

California Victim Compensation and Government Claims Board
Open Meeting Minutes
June 19, 2014, Board Meeting

The California Victim Compensation and Government Claims Board (Board) convened its meeting in open session at the call of Marybel Batjer, Secretary, California Government Operations Agency, at 400 R Street, Sacramento, California, on Thursday, June 19, 2014, at 10:00 a.m. Also present was Board member Richard Chivaro, 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 Executive Officer Julie Nauman and Chief Counsel Wayne Strumpfer. Tisha Heard, Board Liaison, recorded the meeting.

The Board meeting commenced with the Pledge of Allegiance.

Item 1. Approval of Minutes of the May 15, 2014, Board Meeting

Upon a motion by Board member Chivaro and seconded by Chairperson Batjer, the Board unanimously approved the minutes of the May 15, 2014, Board meeting.

Item 2. Public Comment

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

Item 3. Executive Officer Statement

California Trauma Recovery Center Grant Program

On July 1, 2013, Government Code section 13963.1 became law stipulating that the Victim Compensation and Government Claims Board (Board) administer a program to evaluate applications and award grants to trauma recovery centers in California to provide services to victims of crime. Upon appropriation by the Legislature, the Board shall award grants totaling up to \$2,000,000 per year. The total grant award of \$2,000,000 will be divided amongst the selected grant recipients.

Executive Officer Nauman reported that the Board released the Notice of Funds Available for FY 2014-15 on May 16, 2014. The grant application period ended June 16, 2014, and the Board received two applications. Ms. Nauman reported that the applications would be reviewed and ranked according to the scoring criteria. Staff will develop funding recommendations for consideration and approval by the Board at the August 21, 2014, meeting.

Item 4. Contract Report

ATS Communications, Inc.

Upon a motion by Board member Chivaro and seconded by Chairperson Batjer, the Board unanimously approved the three-year contract renewal of the VCGCB's telephone system support and maintenance contract, including the Customer Service Call Center in the total contract amount of \$92,567.24. The total contract amount represents ongoing and routine maintenance in the amount of \$68,746.80 and a one-time purchase of new hardware to replace existing hardware that is at the end-of-life in the amount of \$23,820.44.

Shandam Consulting, Inc. (Amdt. 1)

Upon a motion by Board member Chivaro and seconded by Chairperson Batjer, the Board unanimously approved an amendment to the contract in the amount of \$10,000 for a new contract total of \$62,000. The amendment will add time and money to the VCGCB's existing contract for network maintenance and support services. The contractor will continue to provide on-call maintenance and as-needed consulting services to help resolve disruptions to network services and assist with complex network issues that require highly specialized expertise.

Request for Offers (RFO) – Cares2

The current contract for Cares2 expires on July 31, 2014. Two separate RFOs were released to solicit bids to address the need for additional work on CalVCP's Cares2 project. Executive Officer Nauman stated that the successful bids were not determined prior to the June Board meeting and there is no July Board meeting. She requested the Board delegate to her final approval to award the successful bidder for both solicitations. Ms. Nauman stated that she would report the successful bidders at the August 21, 2014, meeting.

Upon a motion by Board member Chivaro and seconded by Chairperson Batjer, the Board unanimously delegated final approval of the successful bidders for both RFO's to Executive Officer Nauman.

Item 5. Legislative Update

Wayne Strumpfer, VCGCB Chief Counsel, reported the following bills impacting the VCGCB:

AB 2685 (Cooley), sponsored by the Board relating to restitution collection, will enhance the collection of restitution from criminal offenders by: (1) allowing a representative of the Board to provide information on the Board's economic losses to the court for purposes of including them in a restitution order and (2) expanding the current requirement that the Board be notified when an inmate is scheduled to receive funds from an estate to include former inmates in addition to current inmates and to include beneficiaries in addition to heirs. The bill passed 5-0 through the Senate Public Safety Committee on June 17. The bill is now in the Senate Appropriations Committee.

SB 1031 (De Leon), VCGCB's first Government Claims Bill of 2014, appropriates \$776,946.59 to pay 332 claims approved by the Board from May 2013 through December 2013 and \$305,900 to pay the erroneous conviction claim of Mario Rocha. The bill is on the Senate Floor.

AB 1617 (Gatto), the VCGCB's second Government Claims Bill of 2014, appropriates \$745,042.81 to pay 136 claims approved by the Board from January 2014 through April 2014 and \$1,450,200 to pay the erroneous conviction claims of Jose Luis Diaz, Johnny Williams, and Francisco Carrillo. The bill is currently in the Assembly Appropriations Committee.

AB 1194 (Ammiano), relating to crime victims, prohibits an application for compensation from being denied based upon the applicant's involvement in events leading up to the crime if the applicant was the victim of sexual assault or domestic violence. For the past year, the Board had been working with sex workers and rape victims on these changes. The bill also prohibits a person who is convicted of a felony from being granted compensation until that person has been discharged from probation or has been released from a correctional institution and has been discharged from parole.

AB 2264 (Levine), relating to victim compensation, provides that a person with a disability whose guide, signal, or service dog is disabled or killed during a crime is eligible for compensation.

Item 6. Request for Board Approval to Begin the Emergency Rulemaking Process for the California Code of Regulations (title 2, § 679)

Michael Reeves was in attendance on behalf of the State Controller's Office, Fi\$Cal Project.

The State Controller's Office (SCO) proposed an amended regulation to provide for a shortened version of the penalty of perjury statement language applicable to claims submitted by state agencies through the Fi\$Cal system. The language provided by the current regulation is too long and a shortened version is required because of a software limitation. Fi\$Cal software consultants

are working on a software solution to accommodate the current longer language; however, the solution is not expected to be available until early 2015. The SCO will not approve payment of claims in Fi\$Cal unless the penalty of perjury language complies with the regulation.

The SCO requested the amendment of California Code of Regulations (title 2, § 679) through the emergency regulation process so that claims can be paid through Fi\$Cal with little or no delay beginning or shortly after Fi\$Cal's go-live date of July 16, 2014.

Mr. Reeves stated that the SCO requested the Board approve the amendment of the California Code of Regulations (title 2, § 679) to shorten the penalty of perjury statement language for claims submitted through Fi\$Cal through the emergency rulemaking process.

Upon a motion by Board member Chivaro and seconded by Chairperson Batjer, the Board unanimously made a finding of emergency to begin the emergency regulation process and authorized the SCO to submit the amended regulation to the Office of Administrative Law.

Item 7. Government Claims Program Consent Agenda (Nos. 1-306)

Upon a motion by Board member Chivaro and seconded by Chairperson Batjer, the Board unanimously adopted the staff recommendations for item numbers 1-306, with the following exceptions: item number 38 (614262) was continued to the August 21, 2014, meeting to allow the claimant an opportunity to address the Board; item numbers 3 (614390) and 292 (617451) were removed to allow further review by staff; and item numbers 155 (617958) and 286 (616953) were removed to allow the claimants an opportunity to address the Board.

Consent Agenda Appearance Item 155, G617958 Claim of Henry L. Frazier

Henry L. Frazier and Tony Gueringer, claimant's representative, were in attendance. Mr. Frazier submitted documentation for the Board's review and consideration prior to the meeting. Jeffrey Phillips, Deputy Attorney General, attended on behalf of the Attorney General's Office.

Nicholas Wagner, Government Claims Program Manager, explained that Henry L. Frazier (d.b.a. Bay West Electric, Inc.) sought compensation from the Contractors State License Board (CSLB) in the amount of \$217,340.26 for lost business. Mr. Wagner stated that Government Claims Program staff recommended that the claim be rejected because there appeared to be no State liability for the claimed damages.

Mr. Frazier explained that the issue before the Board was the restoration of his contractor's license based on an order received from the appellate court. The Nunc Pro Tunc Order submitted by the CSLB stated that as of September 2013, his license was restored; however, his license was not restored in its entirety. He stated that he was seeking monetary damages from the date of the order to present.

Mr. Gueringer stated that if the order had been followed, Mr. Frazier would not have filed a government claim. He explained that since the order was not followed, Mr. Frazier was denied an opportunity to earn income because he has not had the use of his license.

Mr. Phillips explained that the CSLB took disciplinary action against Mr. Frazier's license. His case was referred to Tuolumne County for criminal prosecution and a jury convicted him of diverting

construction funds. Mr. Phillips stated that he went to court because of the conviction during sentencing to revoke Mr. Frazier's contractor's license because the order of the criminal court was to revoke his license. Based on an error by the District Attorney's Office for failing to give a mandatory jury instruction, the criminal conviction was overturned by the Fifth Circuit Court of Appeal. A Nunc Pro Tunc Order was issued that reversed the revocation of Mr. Frazier's license. He explained that there were other issues clouding Mr. Frazier's license that he discussed with him. Specifically, Mr. Frazier's bond company made a payout to the homeowner prior to the conviction. He explained that Mr. Frazier's license was no longer revoked; rather, it was still suspended due to the bond payout. He explained that Mr. Frazier has to reimburse the bond company for the payout to the homeowner or come to an agreement with the bond company. Additionally, there was a judgment against Mr. Frazier from Calaveras Lumber for materials that he obtained but did not buy. Lastly, Mr. Phillips explained that Mr. Frazier has to pay the license fee in order to restore his license to active status.

Mr. Gueringer stated that Mr. Frazier's license was suspended prior to the trial date. He explained that Mr. Frazier's case went to trial on December 29, 2010, and his license was suspended as of December 28, 2009. He stated that Mr. Phillips failed to give a full description of the overturning of the conviction in the appellate court. Mr. Gueringer explained that there was a failure to give a unanimous jury instruction. He stated that there was no evidence presented regarding the amount that was actually stated to be misappropriated, which was a critical element in determining whether there was misappropriation and whether it was misappropriation as a misdemeanor or felony diversion. The appellate court said that the criminal conviction of Penal Code section 484b should be overturned and Mr. Frazier's license would be restored in its entirety. He explained that Mr. Frazier then presented that information to the Registrar of Contractors and asked them to restore his license. The Nunc Pro Tunc Order dated September 10, 2013, stated that the revocation of his license was withdrawn. As of May 6, 2014, the status of Mr. Frazier's license indicates that there is a criminal conviction attachment that is still showing attached to his license. Lastly, Mr. Gueringer stated that Mr. Phillips' assertion that the revocation of the license was corrected but there were other issues involved was untrue.

Mr. Frazier explained that when the bond company decided to pay the homeowners \$12,500, it was all related to the trial, it was not separate matter. The bond company made an early bond payout to the homeowner's of a trial that was ongoing. At the end of the trial, when the appellate court reversed the conviction and demanded the CSLB to restore his license, the payout had already been paid out.

Mr. Gueringer explained that the bond payout was a payment involving Mr. Frazier performing work as a contractor for the homeowners. He stated that he had proof that Mr. Frazier was not the contractor involved in the work; rather, he was the project manager. He explained that in Mr. Frazier's capacity as a project manager, he was not required to have bond insurance.

Mr. Phillips stated that he misspoke earlier when he stated that Mr. Frazier's license was suspended because of the bond payout prior to the conviction. He explained that the matter was still in litigation. He stated that there would be a retrial of the criminal trial on July 17, 2014, and an administrative hearing was set for March 2015.

Chairperson Batjer asked Mr. Wagner to brief the Board again on staff's recommendation.

Mr. Wagner stated that staff recommended that the Board reject the claim because there appeared to be no State liability for the claimed damages. In addition, because the matter was related to litigation, staff also believed that the matter was complex and outside the scope of the Board.

Upon a motion by Board member Chivaro and seconded by Chairperson Batjer, the Board unanimously adopted the staff recommendation to reject the claim.

Consent Agenda Appearance

Item 286, G616953

Claim of Michael J. Siegel

Michael Siegel was in attendance. Mr. Siegel submitted documentation for the Board's review and consideration.

Nicholas Wagner, Government Claims Program Manager, explained that Michael Siegel requested compensation from the California Victim Compensation Program (CalVCP) in the amount of \$4,900.00 for lost income. Mr. Wagner stated that, based on a review of the facts and the recommendation provided by CalVCP, Government Claims Program staff recommended that the Board reject the claim on its merits.

Mr. Siegel stated that he has represented victims of crime for over 33 years. He stated that in the past more attorneys were willing to represent crime victims; however, their numbers have decreased because of uncertainty of payment, relatively lower fees paid to attorneys, and, most recently, Board staff's efforts purportedly to ensure appropriate representation of victims. He stated that the result made it harder and more costly to represent victims; nevertheless, he still represented them. He stated that approximately four years ago, CalVCP staff warned of a potential budget shortfall and took steps to curtail payment of service to victims. The cutbacks, which he commented were promised to be restored if the shortfall did not appear, included unnecessary regulations governing attorney representation. He stated that the State Bar of California regulates attorneys and attorneys are bound by legal and ethical obligations to the clients, including zealous advocacy. He stated that the budget shortfall did not occur; instead, there was an accounting error in the amount of \$24 million in the Board's favor.

Mr. Siegel explained that he was able to incorporate some of the new requirements of regulation section 649.21 into his practice, but had to reduce the number of his clients by 75 percent. He commented that some of the steps taken were unnecessary overkill and may be illegal, including CalVCP staff's interpretation of what constituted verification of the attorney/client relationship and the Board's interference in the contractual relationship between the attorney and client. He referenced section 649.21, verification of attorney's fees, and quoted subdivision (f): "The Board will review the attorney's fee statements and determine if the amount is payable. Prior to payment of the attorney's fees, the Board may verify with the applicant that the described legal services were provided." Mr. Siegel explained that when he submits an application to CalVCP, he attaches a release of information and limited power of attorney form. The form is printed in English and Spanish and authorizes him to represent the client. It contains an authorization for him to take any action on behalf of the client in furtherance of the claim, payments, and reimbursements.

Chairperson Batjer asked Mr. Siegel if claimants sign the form and whether claimants proactively seek out his representation or whether he proactively seeks out claimants.

Mr. Siegel stated that claimants sign the form and he would not represent a claimant who did not sign the form. He stated that he does advertise his services or seek out claimants. He explained that he receives referrals from providers who know that he can help get them paid for their services as well as represent the claimant appropriately. He stated that confirmation of his representation on the form, the claimant's signature on the application form, as well as his name as their representative is significant documentation that he is appropriately representing the claimant. However, staff have gone further and directly contacted his clients for further verification. He stated

that even though that practice is allowed pursuant to the language in the regulation, it was not a part of the process that he was challenging. Mr. Siegel stated, with regard to his government claim, there was a procedural problem and he was challenging the lateness. He explained that he received a letter from the Government Claims Program dated March 12, 2014, wherein staff categorized the applications into groups: claims for money or damages presented not later than six months after accrual of the cause of action are timely and claims for money or damages presented more than six months and less than one year after the accrual of the cause of action are untimely.

VCGCB Chief Counsel Wayne Strumpfer clarified that the Board waived the timeliness issue and were instead deciding Mr. Siegel's claim on the merits.

Chairperson Batjer stated that the underlying issue, according to documentation submitted by Mr. Siegel, was the improper removal as a representative and denial of payment of attorney fees in the absence of an affirmative indication or direction from claimant.

Mr. Siegel stated that if CalVCP staff does not receive a response from the claimant, they remove him as the claimant's representative because they determine that he is not verified. He stated that there are several reasons that staff does not receive an answer from the claimant, which was outlined in the documentation he submitted to the Board.

Chairperson Batjer advised Mr. Siegel that she read the information he submitted to the Board and was briefed by staff regarding his claim; therefore, she had a very good understanding of his position.

Upon a motion by Board member Chivaro and seconded by Chairperson Batjer, the Board unanimously adopted the staff recommendation to reject the claim.

Item 8. Applications for Discharge From Accountability for Collection

Nicholas Wagner, Government Claims Program Manager explained that there were 95 requests by state agencies (applicants) to discharge from accountability for collection of debt, totaling \$654,360,174.74. Mr. Wager stated that staff requested the Board approve the applications for discharge from accountability.

Upon a motion by Board member Chivaro and seconded by Chairperson Batjer, the Board unanimously adopted the staff recommendation to approve the 95 requests by state agencies.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting.

Closed Session

Pursuant to Government Code section 11126(c)(3), the Board adjourned into Closed Session with the Board's Executive Officer and Chief Counsel to deliberate on proposed decision numbers 1-102.

Open Session

The Board reconvened into open session.

Upon a motion by Board member Chivaro and seconded by Chairperson Batjer, the Board unanimously adopted the hearing officer's recommendations to approve proposed decision numbers 1-102, with the exception of numbers 92A-92C (A12-3548724, A12-3548666, and A12-3548708), which were referred back to staff.

Request for Approval to Submit the California Victim Compensation Program Regulations Rulemaking Record to the Office of Administrative Law (Title 2, §§ 649, 649.4, 649.8, 649.24, 649.26, 649.29, 649.32, 649.40, and 649.43).

Wayne Strumpfer, VCGCB Chief Counsel, explained that last fall the Board authorized the California Victim Compensation Program to proceed with regulatory action to implement numerous Program changes. CalVCP went through the regulatory process, including holding a public meeting. Mr. Strumpfer stated that CalVCP requested authorization to file the final rulemaking record for the proposed changes to the CalVCP regulations with the California Office of Administrative Law.

Upon a motion by Board member Chivaro and seconded by Chairperson Batjer, the Board unanimously adopted the proposed regulations and authorized the Executive Officer to file the rulemaking record with the Office of Administrative Law for its review and approval.

The Board meeting adjourned at 10:50 a.m.