

California Victim Compensation and Government Claims Board
Open Meeting Minutes
March 17, 2011, Board Meeting

The California Victim Compensation and Government Claims Board (Board) convened its meeting in open session at the call of Leslie Lopez, Acting Chairperson, State and Consumer Services Agency, at 400 R Street, Sacramento, California, on Thursday, March 17, 2011, at 10:01 a.m. Also present was Board member Les Kleinberg, Deputy Controller, 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; Patty Harris, 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 February 17, 2011, Board Meeting

The Board voted to approve the minutes of the February 17, 2011, Board meeting.

Item 2. Public Comment

The meeting was opened to public comment. No public comment was provided.

Item 3. Executive Officer's Statement

Executive Officer Julie Nauman reported the following:

National Crime Victims' Rights Week

National Crime Victims' Rights Week (NCVRW) will be observed on April 10-16, 2011. The theme for NCVRW is "Reshaping the Future, Honoring the Past." The Board will hold its second annual Victims' Rights Rally at headquarters on April 11th followed by the annual victims' march to the State Capitol sponsored by Crime Victims United. The Board reached a milestone of \$2 billion in payouts since its inception in 1965. The Executive Officer invited the Board members to participate in events honoring victims of crime during National Crime Victims' Rights Week.

Status of Regulations Regarding Rates and Limitations for Services

At the February 17, 2011, meeting, the Board adopted changes to rates and limitations. Based on this action, regulations were filed with the Office of Administrative Law. The 45-day comment period will begin on March 18, 2011, followed by a public hearing on the regulation package to be held on May 5, 2011.

Attorney General Kamala D. Harris Hosts Smart on Crime Summit

Attorney General Kamala Harris hosted a Smart on Crime Policy Summit on March 16th at U.C. Hastings School of Law. Attorney General Harris invited approximately 400 advisors from across the state including district attorneys, law enforcement, foundations, think tanks, and others at the forefront of research, ideas, and innovation. Attorney General Harris asked the advisors to examine how California can resolve problems in 10 areas ranging from policing to victims' rights. Ten work groups were formed as part of her transition team and prepared briefing papers. The papers, dealing with critical issues facing California, were the focus of the Summit. The Executive Officer participated in the Victims' Rights work group led by Gary Lieberstein, Napa County District Attorney. The group produced a paper that included the delivery of victim services in California, the status of the Restitution Fund, and the need for stronger attention on the imposition and collection of restitution.

During the Summit, each work group met followed by a panel session where Attorney General Harris engaged each of the leaders of the working groups to discuss some of the issues raised in the papers.

Item 4. Contract Report

The Board voted to approve the following 3 one-year contracts:

- Department of Justice contract in the amount of \$115,000. The Department of Justice will continue to provide legal representation on an as needed basis.
- University Enterprises, Inc., (CSUS) contract in the amount of \$60,000. Four student assistants will continue to perform various tasks consistent with the goals and objectives of the Program area to which the student is assigned.
- California Department of Corrections and Rehabilitation (CDCR) contract in the amount of \$219,446. CDCR will continue to track juvenile offenders incarcerated and on parole, provide discharged offender files, and collect restitution order and fines owed to the Board.

Item 5. Legislative Update

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

- SB 80, the budget trailer bill, requires the VCGCB to notify the chairpersons of the committees in each house of the Legislature that consider appropriations and the annual Budget Act, and the Chairperson of the Joint Legislative Budget Committee, within a specified period of time prior to allowing either the use of a current year appropriation to pay claims for prior year costs of \$500,000 or more, or claims from a single provider of goods or services with respect to a single department that exceed \$500,00 within one year. Mr. Myers reported that the Board deferred to the Department of Finance for a position on the bill.
- SB 207 (Kehoe), the Board's first Government Claims Bill of 2011, will cover claims approved by the Board from June 2010 through November 2010, is in the Senate Appropriations Committee.
- AB 139 (Fuentes), the Board's second Government Claims Bill of 2011, will cover claims approved by the Board from December 2010 through May 2011, is in the Assembly Appropriations Committee.
- SB 534 (Corbett), regarding victims of sexual assault, provides that victims of sexual assault are not required to participate in the criminal justice system or cooperate with law enforcement in order to be provided a forensic medical exam, which is paid for by local agencies. Mr. Myers reported that in 2009 Senator Corbett introduced a similar bill, which would have made the CalVCP a reimbursement source for some forensic medical exams. He stated that after the Board expressed its opposition to the bill, it was amended and all subsequent versions of the proposal have maintained local agency funding for the exam.
- AB 898 (Alejo), regarding restitution fines, doubles the minimum and maximum amounts for restitution fines imposed on convicted defendants. For felony convictions, the minimum increases from \$200 to \$400 and the maximum from \$10,000 to \$20,000. For misdemeanors, the minimum increases from \$100 to \$200 and the maximum from \$1,000 to \$2,000.
- AB 1012, (Cook), relating to state officers, authorized the Board to establish daily living expense compensation rates (commonly known as per diem) for members of the Legislature that are not less than the rate provided to federal employees traveling to Sacramento. The Board adopted a regulation in 2009 wherein the per diem rate for members of the Legislature automatically matches any change to the federal rate for travel to Sacramento. This bill includes a new provision that there shall be no reimbursement for the living expenses of a late or absent member of the Legislature. Mr. Myers reported that the new provision would not affect the Board's role in setting the per diem rate. In addition, he reported that the Board has no authority over when or under what circumstances the members of the Legislature would receive reimbursement.

Government Claims Program

Item 6. Consent Agenda (Nos. 1- 635)

The Board voted to adopt the staff recommendations for item numbers 1-635 with the exception of numbers 415 and 631, which were removed to allow the claimants an opportunity to address the Board.

Consent Agenda Appearance

Item 415, G594906

Kelly McGuire, claimant, failed to appear. The Board voted to adopt the staff recommendation to reject the claim as the issues raised in the claimant's non-limited civil case in excess of \$25,000 for discrimination, retaliation, and wrongful termination are complex and outside the scope of analysis and interpretation typically undertaken by the Board.

Consent Agenda Appearance

Item 631, G594617

Barbara Haukedalen, claimant, requested that the Board grant her late application against the Department of Justice in the amount of \$16,000 plus interest for failure to timely pay wages upon separation from state service.

Chairperson Lopez stated that she was previously employed by the California Attorney General's Office and worked with Ms. Haukedalen; however, she stated she had no information regarding Ms. Haukedalen's claim and had no position on its merits.

Ms. Tinetti, Government Claims Program Manager, stated that Ms. Haukedalen submitted her government claim on January 7, 2011, regarding an incident that occurred on January 8, 2010. She stated, pursuant to Government Code section 911.2, claims relating to a cause of action for death or for injury to a person or to personal property or growing crops shall be presented not later than six months after the accrual of the cause of action. Ms. Tinetti stated, based on the January 8, 2010, incident date noted on the claim, Ms. Haukedalen's claim should have been submitted no later than July 8, 2010. She stated that the California Attorney General's Office reviewed the claim and recommended denial of the late claim application and Government Claims Program (GCP) staff concurred with their recommendation. Ms. Tinetti stated that GCP staff noticed Ms. Haukedalen by written communication dated March 1, 2011, informing her of the staff recommendation to deny the late claim application. She further stated that the letter also explained Ms. Haukedalen's next available remedy, which would be to file a petition in court for relief from the requirements of Government Code section 945.4.

Ms. Haukedalen asked for an explanation for the basis of the recommended denial of her application for leave to present a late claim. She stated that although there is a six-month limitation to file certain types of claims, the law also provides that it is proper that claims against the State must be filed within one year after the incident for claims other than for death or injury to a person, damage to personal property or damage to growing crops. She further stated that her claim is not in the nature of an injury to herself or personal property, but rather it is regarding a penalty against her former employer, the California Attorney General's Office. She stated that she was paid her wages; however, it was not done in a timely manner and therefore the California Attorney General's Office is required to pay a penalty as required by law.

Chairperson Lopez stated that the issue before Board is whether the Board should grant the late claim application not the underlying legal issues. Ms. Lopez asked Ms. Tinetti if staff explained the factual and legal reasons for the denial of the late claim application. Ms. Tinetti stated that on March 1, 2011, GCP staff provided Ms. Haukendalen with written notice regarding the provisions of law that govern granting a late application.

Ms. Haukendalen stated that she did not receive the correspondence from GCP staff prior to today; therefore, she did not know the basis for the denial of her late claim application.

Board member Kleinberg asked Wayne Strumpfer, Chief Counsel, to advise the Board whether Ms. Haukendalen's claim met the six-month or one-year statute of limitation.

Chief Counsel Mr. Strumpfer stated that he did not have an opportunity to review Ms. Haukedalen's claim file and he could not confirm whether the Board's Legal Office reviewed it either. Mr. Strumpfer recommended that the Board continue the claim to the April 21, 2011, Board meeting to allow the Legal Office an opportunity to review the file. Mr. Strumpfer further stated that since the claimant did not have an opportunity to review the letter, it would be prudent to continue the claim to the next Board meeting.

GCP staff provided Ms. Haudedalen with a copy of the March 1, 2011, correspondence.

The Board voted to continue the claim to the April 21, 2011, meeting.

Item 7. Claim of Miller Environmental, Inc.
Claim Number G589649

Miller Environmental, Inc., requested payment in the amount of \$448,053.11 plus interest for demolition services provided to the California Department of Transportation (Caltrans) from August 13, 2009, through January 31, 2010. Caltrans recommended that the claim be partially allowed in the amount of \$441,445.23. Caltrans disputed the 15 percent markup, totaling \$6,607.88, because the terms of the contract only allow reimbursement for additional expenses at cost.

The Board voted to partially allow the claim in the amount of \$448,053.11.

Item 8. Claim of Novell, Inc.
Claim Number G590404

Novell, Inc., requested that the Board re-examine the claim under authority of Government Code section 913.2. Novell requested payment in the amount of \$268,806.00 for providing maintenance and support services during the fiscal year 2010/2011. These services were provided without a Purchase Order to allow CHP the ability to continue daily operations.

The Board previously acted on the claim at its November 18, 2010, meeting. The claim was listed as Item Number 65 on the Government Claims Program consent agenda with a recommendation to reject the claim. At the November 18, 2010, the Board meeting, the Board voted to adopt the staff recommendation to reject the claim; however, CHP and Novell, Inc., continued to negotiate the claim after the Board's action.

Board member Kleinberg asked Jackie Tinetti, Government Claims Program Manager, to explain the basis for the recommended denial of the claim at the November 18, 2010, Board meeting. Ms. Tinetti stated that the recommendation was received from CHP. She stated that subsequent to the Board's November 18, 2010, action to reject the claim, negotiations between CHP and

Novell, Inc., continued and the issues underlying the recommendation were overcome. She further stated that thereafter, CHP approached the GCP and requested that the Board reexamine the claim. Ms. Tinetti stated that Government Code section 913.2 allows for reexaminations of previously rejected claims as long as the reexamination occurs within six months of rejection of a claim.

The Board voted to rescind their November 18, 2010, action and voted to adopt the staff recommendation to allow the claim.

Item 9. Applications for Discharge from Accountability for Collection

The Board voted to adopt the staff recommendation to allow the request by the Department of Health Care Services.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 10:31 a.m.

Proposal to Consider Revisions to the Mental Health Guidelines Pursuant to the Board's December 16, 2010, Direction Regarding Additional Treatment Plans

The California Victim Compensation Program and Government Claims Board (Board) considered and determined whether to approve the proposed revisions to the Mental Health Guidelines (guidelines) currently filed with the Office of the California Secretary of State.

At the December 16, 2010, Board meeting, the Board requested that staff make recommendations to modify the guidelines to make requests for additional mental health sessions more restrictive.

Staff proposed amendments to the guidelines to make the approval of Additional Treatment Plans more restrictive and proposed additional amendments to the guidelines to address program changes and a redundant criterion.

The Board voted to adopt the following staff recommendations:

1. Amend the guidelines to be more restrictive for the allowance of additional mental health sessions.
2. Repeal the requirement that the additional mental health sessions for derivative minors of specific crime circumstances be for the benefit of the direct victim.
3. Add requirements for the filing statuses of Minor Witnesses and Post-Crime Primary Caretakers.
4. Amend the guidelines to eliminate a redundant criterion.
5. Amend the requirement regarding when Treatment Plans are to be submitted.
6. Amend the Treatment Plan and Additional Treatment Plan forms to reflect the proposed changes.

Disqualification of a Provider of Medical and Mental Health Services

The California Victim Compensation and Government Claims Board (Board) may provide mental health services to victims of qualifying crimes. The Board works closely with mental health therapists who then submit billing statements to the Board to receive reimbursement for the treatment provided to the victim. On January 29, 2009, Licensed Clinical Social Worker Therese Marie Massod pled no contest in San Joaquin Superior Court to grand theft. This criminal action arose from Ms. Massod submitting over 100 billing statements to the Board for treatment sessions

that never occurred. On April 13, 2010, the California Board of Behavioral Science commenced an action to revoke or suspend Ms. Massod's medical license based on her criminal behavior. Currently, this action is pending. Program staff recommended that the Board disqualify Ms. Massod from being eligible to receive Board compensation for providing medical and mental health services to victims.

The Board voted to adopt the following staff recommendations:

1. Permanently disqualify Ms. Massod from being eligible to receive Board compensation for any medical and mental health services provided to victims.
2. Board staff will notify victims currently treating with Ms. Massod and inform them that she will no longer receive Board compensation.

In addition, based on a March 1, 2011, letter from Ms. Massod's representative stating that she agrees not to pursue payment nor to continue with or ever take on clients, the Board adopted the providers' waiver of any payment on any current outstanding bill with the Board.

Requests for Reconsideration

Recommendation: Deny

(Nos. 1 -7)

The Board voted to adopt the staff recommendations.

Requests for Reconsideration Following Board Action on a Proposed Decision

Recommendation: Deny

(Nos. 8-18C)

The Board voted to adopt the proposed decisions.

Proposed Decisions on the Written Record

(Nos. 19-32)

The Board voted to adopt the proposed decisions.

Proposed Decisions Following Failure to Appear

(Nos. 33-56)

The Board voted to adopt the proposed decisions.

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 10:40 a.m. to deliberate on the proposed decisions, numbers 57 through 78C.

The Board reconvened into open session at 10:58 a.m.

Open Session

The Board voted to adopt the proposed decisions for numbers 57-78C.

Adjournment

The Board meeting adjourned at 10:58 a.m.