

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

The California Victim Compensation and Government Claims Board (Board) convened its meeting in open session at the call of Leslie Lopez, Deputy Secretary and General Counsel, State and Consumer Services Agency, at 400 R Street, Sacramento, California, on Thursday, January 17, 2013, at 10:07 a.m. Also present was Board member Richard Chivaro, Chief Counsel, acting for and in the absence of John Chiang, Controller. Board member Michael Ramos, San Bernardino County District Attorney, was located in San Bernardino County and participated in the meeting via teleconference.

Board staff present included Julie Nauman, Executive Officer; Kathy Cruz, 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 December 13, 2012, Board Meeting

Chairperson Lopez and Board member Chivaro approved the minutes of the December 13, 2012, Board meeting.

Item 2. Public Comment

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

Item 3. Executive Officer's Statement

The Executive Officer gave a PowerPoint presentation highlighting the VCGCB's accomplishments during calendar year 2012. Executive Officer Nauman explained that the 2012 Accomplishments were aligned with the VCGCB's Strategic Plan that sets forth the VCGCB's Vision, Mission, and Strategic Goals.

The VCGCB's Strategic Plan has five Strategic Goals that serve as measurable benchmarks for further improving business, programs, processes, and outcomes and include (1) Compensation to Victims – Improve the quality and efficiency of compensation to crime victims; (2) Restitution – Establish and maintain a stable Restitution Fund to create a \$30 million reserve in order to provide continuous Program services; (3) Government Claims – Improve the Government Claims Program effectiveness and efficiency; (4) Information Technology – To provide consistent delivery of quality IT services and technical innovation to the Board; and (5) Workplace – Promote a positive and supportive workplace environment and culture.

2012 Accomplishments Report

Victim Compensation Program (CalVCP)

During calendar year 2012, CalVCP provided nearly \$68 million in victim assistance and processed 56,171 applications.

CalVCP Processing Division

A new approach was initiated that fosters a culture of "One VCP." Weekly workload management meetings have been initiated for headquarters and Joint Powers managers to jointly review weekly inventory and production statistics so that the CalVCP is working as one victim compensation program.

County Liaison and Support Section (CLASS)

CLASS implemented the Balanced Scorecard for all Joint Powers and headquarters offices. The scorecard is a management tool that provides measurement of the production and processing times for each site. The scorecard is used to document expectations and actual performances for each office.

Customer Service Section (CSS)

CSS had over 98,979 contacts; answered 84,546 calls; returned 3,205 voicemail inquiries; and responded to 8,761 emails. CSS' average wait time was approximately 2.5 minutes.

Mental Health Section (MHS)

MHS focused on improving provider access by providing more extensive training to approximately 10 mental health provider agencies. MHS processed 3,158 additional treatment plans and 2,311 criteria claims.

Office of Audits and Investigations (OAI)

OAI reviewed over 70 alleged fraud cases. Through their efforts, money has been returned to the Restitution Fund in a number of those cases.

Workplace Environment

Human Resources Section (HRS)

- HR conducted 78 recruitments and 108 appointments. The recruitments and appointments do not reflect new hires; rather, they are a reflection of attrition as a result of a number of staff retiring thereby creating an opportunity to replace those individuals with new talent.

Wellness Events

- Quarterly blood drives
- Seminars on privacy, safety, and retirement, among others
- Onsite flu shot clinic

California State Employees Charitable Campaign (CSECC)

- Annual cake auction benefitting CSECC raised 9% more this year than last year.
- Annual chili cook off benefitting CSECC raised 51% more than last year.
- The VCGCB raised 34 percent more for CSECC than in the prior year.

Legal and Appeals Office (LAO)

LAO conducted 612 oral hearings on appeal; submitted 1,658 proposed decisions to the Board; conducted 1,149 hearings on the written record, an increase of 3 percent; and received 3,343 appeals. The LAO processed 10 percent more appeal claims in 2012 than in the previous year.

CaRES Modification (CaRES Mod)

The completion of CaRES Mod Increment One, the cutover into the production environment, was a huge success. The three-phased project will resolve the most severe database architectural defects in CaRES.

Government Claims Program (GCP)

GCP received 7,096 claims; decreased their average processing time to 33 days from 55 days in the prior year; and expanded the delegated authority from one year to three years for state agencies that process their own claims that total \$1,000 or less.

Victim Order Restitution Services

Staff provided 44,848 restitution checks to victims; processed 210,983 victim restitution files; and paid \$4,552,342 in victim restitution checks.

Court Ordered Debt Program

Staff collected \$9.264 million from offenders, a 376 percent increase in collections. County collections were \$59 million, with over 3,000 payments processed.

Revenue and Recovery Section (RRS)

RRS created a scorecard for the CRCs (Criminal Restitution Compacts) that resulted in an increase of over 28 percent in impositions that CRCs were able to secure through the local court systems.

National Training Conference

Executive Officer Nauman, Board member of the National Association of Crime Victim Compensation Boards, attended a joint meeting with the National Association of VOCA Administrators last fall in Atlanta.

Legislation

SB1299, the bill that took effect January 1, 2013, increased the filing period from one year to three years for victims of violent crime to apply for financial assistance for crime-related expenses. The bill will enable more victims the opportunity to seek assistance from the CalVCP.

SB1371, the bill that took effect January 1, 2013, provided that restitution fines and orders are not eligible to be converted into prison time served in lieu of the fine.

Outreach

The State Information Officers Council honored CalVCP with gold awards for the *Cal VCP Connection* blog, Highlighting Expert Perspectives on Crime Victims Issues, and for the VCGCBs social media efforts. The VCGCB is proud to be a leader in the State of California and compensation programs around the country for its use of social media including Facebook, Twitter and Tumblr.

Observances for Victims and Survivors

- CalVCP and other victim services partnered in recognizing April as California Crime Victims' Rights Month. CalVCP hosted its Third Annual Victims' Rights Rally at CalVCP headquarters in Sacramento. Following the Rally, CalVCP participated in the March to the State Capitol in support of crime victims' rights and participated in other victims' rights events and observances.
- In observance of Domestic Violence Awareness Month in October, CalVCP collaborated with the Partnership to End Domestic Violence for the annual Suited for Success Clothing Drive. Donations of new and gently used men's and women's professional clothing and accessories suitable for job interviews were accepted. Two thousand professional items were collected, tripling the previous year's collections. The donated items were given to WEAVE, Inc., My Sister's House, and the Domestic Violence Intervention Center.

Item 4. Contract Report

Executive Officer Nauman explained that Increment One of the CaRES Modification Project was completed; however, additional work has been identified that needs to be completed. Ms. Nauman requested that the Board allow the VCGCB to exercise the contract amendment envisioned in the original execution of the contract and amend it to allow five additional months of work at a cost of 460,000.

Chairperson Lopez and Board member Chivaro approved the amendment to extend the existing contract with Keifer Consulting for an additional five months and increase funding by \$460,000 to accommodate the additional workload. The total amount of the contract, including the amendment, is \$1,499,896.

Item 5. Overview of the Governor's Budget and Status of the Restitution Fund

Executive Officer Nauman reported that the Governor released his budget on January 10th. She stated that it is was opportune time to review the status of the Restitution Fund as it is reflected in the Governor's Budget.

Ms. Nauman gave a PowerPoint presentation on the Restitution Fund Status. The presentation depicted three different scenarios on the impact of the Restitution Fund from prior fiscal year through fiscal year 2015-16 should all, none, or some of the rate reductions be restored, as follows:

- CalVCP Rate Restoration – Potential Impacts to the Restitution Fund - A year ago the Board adopted a number of reductions in the rates paid by the CalVCP for specific types of services provided. If all of the rates were restored, the total potential additional cost would be \$10 million.
- Restitution Fund Balance Projections – Status Quo - Assuming that no changes were made to the current rates, there is a major one-time adjustment in the beginning balance credited to FY 2012-13. The Administration and the Department of Finance conducted a full review of all Special Funds and, as a result, a number of Special Funds were identified as needing adjustments. The adjustment, as well as victim pass through monies, which is money that the VCGCB collects but that remains in the Restitution Fund because it belongs to victims who have direct orders but who cannot be identified, are reflected in the beginning balance and amounts to nearly \$50 million. With the ongoing prior year adjustments of \$4 million a year, the revenues are relatively stable; however, the revenue numbers reflect huge uncertainties resulting from the implementation of realignment. The total expenditures hold steady at approximately \$120 million, which is reflective of the Governor's Budget. The VCGCB has held the line on expenses for a number of years and will continue to exercise its fiscal responsibility to protect the Restitution Fund. The ending balance of just over \$15 million in FY 2015-16 is sufficient; however, the Department of Finance recommended that the VCGCB maintain a prudent reserve of \$30 million. The one-time adjustment allows the CalVCP the ability to set aside that money, not as a Rainy Day Fund; rather, it is a reserve that is a reflection of 2.5 months of operations and payouts without interruption of services to providers or victims. The available funds at the end of each fiscal year show a continued decline. By FY 2013-14, the reserve will be in a dangerous position at \$7.9 million and in FY 2014-15, it will be in a deficit position of nearly \$3.5 million.
- Restitution Fund Balance Projections – Option 1—Restore all 2011 Reductions – If all of the rates are restored, the expenditures would increase steadily and, over time, there would be a steep decline in the Restitution Fund and available funds. By FY 2013-14, it is projected that the Restitution Fund would be in a serious deficit position of \$8 million.
- Restitution Fund Balance Projections – Option 2- Restore Key 2011 Reductions – If the funeral/burial cap was restored, it would amount to an increase of \$4.6 million. If the maximum benefit cap of \$70,000 was restored, it would be an increase of approximately \$2.3 million. With the two limited restorations, in FY 2013-14, it is projected that the Restitution Fund would be almost completely out of money and in FY 2014-15, the Restitution Fund would be in a serious deficit situation at \$14.8 million.

Executive Officer Nauman reported that in late November 2012, she convened the Victim Compensation Program Advisory Committee to review preliminary numbers regarding the Restitution Fund. Ms. Nauman stated that she sought the Committees' advice and counsel in making her recommendation to the Board. The Committee was presented with the set of same scenarios and they unanimously recommended that the Executive Officer and the Board not entertain any increases in rates to providers or victims at this time. The Committee's recommendation was based not only on the PowerPoint presented but also on their own personal understanding of the uncertainties involved in the realignment. The Committee, comprised of representatives from the California District Attorneys Association, Victim Witness and a victim advocates, State Sheriff's Association, and Probation Officers Association, are all key players around the state working with individual counties on the implementation of the realignment. All Committee members felt strongly that the VCGCB needed to take additional time and proceed with caution as the VCGCB worked to ensure that the revenues flowing into the Restitution Fund

continue on at least the current level. Any additional decreases in the revenues would mean significant reductions in available funds at any given fiscal year.

Executive Officer recommended that the Board not restore any reductions from last year. She added that she would continue to monitor the revenues and expenditures as well as the number of claims received.

Board member Ramos applauded Executive Nauman for presenting an excellent report. He stated that he has been a Board member since 2004 and, with limited resources, VCGCB staff has done an amazing job. He added that he fully supported Executive Officer Nauman's thoughts and recommendations regarding the Restitution Fund.

Item 6. Government Claims Program

Consent Agenda (Nos. 1- 296)

Chairperson Lopez and Board member Chivaro adopted the staff recommendations for item numbers 1-296, with the following exceptions: item numbers 71, 73, 75, 80, and 267 were continued and item number 96 was removed to allow the claimant an opportunity to address the Board.

Consent Agenda Appearance

Item 96, G607067

Claim of Regents of the University of California Berkeley

Dr. Elizabeth Dixie-Pierson and Christopher Patti, attorney, appeared and addressed the Board on behalf of the Regents of the University of California Berkeley. Mr. Patti submitted additional documentation to the Board and the Department of Fish and Wildlife. Scott Osborn and Catherine Kennedy appeared on behalf of the Department of Fish and Wildlife.

Nicholas Wagner, Manager, Government Claims Program, explained that the Regents of the University of California Berkeley (UC Berkeley) sought compensation from the California Department of Fish and Game (DFG) (now called the "California Department of Fish and Wildlife") in the amount of \$84,664.56 for unpaid invoices. Mr. Wagner stated that GCP staff recommended that the claim be rejected because the claimant did not fulfill the requirements set forth in the contract.

Mr. Patti stated that it was UCBs position that there were three primary deliverables under the contract. Two of the deliverables were fully delivered and the third deliverable, a report, was delivered in large part with only a few missing elements. The reason that UCB was unable to deliver the report in a timely manner was because some of DFGs required obligations under the contract were not performed; therefore, UCB was required to do it. The additional work performed by UCB, which was not required by them under the contract, caused UCB to deliver a somewhat incomplete final report. He stated that Dr. Pierson would be able to describe what occurred and provide some of the facts related to the contract. Mr. Patti then asked several questions of Dr. Pierson.

Dr. Pierson explained that she received her PhD from UCB. She stated that she is a bat biologist with 30 years' experience with bats and bat research and has worked on multiple contracts in both the private and public sector. She stated that the project was to develop a conservation plan for the bats of California. There were three main deliverables--develop an acoustic library; develop a geographic database at DFG that would be available for researchers for all the occurrences and historical records for bats; and develop a conservation plan. Under the agreement, there was a shared responsibility between UCB and DFG for delivery of the mapping database. She stated that it was her responsibility to gather all records from researchers and DFG was primarily responsible for gathering museum data.

Mr. Patti quoted an excerpt from the contract at Page 2, Scope of Work, as follows: "DFG will assist with the collection and compilation of locality data, and will generate draft and final range maps."

Chairperson Lopez explained that the Board was not set up to act as an adversarial trial type of Board. She stated that it appeared to be UCBs position that the habitat plan was not timely delivered. She asked Mr. Patti whether it was UCBs contention that it was through no fault of their own.

Mr. Patti stated that in May 2010, DFG staff provided the museum data to Dr. Pierson, which was supposed to be complete museum data; however, it was incomplete. As a result, Dr. Pierson and other members of the project had to spend three weeks collecting the missing data. Consequently, it caused them to be taken away from drafting the report. Dr. Pierson was prepared to complete the work on the draft, but she became ill and could not. At that point, Dr. Scott Osborn, Staff Environmental Scientist, DFG, said that he would take over and coordinate completing the remaining pieces of the report. Mr. Patti stated that, as the documents he submitted to the Board proved, UCB relied on Dr. Osborn to complete the report; however, Dr. Osborn did not complete the work. Mr. Patti stated that UCBs view is that of the three deliverables, two were 100 percent delivered and one was 95 percent completed. The bat acoustical records were delivered. He stated that DFGs memo says that it was a first draft, but it does not say that there was any problem with it. The mapping data was also completely delivered. DFG said that UCB did not complete the maps, but under the contract, it was DFGs responsibility. There were gaps in the actual project plan, but it was nearly completed. He further stated that UCB would be willing to complete the work, but they would need the project back in order to do it.

Chairperson Lopez asked Ms. Kennedy whether it was DFWs position that any delay in the deliverables or having product not delivered was through no fault of their own.

Ms. Kennedy explained that it was more complex than Mr. Patti explained. She stated that UCB included a bill from November 2009 that they requested as part of their overall compensation; however, DFWs records indicate that the bill was already paid. She stated that DFWs position is that UCBs claimed amount is in error regarding DFW withholding payment. DFW also disagreed with UCBs contention that they have provided all of the deliverables. In particular, she stated that not only was the plan incomplete, but also in the development of the plan, there were three identified workshops within the scope of vetting the information and one of them was completely not done. There was no workshop, which was within UCBs purview.

Chairperson Lopez explained that the Board was not set up to hear and resolve complicated factual disputes. Ms. Lopez asked Chief Counsel Strumpfer whether there was a mechanism that Board staff could use to try to get the claim resolved.

Mr. Strumpfer stated that if both sides were agreeable to engage in possible negotiation, then GCP staff could work with them.

Upon agreement of UCB and DFW, Chairperson Lopez and Board member Chivaro continued the claim for two months to allow GCP staff sufficient time to assist the parties in reaching a mutually agreeable resolution of the claim.

Item 7. Claim of Dillard Environmental Services

Melissa Roach was in attendance on behalf of Dillard Environmental Services.

Nicholas Wagner, Government Claims Program Manager, explained that Dillard Environmental Services (Dillard) requested payment in the amount of \$50,647.81 from the California Department of Transportation (Caltrans) for hazardous waste removal and disposal services. Mr. Wagner stated

that GCP staff recommended that the claim be allowed in the amount of \$50,647.81 under authority of Government Code section 965 (agency pay).

Chairperson Lopez and Board member Chivaro adopted the staff recommendation to allow the claim.

Item 8. Claim of Associated Health Professionals, Inc.

Nicholas Wagner, Government Claims Program Manager, explained that Associated Health Professionals Inc. (AHP) requested reimbursement in the amount of \$58,582.50 from the California Department of Veteran's Affairs (CalVet) for nursing staff provided to Barstow Community Hospital. Mr. Wagner stated that GCP staff recommended the claim be allowed in the amount of \$58,582.50 under authority of Government Code section 965 (agency pay).

Chairperson Lopez and Board member Chivaro adopted the staff recommendation to allow the claim.

**Item 9. Request for Delegation of Authority Under Government Code Section 935.6
By the California Department of Motor Vehicles**

Nicholas Wagner, Government Claims Program Manager, explained that the California Department of Motor Vehicles (DMV) requested that the Victim Compensation and Government Claims Board (Board) grant it delegated authority to settle and pay or reject claims that do not exceed \$1,000.00 each from February 1, 2013, through January 31, 2016.

Mr. Wagner explained that the current delegation expires January 31, 2013. DMV requested an extension of its delegated authority for a three-year period that will conclude January 31, 2016. He stated that GCP staff recommended that the Board approve the request.

Chairperson Lopez and Board member Chivaro adopted the staff recommendation to approve the request

Item 10. Applications for Discharge From Accountability for Collection

The item was removed from the agenda.

Item 11. Claim of Rick Wilson (Pen. Code, §4900 et seq.)

Rick Wilson, claimant, appeared and addressed the Board. Michael Farrell, Senior Assistant Attorney General, appeared on behalf of the California Department of Justice, Office of the Attorney General.

Wayne Strumpfer, VCGCB Chief Counsel, explained that Mr. Wilson was convicted of a DUI in January 2000. Mr. Wilson's claim for compensation pursuant to Penal Code section 4900 was heard on October 2, 2012. The hearing officer recommended that the Board deny the claim. The hearing officer noted that although there may have been a sentencing error in Mr. Wilson's case, there was no wrongful conviction.

Chairperson Lopez explained to Mr. Wilson that the Board was familiar with his case and reviewed the hearing officer's proposed decision. She stated that she was aware that Mr. Wilson was granted some relief by the Ninth Circuit Court of Appeals; however, the hearing officer found that he did not meet his burden of proof.

Mr. Wilson stated that he was found guilty in violation of Vehicle Code section 23152 which carried a maximum of six months in jail. He stated that he was then found guilty of additional charges for a prior case. He was charged for one enhancement and he pled to that charge; however, six and one-half years later, he was found guilty of the additional charge without any proof and was

sentenced to 25 years to life. Lastly, Mr. Wilson stated that he served 12 years, 3 months, and 3 days in prison.

Chairperson Lopez stated that the hearing officer found, and she agreed, that Penal Code section 4900 addresses wrongful convictions. Ms. Lopez explained that being wrongfully sentenced is different from being wrongfully convicted. Consequently, since Penal Code section 4900 does not address an incorrect sentence, she stated that the Board did not have authority to any grant relief under Penal Code section 4900.

Chairperson Lopez and Board member Chivaro adopted the hearing officer's recommendation to deny the claim.

Item 12. Claim of Joseph Lea (Pen. Code, §4900 et seq.)

Joseph Lea, claimant, was in attendance; however, he did not address the Board. Robert DePillis, claimant's representative, appeared and addressed the Board. Mr. DePillis also submitted additional documentation for the Board's review and consideration. Michael Farrell, Senior Assistant Attorney General, appeared and addressed the Board on behalf of the California Department of Justice, Office of the Attorney General.

Wayne Strumpfer, VCGCB Chief Counsel, explained that in 2000, Mr. Lea was convicted of several counts of sexual assault against a minor. The Ninth Circuit Court of Appeals reversed the district court's ruling based on a jury instructional error. In 2006, Mr. Lea pled no contest to two counts of committing a lewd act against a child under the age of 14. In 2008, the Court of Appeals allowed Mr. Lea to withdraw his plea. In 2009, Mr. Lea's case was dismissed.

Mr. Strumpfer stated that Mr. Lea requested compensation pursuant to Penal Code section 4900 for 3,332 days spent in prison, which amounted to \$333,200 in compensation if his claim was approved. He further stated that the hearing officer recommended that the Board deny Mr. Lea's claim because Mr. Lea did not meet his burden to prove his innocence.

Chairperson Lopez stated that the Board was familiar with the hearing officer's proposed decision and confirmed receipt of the materials submitted on behalf of Mr. Lea. She explained that the hearing officer recommended that the Board deny the claim because Mr. Lea did not meet his burden of proof in order to establish a claim under Penal Code section 4900.

Mr. DePillis stated that the hearing officer's proposed decision assumed that the testimonies of Ms. Pina, mother of the alleged victim, and Ms. Lloyd, next door neighbor to the home where the alleged incident occurred, were true; however, he stated that Ms. Pina's testimony was perjured when she stated that she never coached Isaiah.

Chairperson Lopez asked Mr. DePillis whether Ms. Pina was charged and convicted of perjury.

Mr. DePillis clarified that Ms. Pina only provided false testimony. Mr. DePillis read an excerpt from the Attorney General's file at page 759 wherein he stated that Judge Harrison did not believe that Isaiah was competent to testify at trial and Judge Harrison also said that the testimony was tainted because Isaiah was coached by his mother. Mr. DePillis further stated that the prosecution presented Isaiah as a competent witness; however, he could not identify his perpetrator even though Mr. Lea was in the courtroom.

Chairperson Lopez explained that it is one thing for the district attorney to ultimately decide not to retry Mr. Lea, but Mr. Lea did plead no contest at one point, which is very different from saying that he was innocent and the crime was not committed by him. Ms. Lopez stated that the hearing officer determined that Mr. Lea did not meet his burden of proof establishing that he was innocent.

Ms. Lopez added that she did not hear any testimony provided by Mr. DePillis that caused her to reconsider her thoughts that Mr. Lea did not meet his burden of proof.

Mr. DePillis commented that Mr. Lea's plea was involuntary and, as he understood Penal Code section 4903, the Board may not use any testimony from an involuntary plea. He added that there were many factors involved in the plea that make it involuntary.

Chairperson Lopez explained that she was not focusing on Mr. Lea's plea; rather she was focusing on whether Mr. Lea met his burden of proof under Penal Code section 4900. She stated that she was very convinced that Mr. Lea did not meet his burden of proof that the crime that he was charged with either was not committed at all, or, if committed, was not committed by him.

Mr. DePillis stated that the only witness could not identify him and only one witness, the next door neighbor, who could place Mr. Lea at the scene of the crime.

Chairperson Lopez explained that the Board could not retry the underlying case. She stated that Mr. Lea did not prove by a preponderance of the evidence that he did not commit the crime at all or, if committed, it was not committed by him.

Mr. Farrell stated that Mr. Lea had an opportunity to testify at the Penal Code section 4900 hearing to let the Board assess his credibility; however he chose not to testify.

Chairperson Lopez and Board member Chivaro adopted the staff recommendation to deny the claim.

Mr. DePillis asked the Board whether he could internally request a reconsideration of the Board's decision.

Chief Counsel Strumpfer informed Mr. DePillis that there was no internal reconsideration process; however, he stated that Mr. Lea could file a writ in Superior Court.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 11:04 a.m.

Closed Session

Pursuant to Government Code section 11126(c)(3), Chairperson Lopez and Board member Chivaro adjourned into Closed Session with the Board's Executive Officer, Chief Deputy Executive Officer, and Chief Counsel at 11:04 a.m. to deliberate on the proposed decisions numbers 1-94.

Open Session

The Board reconvened into open session at 11:06 a.m. The Board adopted the proposed decisions for numbers 1-94.

The Board meeting adjourned at 11:06 a.m.