

California Victim Compensation and Government Claims Board
Open Meeting Minutes
April 21, 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, April 21, 2016, at 10:02 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, and Member Michael Ramos, San Bernardino County District Attorney.

Executive Officer Julie Nauman and Supervising Attorney Dorothy Le 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 March 17, 2016, Board Meeting

The Board approved the minutes of the March 17, 2016, meeting.

Item 2. Public Comment

The Board opened the meeting for public comment. Public comment was provided by Stephanie Richard, Policy & Legal Services Director, Coalition to Abolish Slavery & Trafficking (CAST); Cynthia Mullen, Senior Associate, Gibson, Dunn & Crutcher, LLP; and Holly Austin Gibbs, Program Director, Dignity Health.

Ms. Gibbs commented that she is a survivor of human trafficking. At the age of 14, she was lured away from home by a man she met at a shopping mall who promised he would find her a job as a musician or model in Los Angeles. Within hours of running away, the man forced her into prostitution. On the second night, she was arrested for prostitution. After returning home, she felt overwhelmed and stigmatized by society. She commented that without appropriate services, she struggled with depression, anger, and low self-esteem many years after the event. She eventually put the past behind her and later graduated from college. She commented that she is employed at Dignity Health overseeing a program to educate healthcare staff and implement protocols in over 30 hospitals across the state to recognize and respond to victims of human trafficking.

Ms. Richard stated she has been the Policy and Legal Services Director at CAST for over 10 years. She explained that CAST is the first service provider in the United States exclusively serving all survivors of modern day slavery. CAST offers intensive case management, legal services, and shelter to victims of trafficking.

Ms. Mullen gave a PowerPoint presentation entitled "Human Trafficking Victims' Access to CalVCP Lost Income and Prohibitive Regulations." Ms. Mullen complimented CalVCP for adding human trafficking to the list of crimes for which emotional injury could be compensated, but remarked that more action was needed. Ms. Mullen commented that CalVCP should initiate a rulemaking process to allow for public comment on, and staff study of, the current and proposed regulations and their effect on human trafficking victims. She commented that in the interim, the Board should continue to explore additional issues regarding potential regulatory changes. She recommended the Board add an agenda item on human trafficking victims' access to lost income compensation to the May 19, 2016, or June 16, 2016, Board meeting agenda.

Chairperson Batjer stated the Board would add that item to the May 19, 2016 agenda for discussion; however, she remarked that the matter might require a statutory change rather than a regulatory change.

Item 3. Executive Officer Statement

Executive Officer Nauman reported CalVCP participated in several awareness activities in April observing National Crime Victim's Rights Week, Denim Day, and Sexual Assault Awareness Month.

March to the State Capitol

CalVCP participated in the annual march to the Capitol with Crime Victims United of California. She reported the somber gathering included remarks by Governor Brown who spoke of his commitment to victims.

CalVCP Cosponsored Conference with UCD Police Department

CalVCP and the UCD Police Department cosponsored a two-day conference on victim services and community relations on April 11-12, 2016. Speakers included CHP Commissioner Joseph Farrow and Yolo County District Attorney Jeff Reisig, among others.

CalVCP Press Releases

CalVCP conducted several press interviews in underserved communities to raise awareness of the CalVCP and the services it provides. CalVCP also secured an Op-Ed piece on victim services in the *Modesto Bee* and *Merced Sun-Star*.

Denim Day California

On April 27, Executive Officer Nauman will speak at CALCASA's annual observance of Denim Day at the Capitol. Denim Day is named for a 1999 Italian Supreme Court case in which a rape conviction was overturned because the Justices felt that since the victim was wearing tight jeans, she must have helped her rapist remove her jeans, thereby implying consent. The following day, the women in the Italian Parliament came to work wearing jeans in solidarity with the victim.

Item 4. Legislative Update

Executive Officer Nauman 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 reimbursement of transportation and childcare expenses and increasing the limits for reimbursement of relocation, residential security, and crime-scene cleanup expenses.

SB 1404 (Leno) — Trauma Recovery Centers

The bill would make legislative findings and recognize the Trauma Recovery Center at San Francisco General Hospital, University of California, San Francisco, as the State Pilot Trauma Recovery Center (State Pilot TRC). It would require the Board to use the evidence-based Integrated Trauma Recovery Services model developed by the State Pilot TRC when it provides grants to trauma recovery centers. It would also require the Board to create an advisory committee to advise the Board on matters pertaining to the administration of funds designated for use at trauma recovery centers and criteria for awarding grants to trauma recovery centers.

Item 5. Consent Agenda (Nos. 1-346)

Nicholas Wagner, Government Claims Program Manager, requested the Board approve consent agenda item numbers 1-346, with the following exceptions: item numbers 85, 92, and 346 were continued; the claimant withdrew item number 213; and item numbers 53 and 342 were removed to allow the claimants an opportunity to address the Board.

The Board approved the consent agenda with the exception of item numbers 53, 85, 92, 213, 342, and 346.

Consent Agenda Item Number 53
Claim of Sherri Kaufman - 626949

Claimant Sherri Kaufman, attorney, Department of Business Oversight, appeared and addressed the Board. Stephen Lau, Assistant General Counsel, attended on behalf of the Department of Business Oversight.

Nicholas Wagner, Government Claims Program Manager, explained that Sherri Kaufman sought compensation from the Department of Business Oversight (DBO) in the amount of \$3,479.62 for reimbursement of travel expenses. Mr. Wagner stated Government Claims Program staff recommended the Board reject the claim.

Ms. Kaufman explained that her claim concerned the DBO's refusal to pay for legal work included in her duty statement that she performed on December 8-11, 2014 and work related to travel expenses. She explained that she was selected by DBO leadership to become a member of the Multistate Mortgage Committee (MMC). She stated MMC members are required to attend an annual meeting in Washington, DC. She explained that DBO staff was instructed to include her trip in the 2014-2015 travel blanket; however, they failed to inform her that the trip did not receive final approval. Consequently, she incurred out-of-pocket expenses totaling \$3,479.62 for airfare, lodging, and time off. She stated her MMC membership and her attendance at the annual meeting were work-related; therefore, the department owed her compensation for the travel expenses pursuant to Bargaining Unit 2 rules and Labor Code section 2802.

Mr. Lau stated that, pursuant to Government Code section 11032, actual and necessary expenses for travel outside of the state shall be allowed when approved by the Governor. He explained that the DBO had an internal policy and procedures to implement those statutes. He explained that the policies were made available to all DBO employees and Ms. Kaufman had the opportunity to access those policies. He stated there was no preapproval for out of state travel. The DBO never represented to Ms. Kaufman that there was approval by the Governor's Office. Additionally, he stated the DBO was unable to reimburse Ms. Kaufman for travel expenses because they were not preapproved by the Governor's Office.

Chairperson Batjer explained that it would have been relatively easy to produce the travel blanket or the amended travel blanket for Ms. Kaufman. She asked Mr. Lau whether the DBO ever showed Ms. Kaufman the blanket that included the trip or that it was amended.

Mr. Lau stated the DBO did not show Ms. Kaufman the travel blanket.

The Board rejected the staff recommendation and allowed the claim in the amount of \$3,479.62.

Consent Agenda Item Number 342
Claim of Duane Law - 629423

Michael Faber addressed the Board on behalf of Duane Law. Mr. Faber submitted documentation to the Board in support of Mr. Law's claim. Hiren Patel, Chief Counsel, attended on behalf of the Department of Developmental Services.

Nicholas Wagner, Government Claims Program Manager, explained that Duane Law requested leave to present a late claim for compensation from the Department of Developmental Services

(DDS) in an amount exceeding \$25,000 due to lost earnings and benefits, general damages, and emotional distress. Mr. Wagner stated Government Claims Program staff recommended the Board deny the late application for failure to meet the requirements of Government Code section 911.6. Government Claims Program staff also recommended the Board reject the claim itself because it raised complex issues of fact and law not typically undertaken by the Board.

Mr. Faber stated the claim was properly presented and Mr. Law complied with Government Code section 915 (f). He explained that it was indisputable that if there was noncompliance with Government Code section 915, then it was by mistake or inadvertence. The department received Mr. Law's letter on October 9, which set forth the basis of the claim.

Mr. Patel stated Mr. Law made a legal error by submitting his claim to the wrong agency and that legal error was not excusable. He stated it was apparent that Mr. Law never bothered to review the Government Code which specifically states that a claim shall be presented to the state by delivery or by mail to the Board. He stated there was no legal basis to accept the claim. Case law is clear that a person acting in pro per who makes a legal mistake is not excusable. He explained that he responded to Mr. Law's February 3, 2016 email requesting a response regarding his compliance with the Tort Claims Act. He explained that he informed Mr. Law that there was nothing more to add and recommended that he seek the advice of legal counsel.

Mr. Faber stated Mr. Patel deliberately responded to Mr. Law's email four months after he submitted his claim.

The Board adopted the staff recommendation and denied the late application for failure to meet the requirements of Government Code section 911.6. Additionally, the Board rejected the claim itself because it raised complex issues of fact and law not typically undertaken by the Board.

Item 6. Applications for Discharge From Accountability for Collection

Nicholas Wagner, Government Claims Program Manager, explained that the list provided to the Board contained 55 requests by State agencies for discharge from accountability for collection of debt totaling \$518,423,475.29. According to the Office of the State Controller and, if applicable, the Office of the Attorney General, the applicants on the list met the criteria for discharge from further accountability for collection and the criteria for authorization to close the accounts.

The Board approved the 55 requests by the State agencies to discharge from accountability for collection of debt totaling \$518,423,475.29.

Item 7. Request for Delegation of Authority Under Government Code Section 935.6 by the California State Teachers' Retirement System

Nicholas Wagner, Government Claims Program Manager, explained that the California State Teachers' Retirement System (CalSTRS) requested 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 May 1, 2016, through April 30, 2019. Mr. Wagner stated Government Claims Program staff recommended the Board approve the request.

The Board delegated authority to CalSTRS to settle and pay or reject claims that do not exceed \$1,000 per claim from May 1, 2016 through April 30, 2019.

Item 8. Request for Delegation of Authority to the Executive Officer to Act on Government Claims

The item was withdrawn.

Item 9. Claim of Larry Pohlschneider (Pen. Code, § 4900 et seq.)

Maitreya Badami, Assistant Clinical Professor, Northern California Innocence Project, appeared and addressed the Board on behalf of Mr. Pohlschneider. There was no representation by the Attorney General's Office.

VCGCB Supervising Attorney Dorothy Le explained that on November 16, 2000, Mr. Pohlschneider (Claimant) was arrested for continuous sexual abuse of a child. On January 30, 2001, a jury convicted Claimant of three counts of continuous sexual abuse of a child and found true a multiple victim enhancement. The trial court sentenced claimant to an aggregate term of 24 years in state prison. On October 7, 2015, the trial court granted Claimant's petition for writ of habeas corpus based on a claim of ineffective assistance of counsel, which was conceded by the District Attorney's Office. The District Attorney's Office then moved to dismiss the charges with prejudice on the grounds that there was insufficient evidence to justify a retrial. Claimant was subsequently released from custody on October 14, 2015. On November 24, 2015, the trial court found that Claimant had met his burden of proving actual innocence pursuant to Penal Code section 1485.55, subdivisions (b) and (d). The hearing officer recommended the Board make a recommendation to the Legislature that an appropriation be made to pay the claim in the amount of \$762,440, which represented \$140 a day for being wrongfully imprisoned for 5,446 days from January 30, 2001, until October 14, 2015.

Ms. Badami commented that all wrongful convictions are different; however, Mr. Pohlschneider's claim was especially difficult and tragic. She explained that Mr. Pohlschneider was not the only victim in the case; his three stepchildren were victims of grievous sexual assaults by their biological father in 1999 and early 2000. Mr. Pohlschneider and his stepchildren's mother discovered the abuse after their father left the state. They developed a roll of film and found a suggestive picture of their father. The kids stated their father abused them. The police interviewed the children, located their father in Oklahoma and extradited him to California. Their father pled guilty. In the course of the examination, a physician's assistant in Tehama County, in her exam of the eight-year-old boy, believed she saw recent trauma and believed Mr. Pohlschneider caused it. As a result, the police took the children into custody, placed them in separate rooms, and conducted nearly six hours of interrogation. The children did not have access to their mother or food, despite their asking for both. She stated the children were bullied into accusing their stepfather of the abuse.

Chairperson Batjer asked whether the interrogation was tape recorded.

Ms. Badami explained that after the children broke down, they were videotaped. When the children were told that they could not return to their mother, they succumbed and accused Mr. Pohlschneider of the abuse. All of the children recanted at trial; however, they never recanted their accusation of their father. Nonetheless, Mr. Pohlschneider was convicted over the testimony of the children. The children felt it was their fault that Mr. Pohlschneider was convicted. She explained that the children were not returned to their mother; instead, they were placed in different foster care homes. Lastly, Ms. Badami stated all three adult children testified at Mr. Pohlschneider's innocence hearing. She commented that Mr. Pohlschneider was not in attendance at the meeting because he was visiting his oldest daughter.

The Board approved the claim and recommended the legislature pay claimant \$762,440 for 5,446 days of incarceration.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 11:13 a.m.

Disqualification of a Provider of Mental Health Services

Robin Foemmel Bie, CalVCP Resource Branch Manager, explained that a clinical review of a mental health provider identified numerous errors including incorrect billing dates, treatment for non-crime related injuries, and treatment by non-qualified or unlicensed providers. In total, Norma Jordan Ministries was overpaid \$143,125.50. She stated CalVCP staff recommended the Board disqualify Norma Jordan and Norma Jordan Ministries from being eligible to receive Board compensation for providing medical and mental health services to victims and collect the overpayment.

Ms. Foemmel Bie explained that Norma Jordan Ministries was notified of the findings and the request for overpayment on November 6, 2015. On January 27, 2016, Ms. Jordan responded by stating she attempted to contact the persons responsible for the documentation, but those persons were released from employment due to substandard performance and have not responded to her requests for information. Because Ms. Jordan did not provide a response that resolved the issues, staff recommended that the Board approve the staff recommendation.

Ms. Jordan stated she is the CEO of Norman Jordan Ministries. In February 2015, she explained that she received notification of an audit and responded on April 30, 2015. She stated CalVCP did not contact her until November 2015 and she was given 13 days to respond. She explained that she hired an attorney to assist in responding to the audit by requesting an extension of time. She stated she was granted additional time and again responded. Ms. Jordan explained that she hired a billing company. When the review stated the clinical documentation was substandard, she replaced those persons immediately. She instituted a system of quality assurance in order to bring the agency immediately into compliance with CalVCP. Ms. Jordan stated she received numerous commendations for her work in the community from the Mayor, the City of Inglewood, and Wells Fargo Bank, among others. She requested the Board not disqualify her agency or assess the overpayment.

John Jordan stated Ms. Jordan is his foster mother. He explained that he was the victim of domestic violence, which was the impetus for his mother forming Norma Jordan Ministries. He explained that he has been increasingly instrumental in working out the details with the organization including updating their technology. He stated the actions of the organization were not purposeful negligence and requested the Board reject the staff recommendation.

The Board adopted the staff recommendation and permanently disqualified Norma Jordan and Norma Jordan Ministries as an authorized provider of mental health services to eligible claimants of the Victim Compensation Program and authorized staff to collect the \$143,125.50 overpayment made to Norma Jordan and Norma Jordan Ministries.

Closed Session

Pursuant to Government Code section 11126(c)(3), the Board adjourned into Closed Session with the Board's Executive Officer and Supervising Attorney at 11:26 a.m. to deliberate on proposed decision numbers 1-43.

Open Session

The Board reconvened into Open Session pursuant to Government Code section 11126 (c)(3) at 11:33 a.m. The Board adopted the hearing officer's recommendations for proposed decision numbers 1-43.

Adjournment

The Board meeting adjourned at 11:34 a.m.