

California Victim Compensation and Government Claims Board
Open Meeting Minutes
March 17, 2016, 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, March 17, 2016, at 10:05 a.m. Also present was member Richard Chivaro, Deputy State Controller and Chief Counsel, acting for and in the absence of Betty T. Yee, Controller. Member Michael Ramos, San Bernardino County District Attorney, was absent.

Executive Officer Julie Nauman and Chief Counsel Wayne Strumpfer were in attendance. Tisha Heard, Board Liaison, recorded the meeting.

The Board meeting commenced with the Pledge of Allegiance.

Item 1. Approval of Minutes of the February 18, 2016, Board Meeting

The Board approved the minutes of the February 18, 2016, meeting.

Item 2. Public Comment

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

Item 3. Executive Officer Statement

Every year in April, the Office for Victims of Crime designates the second week in April National Crime Victims' Rights Week, which will be observed on April 10-16. The annual observance recognizes crime victims, survivors, supporters, and advocates throughout the United States. It also provides CalVCP with an opportunity to share with the public the benefits offered and the strides California made to protect victim's rights.

CalVCP recognizes April as California Crime Victims' Rights Month to raise awareness of victims' needs and to honor and advocate on their behalf. Executive Officer Nauman reported that a host of activities were planned in April to raise awareness about CalVCP, including the release of an historical video series on victim services, numerous outreach activities, speaking engagements, and a statewide denim collection drive.

Denim Day

April is Sexual Assault Awareness Month and Denim Day is April 27. CalVCP will help raise awareness of sexual violence with a Denim Day clothing drive. Ms. Nauman reported that CalVCP would provide resource kits to its county partners so they can conduct their own denim drives. Collected items will be distributed in each county to help families in need.

Video Series on Victim Services

CalVCP will release a three-part video series detailing the past, present, and future of victim services in California. The first installment will be released on March 30 to kick off Crime Victims' Rights Month. The other installments will be released throughout the month of April.

March on the Capitol

Crime Victims United of California will kick off Victims' Rights Week by sponsoring their annual March on the Capitol on Thursday, April 7. CalVCP staff will march to the West steps of the State Capitol to participate in the victim's rights rally. Executive Officer Nauman reported staff would host a booth and provide informational materials about CalVCP and the benefits it provides.

CalVCP and UC Davis Police Department Cosponsor Conference

CalVCP will cosponsor the two-day "Leave No Victim Behind" conference with the UC Davis Police Department on April 11-12, 2016, at the UC Davis Conference Center. The theme addresses best

practices on building partnerships between law enforcement and the communities they serve, connecting victims with needed resources, and lifting barriers encountered by underserved victims. California Highway Patrol Commissioner Joseph A. Farrow will be the keynote speaker.

CalVCP Press Releases

Executive Officer Nauman reported that a number of press releases were underway to educate the media about CalVCP. An Op-Ed on victim services would also be released soon.

Ms. Nauman gave a PowerPoint presentation highlighting the VCGCB's accomplishments during calendar year 2015.

2015 Accomplishments Report

FI\$Cal Project

The VCGCB implemented the new statewide Financial Information System for California (FI\$Cal). FI\$Cal is now the system of record for the budgeting, accounting, contracts, and procurement activities.

Small Business Procurement

The State requires every department to direct 25 percent of expenditures on Small Business Enterprises. In 2015, the VCGCB surpassed the State requirement and spent a total of 62.3 percent on Small Business Enterprises.

CalVCP Applications

In 2015, staff processed over 50,000 applications and approved payments totaling over \$51 million.

Mental Health Provider Training

CalVCP implemented monthly Mental Health Provider Forums through WebEX with participation from nearly 400 health providers. Topics included adherence to the Mental Health Guidelines, billing procedures, and instructions on required forms completion. The forums resulted in more accurate and completed applications, allowing CalVCP to speed up claims processing.

Advocate Training

Advocates are CalVCPs direct link to victims because they assist them in completing compensation applications. CalVCP enhanced advocate communication by hosting 12 monthly webinar trainings for victim advocates. Topics included the advocate's role, direct and derivative victim definitions, reimbursement and recovery sources, the application process, and statutes governing CalVCP.

CalVCP Received OVC Compensation Initiative Grant

In 2014, CalVCP was awarded grants by the Office for Victims of Crime (OVC). In 2015, CalVCP successfully completed deliverables for the first grant, the Victim Compensation Program Initiative Grant. CalVCP hosted two regional conferences, one at UC Davis and the other at UCLA, titled "Strategic Collaborations for Reaching Underserved Victims of Crime." The conferences addressed strategies to close gaps in victim services and how to work collaboratively to reach more victims. Over 450 attendees participated.

CalVCP published the Baseline Data, Needs Assessment, and Gap Analysis reports. The first two reports provide information on who is receiving compensation and identifies the barriers to accessing services. The third report synthesizes the information in those two reports and identifies effective strategies to close the gaps in services. Additionally, as a result of the findings, CalVCP translated the CalVCP application and related letters and outreach publications into 13 of the most commonly spoken languages in California. Those publications are now available on the website.

CalVCP applied for and received \$230,000 from OVC for year three of the Crime Victim Compensation Program Initiative Grant. The money was awarded to complete the evaluation phase of the grant, which will measure the success of the implemented strategies to reach the underserved, close gaps in access, and remove barriers to victim services.

CalVCP Received OVC Building Technology Grant

In 2014, CalVCP received a second OVC grant, the Building Technology Grant. CalVCP made significant progress implementing it in 2015, which included seeking stakeholder input regarding their need for an online access system. CalVCP also assessed the As-Is state of the application process, which is necessary to complete the feasibility study report.

Lending Support to San Bernardino County

In response to the tragic event in San Bernardino in December of last year, CalVCP provided immediate support to the county, where sadly, dozens were injured and 14 individuals were killed. Executive Officer Nauman reported that CalVCP is now working hand in hand with its partners to process compensation applications as quickly as possible and pay approved bills. Currently, CalVCP has 159 approved applications and 13 of the 14 funeral and burial claims have been received. Payments are being made for mental health treatment, medical costs, and income loss. Additionally, CalVCP is preparing an application for the Office of Victims of Crime Antiterrorism and Emergency Assistance Program grant to cover costs for the victims who fall outside of the compensation program.

Legal and Appeals Division Update

The Appeals section completed over 1,660 appeals on denied applications; inventory decreased by 39 percent since the end of 2014; and currently 85 percent of the appeals inventory is less than six months old.

Legislation

The Board assisted Assembly Member Rob Bonta in the Victim Compensation Program Modernization bill, AB 1140, which was signed by the Governor and became effective January 1, 2016. The bill modernizes program statutes, improves access to benefits, and eliminates some eligibility restrictions. It allows compensation for online harassment or for a minor who sustains emotional injury due to the sharing of sexual images. It prohibits denial in sexual assault and domestic violence cases solely because the victim delayed filing, or did not file, a police report or because the victim failed to cooperate with law enforcement at the scene of the crime. The bill also prohibits the denial of compensation to a victim solely for the commission of a misdemeanor. CalVCP staff is training advocates and its partners at the Office of Emergency Services on the changes in the law so more victims are aware that there is help available for them.

Chairperson Batjer complimented staff for their accomplishments in serving the people of the State of California. Ms. Batjer also thanked staff for their tremendous work concerning the tragedy in San Bernardino.

Item 4. Legislative Update

Wayne Strumpfer, VCGCB Chief Counsel and Legislative Director, reported bills impacting the VCGCB.

AB 2160 (Bonta) — Victim Compensation Program

The bill would modernize statutes governing the Victim Compensation Program by expanding benefits in order to meet the emerging needs of California's victim community. Changes include authorizing the compensation of support loss for domestic violence victims, reimbursement of

transportation and child care expenses, and increasing the limits for reimbursement of relocation, residential security, and crime-scene cleanup expenses. Mr. Strumpfer reported the bill was referred to the Assembly Public Safety Committee.

SB 1186 (Lara) and AB 1701 (Committee on Appropriations) – Government Claims Bills

The VCGCB's two Government Claims Bills of 2016 will appropriate the funds to pay claims approved by the Board, including the wrongful conviction claims. Mr. Strumpfer reported both bills were referred to the Appropriations Committee.

AB 1563 (Rodriguez) — Victim Compensation Program Appeals

The bill would require the VCGCB to make a decision on a Victim Compensation Program application within six months of the date it was received, or to notify the applicant in writing that there was insufficient information to make a decision. Mr. Strumpfer reported that approximately 10 percent of appeals were not acted on in six months and staff has already contacted those claimants. He reported the bill passed the Assembly Public Safety Committee and was referred to the Assembly Appropriations Committee.

AB 1754 (Waldron) — Elder and Adult Dependent Financial Abuse Pilot Program

The bill would create a three-year pilot program in the San Diego County Elder or Dependent Adult Financial Abuse Crime Victim Compensation Pilot Program. The VCGCB would be authorized to provide compensation to victims of elder or dependent adult financial abuse if the crime occurred in San Diego County. The bill originally limited compensation to \$5,000 per person and an aggregate total of \$1,000,000 for financial counseling, mental health counseling, and other supportive services but was amended to \$3,000 maximum per person. The pilot program would end on January 1, 2019. Mr. Strumpfer reported the bill passed the Assembly Public Safety Committee and was referred to the Assembly Committee on Aging and Long-Term Care.

AB 1802 (Chavez) — VCGCB Board Membership

The bill would add two Governor-appointed positions to the membership of the Board, which currently has three members. The fourth and fifth members would include a victims' rights advocate, and a physician, psychiatrist, or psychologist with expertise in treating or providing services to crime victims.

SB 893 (Nguyen) — San Bernardino Victim Tuition Waiver

The bill would require each community college district in California and CSU campus to waive tuition and fees for the dependents of victims killed in the San Bernardino terrorist attack last December. If the UC Regents agree, this would also apply to the UC system. The bill would require the VCGCB to identify and notify eligible individuals for these waivers. Mr. Strumpfer reported the bill was referred to the Senate Education Committee.

Item 5. Consent Agenda (Nos. 1-333)

Nicholas Wagner, Government Claims Program Manager, requested the Board approve consent agenda item numbers 1-333, with the exception of item numbers 53, 61, and 65, which were continued, and items number 48, 67, 307, and 312, which was removed to allow the claimants an opportunity to address the Board.

The Board approved the consent agenda with the exception of item numbers 48, 53, 61, 65, 67, 307, and 312.

Consent Agenda Item Number 48
Claim of Fernando Serna - 617162

Fernando Serna was in attendance. Mr. Serna submitted documentation to the Board in support of his claim. Peter Vu attended on behalf of the California Department of Transportation. Christine Allison and Kim Herlache were in attendance on behalf of the California Department of Human Resources.

Nicholas Wagner, Government Claims Program Manager, explained that Fernando Serna requested compensation from the California Department of Transportation in the amount of \$20,928 for a monthly pay differential. Mr. Wagner stated that Government Claims Program staff recommended the Board reject the claim; however, he explained that the Board could exercise its equitable authority and allow payment for the remaining compensation owed to Mr. Serna, which totaled \$20,928.

Chairperson Batjer explained that the claim came before the Board last month and was thoroughly discussed at that time; however, the Board had concerns about the calculation of the pay differential. Accordingly, the Board referred the claim back to staff and directed staff to recalculate the dollar amount owed to Mr. Serna.

The Board opposed the staff recommendation and instead exercised its equitable authority and allowed the remaining compensation owed to Mr. Serna in the amount of \$20,928.

Consent Agenda Item Number 67
Claim of Walberg, Inc. - 627578

Claimants Bud Walberg, John Thornton, and Ben Diduca were in attendance. Adam Donaton attended on behalf of the Department of Forestry and Fire Protection.

Nicholas Wagner, Government Claims Program Manager, explained that Walberg, Inc. requested compensation from the Department of Forestry and Fire Protection (CalFIRE) in an amount exceeding \$150,000 for property damage and loss of use. Mr. Wagner stated that Government Claims Program staff recommended the Board reject the claim because the State was legally immune pursuant to Government Code sections 850, 850.2, and 850.4.

Mr. Walberg explained that the claim was related to the Lumpkin Fire in Oroville that started on September 11, 2015. During the incident, an expensive bulldozer belonging to Walberg, Inc. was destroyed by a backfire. Mr. Walberg explained that John Thornton has operated equipment for nearly 50 years. He stated Mr. Thornton could explain the events that occurred on the day of the incident because he was present on the day of the fire and was directed to take the equipment into the canyon.

Mr. Thornton explained that he was instructed by CalFIRE dozer bosses to go into a rough area, which, in hindsight, he should not have gone into that area. He explained that he did not want to continue in the dark, but CalFIRE pushed him to continue. As a result, his Caterpillar got hung up on rocks and they could not get it out. He explained that while waiting for the winch caterpillar to arrive to extract the equipment, CalFIRE lit the backfire and the fire burned their dozer.

Mr. Walberg explained that the incident took place over a period of two days. They went into the canyon the evening of the first day and the morning of the second day, they tried to extract the equipment. With CalFIRE present, dozer bosses onsite, and with the help of a CalFIRE helicopter flying overhead, the backfire was lit in their vicinity. He explained that the main fire was miles away

from the vicinity. When the fire was lit, they were ordered to evacuate. He remarked that the State's immunity was qualified. Based on the facts of the claim, the State dozer boss acted intentionally placing them in harm's way with reckless disregard for their life and safety. As a result, Walberg, Inc. suffered material damage in the incident. He stated that the CalFIRE handbook dictates the safety measures and procedures employees were supposed follow.

Mr. Donaton explained that, pursuant to Government Code section 850.4, neither a public entity nor a public employee acting in the scope of his employment is liable for any injury caused from fighting fires. He explained that the injury and alleged damages stemmed from September 13-14 while CalFIRE was fighting the Lumpkin Fire. He stated that even if CalFIRE acted negligently as the claimant alleged, CalFIRE had absolute immunity as intended by the Legislature. Further, he stated that standard emergency equipment rental agreement clearly stated that it was the responsibility of the vendor to provide their own insurance as they deem necessary. Lastly, he remarked that according to the information in the claim file, Walberg, Inc. had insurance but had not made a claim.

Chairperson Batjer asked whether Walberg, Inc. had insurance to cover the damage.

Mr. Diduca explained that the claim was rejected because there was an issue regarding whether the policy was in effect at the time of the incident.

Chairperson Batjer asked whether the dozer was included on their policy.

Mr. Diduca stated the dozer was purchased two months prior to the incident. He explained that whenever equipment was purchased, he typically made sure that it is insured before leaving the premises. He explained that it was an oversight that it was not insured.

Mr. Walberg stated there was qualified immunity for discretionary acts. He explained that the acts taken by the State on those two days involving those dozers were ministerial. He explained that the handbook was very clear regarding the responsibilities of CalFIRE dozer bosses when sending equipment into those fire zones. Based on the statement of witnesses and the dozer bosses, the ministerial act of cutting a break became a horrible disaster. There was a strong possibility that governmental immunity would not apply under the facts and circumstances.

Wayne Strumpfer, VCGCB Chief Counsel, explained that the argument concerning the issues raised were best suited for a court of law. He explained that if the Board rejected the claim, it would allow the parties to go to superior court where they could introduce witnesses, testimony, and documents.

The Board adopted the staff recommendation and rejected the claim because the State was legally immune pursuant to Government Code sections 850, 850.2, and 850.4.

Consent Agenda Item Number 307
Claim of Pervaiz A. Chaudhry, MD - 628140

Neither Dr. Chaudhry nor his representative attended. John Feser, Jr. was in attendance on behalf of the Office of the Attorney General.

Nicholas Wagner, Government Claims Program Manager, explained that Dr. Pervaiz Chaudhry requested leave to present a late claim for compensation from the California Department of Public Health in an amount exceeding \$25,000 for economic harm and emotional distress. Mr. Wagner stated that Government Claims Program staff recommended the Board deny the late application for failure to meet the criteria required by Government Code section 911.6 and reject the claim.

The Board adopted the staff recommendation and denied the late application for failure to meet the criteria required by Government Code section 911.6 and rejected the claim.

Consent Agenda Item Number 312
Claim of David R. Reyes - 628371

Donna Reyes, claimant's wife, appeared and addressed the Board. Jonna Williams attended on behalf of the Department of Transportation.

Nicholas Wagner, Government Claims Program Manager, explained that David R. Reyes requested leave to present a late claim for compensation from the Department of Transportation (Caltrans) in the amount of \$6,500 for damage to his vehicle. Mr. Wagner stated that Government Claims Program staff recommended the Board deny the late application for failure to meet the criteria required by Government Code section 911.6 and reject the claim.

Mrs. Reyes explained that on the day of the incident, a CalTrans vehicle unsafely reversed their vehicle into her husband's personal vehicle. She stated that she and her husband turned in the police report, traffic collision report, copies of receipts, and an incident report. She explained that they filed late because they were waiting for CalTrans to contact them and were unaware that there was a timeframe. She explained that they also attempted to contact ORIM; however, they did not return their telephone calls or respond to their emails. Lastly, she requested the Board require CalTrans to pay for the damages.

Chairperson Batjer asked whether their vehicle was properly insured.

Mrs. Reyes confirmed that their vehicle was insured.

Ms. Williams explained that the claim involved complicated matters of law and fact best decided by the Superior Court. She recommended the Board deny the late application.

The Board adopted the staff recommendation and denied the late application for failure to meet the criteria required by Government Code section 911.6 and rejected the claim.

Item 6. Request for Delegation of Authority by the California Highway Patrol

Nicholas Wagner, Government Claims Program Manager, explained that the California Highway Patrol requested the Board grant it delegated authority to settle and pay or reject claims that do not exceed \$1,000 each during the period of March 20, 2016, through March 15, 2019. Mr. Wagner stated CHP successfully administered its delegated authority to settle and pay valid claims of up to \$1,000 each since 2005 and Board staff recommended their request be granted.

The Board approved the request by CHP.

Item 7. Applications for Discharge From Accountability for Collection

Nicholas Wagner, Government Claims Program Manager, explained that the list provided to the Board contained 101 requests by State agencies for discharge from accountability for collection of debt totaling \$629,925,238.97. According to the Office of the State Controller and, if applicable, the Office of the Attorney General, the applicants on let list met the criteria for discharge from further accountability for collection and the criteria for authorization to close the accounts.

The Board approved the requests by the State agencies.

Item 8. Bid Protest of AdaptConn, Inc.

The bid protest of AdaptConn, Inc. was removed from the agenda because the protestant withdrew the protest.

Item 9. Claim of Marco Milla (Pen. Code, § 4900 et seq.)

Neither the claimant nor his representative were in attendance. Additionally, there was no representation on behalf of the Attorney General's Office.

Chief Counsel Wayne Strumpfer explained that in 2002, Mr. Milla was conflicted of murder and five counts of attempted murder after it was alleged that he shot at a passing vehicle during a gang-related shooting.

In 2014, a reliable confidential informant who assisted the federal department of Homeland Security on an unrelated matter testified at a habeas corpus hearing that he was present at the shooting, another gang member was the shooter, and Mr. Milla was not even present at the scene. The Los Angeles Superior Court granted Mr. Milla's writ of habeas corpus. Earlier this year, the Superior Court made a finding of factual innocence of Mr. Milla. Pursuant to Penal Code section 1485.55, the Board will approve the claim and recommend the legislature pay \$654,500, which represents \$140 a day for a total of 4,675 days of incarceration.

The Board approved the claim and recommended the legislature pay claimant \$654,500 for 4,675 days of incarceration.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 10:49 a.m.

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 10:49 a.m. to deliberate on proposed decision numbers 1-50.

Open Session

The Board reconvened into Open Session pursuant to Government Code section 11126 (c)(3) at 10:54 a.m. The Board adopted the hearing officer's recommendations for proposed decision numbers 1-50.

Adjournment

The Board meeting adjourned at 10:55 a.m.