

California Victim Compensation and Government Claims Board
Open Meeting Minutes
October 16, 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, October 16, 2014, at 10:02 a.m. Also present was Board member Richard Chivaro, acting for and in the absence of John Chiang, Controller, and Board member Michael Ramos, San Bernardino County District Attorney.

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.

Announcement of the Great California ShakeOut Earthquake Drill

Chairperson Batjer announced that the Great California ShakeOut, the annual statewide earthquake drill, would take place while the Board meeting was in progress at 10:16 a.m. She explained that the Board would not participate in the drill; however, she encouraged everyone to take steps to be prepared, including having an earthquake kit at home.

Item 1. Approval of Minutes of the September 18, 2014, Board Meeting

Upon a motion by Board member Chivaro and seconded by Board member Ramos, the Board unanimously approved the minutes of the September 18, 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

October is Domestic Violence Awareness Month

Over one-fourth of the assistance CalVCP provides is related to domestic violence. CalVCP continues to take the lead role in California to spread awareness and educate the public about domestic violence and sexual assault. CalVCP, in collaboration with WEAVE, the primary provider of crisis intervention services for survivors of domestic violence and sexual assault in Sacramento County, are hosting the annual Suited for Successful Families Drive throughout the month of October to collect men and women's clothing, along with children's toys and clothing. Collection bins have been set up at several state buildings as well as some businesses.

Our Promise State Employee Giving Campaign (formerly CSECC)

On October 24, VCGCB staff participated in the annual Cake Auction to raise funds for the Our Promise Campaign. Staff contributed over 40 cakes, cupcakes, and other baked items. The cake that received the highest bid sold for \$100.00. This year's auction raised \$1,374 for Our Promise.

New Web Streaming Equipment for VCGCB

In November, the VCGCB will begin web streaming its monthly Board meetings. The meetings will be web cast live and recorded for the VCGCB's archives. The VCGCB's goal is to provide more access for the public and allow individuals who are unable to travel to Sacramento to be aware of the direction the Board is giving CalVCP and the Government Claims Program.

Chairperson Batjer asked whether the new equipment had closed captioning capabilities. She commented that October is National Disability Employment Awareness Month, a federally recognized month.

Jon Myers, Deputy Executive Officer, Public Affairs and Outreach, stated that currently all CalVCPs PSA's and videos on the VCGCB website are closed-captioned.

2015 Marks the VCGCB's 50th Anniversary

The VCGCB was the first compensation program in the nation and it is the largest program. California still leads the way in innovation and other states and the federal government look to CalVCP as the leader in the field of victim services. Next year the VCGCB will celebrate its 50th anniversary. It will be an opportunity for the VCGCB to reflect upon its accomplishments and look forward to the advancements it will make in the years to come.

Over the years, a number of changes have occurred at the VCGCB that the Board has been a part, including, among others, the following:

- Adoption of Rate Reductions - CalVCP staff proposed that the Board consider options to align program expenditures with Restitution Fund revenue in order to ensure that CalVCP could continue to provide assistance to victims of violent crime. In order to ensure that there were no gaps in services to victims or providers of services, in 2010-2011 the Board approved rate reductions for medical and mental health services and mental health session limits to reduce expenditures from the Restitution Fund.
- Public Safety Realignment Act - The transferring and funding for managing lower-level criminal offenders from the State to the counties raised questions and concerns regarding the impact of realignment on the availability of funds for compensation due to the challenges the counties would face in collecting restitution from offenders. After one year of realignment, CalVCP reconsidered the rate reductions. The Board expressed their concern because they did not want to take any action prematurely to ensure realignment did not negatively impact CalVCPs revenues.
- Expansion of Family Justice Centers - There are approximately ten family justice centers in California. CalVCP has been engaged with the centers and there is need to have conversations with those leaders about the delivery method and the strengths of that delivery in addressing community problems.
- Trauma Recovery Center Expansions – CalVCP received new funding through the grant program to expand trauma recovery centers in places where they have not had the opportunity before.
- Vision 21: Transforming Victim Services Initiative – Supported by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice, the goal of the initiative is to expand the vision and impact of the crime victim assistance field. CalVCP is examining the delivery of services provided, attempting to make sure CalVCP stays current, and looking at underserved communities. CalVCP was awarded a federal grant to study better ways to deliver services to underserved communities through better awareness, access, and use of technology.
- CalVCP Statute Modernization Project – Led by VCGCB Chief Counsel Wayne Strumpfer, CalVCP took an unprecedented effort to update the laws that govern CalVCP. CalVCP is expanding on the Board's action to make changes to the regulations to ensure that victims of sexual assault who are engaged in prostitution are not precluded from receiving program benefits. CalVCP will examine its statutes to make sure it is staying current with the times and with its understanding of new types of crimes.

Board member Ramos commented that during his 11 years as Board member, the Board has been a part of many great things, including taking the lead on domestic violence and human trafficking issues as well as meeting with the families of victims of 9/11 in Los Angeles.

Chairperson Batjer stated that she heard great things about CalVCPs outreach efforts and its relook and appreciated the extra effort being made by staff.

Panel Discussion on Delivery of Services to Victims

In December 2014, Executive Officer Nauman will bring a panel discussion to the Board as an information item to discuss models for the effective, comprehensive, and seamless delivery of victim services with a focus on family justice centers and trauma recovery centers. Individuals who

developed those models will share their successes in achieving their goals and objectives as well as share the appropriate models to focus on for the next 50 years.

CalVCP Statute Modernization Project

In August 2014, CalVCP held two public forums initiated to renew and update California's statutes and regulations concerning the State's compensation program and to ensure alignment with the U.S. Department of Justice and Office of Victims of Crime's *Vision 21: Transforming Victim Services* report. Staff will bring the results of the Project to the Board at the January 15, 2015, meeting.

VCGCB Legislative Proposals for 2015-2016

Staff will bring legislative proposals to the Board for the VCGCB to sponsor or support during the 2015-2016 Legislative Session at the January 15, 2015, meeting.

Restitution Fund Report

Restitution Fund Projections - In FY 2014-2015 the Restitution Fund balance is projected to be reduced to \$56 million, \$35 million in FY 2015-16, and \$23 million in FY 2016-17, with a \$30 million reserve. The \$30 million reserve represents two and one-half months of expenses.

Penalty Assessments – Penalty assessments are declining. The Department of Finance is aware of the reduction and believes it needs to be adjusted in the Governor's Budget.

Expenditures – Total expenditures are approximately \$100 million. State operations for CalVCP, the cost of running the program, was projected to be \$32 million but actual expenditures are below that figure because CalVCP wants the money to be spent on meeting Program needs while at the same time being prudent so there was a savings.

Restitution Fund Structure – The VCGCB pays for itself; however, expenditures that go to other crime-related programs contribute to CalVCP's challenges. When money is deducted from CalVCP's revenue, the pressure on the bottom line is revealed. The VCGCB is dependent on the carryover funds. When the VCGCB sees adjustments in the Governor's Budget for reductions in penalty assessments, it points out the need to work with counties and departments to make sure restitution is collected and ensure that courts impose fines.

Chairperson Batjer stated that she was unfamiliar with a few of the expenditures, such as the Office of Emergency Services Crimes Against Children for nearly \$10 million.

Executive Officer Nauman explained that the programs are worthwhile and CalVCP was proud to support them. She explained that as she continued the discussion with stakeholders about the different directions and different funding priorities, the Board should keep in mind the VCGCB's capabilities to support those ideas.

Item 4. Proposed Board Meeting Dates for Calendar Year 2015

The Board unanimously approved the Board meeting dates for calendar year 2015.

Item 5. Legislative Update

Wayne Strumpfer, VCGCB Chief Counsel, reported the following bills were signed by the Governor and would become effective January 1, 2015:

AB 2685 (Cooley), relating to restitution collection, is sponsored by the Board to 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.

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.

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.

Item 6. Government Claims Program

Consent Agenda (Nos. 1-316)

Nicholas Wagner, Manager, Government Claims Program, stated that item numbers 104 (618834), 106 (619030), and 295 (619164) were continued to the November 20, 2014, meeting and item numbers 22 (616570) and 293 (619088) were removed to allow the claimants an opportunity to address the Board.

Upon a motion by Board member Chivaro, and seconded by Board member Ramos, the Board unanimously approved the staff recommendations for item numbers 1-316, as amended.

Consent Agenda Appearance

Item 22, 616570

Claim of Peerless Network of California

Douglas Lee, Chief Financial Officer, Peerless Network of California, addressed the Board. In lieu of their attendance, the California Public Utilities Commission submitted a written response for the Board's review and consideration. VCGCB Staff Counsel Mary Lundeen was present to answer questions of the Board related to the written response submitted by the California Public Utilities Commission.

Nicholas Wagner, Manager, Government Claims Program, stated that Peerless Network of California (Peerless) requested compensation in the amount of \$241,387.93 from the California Public Utilities Commission (CPUC) for surcharge overpayments. Mr. Wagner explained that Government Claims Program staff recommended that the Board partially allow the claim in the amount of \$97,107.34.

Mr. Lee stated that Peerless had a Director of Regulatory Affairs who filed all federal and state filings across the country. The director filed all CPUC filings for Peerless' payments through the Telecommunications & User Fees Filing System (TUFFS). He explained that in 2013, their director separated from Peerless and thereafter Peerless hired a company to assist with the filings until they found a replacement. During that timeframe, it was discovered that Peerless inaccurately reported revenues to CPUC which resulted in an overpayment totaling \$241,387. He explained that Peerless' claim for \$241,387.93 represented the difference between what they should have paid and what they actually paid. He explained that Peerless paid 17 times the amount they should have paid.

Chairperson Batjer asked Mr. Lee the date Peerless began paying the correct amount.

Mr. Lee explained that Peerless began paying the correct amount in August 2013.

Upon a motion by Board member Ramos and seconded by Board member Chivaro, the Board unanimously adopted the staff recommendation to partially allow the claim in the amount of \$97,107.34.

Consent Agenda Appearance

Item 293, G619088

Claim of Victor Vargas

Victor and Roben Vargas, owners of Quality Towing, addressed the Board. Kim Hunter, Chief Counsel, was in attendance on behalf of the California Highway Patrol.

Nicholas Wagner, Manager, Government Claims Program, stated that Victor Vargas requested leave to present a late claim for compensation from the California Highway Patrol (CHP) in the amount of \$12,034,000.00 due to loss of business and emotional distress. Mr. Wagner explained 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. Additionally, Government Claims Program staff also recommended that the Board reject the claim because it raised complex matters of fact and law not typically undertaken by the Board.

Ms. Vargas explained that the claim was filed late because she and Mr. Vargas applied the discovery of harm rule. She stated that Mr. Vargas was denied an application to tow for the CHP in 1999 and again in 2012 due to his criminal history. In February 2014, Ms. Vargas filed a petition for underground regulations because CHP was not abiding by Penal Code section 1203.4, which stated that once the criminal background is dismissed, the person is relieved from all penalties. She stated that CHP informed her that they did not recognize Penal Code section 1203.4 for their Rotation Tow Program. On April 29, 2014, the Vargas's received a letter from the CHP Commissioner informing them that they would remove the Penal Code section 1203.4 from their Highway Patrol Manual and from their Rotation Tow Program and would not issue, use, enforce, or attempt to enforce an illegal underground regulation. She stated that when the CHP denied Mr. Vargas' application and kicked him off the Rotation Tow Program, it was done illegally because the Penal Code section 1203.4 was an illegal regulation. By doing so, Mr. Vargas lost all contracts in Salinas as well as four other counties. She explained that 90 percent of their towing income came from law enforcement tows and the Rotation Tow Program. Once Mr. Vargas was removed from their rotation program, he lost homes and business. Ms. Vargas stated that the statute of limitations should not apply until a person finds out that the harm occurred. She explained that they filed within six months of knowing that Penal Code section 1203.4 was an underground regulation and their claim should be accepted.

Ms. Hunter stated that CHP joined the Attorney General's Office recommendation to deny the late claim. She commented that the discovery harm rule was not the proper citation; however, if it was used, the discovery of harm rule occurred in 1999 when Mr. Vargas was first denied pursuant to Penal Code section 1203.4. There were denials of applications from 2011-2013 and most recently in 2014-2015 which were all represented in 2011 and 2013. CHP did not believe that the claims met the exceptions articulated in Government Code section 911.6. She stated CHP also requested that the Board reject the underlying claim that related to the denial of their application in 2014-2015. Lastly, she stated that CHP remedied the Penal Code section 1203.4 so called "underground regulations" and updated their policy in July 2014.

Chairperson Batjer asked Ms. Hunter how the regulation was updated and whether she believed it was an underground regulation.

Ms. Hunter stated that CHP updated their internal policy and their review procedures. She stated that the regulation was remedied and she did not believe it was an underground regulation. She

further stated that Penal Code section 1203.4 was not applied as an underground regulation for the applications that were denied; they were denied for other reasons.

Upon a motion by Board member Chivaro and seconded by Board member Ramos, the Board unanimously adopted the staff recommendation to deny the late application for failure to meet the criteria required in Government Code section 911.6 and rejected the claim.

Item 7. Applications for Discharge From Accountability for Collection

Nicholas Wagner, Government Claims Program Manager, explained that there were 15 requests by state agencies (applicants) to discharge from accountability for collection of debt totaling \$153,247,116.73. Mr. Wager stated that Government Claims Program staff requested the Board approve the applications for discharge from accountability.

Upon a motion by Board member Ramos and seconded by Board member Chivaro, the Board unanimously adopted the staff recommendation to approve the 15 requests by state agencies.

Item 8. Claim of Rodney Gaines (Pen. Code, § 4900 et seq.)

Rodney Gaines was not in attendance. Mr. Gaines is currently incarcerated in state prison. Sally Espinoza, Deputy Attorney General, attended on behalf of the California Attorney General's Office.

Wayne Strumpfer, VCGCB Chief Counsel, explained that Mr. Gaines was originally charged with sale, transportation, or offer to sell a controlled substance and one misdemeanor offense of possession of a smoking device. During the trial, the court added a third count of felony possession for sale of a cocaine base and a felony charge of simple possession of a controlled substance. The jury found Mr. Gaines guilty of the felony count of simple possession of a controlled substance and misdemeanor possession of a smoking device. The federal appeals court found that Mr. Gaines was erroneously charged and convicted of the counts that the court added during the trial and released Mr. Gaines. The District Attorney decided not to retry the case. Mr. Gaines sought compensation in the amount of \$226,000, which represented \$100 a day for 2,260 days of incarceration in prison.

Mr. Strumpfer stated that the Hearing Officer made two points in the proposed decision. First Mr. Gaines argued that based on the federal court's decision, he was never properly charged or convicted of a crime. If that were true, then Mr. Gaines would not qualify for relief and the Board would not have jurisdiction on the claim. Second, if there was a conviction is there evidence of simple possession of cocaine by Mr. Gaines. The Hearing Officer found that there was based on the rock cocaine found in Mr. Gaines' sock and by defendant's admission in court that there was a pipe and rock found in his sock. Mr. Strumpfer stated that the Hearing Officer recommended that the Board deny the claim.

Upon a motion by Board member Ramos and seconded by Board member Chivaro, the Board unanimously adopted the hearing officer's recommendation to deny the claim.

Item 9. Claim of Richard Hendrix (Pen. Code, § 4900 et seq.)

Richard Hendrix was in attendance. Claimant's attorney, James Lynch, was not in attendance. Larenda Delaini, Deputy Attorney General, attended on behalf of the Attorney General's Office.

Mr. Hendrix asked the Board to continue his claim because he sent his attorney a text message and his attorney responded by asking the date of the meeting because he was overseas and did not receive notification of the Board meeting date.

Wayne Strumpfer, VCGCB Chief Counsel, clarified that staff served Mr. Lynch. He explained that staff had several conversations with Mr. Lynch and were aware that he would be out of the country

for a period of time. However, staff was informed that Mr. Lynch would return in October, which was the reason that Mr. Hendrix's claim was continued from September to the October Board meeting. Nevertheless, Mr. Strumpfer stated that he had no issue with continuing the claim to a later date.

Chairperson Batjer asked Mr. Hendrix the date that he exchanged text messages with his attorney or the last time he spoke with him.

Mr. Hendrix stated that he sent Mr. Lynch a text message two days ago, but he did not receive a response from him. He stated that on September 23, 2014, he received a text message from Mr. Lynch informing him that he was out of the country and requesting information regarding the Board meeting date.

Mr. Strumpfer commented that there was some question as to whether Mr. Lynch represents Mr. Hendrix, which Ms. Delaini could further elaborate.

Ms. Delaini stated that the hearing officer emailed both she and Mr. Lynch on a number of occasions regarding Mr. Hendrix's case and Mr. Lynch responded several times indicating that he did not represent Mr. Hendrix on the matter. Instead, Mr. Lynch stated that he represented Mr. Hendrix regarding an incident that occurred at the same apartment complex but possibly regarding a domestic violence situation. She added that Mr. Lynch did a contested evidentiary hearing and he appeared. She commented that she was surprised by Mr. Lynch's response to Mr. Reinmiller that he did not represent Mr. Hendrix in the Penal Code section 4900 matter.

Mr. Strumpfer stated that as far as staff was aware, Mr. Lynch represented Mr. Hendrix at the hearing and there was no affirmative evidence that he was not Mr. Hendrix's attorney.

Chairperson Batjer stated that because there appeared to be some confusion, the claim should be continued one month so that Mr. Lynch could prepare for the meeting and appear before the Board if he wished to do so.

Mr. Strumpfer stated that he was concerned about continuing the claim to the November Board meeting because only two Board members would be present at that meeting. He recommended that all members should be in attendance in the event of a tie vote.

Chairperson Batjer stated that she wanted justice to prevail and would be willing to continue the claim until the Board had a full quorum.

Upon a motion by Board member Ramos and seconded by Board member Chivaro, the Board unanimously agreed to continue the claim to the December 11, 2014, meeting.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 10:58 a.m.

Proposal to Approve Trauma Recovery Center Grant Awards

Dr. Bitia Ghaforri, Professor, CSU Long Beach and Director of the CSU Long Beach Trauma Recover Center, and Amy Turk, Chief Program Manager, Downtown Women's Center, were in attendance.

Robin Foemmel Bie, CalVCP Manager, explained that in 2013 law was enacted stipulating that the Victim Compensation and Government Claims Board (Board) administer a program to evaluate applications and award grants to trauma recovery centers (TRC) in California. The TRCs shall provide services to underserved victims of crime. Upon appropriation by the Legislature, the Board

shall award grants totaling up to two million dollars (\$2,000,000) per year. This was the second year that the Board has solicited, received, and scored applications for the grant funds through the Notice of Funds Available process. This year 10 applications were received and scored according to the Scoring Criteria for the TRC Grant applications. Based on the results of the scoring process, staff recommended that the Board approve Downtown Women's Center in the amount of \$669,597.00 and California State University at Long Beach in the amount of \$1,330,403.00.

Ms. Turk thanked the Board for the new funding. She stated that as a new TRC, she was pleased to see that large concentrations of homeless individuals, individuals with behavioral health concerns, and victims of crime would be able to get the help they need through her organization.

Dr. Ghaforri stated that CSU Long Beach was approved for funding last year and was pleased to receive continued funding. CSU Long Beach has helped over 150 individuals in the five months that they have been open.

Chairperson Batjer and Board member Ramos expressed their desire to visit the centers in the future.

Upon a motion by Board member Ramos and seconded by Board member Chivaro, the Board unanimously approved the TRC awards for Downtown Women's Center in the amount of \$669,597.00 and California State University at Long Beach in the amount of \$1,330,403.00.

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 at 11:01 a.m. to deliberate on proposed decision numbers 1-80.

Open Session

The Board reconvened into Open Session pursuant to Government Code section 11126 (c)(3) at 11:13 a.m. Upon a motion by Board member Ramos and seconded by Board member Chivaro, the Board unanimously adopted the hearing officer's recommendations for proposed decision numbers 1-80.

Adjournment

The Board meeting adjourned at 11:14 a.m.