees who work at least half time or more with an appointment of six months or more are eligible for health benefits. He explained that the information did not specify that the time base needed to be more than half-time hours. Additionally, pursuant to information on CalPERS' website regarding eligibility and enrollment, to be eligible for the CalPERS health program, an employee must be appointed to a State job that will last at least six months and one day and must work at least half time. He explained that since he began his employment at Caltrans, he worked that amount of time in addition to overtime. He stated that because Mr. Everett told him that the position came with benefits, he entered into a verbal contract with Mr. Everett as a representative of Caltrans that was legally binding. Lastly, Mr. Short stated that he was only seeking out-of-pocket expenses due to the stress placed on him and his family.

Mr. Bruno stated that he did not receive sufficient information from Caltrans regarding Mr. Hayes' claim; however, Mr. Hayes might have been employed in a TAU position. He explained that regarding TAU positions with the State, under CalPERS law and CalHR policy, if a person has a time base of half time or more, they would be eligible to receive benefits. He commented that he was confused regarding Caltrans' handling of Mr. Hayes' hire and how his position was applied. He explained that an employee at Caltrans' Fresno district office informed him that Mr. Hayes was hired in a TAU position yet a Caltrans headquarters employee informed him that Mr. Hayes was in a temporary intermittent position. He explained that regarding benefit eligibility, CalHR looks for whether a person is in a TAU, whether it is a limited term, the time base, and tenure. Mr. Bruno explained that there was confusion regarding the matter because Caltrans headquarters staff informed him that they originally did an illegal hire, through no fault of Mr. Hayes. The illegal hire could have been the result of an error in the hiring of the position or misallocation of employment; however, he could not address that issue because that was for Caltrans to address based on the hiring practices set up by CalHR and Mr. Hayes' labor contract. He further explained that CalHR looks at very basic dynamics for benefits eligibility, but the employing agency applies the same rules consistently for all employees. He commented that in Mr. Hayes' case, he did not know how it worked, but Caltrans could and should answer that question.

Chairperson Lopez asked Mr. Bruno whether obtaining additional facts and documentation regarding Mr. Hayes' employment would assist CalHR in their recommendation to allow or reject the claim.

Mr. Bruno stated that CalHR's recommendation was based primarily on the information Caltrans provided relative to Mr. Hayes' hire, his position, time base, and tenure. He recommended that Caltrans attend the Board meeting and answer questions of the Board. He stated that he was unable to speak with a supervisor at the Fresno Caltrans district office; he only spoke with a specialist in Fresno and a Caltrans HR senior manager. Lastly, he stated that it would be helpful if Caltrans would provide clear information and explain the facts directly to the Board.

Chairperson Lopez recommended that the Board continue the claim to the August 15, 2013, meeting and suggested that CalHR contact Caltrans in an effort to obtain all facts regarding the claim in order to make a recommendation to the Board.

The Board continued the claim to the August 15, 2013, meeting.

Consent Agenda Appearance

Item 108, G608376

Claim of Linear Cabling Solutions Inc.

Ron Short appeared and addressed the Board on behalf of Linear Cabling Solutions, Inc. A representative from DMV was also in attendance.

Nicholas Wagner, Government Claims Program Manager, explained that Linear Cabling Solutions, Inc. sought compensation from the California Department of Motor Vehicles (DMV) in the amount of \$33,814.00 for unpaid invoices. Mr. Wagner stated that Government Claims Program staff recommended that the Board reject the claim because Linear Cabling Solutions, Inc. did not fulfill the requirements set forth in the contract.

Mr. Short explained that in July 2012 Bill Lindberg, President/CEO of Linear Cabling Solutions, Inc., decided that he could no longer make a living with the company and would begin work with another contractor. At that time Mr. Lindberg discontinued his role as Responsible Manager Officer (RMO) and advised Mr. Short that he had 90 days to find another RMO or cease doing business. In August 2012, it was decided that Linear Cabling Solutions, Inc. would wind down. The company had two contracts remaining, one with FTB and the other with DMV. Mr. Short stated that he notified DMV that Mr. Lindberg left the company and they were winding down the contract. He had a discussion with the DMV project manager and asked if there was a possibility of assigning the contract to the President/CEO of the new company. He explained that nothing would change because the technicians who would be on site would be hired by the new company. He sent a copy of contract to the project manager and discussed the consent. FTB sent a consent to assign within a week and Linear Cabling Solutions, Inc. completed the work; however, DMV had a different process that took longer. He explained that he discontinued working on site and allowed the new company to complete work that was in process while going through the consent process. He explained that the consent process was never completed because Linear Cabling Solutions, Inc. made an error by not contacting the Contractors State License Board to obtain a 90-day extension; consequently, their license was revoked and DMV terminated the contract. Linear Cabling Solutions, Inc. submitted all invoices for work performed by them and by West Coast Computer Exchange, the new company. He stated that DMV paid invoices for services provided prior to the license being revoked, but refused payment for any work performed by the subcontractor.

Chairperson Lopez asked a representative from DMV to confirm that the State could not pay invoices submitted for work performed with no valid license in place. A DMV representative confirmed that the State could not pay for services rendered if no valid license was in place.

Chairperson Lopez explained that unless Mr. Short could provide evidence that a valid license was in place, the State could not pay the invoices.

Mr. Short stated that the company that performed the work had a valid license. He stated that DMV was aware that Linear Cabling Solutions, Inc. was going out of business before the license was revoked, because they sent DMV notice that all assets had been sold. He further stated that DMV was fully aware of everything yet they continued to allow Linear Cabling Solutions, Inc. to perform work that benefitted the State.

Chairperson Lopez explained that the contract was not with the company that performed the work. She explained that the Board had limited jurisdiction and authority; therefore, when factual disputes are complicated, a court of law is better suited to determine which version of events and law are correct. She further explained that if the Board rejected the claim, it would not be based on the merits of the claim; rather, the Board is not set up to handle factual disputes.

The Board rejected the claim.

Consent Agenda Appearance

Item 167, 610551

Claim of Kent Kreh

Kent Kreh appeared and addressed the Board. Darrel Woo and Chao Lor were in attendance on behalf of the Department of Insurance.

Nicholas Wagner, Government Claims Program Manager, explained that Kent Kreh sought compensation in an amount exceeding \$1,080,622.00 for lost earnings due to obstruction of justice, undue influence, wrongful conversion of property, unfair competition and gross negligence by the California Department of Insurance and the California Board of Accountancy. Mr. Wagner stated that Government Claims Program staff recommended that the Board reject the claim because the issues raised were complex and outside the scope of analysis and interpretation typically undertaken by the Board.

Mr. Kreh stated that he was a licensed professional and the victim of fraud. He further stated that every month that he is not paid for insurance sales is another act of fraud; therefore, he was seeking restitution for damages.

Chairperson Lopez explained that Mr. Kreh's claim was too complex for the Board's limited authority.

Mr. Kreh stated that he drove from Los Angeles and brought evidence that would show that he was the victim of a serious crime. He stated that he was told by the Department of Justice that he was entitled to restitution. He stated that he needed protection from the Department of Insurance and the Board of Accountancy because both departments were egregious. He explained that he sought assistance from 100 attorneys who all turned him away; consequently, he could not get any legal protections. Lastly, he stated that he has been a CPA for 18 years, paid his dues, and was entitled to protection.

Chairperson Lopez clarified that anyone who wished to file a lawsuit against the State must first pursue an administrative remedy through the Government Claims Program process. She explained that if the claim is rejected or denied, the claim may be pursued through the courts.

The Board rejected the claim.

Consent Agenda Appearance

Item 402, 610213

Claim of Celeste Holland

Celeste Holland, claimant, appeared. John McDonough attended on behalf of the California Highway Patrol.

Nicholas Wagner, Government Claims Program Manager, explained that Ms. Holland requested leave to present a late claim for compensation from the California Highway Patrol and Department of Motor Vehicles in an amount exceeding \$25,000 for sexual assault and false arrest. Mr. Wagner stated that Government Claims Program staff recommended that the Board grant the late application and reject the claim because the facts presented were complex and beyond the scope of analysis and interpretation typically undertaken by the Board.

Chairperson Lopez asked Ms. Holland whether she understood the staff recommendation to the Board to reject the claim due to its complexity; thus allowing her the opportunity to pursue the matter in court. Ms. Holland agreed that her claim was complex.

The Board granted the late application but rejected the claim due to its complexity.

Item 7. Claim of Burke, Williams & Sorensen, LLP

Claim Number G606384

Nicholas Wagner, Government Claims Program Manager, explained that Burke, Williams & Sorensen, LLP requested compensation in the amount of \$301,647.10 from the California Department of Corrections and Rehabilitation for unpaid invoices. Mr. Wagner stated that

Government Claims Program staff recommended that the Board allow the claim in the amount of \$301,647.10 under authority of Government Code section 965 (agency pay).
The Board allowed the claim in the amount of \$301,647.10.

Item 8. Claim of Inter-Con Security Systems, Inc.

Claim Number G607728

Nicholas Wagner, Government Claims Program Manager, explained that Inter-Con Security Systems, Inc. requested compensation in the amount of \$70,583.28 from the California Department of Corrections and Rehabilitation for unpaid invoices. Mr. Wagner stated that Government Claims Program staff recommend that the Board allow the claim in the amount of \$70,583.28 under authority of Government Code section 965 (agency pay).

The Board allowed the claim in the amount of \$70,583.28.

Item 9. Claim of Linda E. Boyle

Claim Number G608099

Linda Boyle, claimant, was in attendance. Eric Pfost and Frank Shill were in attendance on behalf of the Department of Housing and Community Development. Ray Asbil attended on behalf of the California Department of Human Resources (CalHR).

Nicholas Wagner, Government Claims Program Manager, explained that Linda Boyle sought compensation from the Department of Housing and Community Development in the amount of \$387.44 for reimbursement of a travel expense claim. Mr. Wagner stated that Government Claims Program (GCP) staff recommended that the Board allow the claim in the amount of \$387.44 under authority of Government Code section 965 (agency pay).

Chairperson Lopez clarified that CalHR recommended that the Board reject the claim; however, GCP staff and the Department of Housing and Community Development recommended that the Board allow the claim. She asked Board member Chivaro whether he had any questions for the CalHR representative. Board member Chivaro stated that he did not have any questions.

The Board allowed the claim in the amount of \$387.44.

Item 10. Claim of Downey Brand, LLP

Claim Number G609595

Bob Soran attended on behalf of Downey Brand, LLP. Mellonie Yang was in attendance on behalf of the California Department of Corrections and Rehabilitation.

Nicholas Wagner, Government Claims Program Manager, explained that Downey Brand, LLP requested compensation in the amount of \$61,292.62 from the California Department of Corrections and Rehabilitation for unpaid invoices. Mr. Wagner stated that Government Claims Program staff recommended that the Board allow the claim in the amount of \$61,292.62, under authority of Government Code section 965 (agency pay).

The Board allowed the claim in the amount of \$61,292.62.

Item 11. Claim of Philip Clark

Claim Number G609960

Philip Clark, claimant, appeared and addressed the Board. Catherine SooHoo and Lynette Moses attended on behalf of the Department of Fish and Wildlife. John Long and Susan Coates attended on behalf of the California Department of Human Resources.

Nicholas Wagner, Government Claims Program Manager, explained that Philip Clark requested compensation from the California Department of Fish and Wildlife (DFW) in the amount of \$6,160 for FlexElect cash benefits. Mr. Wagner stated that Government Claims Program (GCP) staff recommended that the Board partially allow the claim in the amount of \$825 under authority of Government Code section 965 (agency pay).

Chairperson Lopez clarified that CalHR recommended that the Board partially allow the claim in the amount of \$5,637.50; however, GCP staff recommended that the Board partially allow the claim in the amount of \$825. The GCP staff recommendation to the Board was based on compensation to Mr. Clark for FlexElect cash, minus monthly administrative fees, over the six-month period between Mr. Clark's date of hire and the first open enrollment period.

Mr. Clark stated that when he was hired with the State, he completed and returned a hiring packet to his HR department. He explained that he was under the assumption that his HR department enrolled him into the FlexElect Program because he was not informed to the contrary. He later discovered that he was not being paid \$140 a month for the FlexElect cash option and was not enrolled in the FlexElect Program. When he contacted his HR department, he was told that he was not enrolled in the program because there was no documentation provided that indicated his request for enrollment into the program. He stated that his HR department asked him if he completed the entire hiring packet and he told them that he did. In fact, he informed them that he declined the State offered healthcare insurance on one of the forms and was not given any additional forms to complete. Mr. Clark explained that he was seeking \$140 a month for the 41 months that he did not receive the FlexElect payment. He further explained that he originally sought over \$6,000, but he had since been enrolled in the FlexElect Program and had been paid \$420.

Chairperson Lopez stated that it was her understanding of the facts of Mr. Clark's claim that DFW put Mr. Clark on notice that there was an earlier open enrollment period. She further stated that the department notifies employees yearly.

Mr. Clark stated that he was under the assumption that he was enrolled in the FlexElect Program and the \$140 cash option was included with his pay. Sometime later a coworker advised him that he was not receiving the cash option because it was not reflected on his warrant.

The Board partially allowed the claim in the amount of \$825.

Item 12. Request for Delegation of Authority Under Government Code Section 935.6 by the California Department of State Hospitals

Nicholas Wagner, Government Claims Program Manager, explained that the California Department of State Hospitals requested that the Victim Compensation and Government Claims Board grant it delegated authority to settle and pay or reject claims that do not exceed \$1,000.00 each from June 20, 2013, through June 19, 2015. Mr. Wagner stated that Government Claims Program staff recommended that the Board approve the request.

The Board delegated to the California Department of State Hospitals the authority to settle and pay or reject claims that do not exceed \$1,000 per claim from June 20, 2013, through June 19, 2015.

Item 13. Applications for Discharge From Accountability for Collection

The item was removed from the agenda.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 10:47 a.m.

Closed Session

Pursuant to Government Code section 11126(c)(3), the Board adjourned into Closed Session with the Board's Executive Officer, Chief Deputy Executive Officer, and Chief Counsel at 10:47 a.m. to deliberate on the proposed decisions numbers 1-422.

Open Session

The Board reconvened into open session at 10:53 a.m. The Board adopted the proposed decisions for numbers 1-422.

The Board meeting adjourned at 10:53 a.m.