

California Victim Compensation and Government Claims Board
Open Meeting Minutes
October 17, 2013, Board Meeting

The California Victim Compensation and Government Claims Board (Board) convened its meeting in open session at the call of Marybel Batjer, Secretary, Government Operations Agency, at 400 R Street, Sacramento, California, on Thursday, October 17, 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, and Board member Michael Ramos, San Bernardino County District Attorney.

Board staff present included Julie Nauman, Executive Officer; Kathy Cruz, Chief Deputy Executive Officer; and Wayne Strumpf, 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 September 19, 2013, Board Meeting

The Board approved the minutes of the September 19, 2013, Board meeting.

Item 2. Public Comment

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

Item 3. Executive Officer Statement

Trauma Recovery Center Update

The Budget Trailer Bill required the VCGCB to administer a program to award, upon appropriation by the Legislature, up to \$2 million in grants annually from the Restitution Fund to trauma recovery centers in California to provide services to victims of crime. The applications are due on October 17th; thereafter staff will begin the scoring and grading process. Staff will bring recommendations to the Board for their final selection and award of the grants at the November 21, 2013, Board meeting.

California State Employees Charitable Campaign (CSECC)

The VCGCB held its annual Cake Auction benefitting CSECC on October 11th. Staff donated home baked and store bought cakes for bidding at the silent auction. Awards were given for most creative, most colorful, best effort, and most bids. Staff's generous donations raised \$762 for local charities. The next event planned for CSECC will be the fourth annual Chili Cook-Off that will be held on October 29th. Staff will bring in their homemade chili for tasting and judging. The last event benefitting CSECC will be an Antiques Roadshow that will be held on November 13th. Donations of gently used or new unwanted items or handmade items will be up for bid in a traditional style garage sale with proceeds directly benefitting local charities.

October is Domestic Violence Awareness Month

One in four women in America will experience domestic violence in their lifetime. CalVCP observes Domestic Violence Awareness Month in hopes of helping victims through their pain and moving forward in the fight to eradicate domestic violence from our world. CalVCP is sponsoring "Suited for Successful Families," expanding upon the "Suited for Success" Program, by including child victims of domestic violence. Donations of new children's toys, diapers, new and gently used professional attire for men and women, and children's clothing will provide basic needs for child victims and help their parents develop careers. Beneficiaries of the donated items include A Community for Peace, My Sister's House, Plumas Rural Services, Sacramento Children's Home, and WEAVE, Inc. Bins have been placed at CalVCP headquarters as well as donation drop-off locations at the Governor's Office, Chicory Tea and Coffee located across from the State Capitol, as well as locations in Sacramento and Folsom. Last year the community donated nearly 2,000 items to help victims of domestic violence.

Item 4. Proposed Board Meeting Dates for Calendar Year 2014

The Board approved the Board meeting dates for calendar year 2014. The Board meetings will be held on the third Thursday of every month, with the exception of the month of July when the Board is silent.

Item 5. Contract Report

Executive Officer Nauman stated that, as reported last month, CalVCP was successful in receiving a grant from the Office for Victims of Crime to conduct research on meeting the needs of underserved populations. CalVCP will use the funds to enter into an interagency agreement with the University of California, Berkeley (UCB) Chief Justice Earl Warren Institute on Law and Social Policy to conduct research and identify underserved victims who may be unaware of the compensation program or unable to access services.

The Board approved the interagency agreement with UCB in the amount of \$245,440.00.

Item 6. Legislative Update

Executive Officer Nauman stated that most of the legislative bills on the report were reported at prior Board meetings and many had been chaptered. Ms. Nauman stated that SB 618, the bill relating to wrongful convictions, is on the Governor's desk. She asked Wayne Strumpfer, VCGCB Chief Counsel, to provide a brief summary of the changes that the bill makes to the process that the VCGCB utilizes in reviewing claims for wrongful convictions.

Chief Counsel Strumpfer stated that Penal Code section 4900 currently requires a claimant to meet the following two requirements in order to receive compensation: (1) the claimant must prove his or her innocence by a preponderance of the evidence and (2) the claimant must prove that he or she did not, by any act or omission on his or her part, intentionally contribute to the bringing about of his or her arrest or conviction for the crime. A claimant could receive \$100 for each day served in prison if they are able to prove their innocence.

Chief Counsel Strumpfer explained that when the VCGCB receives erroneously convicted person claims, the Board forwards them to the Attorney General's Office for review and investigation. The Attorney General's Office returns the claim to the VCGCB with an informational package and thereafter the VCGCB sets the claim for hearing. Claimants have always been required to apply to the VCGCB within two years after judgment of acquittal or discharge given, after a pardon granted, or after release from imprisonment; however, there has not been a timeframe for the VCGCB or the Attorney General's Office to set a claim for hearing. After the hearing, if the Board approves the claim, the VCGCB makes a recommendation to the Legislature that an appropriation be made for the purpose of indemnifying the claimant for the pecuniary injury. The amount of the appropriation recommended is the sum equivalent to \$100 per day of incarceration served subsequent to the claimant's conviction. He stated that the Legislature has the authority to deny the appropriation of funds, which it has done once in the past 20 years.

Chief Counsel Strumpfer reported that the new law takes effect on January 1, 2014, and explained that it makes several changes that include: (1) providing that in a contested proceeding, if the court grants a writ of habeas corpus concerning a person who is unlawfully imprisoned or restrained, and if the court finds that the new evidence on the petition points unerringly to innocence, the court's finding would be binding on the Board and the Board would be required to recommend to the Legislature that an appropriation be made and the claim be paid; (2) requiring that the factual findings and credibility determinations establishing the court's basis for granting the writ of habeas corpus, a motion for new trial, or an application for a certificate of factual innocence be binding on the Attorney General, the hearing officer, and the Board; (3) requiring the Attorney General to respond to the claim sent to them by the Board within 60 days or to request an extension of time, upon a showing of good cause; (4) deleting the requirement that a claimant is required to prove, among other things, the fact that he or she did not, by any act or omission on his or her part, intentionally contribute to the bringing about of his or her arrest or conviction for the

crime with which he or she was charged; (5) deleting the requirement that the hearing officer shall not consider statements obtained from an involuntary false confession or involuntary pleas or that the claimant bears the burden of proving by a preponderance of evidence that the statements were obtained from an involuntary false confession or involuntary plea; and (6) extending the time period to submit a claim for wrongful imprisonment to two years from release from custody for felons who go to county prisons under the realignment.

Item 7. Government Claims Program
Consent Agenda (Nos. 1-302)

The Board adopted the staff recommendations for item numbers 1-302, with the following exceptions: item number 36 was continued to the November 21, 2013, meeting and item numbers 64, 104, and 275 were removed to allow the claimants an opportunity to address the Board.

Consent Agenda Appearance

Item 64, G611084

Claim of Charcy Company, Inc.

Chuck Van Den Abeelen and Judy Weber appeared and addressed the Board on behalf of Charcy Company, Inc. and submitted documentation to the Board in support of their claim. Jeff Sly appeared and addressed the Board on behalf of the California Prison Industry Authority.

Nicholas Wagner, Government Claims Program Manager, explained that Charcy Company, Inc. (Charcy) sought compensation from the California Prison Industry Authority (CALPIA) in the amount of \$67,196.93 for unpaid invoices. Mr. Wagner stated that Government Claims Program staff recommended that the Board reject the claim because the issues raised involved complex matters of fact and law beyond the scope of analysis and interpretation typically undertaken by the Board.

Mr. Van Den Abeelen stated that Charcy was awarded a contract with CALPIA in November 2010 to haul their products. He explained that pursuant to the contract, Charcy would haul the equipment and CALPIA would supply the trailers; however, CALPIA never supplied the trailers. He stated that he verbally notified four administrators in charge of each CDCR institution that they owed Charcy trailers, yet his request was ignored. He explained that in July 2012, CALPIA requested more trailers and he again reminded them that they had to supply their own trailers, yet they never did.

Ms. Weber stated that the contract entered into with Charcy and CALPIA was clearly written and the scope of work provided that CALPIA would supply the trailers. She explained that when Charcy discussed the fact that CALPIA must supply the trailers, CALPIA kept making excuses for not providing them. She stated that Charcy had been performing the work prior to the contract and trailers were already at the institution; therefore, Charcy continued performing the services because they were under the impression that CALPIA would get their own trailers, but they never did.

Mr. Sly stated that the issue regarding the trailers was not raised by Charcy until four months after the two-year contract ended. He explained that it would be necessary to conduct proceedings that would not be appropriate before the Board; therefore, CALPIA recommended that the Board reject the claim.

Board member Ramos stated that the claim involved complex matters, timeline matters, and contract issues that were all beyond the Board's scope of authority.

The Board rejected the claim due to its complex nature.

Consent Agenda Appearance

Item 104, G612883

Claim of Rivers End Mountain House, LLC

William Pease addressed the Board on behalf of Rivers End Mountain House, LLC and submitted documentation in support of the claim for the Board's review. Penny Schulz, Angela LaBahn, and Antonia Delgado appeared on behalf of the Department of Boating and Waterways.

Nicholas Wagner, Government Claims Program Manager, explained that Rivers End Mountain House, LLC (Rivers End) sought compensation from the Department of Boating and Waterways (DBW) in the amount of \$20,383.55 for loss of revenue. Mr. Wagner stated that Government Claims Program staff recommended that the Board reject the claim because determining the extent of damages and liability would require complex review and discovery that should be undertaken in a court of law.

Mr. Pease stated that the DBW is responsible for the control and removal of water invasive vegetation in the California delta waterways and other areas. DBW failed to apply for and receive a permit to spray the water hyacinth in a timely manner due to internal staff changes and inadequate paperwork. He stated that it took two years for the DBW to finally receive their permit and they now have a five-year permit due to Rivers End contacting federal agencies responsible for issuing the permit. He explained that Rivers End was able to verify that DBW did not file their permit paperwork in a timely manner and did not have adequate information for the permit review. He referenced an article from the *Stockton Record* dated December 22, 2012, wherein a representative from the National Marine Fisheries Service stated that DBW had not provided adequate information, forcing the federal agency to correct the DBW's reports. Mr. Pease stated that DBW has been spraying water hyacinth since 1982, they had to obtain permits, so there was no excuse for DBW not obtaining the permits in a timely manner. He stated that Rivers End should not be punished because of DBW's failure to do their job. He commented that it was frustrating working with DBW because Rivers End had to close twice this year due to DBW not obtaining their permits in a timely manner and spraying inadequately in some areas resulting in Rivers End's inability to navigate the waterways. Lastly, he stated that Rivers End should be compensated for its loss, which included lost bait, tackle, and beverage and food sales because fishermen could not use their launch ramps. He explained that Rivers End also lost sales because many of its storage customers moved their boats to marinas outside of the area.

Ms. Schulz explained that water hyacinth is an invasive aquatic weed that has spread throughout the Sacramento-San Joaquin Delta over the past decade. During the hot summers, water hyacinth grows and spreads rapidly in the delta; it obstructs navigation, impairs other recreational uses of the waterways, and has the potential to damage man-made facilities. In 1982, the Legislature passed Harbors and Navigation Code section 64 that gave DBW permission to cooperate with other federal and State agencies to control water hyacinth in the delta, its tributaries, and the Suisun marsh. She explained that the statute does not require DBW to take any action; rather, the statute is permissive. The statute authorizes DBW to partner with other federal and State agencies to control water hyacinth in the delta. DBW did not fail to comply with any statutory requirement.

Ms. Schulz explained that DBW received its permit to begin spraying on July 12, 2012, and spraying was permitted through November 30, 2012. She stated that DBW has an invasive weed control program with an annual budget of \$5-6 million per year for the controlled spraying of water hyacinth. She explained that DBW has 5 two-person crews at an annual cost of \$1 million per crew, including the cost of herbicide. DBW sprayed for water hyacinth in the delta from July-November, the only months that spraying is allowed with permits. She stated that if DBW were to attempt to control all

of the water hyacinth, which covers 60,000 acres, it would take approximately 100 crews two years at a cost of \$100 million per year, exceeding DBW's total annual budget for all of its programs. Crews could not completely eradicate the water hyacinth; they could only get rid of what is on the surface. New plants would sprout the following spring and the process would start all over again. The only way to remove water hyacinth would be to hand pick it or collaborate with the federal government to remove it with a mechanical harvester. She explained that the federal government owns the mechanical harvesters at the fish screen near Rivers End marina and DBW assisted the federal government with the mechanical harvester on at least five occasions from December 2012 to March 2013. She explained that there is no way to get rid of the water hyacinth in the delta or near Rivers End because there is a fish screen that pulls the water hyacinth from all over the delta and it collects around the marina. She further explained that DBW did everything it could with the resources it had available to them. Lastly, Ms. Schulz stated that the claim was complex and recommended that the Board reject the claim.

Chairperson Batjer asked whether water hyacinth grew faster in warmer water and if it ever dissipated due to varying weather conditions.

Angela LeBahn explained that new growth starts in spring. Once the summer temperature rises, growth increases exponentially. Heat, water temperatures, and high nutrient loads in the delta all aid to the fast growth of the water hyacinth throughout the year. Cold weather and frost could kill off water hyacinth, but not far below the surface and it can grow back in the spring.

Mr. Pease stated that DBW did not admit that they failed to get their permit on time. He further stated that DBW has a permit now, but they did not have permits in 2010 or 2011.

Chairperson Batjer asked Ms. Schulz when DBW received its permit.

Ms. Schulz stated that DBW received its permit on July 12, 2012.

The Board rejected the claim due to its complexity.

Consent Agenda Appearance

Item 275, G611736

Claim of Sharon Laidley

Neither the claimant nor her representative were in attendance. Jennifer Marquez attended on behalf of the Attorney General's Office.

Nicholas Wagner, Government Claims Program Manager, explained that Sharon Laidley, represented by attorney Elizabeth Dedrick, requested leave to present a late claim for compensation from the California Department of Corrections and Rehabilitation in an amount exceeding \$25,000 for wrongful termination. Mr. Wagner stated that Government Claims Program staff recommended that the Board deny the late application for failure to meet the criteria required in Government Code section 911.6.

The Board denied the late application.

Item 8. Claim of Stanford Hospital & Clinics

Claim Number G612727

Nicholas Wagner, Government Claims Program Manager, explained that Stanford Hospital & Clinics requested compensation in the amount of \$349,140.04 from the California Department of State Hospitals for unpaid invoices. Mr. Wagner stated that Government Claims Program staff recommended that the Board partially allow the claim in the amount of \$65,179.26.

The Board partially allowed the claim in the amount of \$65,179.26 under authority of Government Code section 965 (agency pay).

Item 9. Applications for Discharge From Accountability for Collection

The item was removed from the agenda.

**Item 10. Bid Protest of Forestry Conservation Communications Association
Request for Quotation No. 13-139105**

Ralph Haller and Paul Leary appeared on behalf of Forestry Conservation Communications Association. Kathleen Yates appeared on behalf of the Department of General Services and the California Governor's Office of Emergency Services.

The item was before the Board to determine the protest by bidder Forestry Conservation Communications Association of Request for Quotation (RFQ) Number 13-139105 for the procurement of radio frequency coordination services for the California Governor's Office of Emergency Services. The Hearing Officer examined and considered the written arguments and evidence presented by the parties and recommended that the Board deny the protest.

Mr. Haller explained that Forestry Conservation Communications Association (FCCA) is a nonprofit association representing state forestry conservation and wildlife agencies across the country and is certified by the FCC to coordinate public safety radio channels. He stated that he was previously employed by the FCC for 25 years as Chief of the Private Radio Bureau, which originally made the recommendations for the entities that would be certified as frequency coordinators. He explained that the RFQ was intended to select the certified coordinator for the State of California for the next three years. FCCA was the coordinator for the past three years. He stated that FCCA contended that the commercial company that performs frequency coordination work under contract for the American Association of State Highway and Transportation Officials (AASHTO) did not meet the basic qualifications of the RFQ. The RFQ required that the bidder be certified by the FCC to coordinate FCCRR Section 90.20 frequencies and provide documentation for verification. The RFQ did not permit a subcontractor of a certified frequency coordinator to bid; it required the certified entity to bid. He explained that in this case, the bidder, Frequency Finders, was a for profit company that performs technical work associated with frequency coordinations for AASHTO; however, Frequency Finders is not AASHTO and is not certified by the FCC. He stated that when he worked for the FCC in the Private Radio Bureau, the FCC never certified Frequency Finders for anything. AASHTO was certified as a public safety frequency coordinator from 1985-1986 and Frequency Finders did not exist at that time. Holding a contract with AASHTO does make Frequency Finders a certified coordinator or eligible to bid in the RFQ. Without being a subcontractor with AASHTO, Frequency Finders would lack any ability to certify applications to the FCC. Any public safety coordinator could coordinate any public safety channel, but only with the advice and consent of the primary coordinator for the channel in question. The primary coordinator for the police pool channels is the Association of Public Safety Communications Officers. The International Municipal Signal Association is responsible for fire and emergency medical channels; AASHTO is certified for highway maintenance channels; and FCCA is the primary coordinator for forestry channels. He explained that when any coordinator is coordinated outside of its primary pool, it must submit its proposed coordination to the primary coordinator and seek approval pursuant to FCC rules and regulations. If approved, the out-of-service coordinator must pay the primary coordinator \$100 per channel for the review, which are inter-service fees. He stated that DGS either did not understand the extra cost to the State or the actual cost of the channels may not be known and they ignored the inter-service fees; nevertheless, DGS could have checked previous records to confirm FCCA's assertion by visiting the FCC's website, but no attempt was made by DGS to verify the information. He stated that by accepting the bid, it would likely result in an extra cost of several thousand dollars

per year to the State, whereas FCCA would be the least costly option to the State. Lastly, he stated that Frequency Finders was not qualified to bid under the terms of the RFQ.

Ms. Yates stated that the issues raised by Mr. Haller were fully briefed by the Hearing Officer assigned to the protest and the Hearing Officer did not find FCCA's arguments persuasive. The Hearing Officer was satisfied with the information presented that showed there was a legal relationship between Frequency Finders and AASHTO. The legal business name is Frequency Finders dba RS/American Association of State Highway and Transportation Officials. She stated that the question of whether there would be a savings in the next three years, as asserted by Mr. Haller, was speculative. She explained that it was very clear from the cost worksheet presented in the bid document that the State was not going to consider inter-service fees, which FCCA argued should have been considered. She further explained that it was too late for FCCA to attack the bid document, because the bid documents have been published, bids were received and evaluated, and the Notice of Intent to Award has been published. Lastly, Ms. Yates requested the Board to approve the decision of the Hearing Officer.

The Board denied the protest.

Item 11. Claim of David Stubblefield (Pen. Code, § 4900 et seq.)

Neither the claimant nor his representative appeared. Michael Farrell attended on behalf of the California Department of Justice, Office of the Attorney General.

Wayne Strumpfer, VCGCB Chief Counsel, stated that Mr. Stubblefield's representative submitted written argument to the Board on behalf of the claimant. Mr. Strumpfer explained that David Stubblefield used a machete and a knife to attack a roommate over a dispute regarding a clogged drain. After the hearing, the Hearing Officer made a determination that Mr. Stubblefield failed to prove that he did commit the crime and offered no additional evidence other than his own self-serving statements. Moreover, the only third-party witness to the incident corroborated the victim's assertion that Mr. Stubblefield was the weapon-wielding aggressor. Mr. Strumpfer stated that the Hearing Officer recommended that the Board deny the claim.

The Board denied the claim.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 10:50 a.m.

Request for Authority to Begin the Rulemaking Process for the California Code of Regulations (title 2, § 649, 649.4, 649.8, 649.26, 649.29, 649.32, 649.40, 649.43, and 649.62)

Mindy Fox, Deputy Executive Officer, Victim Compensation and Government Claims Programs, explained that staff was proposing new and amended regulations to improve the verification process for initial eligibility, income and support loss, and mental health benefits. The rulemaking action also defines what constitutes a lack of cooperation with the Board by mental health providers, includes several provisions to clarify language, and corrects grammatical errors. Ms. Fox requested the Board direct staff to begin the rulemaking process with the proposed regulation changes, which included a public comment period, final approval by the Board, and submission to the Office of Administrative Law.

The Board approved staff's request to begin the rulemaking process for the proposed regulation changes.

Victim Compensation Program

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 10:51 a.m. to deliberate on proposed decision numbers 1-129.

Open Session

The Board reconvened into open session at 10:59 a.m. The Board adopted the proposed decisions for numbers 1-129, with the exception of Number 6 (A10-2501740), which was referred back to staff.

The Board meeting adjourned at 11:00 a.m.