

**California Victim Compensation and Government Claims Board**  
**Open Meeting Minutes**  
**August 20, 2015, Board Meeting**

The California Victim Compensation and Government Claims Board (Board) convened its meeting in open session at the call of Michael Ramos, San Bernardino County District Attorney and Board member, at 400 R Street, Sacramento, California, on Thursday, August 20, 2015, at 10:00 a.m. Also present was Board member Richard Chivaro, Deputy State Controller and Chief Counsel, acting for and in the absence of Betty T. Yee, Controller. Chairperson Marybel Batjer 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 June 18, 2015, Board Meeting**

Chairperson Ramos and Member Chivaro approved the minutes of the June 18, 2015, Board Meeting.

**Item 2. Public Comment**

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

**Item 3. Executive Officer Statement**

2015 VOCA National Training Conference

Executive Officer Nauman will attend the National Association of VOCA Assistance Administrators National Association of Crime Victim Compensation Boards training conference in Washington, DC on August 25-27. The joint conference will offer a unique opportunity for all administrators, managers, staff, and Board members of government crime victim compensation programs to obtain critical up-to-date information on VOCA funding and ways to improve program and grant management. Ms. Nauman reported she was invited to present at the conference on the 50<sup>th</sup> anniversary of CalVCP. She will also share some of the unique and effective ways CalVCP is reaching communities and victims.

CalVCPs Internal 50th Anniversary Celebration

Following the September 17 Board meeting, the Board room will be transformed to accommodate CalVCPs 50<sup>th</sup> Anniversary event. Executive Officer Nauman reported that CalVCP has an exciting agenda planned with a special message from Office for Victims of Crime Director Joye Frost, guest speakers, and a thought provoking film from the Alameda County District Attorney's Office that portrays many of the real difficulties that victims faced prior to 1965. The video also highlights some of the remarkable improvements of victim services over the years.

Upcoming OVC Grant Funded Regional Conferences

Funded by an OVC grant, CalVCP is excited to host two conferences in the fall that will focus on strategic collaborations for reaching underserved victims of crime. The Northern California Regional Conference will take place on September 23, 2015, at the UC Davis Conference Center. The day will feature a keynote presentation from Elizabeth Smart who was abducted in 2002 from her home in Utah while she slept and was held captive for nine months. She will share her incredible story of perseverance in the face of unimaginable adversity and discuss the importance and process of recovery and not allowing ones past to dictate their life's future. The Southern California Regional Conference will be held on October 8, 2015, at UCLA.

California Crime Victims Services Summit

On November 3, 2015, CalVCP will host the *Victim Services Summit: The Next Chapter* at UC San Diego. Leaders in victim services and rights will gather to address emerging trends in victims' services delivery, victim rights issues, and the future of victim services in California, among others.

#### **Item 4. Contract Report**

##### **Bill Review Service**

The Board approved the three-year contract with Cyber Pro/MDX (Cyber Pro) in the amount of \$1,404,150. Cyber Pro provides bill review and adjustment services in accordance with the Medicare, DentiCal, and other fee schedules, as required by the Board.

##### **Student Assistants**

The Board approved the two-year contract with University Enterprises, Inc. (UEI) in the amount of \$60,000. UEI, an auxiliary organization of CSUS, provides student assistants to the VCGCB.

##### **CaRES Testing Services**

The Board approved the contract with Capiro Group in the amount of \$945,780. Capiro Group will provide testing services to support the CaRES Modification Project. The contractor team would be comprised of four resources: one Test Manager and three testers. The contractor testing team will manage and execute all system testing preparation and testing activities, as well as support user acceptance testing.

#### **Item 5. Legislative Update**

##### **AB 1140 (Bonta) — Victim Compensation Program Modernization**

The bill modernizes Victim Compensation Program statutes by making a number of changes to eligibility and benefits. It would also increase the amount of the recommended appropriation for compensation of an erroneous conviction from \$100 to \$130 per day. Mr. Strumpfer reported that the bill has been combined with SB 519, Senator Hancock's bill, by adding important parts of that bill into AB 1140. The bill is scheduled for the Senate Appropriations Committee on August 24<sup>th</sup>.

#### **Item 6. Consent Agenda (Nos. 1-705)**

Nicholas Wagner, Government Claims Program Manager, reported that consent agenda item numbers 148, 169, 178, 514, and 668 were continued and item numbers 137, 328, 595, and 621 were removed from the consent agenda to allow the claimants an opportunity to address the Board. Mr. Wagner requested the Board approve the Consent Agenda, with the exception of the removed claims.

The Board approved consent agenda numbers 1-705, with the exception of the removed claims.

##### **Consent Agenda Appearance**

###### **Item 137, 619815**

###### **Claim of Justin Carter**

Anthony Hall was in attendance on behalf of the claimant. Mellonie Yang attended on behalf of the California Department of Corrections and Rehabilitation.

Nicholas Wagner, Government Claims Program Manager, explained that Justin Carter claimed damages from the California Department of Corrections and Rehabilitation in an amount exceeding \$25,000 for wrongful arrest, false imprisonment, and malicious prosecution. He stated that Government Claims Program staff recommended that the Board reject the claim because it raised complex issues of fact and law beyond the scope of analysis and interpretation typically undertaken by the Board.

Mr. Hall requested the Board continue the claim to the September 17, 2015, meeting because he was experiencing financial difficulties, was homeless, and did not have access to his files.

VCGCB Chief Counsel Wayne Strumpfer expressed the need to bring the claim to a resolution soon because the claim had been continued several times previously.

Chairperson Ramos asked Mr. Hall whether one month's time would be sufficient for him to proceed with the hearing.

Mr. Hall stated that he would be prepared to proceed at the Board's September 17, 2015, meeting.

The Board continued the claim to the September 17, 2015, meeting.

### **Consent Agenda Appearance**

#### **Item 328, 625005**

#### **Claim of Golden Feather Union Elementary School District**

Gregory Blake, Superintendent/Assistant Principle of Golden Feather Union Elementary School District, appeared and submitted documentation for the Board's review in support of the claim. Peter Foggiato, Director of School Fiscal Services Division, attended on behalf of the Department of Education.

Nicholas Wagner, Government Claims Program Manager, explained that Golden Feather Union Elementary School District (Golden Feather) sought compensation in the amount of \$550,337 from the California Department of Education (department) for withheld grant funding. He stated that Government Claims Program staff recommended the Board reject the claim because there appeared to be no liability on the part of the State for the damages claimed.

Mr. Blake explained that Golden Feather is a rural K-8 school district with approximately 110 students, 86 percent of whom qualify for the free or reduced lunch program. In July 2013, Golden Feather received the Advance Principal Apportionment Summary for the 2013-14 school year which indicated they would receive \$588,365 for their basic aid supplement charter school adjustment. He explained that the advance apportionment schedule is used to adjust their budget, staff schools, and allocate resources. On June 25, 2014, 21 days after the 2013-14 school year ended, he received notice from the Butte County Office of Education that Golden Feather would receive \$197,305 from the adjustment, a \$391,060 difference. He stated that he relied on the State's information and the change in the calculation crippled their district. Since Golden Feather did not receive notification until late June, it was too late to make any signification reductions for the next year. The reductions, coupled with the timing of the notice, put them significantly over budget for two years.

Mr. Blake explained that since June 2014, Golden Feather reduced their teaching staff from eight teachers to six teachers, every student is in a two-grade combination class, and students have two fewer classroom aides. Additionally, they closed their only onsite alternative education program, the plan for a long-term school based counselor was eliminated, the school bus service was reduced from four buses to two so children are on the bus for an hour, and they contract with a school district 20 miles away to reduce food service costs. Because of the lack of timely notice regarding the reduction, Mr. Blake requested that the Board approve their claim.

Mr. Foggiato explained that the funding formula had been in place for some time. The formula was severely flawed; it created unintended windfalls for certain districts, not Golden Feather, that were capitalizing to the tune of approximately \$200,000 per student. Once the legislature was aware of how much districts were receiving, they wanted to fix the formula. He explained that the department has to flow funds throughout the year. They do not know how much a district will receive because it is based on estimates, such as attendance and taxes. He explained that the department's budget letter indicated, in bold writing, that school districts should not budget off the numbers because it

was merely a means to flow cash. He explained that the claim was related to an entitlement in the Education Code that stated that funds are continually appropriated in order to apportion funds. He explained that the Department of Education was not withholding funds. The department apportioned the exact amount that the statute required and they had no authority to apportion any more.

Chairperson Ramos thanked Mr. Blake for his presentation. He explained that the claim was complex.

The Board adopted the staff recommendation and rejected the claim.

**Consent Agenda Appearance**

**Item 595, 625910**

**Claim of Grace M. Beatty**

Grace Beatty, claimant, failed to appear. Gary O'Mara attended on behalf of the Department of Industrial Relations.

The Board adopted the Government Claims Program staff recommendation and rejected the claim because it raised complex issues of fact and law beyond the scope of analysis and interpretation typically undertaken by the Board.

**Consent Agenda Appearance**

**Item 621, 624228**

**Claim of Anka Behavioral Health, Inc.**

Antoinette McGill was in attendance on behalf of Anka Behavioral Health, Inc. and submitted documentation to the Board in support of the claim. Sara Murillo and Ginger Fair attended on behalf of the Department of State Hospitals.

Nicholas Wagner, Government Claims Program Manager, explained that Anka Behavioral Health, Inc. (Anka) requested leave to present a late claim for compensation from the California Department of State Hospitals in the amount of \$753,208.85 for reimbursement of facility expenses. Mr. Wagner stated that staff recommended the Board grant the late application and reject the claim itself.

Ms. McGill stated that in July 2012 Anka entered into three agreements with the Department of State Hospitals to provide community health treatment services to judicially committed individuals. She explained that Anka opened five facilities based on negotiated rates, some of which were subject to adjustment. The parties carefully crafted budgets that were attached to the agreement and formed the basis for the negotiated rates. Anka incurred fixed and ongoing costs to operate the facilities. As part of its duties, Anka provided court evaluations and community liaison services. It incurred rental and equipment lease expenses and other costs. The agreement specifically provided that Anka maintain a dedicated capacity of staffing and support services necessary to provide mandated services despite the caseload.

She explained that on June 23, 2014, the Department of State Hospitals terminated the contract without cause on the basis that the Department of State Hospitals perceived that Anka had financial difficulties. Anka maintained its levels of service and took no action that would have led a reasonable person to believe that it was going to file bankruptcy or engage in an assignment of creditors. Anka made good faith attempts to mitigate its damages once termination occurred; however, it incurred rental and equipment lease expenses reflecting future rent and early cancellation fees, personnel expenses and other costs necessary to operate the five mental health service facilities. She explained that Anka dutifully submitted invoices for payment of reimbursable expenses; however, a representative of the Department of State Hospitals denied each invoice.

Ms. Murillo explained that the Department of State Hospitals exercised its option to cancel the contract and gave 30 days' notice before cancelling the contract. She explained that for the last 12 months of the contract term, the Department of State Hospitals received numerous emails from Anka's vendors indicating nonpayment. Additionally, Anka's own employees stated they had not been paid. She explained that the Department of State Hospitals began weekly meetings with Anka in an attempt to facilitate information regarding the claims of their staff and its vendors; however, due to the continued nonpayment to vendors, the Department of State Hospitals made the decision to give 30 days' notice and move someone else in to perform the services.

Chairperson Ramos explained that the claim was complicated and the Board would not be able to make a decision on the claim.

The Board adopted the staff recommendation and granted the late application and rejected the claim itself.

#### **Item 7. Applications for Discharge From Accountability for Collection**

Nicholas Wagner, Government Claims Program Manager, reported that there were 34 requests by State agencies for discharge from accountability for collection of debt, totaling \$138,536,124.42. Mr. Wagner requested the Board approve the requests.

The Board approved the requests.

#### **Item 8. Bid Protest of Capitol Digital Document Solutions, Inc. Request for Quotation Number 10107776**

Matthew Monaghan was in attendance on behalf of Capitol Digital Document Solutions, Inc. Gary Chang attended on behalf of the Department of General Services. Jonathan Pritt attended on behalf of SyTech Solutions.

Wayne Strumpfer, VCGCB Chief Counsel, explained that the item was before the Board to determine the protest by Capitol Digital Document Solutions, Inc. of the request for quote for document conversion services for the Department of Water Resources. The hearing officer examined and considered the written arguments and evidence presented by the parties and recommended that the Board deny the protest.

Mr. Chang stated that the Department of General Services was in agreement with the hearing officer's decision.

Mr. Pritt stated that he agreed with the hearing officer's decision.

The Board adopted the hearing officer's decision to deny the protest.

#### **Item 9. Amended Proposed Decision Regarding the Claim of Timothy Atkins (Pen. Code, § 4900 et seq.)**

Alexander Simpson was in attendance on behalf of Timothy Atkins. Galen Farris attended on behalf of the Attorney General's Office.

Wayne Strumpfer, VCGCB Chief Counsel, explained that at the June 18, 2015, meeting the proposed decision was to approve the claim; however, after argument, the Board made a decision on a 2-1 vote to deny the claim based on oral presentations from both sides and the Board's

discussion. Consequently, staff amended the proposed decision to reflect a denial and to explain the decision by the Board.

Chairperson Ramos stated that he reviewed the matter intensely. He explained that unless there was new information that the Board was unaware of, the amended proposed decision was before the Board to ratify the vote taken at its June 18, 2015, meeting.

Mr. Farris stated that the Attorney General's Office requested the Board adopt the amended proposed decision.

Mr. Simpson stated that the Board's proposed decision relied on an incorrect analysis of how Penal Code section 1485.55 applied to pending claims. The section explicitly states that compensation should be awarded automatically when you have a finding of innocence by a judge, which is what happened in the case of Timothy Atkins. He stated that it was not a retroactive application of the law as the proposed decision stated; rather, it was a change in the procedure by which pending claims are decided before the Board. He explained that the issue of whether the application of Penal Code section 1485.55 to pending claims amounts to a retroactive application of the law had already been decided in Mr. Atkins' favor by a Superior Court judge. He stated that since the Board last met on the claim at its June meeting, the California Supreme Court declined review on the very issue in the case of Obie Anthony, thus impliedly affirming the Superior Court's determination again that a Penal Code section 1485.55 determination was not a retroactive application when applied to pending cases and claims.

Mr. Simpson stated that Timothy Atkins served 23 years in prison for a crime that he did not commit, he was innocent, and a judge made that determination. He requested the Board grant Mr. Atkins compensation.

The Board approved the amended proposed decision.

### **Victim Compensation Program**

The Board commenced the Victim Compensation Program portion of the meeting at 10:40 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 10:40 a.m. to deliberate on proposed decision numbers 1-116.

### **Open Session**

The Board reconvened into Open Session pursuant to Government Code section 11126 (c)(3) at 10:44 a.m. The Board adopted the hearing officer's recommendations for proposed decision numbers 1-116.

### **Adjournment**

The Board meeting adjourned at 10:45 a.m.