

California Victim Compensation and Government Claims Board
Open Meeting Minutes
August 21, 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, August 21, 2014, at 10:00 a.m. Also present were Board members 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 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 June 19, 2014, Board Meeting

Upon a motion by Board member Chivaro and seconded by Chairperson Batjer, the Board approved the minutes of the June 19, 2014, Board meeting. Board member Ramos abstained.

Item 2. Public Comment

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

Item 3. Executive Officer Statement

VCGCB Chief Counsel Wayne Strumpfer presented the Executive Officer Statement in Executive Officer Nauman's absence. Ms. Nauman was attending the 2014 VOCA National Training Conference in Boston.

California Trauma Recovery Center (TRC) Grant

At the June 19 meeting, Executive Officer Nauman briefed the Board regarding the second cycle of the TRC grants; however, on June 30 CalVCP extended the application timeframe to ensure all applicants had adequate time to complete the grant application. The second application cycle of the TRC grant closed on August 1st and CalVCP received 10 applications. CalVCP staff is currently in the process of scoring the applications and will come before the Board at the October 16, 2014, meeting with grant award recommendations. In addition, CalVCP received the first quarterly TRC reports at the end of July from Special Service for Groups in Los Angeles and CSU Long Beach, two of the three current grant recipients from last year's grantees. Last week Executive Officer Nauman, Deputy Executive Officer Mindy Fox, and Mr. Strumpfer visited CSU Long Beach and were very impressed with their program. CalVCP staff is currently reviewing the reports to confirm that the grantees are meeting their grant deliverables and will ultimately use the data to depict the outcomes of the grant program.

2014 Run for Courage

In continuation of all the great charitable work that CalVCP staff does outside their day-to-day activities, CalVCP staff has a team of 15 runners so far who will participate in the annual 5k/10k Run for Courage on September 27th in Folsom, California. CalVCP is excited to collaborate once again with a great cause that focuses on spreading awareness of human and sex trafficking.

CalVCP Statute Modernization Project

On August 13-14, CalVCP held public forums in Glendale and CalVCP headquarters, respectively, to examine laws and long-standing statutes that do not fit in today's criminal justice system or that do not align with the current needs of victims of crime. Members of the public were invited to participate in the project and contribute their thoughts, concerns, and suggestions. Both forums were well-attended with approximately 25-30 members of the public in attendance in Glendale and between 24-45 participants in Sacramento. The exact number of participants at the Sacramento forum was unknown because members of the public were invited to participate in person and via teleconference. CalVCP staff received public comment and is working to make final recommendations to the Board to improve CalVCP's current statutes. It is anticipated that staff will bring the recommendations for Board consideration in the fall.

Item 4. Contract Report

Chief Counsel Wayne Strumpfner briefed the Board on the following contracts executed by the VCGCB:

Capio Group

At the June 19th meeting, the Board delegated to Executive Officer Nauman final approval of the successful bidder for the CaRES Modification Project (CaRES Mod). The contract in the amount of \$642,800 was awarded to Capio Group who will provide technical services to support CaRES Mod through the end of January 2015.

Titan Outdoor LLC

As part of the CalVCP Strategic Outreach Plan, the Board is attempting to reach a targeted population in the greater Bay Area that has a very low awareness of the CalVCP program. An awareness survey found that 85% of the respondent population in the San Francisco, Oakland, Antioch, and Richmond areas as having no knowledge of the program. When researching outreach opportunities for this area, mass transit was identified as a significant resource, offering high volume exposure due to its monthly ridership of 26.8 million. Titan Outdoor LLC holds the sole contract for advertising with the three most prominent transportation agencies in the greater Bay Area. The exposure offered to their ridership and the overall price for this advertising service will provide the greatest benefit to the Board. The contract is in the amount of \$75,103.64. A presentation regarding the outreach effort will be given at next month's meeting.

Colliers International, Amendment 1

The contract in the total amount of \$59,953.09 includes an amendment to the contract in the amount of \$7,948.47 to upgrade equipment for webcasting capabilities in the auditorium and the American River Room.

Item 5. Legislative Update

Chief Counsel Wayne Strumpfner reported the following bills impacting the VCGCB:

AB 2685 (Cooley), sponsored by the Board to enhance the collection of restitution from criminal offenders, would (1) allow 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) expand 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 the Senate Appropriations Committee and will be voted on by the full Senate soon.

SB 1031 (De Leon), the 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. It is currently on the Assembly Floor. Chairperson Batjer commented that SB 1031 required a 2/3 vote.

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 going to the Governor's desk shortly.

AB 2545 (Lowenthal) prohibits denial of a CalVCP application with respect to a claim based on sexual assault committed by military personnel against military personnel, solely because the sexual assault was not reported to a superior officer or law enforcement at the time of the crime. The bill passed in both houses and is going to the Governor's desk.

Chairperson Batjer inquired about AB 1911 (Patterson). The bill shortens the time period in which the Board must approve or deny a CalVCP application to within 30 calendar days of the date of acceptance rather than an average of 90 days. It requires the Board to make quarterly reports to the Legislature if the 30-day deadline is not met until it is met for two consecutive quarters. It further requires the Board to provide written advisement to the applicant if it fails to approve or deny an individual application by the 30-day deadline. It also requires payment for an emergency award to be disbursed within 5 business days rather than 30 calendar days. Chief Counsel Strumpfer noted that the bill failed deadlines and died.

Item 6. Government Claims Program

Consent Agenda (Nos. 1-508)

Nicholas Wagner, Manager, Government Claims Program stated that item numbers 39 (G616570), 64 (G616285), 476 (G617537), 505 (G618698), and 507 (G618870) were continued to the September 18, 2014, meeting; item number 298 (G618932) was removed to allow staff sufficient time to review new information received; and item numbers 43 (G618078) and 56 (G614262) were removed to allow the claimants an opportunity to address the Board.

Chairperson Batjer stated that she would recuse herself from the vote regarding item number 354 (G619090), the claim of Racquel Raichart against the Board of Equalization (BOE). Chairperson Batjer explained that the Department of General Services (DGS) reports directly to her in her capacity as Secretary of the California Government Operations Agency and DGS is responsible for the maintenance of the BOE building. She explained that there would be two separate votes on the Government Claims Program consent agenda.

Upon a motion by Board member Ramos, and seconded the Board member Chivaro, the Board unanimously approved the staff recommendations for items 1-508, with the exceptions noted by Mr. Wagner, and with the exception of item number 354, the claim of Racquel Raichart against BOE.

Additionally, upon a motion by Board member Ramos, and seconded by Board member Chivaro, the Board approved the staff recommendation for item number 354 (G619090). Chairperson Batjer recused herself from the vote.

Consent Agenda Appearance

Item 43, G618078

Claim of Kiefer Consulting, Inc.

Gregory Kiefer, President/CEO, Kiefer Consulting Inc., attended. Mr. Kiefer submitted documentation for the Board's review. Andrea Rosen, attorney, attended on behalf of Covered California and submitted evidence for the Board's review.

Nicholas Wagner, Manager, Government Claims Program, explained that Kiefer Consulting, Inc. (Keifer) requested compensation in the amount of \$64,593.75 from Covered California for an unpaid invoice. Mr. Wagner stated that Government Claims Program staff recommended that the Board partially allow the claim in the amount of \$42,486.75.

Mr. Kiefer stated that Keifer entered into a fixed bid contract with Covered California and explained that Covered California had to meet federally mandated deadlines. He stated that Keifer delivered everything within the scope of the contract, in addition to items that were added to the scope, including Spanish translation. Even after Keifer submitted its government claim, items were being reconfigured to assist with moving things through the cloud that were not within the scope but that allowed the system to continue to run because the system was very critical for Covered California. He commented that as of May 2014, over 5.5 million users have used the software that Keifer configured and built for Covered California. He explained that there were significant changes to the scope of the contract and Keifer kept Covered California informed when they ran out of funds;

however, Covered California continued to request additional services beyond the contract expiration date. He stated that the items listed on the document he submitted to the Board were requested after the contract ended.

Ms. Rosen explained that when Covered California's contract with Keifer expired on December 31, 2013, an implied contract was formed. Covered California staff asked Keifer to continue to work on the work that had not been completed by December 31st. The substance of the work that Covered California contracted with Keifer to perform was the creation of a tool referred to as "shop and compare" which, she clarified, was not required by federal mandate. Shop and compare is a heavily used tool that allows an individual interested in purchasing a health plan from Covered California to access the tool by visiting Covered California's website, providing their zip code, among other basic information, and receiving a proposal listing what their premium would be for the plan selected.

Ms. Rosen explained that Covered California entered into a contract with Keifer in the amount of \$137,540 as of May 14, 2013. The original contract was amended twice. The first amendment added \$142,500 and the second amendment on November 1, 2013, added \$37,500. In both cases, the original contract as well as the subsequent amendments, Covered California relied entirely on Keifer as the subject matter IT experts. Covered California did not dispute that an implied contract was formed, which was the reason that Covered California agreed to pay Keifer \$42,468.75 because that was the balance due on the contract. On the other hand, Covered California disputed Keifer's assertion that Covered California staff approved any work that was outside the scope of the contract. She explained that she looked at every line item on the document submitted by Keifer and prepared a document wherein she took each item that was purported to be outside the scope and found that it fell within the scope of work of the existing contracts. She stated that Keifer relied on the terms of the contract by virtue of the invoice they attached to their claim; specifically, the April 30, 2014, invoice for \$64,593.75 in which they referenced 12-E9081, the first amendment to the contract. Covered California believed that the invoice was evidence that Keifer's claim was for work that was performed within the scope of the contract. Additionally, there was a provision in the original contract and both amendments that was a standard term in Covered California contracts. She quoted the following language from the contract: "In the event the State requires additional refinements and modifications for any deliverable which occurs after that deliverable has been previously accepted by the State, the Contractor shall be required to make the additional revisions until the revised deliverable is accepted and approved by the State." Ms. Rosen stated that she interviewed every staffer who worked with Keifer on the contract and read every email related to the contract and, in her analysis for Covered California, she could not find a single written communication and staff could not recall an oral communication that authorized Keifer to perform any work outside of the scope of the contract. She explained that State contracts require change requests that have to be proposed by the vendor and approved by the State in order to deviate from the scope of work of the contract. The documents submitted by Keifer to supplement their original claim included an internal listing of tasks that Keifer claimed to have performed that included hours worked and staff names. She explained that the documents did not prove that Covered California approved any work outside the scope of the contract; instead, it was simply a listing of tasks showing that the web developers were working a lot. When she interviewed Covered California staff, they stated that most of the work performed was to fix errors that were producing bugs in the system when the deliverables were being tested and work needed to be performed to fix those bugs. She referenced *Covered California Mobile Enhancements, Support and Knowledge Transfer Statement of Work*, a document by Keifer dated October 17, 2013. She stated it was the document on which the second amendment to the contract was based. Many of the items Keifer included in their communications to the Board for their supplemental claim were contained in the document. She quoted the following from the document: "Due to the success of the 'shop and compare' application, Covered California needs to account for unanticipated changes. To better serve the program, Keifer will make (but not limited to) the below modifications." She stated that the

document was evidence that Keifer understood that modifications were needed. Covered California agreed to amendment 2 even though the specific itemized tasks were not incorporated into the contract. She referred the Board to the fee schedule listed in the document. Both parties agreed to the hours and cost with the understanding that it was the modifications in the documents that were going to be made a part of amendment 2. She commented that Keifer was awarded a new contract in July 2014 through a competitive bidding process to continue to refine and enhance the shop and compare tool because there were key deliverables in the original contract that were never delivered, specifically the partner widget. Covered California staff confirmed that many of the items listed in Keifer's May 22 memo to the Board described work that was covered in the new contract so it appeared that Keifer was asking to be paid twice for the same work. Lastly, Ms. Rosen stated that despite the fact that Keifer did not provide all of the deliverables, Covered California was being very generous by allowing the balance of the contract amount in 12-E9081 to be paid to Keifer.

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 \$42,486.75.

Consent Agenda Appearance

Item 56, G614262

Claim of Carmen W. Madia

Carmen Madia, senior legal analyst, Air Recourses Board, attended. Mr. Madia submitted documents for the Board's review in support of his claim. Cathy Nystrom, manager, Classification and Transactions Section, attended on behalf of the Air Resources Board.

Nicholas Wagner, Manager, Government Claims Program, explained that Carmen Madia claimed damages from the California Air Resources Board (ARB) for an improper account receivables issued against him in the amount of \$6,796.46. Mr. Wagner stated that Government Claims Program staff recommended that the Board reject the claim because there appeared to be no State liability for the damages claimed.

Mr. Madia explained that, by direction of the President's Executive Order, in October 2001 he was mobilized overseas. He stated that he was one of the first reservists activated and spent nearly a year in support of operation Enduring Freedom. In early 2002, he returned to his employment at the Air Resources Board. In October 2002 he was notified by ARB human resource staff that he was overpaid approximately \$11,000 due to the underreporting of military payments, which represented approximately \$1,000 a month for 11 months. He explained that during his deployment, he was on a remote island for most of that period and had limited telephone access and no email access; therefore, he did not notice the incorrect amount deposited into his bank account. Nonetheless, he informed human resources staff that he would repay it. He explained that in January 2003, he notified human resources that his father passed away and he would use his inheritance to repay the overpayment. He stated that he received two estate checks--one in the amount of \$15,000 and the other in the amount of \$2,000. He stated that he paid ARB approximately \$7,000 leaving a remaining balance of \$4,000. He explained that he did not pay the balance in full because he knew that he receive mobilization orders again and he would be deployed to Iraq. He explained that he wanted to have \$10,000 in the bank in the event that something happened to him. When he returned from deployment, ARB set up an account receivables that started in 2004 and the installments ended in February 2005. Approximately \$367 was deducted from his pay warrant for 11 months, the period that he was deployed. He explained that ARB did not contact him again until October 2013, over 8 years later. ARB informed him that he had an account receivable still owing. Human resources staff advised him to contact the administrator of his father's estate as well as obtain copies of checks to substantiate his assertion that the account receivables had been satisfied. He stated that he contacted the banks; however, because many years had passed, the

financial institution was no longer in business. He also asked ARB to provide him with copies of their information, but they did not provide anything. He then submitted a Public Records Act request and received copies of legal opinions, specifically an email from CalHR Legal Division. He stated that the email stated that there were no legal grounds for recouping the account receivables that was set up by the ARB in 2002. He explained that the account receivables were set up for 11 months. He gave ARB \$7,000 and had a remaining balance of \$4,000, which he paid.

Chairperson Batjer asked Mr. Wagner whether staff reviewed the documents submitted by Mr. Madia.

Mr. Wagner confirmed that he reviewed the documents as well as the email from CalHR; however, GCP staff disagreed with the interpretation of the language in the email. He explained that Government Claims Program staff consulted with the Board's legal counsel who believed that CalHR meant that Mr. Madia did not have grounds to recoup any of the account receivables.

Ms. Nystrom stated that Mr. Madia was noticed in 2013. He was contacted regarding his account receivables; however, the ARB specialist did not follow up. She explained that when the Governor's Executive Order B-5-11 was released, departments were asked to again look at their account receivables and begin collecting. ARB human resources conducted an audit and found old documentation of Mr. Madia mixed in with another employees documents. She stated that their department asked SCO to write off the debt; however, they would not write it off because Mr. Madia began repayment. His repayment began in 2004-2005 period and he paid approximately \$4,000.

Board member Ramos asked Ms. Nystrom to clarify that the reason the debt could not be waived was because Mr. Madia, in good faith, attempted to pay it off.

Ms. Nystrom stated that statute 19858 specified that a person has to be noticed within three years. Because Mr. Madia began repaying it in three years, it did not excuse the remainder of the amount. Human resource staff asked Mr. Madia if he had any record of paying the remaining amount. Staff also checked with their accounting department, but they did not have documentation; however, there was an email regarding the approximately \$11,000 that he owed specifying that Mr. Madia would be allowed 24 months to repay it. She explained that even though the State requires it to be repaid within 12 months, when a repayment amount is large, their human resource department works with the employee to extend the timeframe. She stated that SCO only allows repayments to be set up for a 12-month period at a time. After that 12-month period, the repayments have to be reset. She added that it would be a gift of State funds if ARB did not collect.

Chairperson Batjer asked Ms. Nystrom whether the employee or human resource staff would reset the payments for another 12-month period.

Ms. Nystrom explained that their transactions staff would set it up. However, she believed that due to significant staff turnover, when Mr. Madia was on military leave then came back, there was a new specialist who was not aware of the payments.

Chairperson Batjer commented that the new specialist not being aware of Mr. Madia's account receivables was not Mr. Madia's problem. She asked Mr. Madia to explain the reason that he stopped repaying then started repaying again in 2004-2005.

Mr. Madia explained that he was deployed in 2001 then returned to ARB in 2002. He was noticed by ARB in 2002. In early 2003 he paid the account receivables with his inheritance. In March 2003, he was deployed again for another year in Iraq. He informed the ARB specialist not to take any money out of his pay because he did not want the same issue to occur again. He advised the

specialist that when he returned, he would start the account receivables again. He explained that ARB could not take any money from him because he was not employed with the State for an entire year.

Chairperson Batjer asked Mr. Madia if he started repayment again after his second deployment.

Mr. Madia explained that the balance was \$4,000 and ARB deducted \$367 from his pay for 11 months; therefore, it was paid off.

Chairperson Batjer asked Ms. Nystrom to explain the reason that ARB stopped collection when the payments ended.

Ms. Nystrom explained that payments could only be set up for 12 months and thereafter staff would have to reset it manually.

Chairperson asked Ms. Nystrom to explain the reason that ARB did not set up the agreed upon repayment for 24 months, as indicated in the email communication Mr. Madia provided.

Ms. Nystrom stated that ARB gave Mr. Madia more than 12 months, because the payments would have had been \$1,000 a month for an 11 month-period in order to pay it back. She explained that ARB was limited to collecting up to 25 percent of an employee's net income; however, for larger amounts ARB worked with the employee.

Board member Ramos stated that he had an issue regarding the statute of limitations. He stated that Mr. Madia served our country and tried to do the right thing by repaying the account receivables. Then years later, he was told that he owed the money. He stated that Mr. Madia could not locate his records because they were destroyed and the financial institutions were no longer in business.

Upon a motion by Board member Ramos and seconded by Board member Chivaro, the Board unanimously overturned the staff recommendation and found that Mr. Madia paid ARB in full and owed nothing further on the account receivables.

Item 7. Applications for Discharge From Accountability for Collection

Nicholas Wagner, Government Claims Program Manager explained that there were 20 requests by state agencies (applicants) to discharge from accountability for collection of debt, totaling \$439,457,511.75. 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 Board member Ramos, the Board unanimously adopted the staff recommendation to approve the 20 requests by state agencies.

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

Item 8 was continued to the September 18, 2014, meeting.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 10:47 a.m..

Closed Session

Pursuant to Government Code section 11126(c)(3), the Board adjourned into Closed Session with the Board's Chief Counsel to deliberate on proposed decision numbers 1-175.

Open Session

The Board reconvened into open session at 10:52 a.m. Upon a motion by Board member Ramos and seconded by Board member Chivaro, the Board unanimously adopted the hearing officer's recommendations to approve proposed decision numbers 1-175.

The Board meeting adjourned at 10:53 a.m.