

California State Auditor

B U R E A U O F S T A T E A U D I T S

Investigations of Improper Activities by State Employees:

July 2000 Through January 2001



April 2001
I2001-1

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CALIFORNIA STATE AUDITOR

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April 3, 2001

Investigative Report I2001-1

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

Pursuant to the California Whistleblower Protection Act, the Bureau of State Audits presents its investigative report summarizing investigations of improper governmental activity completed from July 2000 through January 2001.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE
State Auditor

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SUMMARY

Audit Highlights . . .

State employees engaged in improper activities, including the following:

- Participated in governmental decisions from which they were likely to benefit financially.*
- Misused state positions and resources for personal benefit.*
- Allowed fair officials and their spouses to compete in and receive prizes from fair events.*
- Accepted a gift from a vendor doing business with the State.*
- Created the appearance of conflicts of interest by circumventing controls over high-cost vehicle repairs and failing to ensure that the State paid only for necessary costs.*

The Board of Pharmacy engaged in the following improper activities:

- Handled consumer complaints inefficiently.*
 - Failed to document hours worked to ensure that it fully compensated its employees.*
-

RESULTS IN BRIEF

The Bureau of State Audits (bureau), in accordance with the California Whistleblower Protection Act (act) contained in the California Government Code, beginning with Section 8547, receives and investigates complaints of improper governmental activities. The act defines “improper governmental activity” as any activity by a state agency or employee during the performance of official duties that violates any state or federal law or regulation; that is economically wasteful; or that involves gross misconduct, incompetence, or inefficiency. To enable state employees and the public to report these activities, the bureau maintains the toll-free Whistleblower Hotline (hotline). **The hotline number is (800) 952-5665.**

If the bureau determines that there is reasonable evidence of improper governmental activity, it confidentially reports the details to the head of the employing agency or the appropriate appointing authority. The employer or appointing authority is required to notify the bureau of any corrective action taken, including disciplinary action, no later than 30 days after transmittal of the confidential investigative report and monthly thereafter until the corrective action concludes.

This report details the results of the seven investigations completed by the bureau and other state agencies between July 1, 2000, and January 31, 2001, that substantiated complaints. Following are examples of the substantiated improper activities:

CALIFORNIA DEPARTMENT OF TRANSPORTATION

A California Department of Transportation (Caltrans) employee engaged in these improper activities:

- Had a conflict of interest when he participated in making Caltrans decisions that benefited a company owned by his wife.

- Misused his state position to influence Caltrans contractors and other private businesses to do business with his wife's company.
- Used state resources to solicit work for his private consulting business.

Caltrans did not require this employee, nor does it require others in similar classifications, to file annual statements of economic interest to assist it in identifying and preventing conflicts of interest.

16TH DISTRICT AGRICULTURAL ASSOCIATION

The 16th District Agricultural Association, which sponsors, manages, and conducts the California Mid-State Fair (fair), failed to uphold and circumvented state rules when it performed these improper acts:

- Allowed one fair board director and his spouse, who was a horse show official, to compete in horse show events.
- Allowed another director's spouse to compete in judged events.
- Paid the same two directors and their spouses more than \$9,800 in prize money from 1995 through 1999.

We also found that both directors violated conflict of interest laws when they participated in a vote to adopt a resolution that enabled directors, fair management, and their spouses to continue to receive prize money.

DEPARTMENT OF CORRECTIONS

Employees of the Department of Corrections' Southern Transportation Unit (STU) engaged in these improper activities:

- One employee improperly received a gift from a business whose owners also own an automotive repair shop that the STU uses to repair its vehicles.
- This same employee and three others created an appearance of conflicts of interest by participating in decisions to give

the automotive repair shop a disproportionate share of the STU's business while having the same business repair their personal vehicles.

- The STU employees further created an appearance of conflicts of interest by circumventing controls over high-cost repairs by the automotive repair shop and by not ensuring that the STU paid the vendor only for necessary costs.

BOARD OF PHARMACY

The Board of Pharmacy engaged in these improper governmental activities:

- Allowed itself too much time to resolve consumer complaints and then failed to meet even the time frames it set for itself.
- Failed to maintain adequate records to ensure that it compensated its employees for all the time they worked.

DEPARTMENT OF CONSUMER AFFAIRS

A Department of Consumer Affairs investigator used his state position to access a law enforcement information system and obtain confidential information about a person who had been involved in a car accident with the investigator's spouse.

DEPARTMENT OF HEALTH SERVICES

A Department of Health Services employee engaged in these improper governmental activities:

- Submitted claims for \$310 in mileage reimbursement even though she drove a state vehicle.
- Submitted claims for \$112 for meals and incidental expenses even though she was not entitled to reimbursement.

DEPARTMENT OF TRANSPORTATION

An employee used a state dump truck to deliver two loads of gravel to a private residence during regular state hours.

This report also summarizes actions taken by state entities as a result of investigations presented here or reported previously by the bureau.

Appendix A contains statistics on the complaints received by the bureau between July 1, 2000, and January 31, 2001, and summarizes our actions on those and other complaints pending as of June 30, 2000. It also provides information on the cost of improper activities substantiated since 1993 and the corrective actions taken as a result of our investigations.

Appendix B details the laws, regulations, and policies that govern the improper activities discussed in this report.

Appendix C provides information on actual or suspected acts of fraud, theft, or other irregularities identified by other state entities. Section 20060 of the State Administrative Manual requires state agencies to notify the bureau and the Department of Finance of actual or suspected acts. It is our intention to inform the public of the State's awareness of such activities and to publicize the fact that agencies are taking action against wrongdoers and working to prevent improper activities.

See the Index for an alphabetical listing of all agencies addressed in this report. ■

CHAPTER 1

California Department of Transportation: Conflicts of Interest, Abuse of Position, and Failure to Identify and Prevent Conflicts of Interest

ALLEGATION I980141

An employee of the California Department of Transportation (Caltrans) violated conflict-of-interest laws and engaged in incompatible activities.¹

RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated the allegation. In his role as a state employee, the employee participated in making departmental decisions that allowed him, through his wife's company, to benefit financially. In addition, he misused his state position to influence Caltrans contractors and private businesses to do business with his wife's company. The employee also used state resources to solicit work for his private consulting business. Moreover, because of the employee's conflicts of interest and his attempts to influence private businesses, the employee discredited both Caltrans and the State. Finally, Caltrans did not require this employee, nor does it require others in similar classifications, to file annual statements of economic interests. Requiring more employees to file these statements could help Caltrans become more vigilant in monitoring employees to prevent the occurrence of incompatible activities and conflicts of interest. In this case, however, Caltrans was aware of this employee's outside financial interests yet failed to take sufficient action to eliminate the potential for conflicts of interest to arise, thereby allowing the employee's activities to discredit Caltrans.

When we began our investigation, we learned that Caltrans was just completing an investigation of a similar allegation against this employee. Therefore, we reviewed Caltrans' investigation and performed additional work. We interviewed numerous

¹ For a more complete description of the laws, regulations, and policies discussed in this chapter, see Appendix B.

Caltrans employees and contractors who had performed work on Caltrans projects or had other professional contacts with the employee. In addition, we reviewed the employee's state telephone records and computer files and other information maintained by Caltrans, including contract files, accounting records, and the employee's personnel file. Further, we obtained both public and bank records related to the businesses operated by the employee and his wife. Finally, we interviewed the employee.

BACKGROUND

Within Caltrans is the Office of Landscape Architecture, which develops policies, programs, procedures, and standards in areas such as highway planting, replacement planting, revegetation, and erosion control.² Erosion control is the use of vegetation, such as grasses and wildflowers, and other materials, such as straw, fiber, protective blankets, etc., to stabilize areas disturbed by grading operations, to reduce soil loss due to the action of water or wind, and to prevent water pollution. The employee was a landscape architect and is considered to be an erosion control specialist. Effective May 1, 2000, the employee was promoted to a senior-level position in another office within Caltrans.

The Employee's Duties

In his position as an erosion control specialist, approximately 25 percent of the employee's duties included providing assistance and advice to Caltrans' districts and headquarters on erosion control and revegetation for environmental, design, maintenance, and construction projects. These duties included conducting field reconnaissance; developing designs, specifications, and estimates; and providing construction assistance and maintenance review and recommendations. The employee also had responsibility for overseeing research projects, managing contracts, inspecting materials for contract compliance, developing and evaluating new products, training Caltrans employees, and providing education and information to the public. Moreover, his duties and responsibilities were largely self-directed; the employee wrote the duty statement for

As an erosion control specialist, the employee provided advice on how Caltrans should best control erosion on its projects. However, he also had a financial interest in his wife's company that sells an erosion control product. This creates a conflict of interest.

² Because of a past conflict, the employee actually reported to the head of Caltrans' Office of Testing and Technology Services. However, his duties were in line with the responsibilities of the Office of Landscape Architecture.

his position. Since his May 2000 promotion, the employee's duties continue to include responsibilities related to erosion control as well as new product evaluation.

The Employee's Financial Interest in His Spouse's Company

The employee has a financial interest in a company, company A, owned by his wife. Company A sells a product used for erosion, sediment, and storm water runoff control and for slope stabilization. Company A has obtained a trademark on the name of the erosion control product it sells. To provide perspective on the employee's financial interest in company A, in 1997 the company deposited more than \$350,000 into its accounts; we do not know how much of that was profit.

THE EMPLOYEE VIOLATED CONFLICT-OF-INTEREST AND INCOMPATIBLE ACTIVITIES LAWS AS WELL AS CALTRANS POLICY

In violation of conflict-of-interest and incompatible activities laws, the employee participated in making decisions related to Caltrans erosion control projects even though he has a financial interest in a company that sells an erosion control product. The employee also used his state position to influence and intimidate contractors and obtain private consulting work.

Laws prohibiting conflict of interest are grounded in the belief that government officials owe paramount loyalty to the public interest. The objective of these laws is to limit the possibility of any personal financial influence that might sway an official's decision. One state law prohibits any public official from making, participating in making, or in any way attempting to use his or her official position to influence a government decision in which the official knows or has reason to know that he or she has a financial interest. A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the public generally, on the employee or his or her spouse. Participation in decision making includes participation in negotiations without significant substantive review or providing advice by way of research, investigations, or preparation of reports or analyses for the decision maker without intervening substantive review.

Laws prohibiting conflicts of interest are grounded in the belief that government officials owe paramount loyalty to the public interest.

Another state law prohibits state employees from engaging in any employment, activity, or enterprise in which they have a financial interest and that is sponsored or funded by any state agency or through a state contract, unless the employment, activity, or enterprise is required as a condition of their regular state work. Yet another state law prohibits state employees from being financially interested in any contract in which they participate in making a decision in their official capacity.

In addition to specific statutory prohibitions, common-law doctrines against conflicts of interest exist. Common law is a body of law made by decisions of the California Supreme Court and the appellate courts. The courts and the attorney general have found conflicts of interest by public officials to violate common-law and statutory prohibitions. For example, common-law doctrines state that a public officer is bound to exercise the powers conferred on the officer with disinterested skill, zeal, and diligence, and primarily for the public's benefit. Further, another judicial interpretation of common-law doctrine is that public officers are obligated to discharge their responsibilities with integrity and fidelity. According to the attorney general, where no conflict is found in statutory prohibitions, special situations still could constitute a conflict under the long-standing common-law doctrine. Therefore, situations that have the appearance of a financial conflict of interest may still be subject to common-law prohibitions.

State law also prohibits state employees from engaging in incompatible activities and requires state departments to define such activities. Caltrans' policy stipulates that "Caltrans employees do not willfully engage in any other employment or activities which are illegal; which are or give the appearance of being incompatible or in conflict with their duties as State employees; discredit their profession, the Department, or the State, or have an adverse effect on the confidence of the public in the integrity of government." Further, the policy requires employees to perform their duties and responsibilities honestly and objectively and to use state resources, information, and position only for the work of Caltrans, not for their own private gain or the private gain of another.

Caltrans' ethics policy provides further guidance for department employees. The policy states that through personal conduct, Caltrans employees should demonstrate the highest standards of personal integrity, truthfulness, and honesty; inspire public confidence and trust in state government; and recognize

that personal gains from public service are limited to respect, recognition, salary, and normal employee benefits. Further, employees must make decisions in the organization's best interest and with the overall public interest in mind. They are to take special care in establishing and maintaining relationships with coworkers, consultants, contractors, and others on a professional basis.

The Employee Participated in a Governmental Decision That Benefited His Spouse's Company

The employee, acting within the authority of his position but contrary to state law, recommended that the erosion control product sold by his wife's company be used on a Caltrans project, and this resulted in state payments to her company.

Contrary to law, the employee recommended that the erosion control product sold by his wife's company be used on a Caltrans project.

Specifically, we interviewed a resident engineer and a landscape architect employed by Caltrans who consulted with the employee on a Caltrans project in 1996. Based on the employee's recommendation, the resident engineer prepared a contract change order that specified the use of the erosion control product sold by company A. The subcontractor purchased the product from company A, and it was delivered to the job site. After a number of pieces of the product had been installed, the resident engineer discovered that the employee's wife owned company A and, because he thought it clearly appeared to be a conflict of interest, he instructed the subcontractor to stop installing the product. The resident engineer and his supervisor tried to follow up with department headquarters about the employee's conflict of interest. According to the resident engineer, Caltrans was apparently already aware of the situation and unconcerned about it. Caltrans had to pay more than \$6,700 for the unused portion of the product after the resident engineer learned of the employee's conflict of interest and stopped the subcontractor from installing the product. The product, for which company A billed more than \$11,680 in total, was nonreturnable.

The resident engineer and the landscape architect told us that the employee never informed them that his wife owned the company that sold the product. The landscape architect said that, after she discovered the connection, she told the employee that he had put her in an uncomfortable position by not telling her about his wife's company. Although she did not recall the employee's exact response, in general he told her that his state work and his wife's company were separate and that he would

not have discussed the product with her if it were not acceptable for him to do so. Nevertheless, the landscape architect has not used the product sold by company A for any other projects because she is uncomfortable with the situation.

More Conflicts of Interest May Exist

The employee's actions created at least the perception of more conflicts of interest because at least 35 contractors, subcontractors, or vendors on Caltrans projects also purchased products from company A. We were unable to confirm that these entities used materials purchased from company A on Caltrans projects, nor could we confirm that the employee used the influence of his position to get them to purchase the materials from company A. However, the sheer number of entities that both made purchases from company A and had business dealings with Caltrans clearly creates the appearance of conflicts of interest on the part of the employee. Company A deposited more than \$275,948 into its accounts from these entities between October 1, 1994, and November 3, 1998. The payments from the entities ranged from \$122 to \$18,675. In addition, according to telephone records for the 10 months from November 1997 through August 1998, the employee made at least 123 calls from his state telephone to 8 of the 35 entities. We do not know whether the employee influenced these entities to make purchases from company A or whether the calls related to state business, but his state position provided him with the opportunity to influence contract specifications and wield considerable power over a substantial number of contractors and subcontractors.

The Employee Offered to Use His Influence to Benefit Other Companies and Potentially Himself

Our investigation revealed that, in violation of the prohibition against incompatible activities, the employee offered to use the influence of his state position in ways that would financially benefit not only contractors but possibly himself. As mentioned, the employee's duties included the development and evaluation of new products. Because he was responsible for both developing new products and writing contract specifications or influencing Caltrans decisions, there was an opportunity for the employee and any contractors he might favor to benefit financially.

We subpoenaed and interviewed a business owner who told us that he has known the employee for approximately eight years. The owner's company, company B, produced wheat straw and coconut fiber products for use in erosion control. According to the owner, when the employee learned about company B in the early 1990s, he told the owner that he wanted to become involved in the manufacturing and sale of erosion control products.

The employee told one business owner that he could use his Caltrans position to make sure that a product he wanted to manufacture and sell with the owner would be specified for projects throughout the State.

Under penalty of perjury, the business owner told us that the employee wanted to work with company B to manufacture and sell erosion control products made from rice straw. According to the owner, the employee said that for his part of their venture, he would make sure that the products were specified for projects throughout the State, because his position in Caltrans allowed him to influence or prepare contract specifications for projects with erosion control components. According to the owner, when he told the employee that he did not want to enter into a business relationship with him, the employee became angry. After his rejection of the employee's offer, the owner said his business had a difficult time marketing its products to Caltrans projects. The owner believes the employee used the influence of his state position either to encourage contractors to purchase from his wife's company or to discourage contractors from purchasing from the owner's company.

When we talked to the employee, he confirmed that he had personally shipped rice straw to the owner of company B, suggesting that he use it to develop an erosion control blanket. The employee also confirmed that he wanted to have a private business arrangement with the owner and he thought the rice straw blankets would be useful on Caltrans projects. Further, the employee told us that he had proposed the same private business arrangement to two other companies.

Whether or not the employee actually benefited financially from these dealings, his actions create the appearance of a conflict of interest because of his potential financial interest in such business dealings. In addition, as mentioned previously, the law prohibits state employees from using the prestige or influence of the State for their own private gain or advantage or the private gain or advantage of another.

More recently, beginning around 1998, the employee organized demonstrations for Caltrans employees of two mulch-blowing devices developed by private companies—company C and

company D. Although developing and evaluating new products were among the employee's duties, demonstrations such as these could be problematic: The employee might appear to be endorsing these products and ultimately benefiting the companies that made them.

Company C's website contained the following quote from the employee, who was identified as a Caltrans employee. "The use of compost is in its infancy. We are currently using compost in erosion control throughout the State. The use of this material will expand very significantly. I believe [company C] can fill a very important niche in the market because of its versatility and low investment requirement." Because the employee was identified as an employee of Caltrans, his use of *we* implied that he spoke for Caltrans. Moreover, when he said, "The use of this material will expand very significantly," readers could infer that, because he is employed by Caltrans, the employee is in a position to influence Caltrans' use of the material. Finally, because he mentioned company C by name, readers could interpret the employee's statement as an endorsement.

We interviewed the owners of company C and asked them about the quotation. The owners told us that their website was set up and is maintained by a friend and they were unaware the quote was included on the site. They further explained that the quotation was from a draft of a letter prepared by the employee, at their request, for use in their attempt to license their mulch-blowing device. The employee apparently showed the draft to a superior for approval. The superior modified the letter presumably to make it sound less like an endorsement of company C. Company C's owners understood it would be inappropriate for the employee to endorse their product, and they never intended for his letter to appear on their website. They have since removed the quotation.

The employee told us that he had provided his input on the current market and the development of future markets at the owners' request and as part of his state duties. Whether or not the employee intended to endorse company C, by providing it with this written information, the employee lost control over its use. In addition, even if this type of activity was within the scope of the employee's duties and responsibilities, it clearly could be a problem for both the employee and Caltrans, because the employee might have appeared to be endorsing a product and thus using his state position for the private gain or advantage of another.

In another instance, a Caltrans contractor reported being told by the employee that he had offered to use his state position to include company D's products in Caltrans contract specifications. California regulations specify that a public official is attempting to use his or her official position to influence a decision when the official acts or purports to act on behalf of, or as a representative of, his or her agency to any member, officer, employee, or consultant of an agency for the purpose of influencing the decision.

The employee told us that he talked with the owner of company D about creating a business together. Although that idea did not work out, the employee did consulting work for company D's owner to help him develop terminology and specifications for his products. This situation is yet another example of the amount of power the employee wielded. The employee became involved with various companies through his nonstate activities and then, as a result of his role at Caltrans, was in a position to influence others to use (or not to use) the companies' products.

Contractors Believe the Employee Used His Authority to Influence and Intimidate Them and Others

Some contractors believe the employee has used his state position to influence and intimidate vendors. We interviewed several Caltrans contractors and others in the erosion control industry who told us, under penalty of perjury, that they believed the employee had a conflict of interest because of his financial interest in his wife's company and that he had used his state position to compel, intimidate, or threaten contractors to get them to use particular materials produced by his wife's company.

Many contractors were reluctant to cooperate with our investigation because they feared the employee would use his ability to influence the selection of Caltrans' vendors to retaliate against them.

One contractor said he overheard the employee say that he planned to make trouble for a competitor of his wife's company. In addition, some people told us they believe that contractors are afraid to report the employee's wrongdoings for fear that he will retaliate against them. Many of the people we spoke with told us that they were reluctant to cooperate with our investigation for the same reason. Some contractors also told us they knew Caltrans was aware of the employee's conflict of interest but that Caltrans failed to take any action to rectify the situation or discipline the employee.

Moreover, three Caltrans contractors told us they believe the employee used his influence, such as special contract provisions and verbal recommendations, to specify his favored vendors. Two contractors told us they believe the employee took punitive action against them by attempting to interfere with Caltrans' payments to their companies because the companies had not complied with the employee's wishes concerning the materials and suppliers used on Caltrans projects. One contractor also believes the employee cast doubt on his company's reputation to prevent the company from being selected as a subcontractor on a Caltrans project, presumably because the employee was upset that the contractor purchased erosion control products from a competitor of company A. As one contractor pointed out, the employee's favoritism toward some vendors was not only discouraging for the competition but also might have resulted in Caltrans paying higher prices.

Several people we interviewed raised concerns over the amount of power and authority Caltrans granted the employee. One contractor said, "I believe Caltrans has made a serious error in judgment to allow one individual to wield so much power in his role, particularly when there is apparently no adequate supervision." Another contractor told us, "It seems incredible that Caltrans has allowed one individual to have so much influence over so many vendors and contractors throughout the State." Yet another contractor said, "Several years ago, I was surprised to learn that [the employee] had the power to write Caltrans contract specifications related to erosion control in spite of the fact that it could financially benefit his wife's company, and therefore, himself."

Although the employee told us he could not recall ever using his state position to threaten a contractor, it is clear that he violated Caltrans' ethics policy by failing to inspire public confidence and trust in state government.

The employee told us he was aware that some people in the erosion control industry believe he favored certain contractors, but he maintained that he did not give preferential treatment. Although the employee wrote specifications that benefited his wife's company, he contended that it was not possible for him to write specifications to favor a particular vendor. He told us he watched some contractors more closely than others because he believes some contractors are unscrupulous. For example, the employee mentioned a seed supplier that mislabeled its products; as a result, he set up a seed-testing program to help detect this type of problem. The employee provided us with examples of several situations in which he said the seeds provided for Caltrans projects did not meet contract specifications and were sometimes either inadvertently or intentionally mislabeled. As a result, in many cases he recommended that

Caltrans withhold payments or deduct an appropriate amount based on the discrepancies or variances in the seed provided. In a few cases, it was the testing facility that stated whether or not the contractors' seeds met specifications; however, the documentation the employee gave us indicated that more often it was the employee who ultimately interpreted the test results and made recommendations about paying the contractors.

The employee told us he could not recall ever using his state position to threaten a contractor; he does not think he had that kind of authority. Even though the employee may believe he did not show preferential treatment or threaten contractors, it is clear from our conversations with, and formal written statements made by, people in the erosion control industry that they perceived the situation differently and clearly his financial interest in his wife's company contributed to this perception. We believe the employee violated Caltrans' ethics policy by failing to demonstrate the highest standards of personal integrity and inspire public confidence and trust in state government.

The Employee Created Confusion by Representing Both Caltrans and Company A

The employee engaged in incompatible activities by representing both Caltrans and company A at professional conferences, creating confusion about whose interests he was representing. The employee confirmed that he helps his wife's company, company A, with long-term planning, including looking at developing markets. In addition, when his wife is busy, he represents company A at conferences by working in the company's exhibit booth and providing technical information about the erosion control product. The employee said he represented company A on his own time, not state time.

Many of the people we interviewed said they saw the employee representing company A and its product in the company's exhibit booth at various conferences and trade shows. In fact, the employee often represented both Caltrans and company A at the same events. As recently as February 2000, the employee represented company A in its exhibit booth at a conference he attended at state expense. Whether or not the employee was on state time, the very fact that he both works for Caltrans and represents company A could be interpreted as a Caltrans endorsement of company A, particularly because his position with Caltrans is in the same field as his wife's company. This situation could clearly create an unfair advantage for company A.

As mentioned previously, state law prohibits state employees from engaging in any act that is clearly in conflict with their duties as state employees, including using the prestige or influence of the State for private gain or advantage.

CALTRANS FAILED TO TAKE ACTION TO PREVENT THE EMPLOYEE'S CONFLICTS OF INTEREST

Although the employee's conflicts of interest were brought to Caltrans' attention in the past, it did not take the action necessary to ensure that the employee stopped engaging in incompatible activities. Further, Caltrans does not require some employees who participate in governmental decisions involving millions of dollars to disclose their financial interests. As a result, Caltrans has weakened its ability to identify and prevent other conflicts of interest.

Caltrans Conducted Three Investigations of Possible Conflicts of Interest Involving the Employee But Did Not Take Appropriate Action

Based on allegations from various sources, Caltrans investigated the employee three times. Caltrans was first alerted to a potential problem related to the employee engaging in his private business on state time in 1993; however, based on its investigation, Caltrans concluded there was no evidence that the employee violated Caltrans policies.

After receiving another allegation of conflict of interest against the employee in 1995, Caltrans conducted an investigation in 1996 and substantiated the following: The employee promoted the use of the erosion control product sold by company A (specifically, he used the term trademarked by company A) in three Caltrans erosion control contracts; the employee contacted a subcontractor after bid opening and urged the subcontractor to change suppliers of the product from a competitor of company A to company A; and the employee solicited consulting work on state time. Although Caltrans again concluded that there was no conflict of interest, in 1997 it issued the employee a letter specifically outlining acceptable conduct. In 1998, Caltrans received a third report of conflict of interest activities conducted by the employee. Its investigation revealed that the employee was not complying with the 1997 letter, but ultimately Caltrans took no action against the employee.

Caltrans Knew the Employee Wrote Specifications That Benefited His Wife's Company

Because the employee's state position allowed him to participate in making Caltrans' decisions that could financially benefit his wife's company, the employee had a conflict of interest. Although we found no evidence that company A ever contracted directly with Caltrans, its erosion control product was used on Caltrans projects. In addition, the employee, as part of his duties for Caltrans, promoted the use of the product on Caltrans projects. In fact, in November 1996, Caltrans found that the employee even used company A's trademarked name for the product when he wrote specifications for Caltrans contracts. Although the trademarked term apparently appeared in at least four Caltrans contracts, based on our review of Caltrans' investigative files, it is difficult to determine the extent of the employee's involvement in every case.³

Use of the trademarked name in the specifications might have forced contractors to acquire the product from company A or risk being found in violation of the contract, even though, according to Caltrans' investigation, at least one other company had a generic product meeting the same specifications. When we asked the employee about the trademarked name, he told us he was aware of the trademark but still considered the term to be generic. However, we believe the employee should have understood the implications of using a trademarked term in an official Caltrans contract and used a truly generic term instead.

The Employee Tried to Use His Influence to Benefit His Wife's Company

In its 1996 investigation, Caltrans learned that the employee had approached a subcontractor on a Caltrans contract and suggested the subcontractor change the provider of materials to his wife's company. In 1995, Caltrans awarded a contract that specified the use of a particular erosion control product. The subcontractor was aware of only two suppliers of the product, one of which was company A. The subcontractor said that after Caltrans was aware that his company planned to purchase the product from company A's competitor, the employee called him and wanted to give him a price quote from company A.

³ One of these contracts was canceled. The employee told Caltrans that he did not influence two of the contracts. It appears that Caltrans did not talk with the employee about the fourth contract.

The employee's wife then provided a telephone quote to the subcontractor that underbid the competitor by a few cents per piece of product. The subcontractor nevertheless purchased the product from company A's competitor. Although the employee contended that the subcontractor was the one who called him, he did confirm that he told the subcontractor that company A could meet the price of any other supplier.

The Employee Solicited Consulting Work on State Time

Caltrans also knew the employee engaged in other incompatible activities when he solicited private consulting work from contacts he made as a result of his state position. In addition, we found that the employee's state telephone number and e-mail address were listed as contact information for his private business. Although there are no prohibitions against the employee having a private business, state law prohibits the employee from engaging in any employment, activity, or enterprise that is clearly inconsistent, incompatible, in conflict with, or inimical to his duties as a state employee. These prohibitions include using the prestige of the State or state time, facilities, equipment, or supplies for private gain or advantage.

Since 1991, the employee and his wife have owned another private business, company E. The employee provides consulting services and advertises his expertise in many different areas, including specifications and slope stabilization. In 1996, Caltrans substantiated allegations that the employee solicited consultant work on state time. The employee denied the allegations. Nevertheless, Caltrans discovered two incidents, one involving a federal employee and one involving an individual who was working on a Caltrans project, each of whom contacted the employee to obtain seed mix information. In both cases, the individuals who made the requests told a Caltrans investigator that the employee refused to provide the information they requested but did offer his services as a consultant and named a price for his services. Neither of these individuals brought these incidents to Caltrans' attention at the time. However, the federal employee believed the Caltrans employee had a conflict of interest and went elsewhere for advice. The other caller said she did not complain to Caltrans because she feared retaliation.

Caltrans' Action Was Inadequate to Prevent the Employee From Engaging in Improper Activities

Caltrans concluded that, at the time of its 1996 investigation, there was no conflict of interest. In response to Caltrans' investigative report, the employee's second-line supervisor at the time stated that, although Caltrans had not established that a breach of the rules governing conflict of interest or incompatible activities had occurred, the potential for conflict, or the perception of conflict, clearly existed. To address this issue, on September 29, 1997, Caltrans presented the employee with a letter specifically outlining acceptable conduct. Caltrans' legal office reviewed these Instructions for Conduct. The instructions state: "[D]o not volunteer, in the course of your job duties, information that you offer private consulting services as an erosion control specialist. Respond to direct inquiries, but limit this response to information that allows the individual to contact you off state time and away from state premises." The employee's first- and second-line supervisors went over the instructions with the employee, and the employee agreed to abide fully by these instructions. While these instructions address potential incompatible activities, they do not adequately address actual conflicts of interest or the appearance of a conflict.

Nonetheless, individuals in the erosion control industry told us that, on a number of occasions, the employee stated that he was *permitted* to engage in consultancy and other business relationships outside his normal duties as a state employee, and that he was not the only person at Caltrans to "moonlight" in private business related to his public employment. As a result, the individuals reported feeling that Caltrans was aware of the employee's activities, and that the agency's inaction sent a clear signal to many in the erosion control industry that this is what passes for acceptable behavior by state employees. The excerpt in the previous paragraph from the instructions Caltrans provided to the employee demonstrates that Caltrans was aware of the employee's private business and, while imposing some restrictions, condoned it, despite potentially incompatible activities.

Although state law does not prohibit state employees from having private businesses, it does prohibit them from using the prestige of the State or using state time, facilities, equipment, or supplies for private gain.

The employee told us that he continues to offer private consulting services. Again, although the law does not prohibit the employee from having a private business, it does prohibit using the prestige of the State or using state time, facilities, equipment, or supplies for private gain. We asked the employee how people contact him to obtain his services and how he responds to those

requests. According to the employee, some individuals call Caltrans looking for erosion control information and end up talking to him. If the caller is representing a state or federal agency, the employee explained, he provides his services or recommendations as part of his state duties. However, if the caller is not representing a state or federal agency, the employee tells the caller to call him at home after work hours. Some individuals simply contact the employee directly at his home. By obtaining clients through calls he receives as a Caltrans employee, the employee is using the prestige of the State for personal gain.

More specifically, we asked the employee how he responds to inquiries he receives about the erosion control product sold by company A. The employee told us that if the inquiry is from someone outside Caltrans, he suggests they contact him at home during his off-hours because, as long as he is on his own time, he can do whatever he deems is appropriate. Such a response would appear that the employee has complied with Caltrans' instructions. However, as we mentioned previously, we believe the issue of whether or not the employee is on state time is only one factor in determining whether he is engaging in incompatible activities. Specifically, because the employee works for the State in the same field in which he consults, he can use his state position for private gain. Moreover, whether or not he performs the consulting work on state time, he is still using state time, facilities, and equipment when he receives the initial contacts.

The employee also belongs to an international erosion control association. The association's website contains a directory listing the employee's name and his company's name, and lists his state telephone and state fax numbers for interested parties to contact him. Further, until at least July 1999, the directory also listed his state e-mail address as a contact point for his private business. The employee told us that he was not aware this information was on the association's website as his contact information. As of February 2000, the e-mail address listed in the directory is no longer the employee's state e-mail address, but one that incorporates the trademarked name of company A's product. The employee told us in March 2000 that he planned to contact the association and have them remove the state information. However, as of July 2000, the other state information continues to appear on the website.

Even more glaring is the fact that Caltrans itself is aware that the employee has failed to comply with its instructions. Caltrans received conflict-of-interest allegations about the employee for the third time in 1998. The previously mentioned Instructions for Conduct issued in 1997 state that the employee can participate in the development, modification, or review of Caltrans specifications and plans under which company A's product can be used. However, all the employee's written recommendations must be reviewed and approved by his supervisor. Caltrans' 1998 investigation disclosed that on one occasion, the employee did not submit his recommendation to use the product to his supervisor for review and approval as required. In another instance, another Caltrans employee contacted the employee for his advice on a contract change order for a Caltrans project. Caltrans found that, although the senior engineer in charge of the project already was considering the use of the product, the employee recommended it. The employee disclosed that company A was owned by his wife and was a supplier of the product, but he did not provide names of other suppliers even though he was aware of them. Once again, in violation of the Instructions for Conduct, the employee failed to inform his supervisor of the recommendation. Caltrans' investigation also concluded that by failing to disclose the names of other vendors that could provide suitable materials, the employee used Caltrans information to his advantage by assisting his wife's company. This is a clear violation of the Instructions for Conduct, which state the employee cannot use information gained during the course of his duties to assist company A.

As a result of its most recent investigation, Caltrans notified the employee of its intent to take adverse action against him. The employee exercised his right to have a hearing and present his response to the charges. Based on information provided by the employee and some additional investigation by Caltrans' hearing officer, the hearing officer disagreed with the proposed disciplinary action, and Caltrans ultimately did not take any adverse action against the employee. As stated earlier, the employee has since been promoted to a senior-level position. Although the position is in another office within Caltrans, the employee's responsibilities are still related to erosion control as well as new product evaluation.

Caltrans Has Not Established Adequate Controls Over Conflicts of Interest

Caltrans did not require the employee, or other employees in similar positions of influence, to disclose their financial interests.

In addition to its failure to take appropriate action to ensure that the employee had neither an actual nor an apparent conflict of interest, Caltrans clearly has not established an adequate system of controls in this regard. State law requires agencies to adopt and promulgate a conflict-of-interest code that identifies agency positions that involve making or participating in making decisions that could foreseeably have a material effect on the position holder's financial interest. For those individuals, the conflict-of-interest code must identify what must be disclosed in statements of financial interest. This law was intended to ensure that public officials disclose any financial interest that their official actions might have a material financial effect on, and to disqualify them from taking official actions when those actions might constitute a conflict of interest.

As explained previously, the employee's duties required him to write contract specifications and participate in making governmental decisions. Nevertheless, Caltrans' conflict-of-interest code did not require the employee to complete a statement of economic interests. We contacted the Fair Political Practices Commission and, based on its preliminary review of the employee's duty statement, it agreed that Caltrans should consider revising its conflict-of-interest code to require the employee to file a statement of economic interests.

Further, we believe it would be prudent for Caltrans to require all employees in positions that require them to write contract specifications and make or participate in making decisions on behalf of Caltrans to disclose all financial interests that could conflict with their responsibilities as state employees. Just as importantly, Caltrans must follow up and take appropriate corrective actions to prevent and eliminate conflicts that come to its attention.

AGENCY RESPONSE

Caltrans suspended the employee for 45 days without pay and has reassigned him to a job where he no longer will have responsibilities that could constitute a conflict of interest. Caltrans also reported that it found no evidence that the earlier decision to revoke a proposed disciplinary action against him was motivated by bias or favoritism. On December 22, 2000, Caltrans issued revised policies on conflicts of interest and incompatible activities. ■

CHAPTER 2

16th District Agricultural Association: Improper Awarding of Prize Money and Conflicts of Interest

ALLEGATION I980008

We received an allegation that two directors of the board of the 16th District Agricultural Association (association), which is responsible for governing the California Mid-State Fair (fair), and their spouses improperly received prize money after participating in horse show events at the fair.

RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated this allegation and other improper activities. The association allowed director A and his spouse, who was a horse show official, to compete in horse show events. The association also allowed director B's spouse to compete in judged events and paid directors A and B and their spouses more than \$9,800 in prize money from 1995 through 1999. By allowing such activities, the association's board and management failed to uphold state rules. In addition, the board circumvented these rules by adopting a resolution that effectively enables board directors, association management, and their spouses to continue to receive prize money. We also found directors A and B violated conflict-of-interest laws when they participated in a vote to adopt this same resolution.

Contrary to state rules, the California Mid-State Fair paid two directors and their spouses more than \$9,800 in prize money from 1995 through 1999.

To investigate the allegations, we interviewed board directors, current and past association management, and association employees. We also interviewed current and prior employees of the Department of Food and Agriculture (department) and other officials familiar with fair issues. We reviewed payment registers and identified payments made to directors

and their spouses for fairs held from 1995 through 1999. Finally, we reviewed laws and rules regulating the association and its officials.⁴

BACKGROUND

The association was formed in 1946 for the purpose of sponsoring, managing, and conducting the fair each year in Paso Robles. State law requires each agricultural association to be governed by a board consisting of nine directors who are residents of the district and appointed by the governor. The department has instructed the board that its primary obligations are to ensure the ongoing stability of the fair and to work with the association's management to formulate policy and develop strategies.

The department's Division of Fairs and Expositions (division) provides financial oversight and support of the State's 80 fairs as well as general oversight and counsel to association management to improve, maintain, and operate the fairs in the public's best interest. The division ensures the integrity of fairs by requiring annual audits.

According to the department, the association is subject to policies, procedures, and regulations set forth in state law, the State Administrative Manual, and state rules for fairs (state rules). According to state rules, board directors, fair management, and their spouses cannot exhibit at their own district fairs, although they can participate in timed events. These rules also prohibit horse show officials and members of their immediate families from entering or exhibiting horses in any show at which the official is serving. State rules define immediate family as the official's spouse or any children or other relatives living in the household. These rules are designed to mitigate conflicts of interest involving officials who are closely affiliated with the fair.

⁴ For a more complete description of the laws, regulations, and policies discussed in this chapter, see Appendix B.

State rules also specify that under no circumstances are directors, fair managers, or their spouses allowed to collect awards from fair events.⁵ For example, although these individuals can compete in timed events, they are prohibited from collecting any awards for such events. According to the association's management, awards can include prize money, ribbons, or other items, such as belt buckles.

THE ASSOCIATION IMPROPERLY ALLOWED TWO BOARD DIRECTORS AND THEIR SPOUSES TO COMPETE IN FAIR EVENTS AND TO ACCEPT PRIZE MONEY

Despite the prohibitions established by state laws and rules, the association's management and governing board allowed director A and his spouse to compete in horse shows, even though director A's spouse was a horse show official. The association also improperly allowed director B's spouse to compete in judged events. Although it had been warned not to do so, the association's management allowed directors A and B and their spouses to collect prize money from timed and judged events. In fact, it appears that the association deliberately circumvented state rules.

Directors and Their Spouses Participated in Events in Violation of State Rules

Director A and his spouse violated state rules when they entered events during the time his spouse worked as a horse show official. These rules define a show official as any person performing the duties of a show manager, judge steward, or show secretary. Duties include but are not limited to contacting and hiring judges and collecting entry fees. Director A's spouse has been an official at horse shows since 1991. She and director A should not have been allowed to participate in horse show events after she became a horse show official.

In addition, the association improperly allowed director B's spouse to participate in judged horse shows during the 1997, 1998, and 1999 fairs. Although state rules allow directors' spouses to enter timed events, they do not allow spouses to

⁵ The prohibition applies to events held during the annual fair in late July and early August. It does not apply to other events that are held on the fairgrounds.

participate in judged events. Judged events are decided by a judge and involve a certain amount of interpretation and subjectivity. In contrast, timed events are based on elapsed time that is mechanically recorded.

The Association Improperly Paid Prize Money

Despite state rules, the association paid directors A and B and their spouses approximately \$9,845 in prize money from 1995 through 1999. The association’s deputy manager stated that the fair made these payments after these individuals won or placed in horse show events scheduled at the fair. Table 1 shows the amounts paid to these four people from 1995 through 1999.

TABLE 1

**Prize Money Paid to Directors and Their Spouses
1995 Through 1999**

	1995	1996	1997	1998	1999	Totals
Director A	\$230.57	\$291.20	\$2,742.50	\$ 527.00	\$1,060.00	\$4,851.27
Director B	N/A*	156.97	1,359.79	38.50	348.00	1,903.26
Director A’s Spouse	195.60	281.35	274.00	164.00	336.00	1,250.95
Director B’s Spouse	N/A	0	587.13	809.00	443.50	1,839.63 [†]
Totals	\$426.17	\$729.52	\$4,963.42	\$1,538.50	\$2,187.50	\$9,845.11

* Director B did not become a director until October 1995, after the 1995 fair competitions. Therefore, we did not include his or his spouse’s 1995 winnings.

[†] According to the association’s deputy manager, of the roughly \$1,840 in prize money that director B’s spouse received, she won about \$1,052 in judged horse show events, which she was prohibited from entering. The remaining \$788 she won in timed events.

The Association’s Board and Management Ignored State Rules

According to the department’s *Handbook: Recommended Guidance for Fair Board Directors* (handbook), the board is responsible for ensuring that all fair operations conform to applicable laws and regulations. State rules explicitly say that rules cannot be waived or amended by anyone, including the board, association management, or judges. The board can adopt local rules that are stricter than state rules but cannot circumvent or contradict state rules.

The handbook also notes that a board director, in accepting the appointment, makes a commitment to exercise the duties of a policy-maker. This commitment includes avoiding conflicts of interest, and even the perception of conflicts of interest, with respect to the board's financial decisions. In addition, the handbook states that a director must put the fair's interests above special interests or personal financial interests and that a director must ensure that the fair adheres strictly to all applicable laws, regulations, policies, and procedures.

Questions concerning board members and their spouses competing in and receiving prizes from various fair events were raised as long ago as 1994.

When we questioned director A, he stated that he had been competing in and winning rodeo events long before he began serving on the board and never acted on fair matters without the board's approval or foreknowledge. He said the association's board and management agreed during a 1994 meeting that board directors, association management, or their spouses should be allowed to receive prize money if they won or placed in timed horse show events. Director B said that when he met with association management and the board president in October 1995 for his orientation to the board, he specifically asked about participation in equestrian events by him and his family members. According to both director B and the board president, association management said no conflict existed and that director B's circumstances would fall under the action taken by the board with regard to director A in 1994.

Because we found no written record regarding such an agreement in minutes of the board's meetings, we interviewed four board directors and a manager who served the association during the time these discussions supposedly took place. We also spoke with the division's interim director. Although two board directors agreed that the board had decided that directors and their spouses could accept prize money, the other two directors either did not recall or disputed that any such decision was made. In fact, one director and manager told us that they informed director A that his acceptance of prize money violated state rules and appeared to be a conflict of interest. Despite this warning, the manager said, director A continued to insist that he receive any prize money he won. Director A, however, denied that anyone ever told him his acceptance of prize money violated state rules or appeared to be a conflict of interest.

The association's current management provided us with additional information as well as signed statements from three current and former directors and the association's deputy manager. In their statements, the directors generally agreed that:

- In 1994, the board had directed the association's management to check with the Division of Fairs and Expositions regarding the appropriateness of director A's participation in timed rodeo events.
- Management later informed the board that it had discretion to determine if board members could participate and that director A's participation was not a conflict.⁶

The association's deputy manager added that, although the board did meet in 1994 to discuss issues related to director A's participation and discussed director A's desire to accept prize money and awards, she could not say whether management ever provided an answer to the board. She said she assumed there were no problems because management continued each year to sign prize money checks to directors A and B and rehire director A's spouse as the horse show secretary.

Because of the conflicting statements of those who attended the 1994 board meeting and because we found no record of the agreement, we could not ascertain what actually took place. However, it seems clear that, even though association management and at least one board member knew as far back as 1994 that it was inappropriate for board members and their spouses to accept prize money, the practice did not stop. In fact, the issue was raised again in 1999.

On July 21, 1999, the board voted to continue to allow directors and their spouses to receive prize money.

On July 21, 1999, the board unanimously adopted a resolution that enables directors and their spouses to continue to receive prize money as they had in prior years.⁷ The resolution states that the board accepts "the policy regarding the horse show department, recognizing that current and past board members can continue with heritage and traditions." According to current association management, this resolution was intended to document what had been discussed and agreed on in previous years.

⁶ When we interviewed one of these directors earlier, he told us he could not recall what happened.

⁷ One director did not attend this meeting.

That is, the board not only endorses participation by board directors, association management, and their spouses in timed horse show events, but also permits them to continue to accept prize money.

We believe this resolution demonstrates the board's intent to circumvent the existing state rule. In addition, we confirmed with the interim director of the division that, absent an approved variance, members of the board of directors or their spouses who accept prize money or awards for horse show events held at a state-supported fair violate state rules. When we spoke with the current chief executive officer, he said that, to the best of his knowledge, no representative of the fair has requested a written variance from the division regarding this rule. Failing to request a written variance seemed questionable, even irresponsible, considering that the state rules pronounce the division as the final and absolute interpreter of these rules.

Before the board's July 21 vote, a consultant told the fair's management that it was improper for board members and their spouses to receive prizes for certain fair events. However, management did not convey this information to the board.

Further, it appears that association management purposely chose to disregard state rules and the established process for seeking a variance to the rules. Before the July 21, 1999, meeting when the board adopted its own resolution, management, at the request of director A's spouse, asked a consultant to help decide how it should handle the prize money issue. The consultant told us that she is intimately familiar with the state rules because she had been an employee of the division that was in charge of overseeing the state rules and competitions for fair exhibits. On July 7, 1999, the consultant prepared a memo addressed to association management. The consultant provided a brief history of state rules involving conflict of interest. She advised association management that even though state rules allow board members, spouses, and staff members to compete in timed events, the rules do not allow them to receive awards. She also explained that the rules variance process is a formal method for local boards of directors to make exceptions to state rules, and she provided a draft request for variance from state rules for immediate submission to the division. In addition, she provided association management with a list of issues for the board to discuss and attempt to resolve before adopting a policy, including:

- Ensuring that the board and the affected individuals clearly understand the rules and their purpose.

- Deciding whether unapproved noncompliance with state rules and board policy is worth the risk of protests and any negative publicity.
- Deciding whether the board should “take the bullet” and enforce the rules in the spirit and purpose for which they are intended.

Association management appears to have ignored the consultant’s advice because it was contrary to what some board members wanted to do. Clearly, the consultant’s memo made management aware that it probably was violating state rules. However, the manager said he did not find the consultant’s analysis very useful. As a result, during the July 21, 1999, meeting, the manager told the board that he had sought counsel concerning conflict-of-interest rules but did not obtain any useful information. The board then adopted the resolution that enables board directors, association management, and their spouses to continue to receive prize money.

Management told us that the board believes state rules should not apply to these horse show events because state money is not commingled with horse show funds and is not used to pay horse show winners. According to management, the prize money is paid entirely from horse show entry fees. This is not a credible argument. We talked to the division’s interim director to determine whether it was appropriate for board directors, association management, or their spouses to accept prize money in timed horse show events. He said state rules apply to all events held at the fair, including horse show events. He added that any assertion that state rules do not apply because a horse show does not receive state funding is inaccurate. The State does not appropriate money to specific events at the fair but for general fair expenses, which would include horse shows.

After we submitted our initial draft of this report to the department and the association, association management, in a letter dated July 13, 2000, asked the division director to clarify specific questions regarding these matters. Management’s questions included, but were not limited to:

- What is an award?
- What constitutes a prize, and how is it defined?

- Can a director's spouse who is also a part-time fair employee compete at the annual fair? If so, can he or she receive any awards or prizes?

In a letter dated August 7, 2000, the director responded by saying an award is given as a result of judgment; a prize is offered or striven for in a competition or contest; and a part-time employee of the fair who is married to a board director cannot compete or receive any awards or prizes in the annual fair. The director added that permitting such employees to compete or collect awards or prizes constitutes a conflict of interest.

Association management told us that during the most recent fair, held from July 26 through August 6, 2000, directors A and B and their spouses continued to participate, but only in timed horse show events. As in previous years, the directors and their spouses won some of the events. According to management, directors A and B and their spouses won a combined \$2,497 in prize money. However, instead of accepting the prize money, they donated their share of winnings to a group, mostly composed of cattle ranchers and businesses, that supports various junior livestock exhibits held at the fair. When we asked management if the fair planned to stop director A and his spouse from participating in horse show events while director A's spouse continued to work for the fair as the horse show secretary, we were told the fair would be requesting clarification from the division about state rules before making such a decision. Management maintains that one rule that allows directors and their spouses to participate in timed events conflicts with another rule that forbids horse show officials and their spouses from entering events in which the horse show official worked. However, the association's management and its board will accept whatever decision the division hands down regarding this matter. We asked the director of the division, and she confirmed that participation in any horse show event held during the fair, timed or otherwise, by a horse show official or their spouse would violate state rules.

We believe the association's board and management not only failed to adhere to the state rules but also acted to circumvent them. Only after we raised these issues with the association did it seek and accept definitive guidelines from the department. By allowing such activities to persist, the association's board and management put the fair's reputation at risk because the public might perceive such activities to be unfair or biased.

TWO DIRECTORS VIOLATED CONFLICT-OF-INTEREST PROHIBITIONS BY PARTICIPATING IN A DECISION IN WHICH THEY HAD A FINANCIAL INTEREST

State law prohibits public officials from participating in any governmental decision in which they know or have reason to know they have a financial interest. According to the Office of the Attorney General, when a decision is found to have the required effect on a public official's financial interests, the official is disqualified from making, participating in the making, or attempting to use his or her official position to influence the making of that decision at any level of the decision-making process.

Because two directors and their spouses had won prize money in the past, it was likely that they would continue to do so. Therefore, they should not have participated in the decision to allow directors and their spouses to accept prize money.

Directors A and B violated provisions of this law when they, as members of the board, participated in the decision that resulted in the adoption of a resolution allowing board directors, association management, and spouses to continue to accept prize money at the fair. The minutes from the July 21, 1999, meeting show that all but one board member, including directors A and B, voted in favor of this resolution. According to the state attorney general's pamphlet on conflicts of interest, five questions help determine whether a conflict of interest exists under the Political Reform Act of 1974. Table 2 shows both the questions and the answers as they apply to directors A and B. The answer to all five questions is yes, indicating that a conflict of interest existed and directors A and B should not have voted on the prize money issue during the July 21, 1999, board meeting.

TABLE 2

Analysis of the Board Members' Conflicts of Interest

Question*	Answer	Explanation
1. Is a public official involved?	Yes	As members of a governmental board that has decision-making authority, directors A and B <i>both</i> meet the definition of public officials.
2. Does the official have a statutorily defined economic interest? [†]	Yes	Fewer than 12 months before the board's decision at the July 21, 1999, meeting, director A received \$527 in prize money. Director B received only \$38.50, but his spouse received \$809. As a result, the prize money received by director A meets the \$250 threshold for a source of income, and the prize money accepted by director B's spouse meets the \$500 threshold test for a statutorily defined economic interest.
3. Is the official making, participating in the making of, or using his or her official position to influence the making of a governmental decision?	Yes	By voting on the issue during the board's July 21, 1999, meeting, the directors participated in a governmental decision.
4. Is it reasonably foreseeable that the decision could materially affect the official's economic interest?	Yes	This decision appears to be an attempt to eliminate any question as to whether the prize money previously received should be returned. Further, it is reasonably likely that directors A and B and their spouses will continue to benefit financially from their decision given their previous history of prize money earnings shown in Table 1 of this report.
5. Will the effect of the decision on the public official's economic interest be distinguishable from its effect on the public generally?	Yes	The decision specifically benefited directors A and B and their spouses by allowing them to keep and continue to accept prize money even though existing state rules forbid it.

* Source: Office of the Attorney General.

[†] A public official has a financial interest in any source of income that is either received by or promised to the official and that totals \$250 or more in the 12 months before the decision in question. Income also includes the official's community property interest in his or her spouse's income. As such, the official would meet the \$250 threshold if the spouse received \$500 of income.

AGENCY RESPONSE

Although the department provides oversight to each district agricultural association, each association has its own governing board of directors. Consequently, we sent our report to both the association and the department for response.

The association contends that the state rules are vague and ambiguous and the "official" interpretation of some of the rules has been inconsistent and conflicting. The association says that

it sought departmental approval of its practices in 1994, and believes that its management at that time misled the board as to whether it was properly interpreting the state rules. Nevertheless, the association's board rescinded its July 1999 resolution and passed a new resolution that manifests a specific intent to comply with the state rules. Directors A and B did not participate in these actions.

In addition, directors A and B and their spouses agreed to return all awards won and received during the directors' tenure on the board, including ribbons, belt buckles, and prize money. Finally, all association directors, managers, and staff have agreed to undergo training on the state rules as required by the department.

The department does not agree that the state rules are vague or ambiguous, and does not totally agree with the association's characterization of the historical facts at issue in our report. For example, the department has no record that the association applied for a waiver of the state rules in 1994. Nevertheless, it believes that the corrective measures proposed by the association are appropriate. The department will, however, continue to monitor the association to ensure that the corrective measures are fully implemented and that the association complies with state rules in the future. ■

CHAPTER 3

Department of Corrections: Conflicts of Interest and Failure to Protect the State's Assets

ALLEGATION I990136

We received an allegation that vehicle maintenance officers and senior staff at the Department of Corrections' (corrections) Southern Transportation Unit (STU) had their privately owned vehicles repaired by a vendor that also repairs the STU's state vehicles, and that some individuals received discounts from the vendor.

RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated the allegation and other improprieties. One employee of the STU, employee A, improperly received a gift in the form of reduced vehicle registration fees when he purchased a car from a business whose owners also owned an automotive repair shop that the STU uses to repair its vehicles. Employee A and three other STU employees used the same vendor to repair their personal vehicles while they held state positions that enabled them to authorize or influence significant increases in the amount of business the vendor received from the State. For instance, in fiscal year 1996-97, the STU paid the vendor only \$11,287. In July 1997, the manager of the STU—who had stopped using the vendor because of concerns with the vendor's work and her knowledge that certain employees were taking their personal vehicles to the vendor for repair and possibly receiving discounts—left the STU. Following her departure, the STU's payments to the vendor increased to \$71,971 in fiscal year 1997-98 and \$113,273 in fiscal year 1998-99. In addition, STU employees circumvented controls over high-cost repairs and vehicle modifications made by the vendor and did not exercise due diligence in making sure the State paid only for necessary costs. All these factors contributed to the appearance of conflicts of interest.

One employee who influences vendor selection improperly accepted a gift from a vendor.

To investigate the allegation, we reviewed vehicle maintenance files, reports, and policies and procedures for departmental transportation staff. We also reviewed all applicable laws and

regulations as well as fleet administration information maintained by the Department of General Services (DGS).⁸ We interviewed STU staff, other transportation unit staff, and DGS staff. In addition, we interviewed and obtained records from one automotive repair vendor used by the STU. To each individual who provided us with important information verbally, we gave a written summary of what he or she told us. We then asked him or her to review the summary for accuracy and make any necessary changes. We also asked each of these individuals to sign the summary under penalty of perjury to ensure the accuracy of our understanding of the information provided. The owners of the auto repair shop refused to sign summaries of what they told us. Although we report our understanding of what they told us, we have less confidence in the accuracy of our understanding because of their unwillingness to confirm or correct our understanding and to certify it under penalty of perjury.

BACKGROUND

Corrections' transportation unit is primarily responsible for transporting offenders between Corrections' 33 institutions as well as other facilities such as community correctional reentry centers and community correctional facilities. In addition to the STU, the transportation unit operates two other transportation hubs—the Northern Transportation Unit and the Central Transportation Unit—and an extradition unit. As of December 30, 1999, the three hubs owned and operated 84 vehicles consisting of 35 buses, 42 vans, 4 sedans, and 3 paratransit vehicles.

Each transportation hub maintains its fleet primarily by procuring the services of approved private automotive repair vendors. A vendor gains approval status after the DGS determines it has met the terms and conditions outlined in a request for qualification (RFQ). One of the goals of the RFQ is to provide the State with a pool of approved vendors that can provide consistent and reliable automotive repair services at the most economical rates available. The RFQ process is not a competitive procurement and provides no guarantee of business to any vendor. Instead, transportation hubs have the discretion to

⁸ For a more complete description of the laws, regulations, and policies discussed in this chapter, see Appendix B.

choose any of the approved vendors. However, a hub must contact a designated DGS fleet inspector and receive approval when repairs by approved vendors exceed \$500. Should a hub use a nonapproved vendor, repair costs exceeding \$350 require approval from the appropriate DGS representative.

Each hub is assigned a transportation manager who manages the hub's overall operations. Working under the direction of the transportation manager, an assistant manager supervises the hub's day-to-day operations, including maintaining the preventative maintenance program for the hub's fleet and reviewing and approving vehicle maintenance and repair invoices. Fleet officers, also known as vehicle maintenance officers, maintain the hub's fleet and are under the general supervision of the assistant manager. Fleet officers keep track of repairs, preventative maintenance, vehicle mileage, and maintenance and repair invoices.

ONE EMPLOYEE IMPROPERLY RECEIVED A GIFT AND CREATED THE APPEARANCE OF A CONFLICT OF INTEREST

State law prohibits state employees from engaging in any activity that is clearly in conflict with their duties, including using the prestige or influence of the State for private gain or advantage. In addition, state employees are prohibited from receiving or accepting, directly or indirectly, any gift, including money, or any service, gratuity, favor, entertainment, hospitality, loan, or any other item of value from anyone who is doing or is seeking to do business of any kind with their departments. The same law requires state departments to define incompatible activities. Corrections' policy prohibits any employee from receiving or accepting a gift from anyone doing or seeking to do business with the State under circumstances from which it reasonably could be inferred that the gift was intended as a reward or for the purpose of influencing any official action on the employee's part.

In spite of these prohibitions, one STU employee, employee A, improperly received a gift in the form of reduced registration fees when he purchased a car from a dealership whose owners also own an automotive repair shop used regularly by the STU. The employee, whose duties place him in frequent contact with such vendors and give him the ability to influence which vendors management selects, purchased a sport utility vehicle

As a result of reporting \$10,000 as the vehicle sales price to DMV instead of the actual price of \$17,602, the employee received a gift in the form of reduced registration fees from a state vendor.

from the dealership for \$17,602. However, the purchase price reported to the Department of Motor Vehicles (DMV) was only \$10,000. Thus, the employee benefited in the form of reduced registration fees associated with the sale.

There is some controversy about who reported the \$10,000 purchase price to the DMV. When a vehicle is bought from a dealership, the purchase price must be reported to the DMV, and the DMV bases its annual registration fees, in part, on this price. When new car owners sign the vehicle registration forms, they certify that the information they entered is true and accurate. In this case, the \$10,000 purchase price was recorded next to the signatures of employee A and his spouse on the application for transfer of vehicle ownership, one of the vehicle registration forms. Employee A said that neither he nor his wife entered the \$10,000 purchase price and that neither had any knowledge of this discrepancy. He also said that his wife did not actually sign her name and that he did not recall whether he or someone else had signed for his wife. When we spoke with the dealership owners, both told us that they did not record the erroneous purchase price on the DMV document.⁹ According to one owner, a subcontractor paid by his company to handle DMV paperwork and sell cars on commission must have mistakenly entered the incorrect purchase price. Despite requesting assistance from the owner, we were not able to locate and interview this individual. In fact, we found no evidence that anyone other than the owners, employee A, or employee A's spouse, had prepared or signed the DMV form on which the \$10,000 purchase price was recorded. Thus, the evidence indicates that one or all of the parties involved in the sale—the owners, employee A, or his spouse—participated in reporting a lower purchase price to the DMV, thereby providing a benefit to employee A in the form of reduced vehicle registration fees.

OTHER EMPLOYEE TRANSACTIONS CREATED THE APPEARANCE OF A CONFLICT OF INTEREST

Although we found no evidence that other employees at the STU violated statutory prohibitions against conflicts of interest, the actions of some of these employees have contributed to the appearance of conflicts of interest.

⁹ See the "Results and Method of Investigation" section for an explanation of how we obtained information from the business owners.

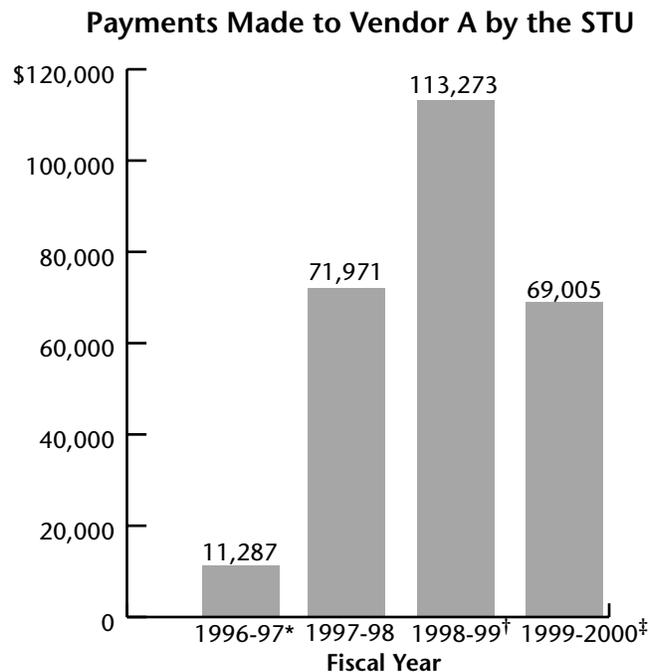
As previously discussed, the STU can procure automotive maintenance and repair services from approved vendors via a noncompetitive agreement established by the DGS. When a list of approved vendors is established, the STU can obtain services from any of them. Two managers at the STU, employees B and C, have the authority to choose which vendors the STU uses to perform maintenance and repair services. Employees A and D, who serve or have served as STU vehicle maintenance officers, performed duties that required them to work closely with approved vendors. They also can influence which vendors the STU uses.

The previous manager stopped giving state business to the vehicle repair vendor because she knew that some of her employees were taking their personal vehicles to the vendor and because she noticed a pattern of excessive repairs by the vendor on state vehicles.

Employee B assumed responsibility for overall operations of the STU in December 1997. Before his arrival, employee C, who transferred to the STU in September 1997, acted in the interim as head of STU and instructed staff to use one vendor, vendor A, as the primary vendor of choice for maintenance and repairs of STU's fleet of vans and one sedan. Employee C said he chose vendor A after performing his own analysis and receiving input from his vehicle maintenance officers. He concluded that the vendor offered the best combination of timely, efficient, and economical repair and warranty service.

However, employee C's explanation conflicted with what the previous STU manager had told us—that is, that she had performed an extensive analysis of qualified vendors and found several that offered services and prices comparable to that of vendor A. The previous manager had performed this analysis after she determined the STU should stop using vendor A. She came to this conclusion shortly after assuming responsibility for STU operations in October 1994, when she noticed an apparent pattern of excessive repair work on STU vehicles by vendor A. She also became aware that several employees, specifically employees A and D, were taking their personal vehicles to the vendor and heard these employees had received discounted prices from the vendor. Although she never obtained direct evidence of any STU employee receiving a discount, she decided that the STU should avoid the appearance of a conflict of interest and stopped using vendor A sometime in 1995. Despite her concerns, shortly after she left the STU on July 14, 1997, the STU began using vendor A almost exclusively. This abrupt shift in the volume of state business given to one vendor seemed questionable given the previous manager's concerns. Figure 1 illustrates the amount of payments made to vendor A from fiscal years 1996-97 through 1999-2000.

FIGURE 1



Source: Corrections' reports of payments to vendor.

* Although the previous manager determined the STU should not use vendor A during this time, some employees still used vendor A for repairs.

† The increase in business vendor A experienced during fiscal year 1998-99 may be due, in part, to the larger number of costly repairs required to maintain the STU's aging fleet of vans. The STU subsequently updated its fleet with four 1999 model vans and disposed of older vans. Thus, lower maintenance costs would be expected during fiscal year 1999-2000.

‡ Amount includes \$9,744 in charges made on a state credit card for STU vehicles repaired by vendor A. The STU began using the credit card as early as February 2000.

From March 1998 through March 2000, at least five STU employees used vendor A for maintenance and repairs on their personal vehicles. Although we did not find any direct evidence that all these employees received discounts from the vendor for work performed on their personal vehicles, certain aspects of their transactions were questionable and added to the appearance that a conflict of interest existed. For instance, one document we obtained included information that appeared to indicate employee C received a discount from the vendor. Specifically, an invoice dated March 3, 1998, for \$167.91 showed the vendor deducted \$45 from employee C's invoice. Next to the \$45 deduction on the invoice was the notation "Dist," which appears to be an abbreviation of the word *discount*. Both the employee and the vendor said the amount deducted actually represents a credit for a part the employee returned to the

vendor. However, this is not indicated anywhere on the invoice, and neither the employee nor the vendor could provide any documentation to support the statement. We also noticed on the invoice that the vendor failed to charge employee C for oil disposal fees commonly associated with the type of service provided. The vendor said his failure to include the disposal fees was an oversight.

Table 3 shows the repairs that vendor A made to vehicles owned by five STU employees from March 1998 through March 2000.

TABLE 3

Repairs Made by Vendor A to Vehicles Owned by STU Employees

Invoice Date	Name	Repair Description	Invoice Amount
01/18/2000	Employee A	Replace manifold and repair air conditioning	\$ 609.65
03/02/2000	Employee A	Lube, oil, transmission, and rear-end service	148.41
04/25/1999	Employee B	Replace computer module	463.55
03/03/1998	Employee C	Replace alternator, lube, oil and filter, and adjust valves	167.91
04/13/1998	Employee C	Rebuild motor and check brakes	1,100.00
04/26/1999	Employee C	Replace alternator	216.75
01/05/2000	Employee C	Check alignment and replace struts	696.48
07/04/1998	Employee D	Repair muffler	187.65
04/26/1999	Employee D	Rebuild transmission	1,469.81
02/10/2000	Employee D	Repair clutch master cylinder	102.10
03/03/2000	Employee E	Replace alternator	199.69
Total			\$5,362.00

Source: Vendor's repair records.

The repair document dated April 13, 1998, showed the vendor gave employee C an estimate of \$1,100 to rebuild the engine in his car and check the brakes. Neither the vendor nor the employee could provide the actual invoice for this work, but employee C confirmed the work had been performed and

recalled paying somewhere around \$1,290. Employee C said he paid cash for this work and that vendor A allowed him to pay it off over a period of two months. We attempted to substantiate the amounts paid to vendor A by employee C and each of the other employees involved, but our ability to do so was hampered by the fact that each employee said they paid cash for the vendor's services.

THE STU FAILED TO PROTECT THE STATE'S INTERESTS, CIRCUMVENTED CONTROLS OVER HIGH-COST REPAIRS, AND FURTHER CREATED THE APPEARANCE OF CONFLICTS OF INTEREST

We found the STU circumvented controls when purchasing high-cost repairs from the vendor, failed to hold vendor A accountable for failed repair work still under warranty, and paid vendor A to make modifications to one vehicle without obtaining the appropriate approval.

As stated earlier, a DGS fleet inspector must approve all repairs exceeding \$500 made by approved vendors. However, we found that the State paid for high-cost repairs after the STU either encouraged or allowed vendor A to split repair costs over multiple invoices to circumvent this approval process. As shown in Table 4, the split invoices for each vehicle include similar dates and identical odometer readings.

The STU also did not collect for failed repair work still under warranty and paid vendor A to make vehicle modifications without obtaining the appropriate approval. According to the terms outlined in the automotive repair and service agreement established by the DGS, vendors seeking to do business with the State agree to provide a six-month, 6,000-mile minimum warranty on all parts, labor, and repairs. Despite this requirement, we found the STU did not always take advantage of the warranty. In one instance, the STU paid \$1,300 to vendor A for replacing the computer module, ignition switch, and alternator on a vehicle that would not start due to electrical problems. Two weeks and less than 1,000 miles later, the vehicle experienced similar problems, yet the STU paid vendor A approximately \$632 to install another computer module. In another example, the STU paid \$296 to vendor A for replacing an alternator and belt. Less than three months and 3,000 miles later, the alternator failed in a remote area far from vendor A's place of business, requiring the STU to pay another vendor more than \$330 for the

TABLE 4

Split Invoices From Vendor A

Description of Services Provided	Invoice Date	Odometer Reading	DGS Approval?	Invoice Amount
Vehicle A				
Repair and replace fuel injectors	11/30/99	239692	No	\$499.07
Replace fuel pressure regulator, wires	11/30/99	239692	No	287.31
Combined price of split invoices				\$786.38
Vehicle B				
Install water pump, air horns, and replenish power steering fluid	1/11/00	133280	No	\$ 362.39
Minor tune-up	1/11/00	133280	No	256.13
Replace mufflers, tailpipes, and belts	1/11/00	133280	No	446.22
Combined price of split invoices				\$1,064.74
Vehicle C				
Replace serpentine belt and tensioner	1/7/00	119590	No	\$266.79
Lube, oil, transmission, and 3rd-member service	1/11/00	119590	No	142.83
Replace thermal fan	1/12/00	119590	No	125.77
Combined price of split invoices				\$535.39
Vehicle C				
Minor tune-up and brake job	1/18/00	119622	No	\$329.09
Replace injector	1/18/00	119622	No	298.13
Combined price of split invoices				\$627.22

emergency repair. While it was not practical for the driver to return the vehicle to vendor A for rework, the STU could have sought a full or partial refund from vendor A for the original work. However, the vehicle maintenance files do not indicate any such refund was ever requested.

The DGS also requires inspections for all modifications made to state vehicles. However, we found the STU used vendor A to install cruise control for \$384 and air horns for \$105 without obtaining the appropriate approvals.

Conflict-of-interest laws are not restricted to prohibiting actual instances of self-dealing, dishonesty, or unfairness but also seek to prevent the appearance of wrongdoing. The STU employees created the appearance of conflicts of interest by directing a

large amount of the State's business to one vendor, circumventing restrictions and requirements when procuring vehicle repairs from that vendor, failing to hold the vendor accountable for guaranteed repairs, and obtaining repairs for personal vehicles from the vendor.

AGENCY RESPONSE

Corrections has not completed its corrective action. ■

CHAPTER 4

Board of Pharmacy: Gross Inefficiency in Processing Consumer Complaints and Failure to Record and Pay Overtime

ALLEGATION I990107

We received an allegation that the Board of Pharmacy (board) has a backlog of consumer complaints and is not doing its job to investigate the allegations that continue to be made.

RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated the allegation. Specifically, the time the board allows itself for resolving complaints, up to 290 days, is excessive when compared to the time frames mandated by law or regulation for other consumer protection agencies.¹⁰ The longest time frame we found was a state law allowing up to 120 days to review and investigate insurance complaints before a public hearing.

Also, the board has experienced long delays in complaint processing. As of March 6, 2000, the board had not resolved 770 of its 1,552 open complaints within its 290-day goal. Between January 1, 1994, and March 6, 2000, it took the board an average of 441 days to close 5,265 complaints. If the board continues to resolve complaints at this rate, and if it continues to receive an average of 1,000 complaints annually, its backlog will grow steadily. Moreover, although the board's goal is to complete the investigation phase of the complaint-resolution process within five months, board staff, on average, took nine months. We also noticed that the board's process for prioritizing complaints does little to ensure that complaints involving potential consumer injury receive immediate

As of March 6, 2000, the board had not resolved 770 of its 1,552 open complaints within its own 290-day goal.

¹⁰ The 290-day time frame is the maximum the board allots for closing complaints that involve disciplinary actions, such as referrals to its compliance committee or the Office of the Attorney General.

attention. In addition, the board has been unable to retain sufficient staff in its investigations unit to resolve consumer complaints efficiently.

Finally, while investigating the allegation, we noted a discrepancy between the number of hours that board inspectors worked before their appointment as exempt employees on January 1, 1998, and the number of overtime hours they were paid. After January 1, 1998, the board's inspectors were no longer eligible to receive overtime pay. Although the board, in August 1998, requested its inspectors to submit a claim for any uncompensated overtime hours, it may have improperly denied some hours shown on the overtime claims for four of its inspectors. The failure to pay certain staff for all hours worked violates the federal Fair Labor Standards Act. Moreover, this act requires the board to track the amount of overtime its employees work. However, the board did not maintain accurate overtime records. And, in the absence of those records, we question its ability to deny hours shown on overtime claims.

BACKGROUND

State law requires the board to protect the public health, safety, and welfare of the people of California.¹¹ One way the board does this is to investigate complaints against those involved in the pharmacy industry, including drug wholesalers, pharmacies, and individual pharmacists. Complaints can range from general consumer complaints resulting in no patient injury to grossly negligent prescription errors resulting in patient injury or death.

In an October 1996 report to the Joint Legislative Sunset Review Committee, the board outlined several steps it had taken to improve its complaint-resolution process. For instance, the board cited the establishment of team investigations, which allow inspectors to collaborate as a way to double the board's efforts and resources to resolve high-risk complaints quickly and thoroughly. The board also set forth its performance standards for resolving complaints.

¹¹ For a more complete description of the laws, regulations, and policies discussed in this chapter, see Appendix B.

THE BOARD IS SLOW TO RESOLVE CONSUMER COMPLAINTS

Despite the board's efforts to improve its complaint-resolution process, it routinely fails to meet its deadlines. These are our specific concerns with the board's management of consumer complaints:

- The board has established time frames that are unreasonably long.
- The board fails to meet even its excessive time frames.
- The board's system for prioritizing complaints does not effectively ensure prompt investigation and resolution of the most serious complaints.
- The board has been unable to maintain adequate investigative staff to ensure timely complaint resolution.

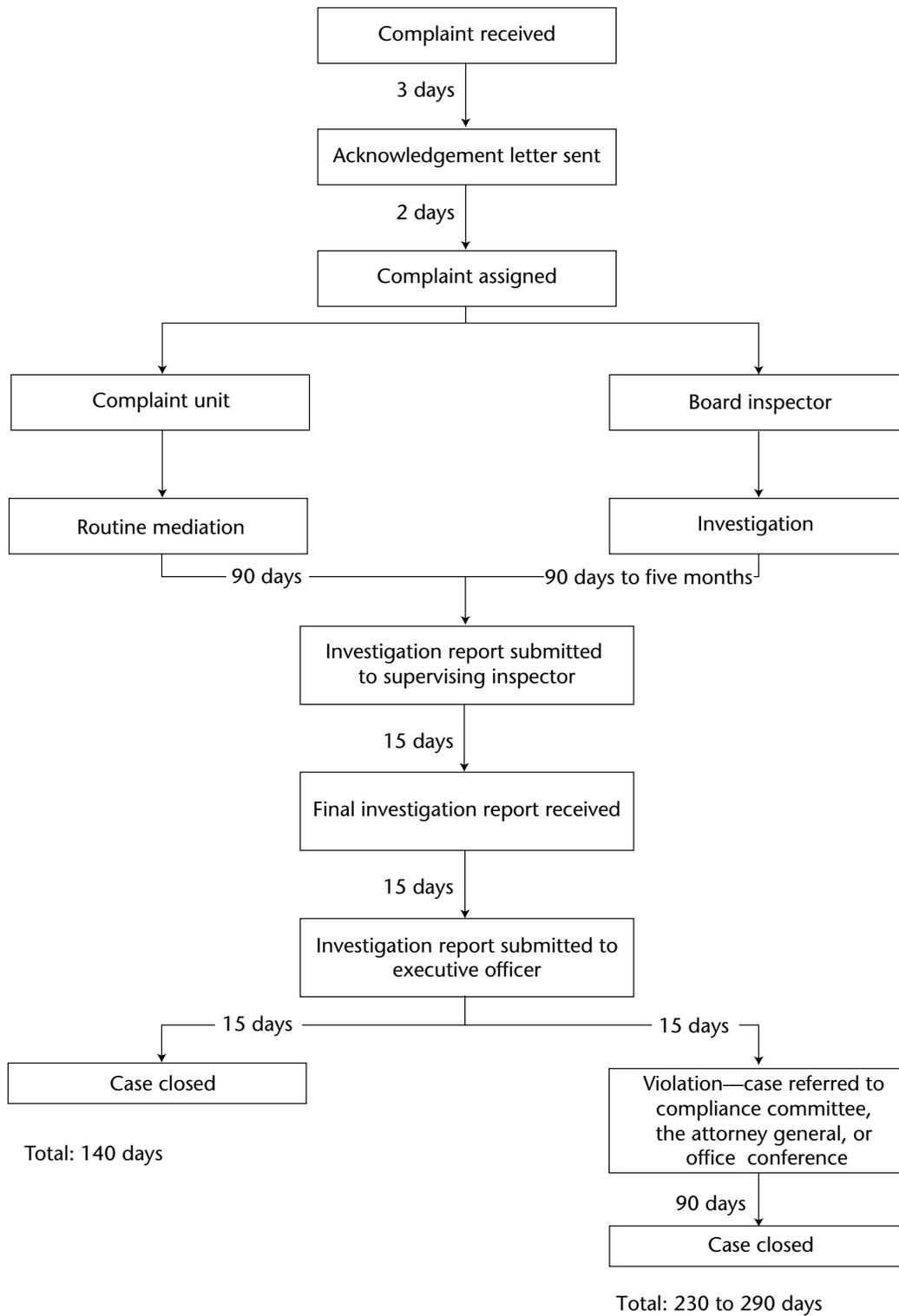
We believe these concerns reflect gross inefficiency on the part of the board. Delays in resolving complaints increase the risk that those violating pharmacy laws will continue to make mistakes that affect the public health, safety, or welfare of California consumers.

Its Time Frames for Resolving Complaints Is Longer Than Other Agencies

The board has established goals for its complaint-resolution process that are excessive when compared to other consumer protection agencies. The board's goal is to resolve complex complaints—those requiring the expertise of an inspector or referral to the Office of the Attorney General (AG)—within 290 days. The deadline for processing all other complaints—those handled by the board's complaint unit—is 140 days. Figure 2 illustrates the board's complaint-resolution process and the number of days allotted for each step in that process.

FIGURE 2

Overview of the Board of Pharmacy's Complaint-Resolution Process
(Including Performance Standards)



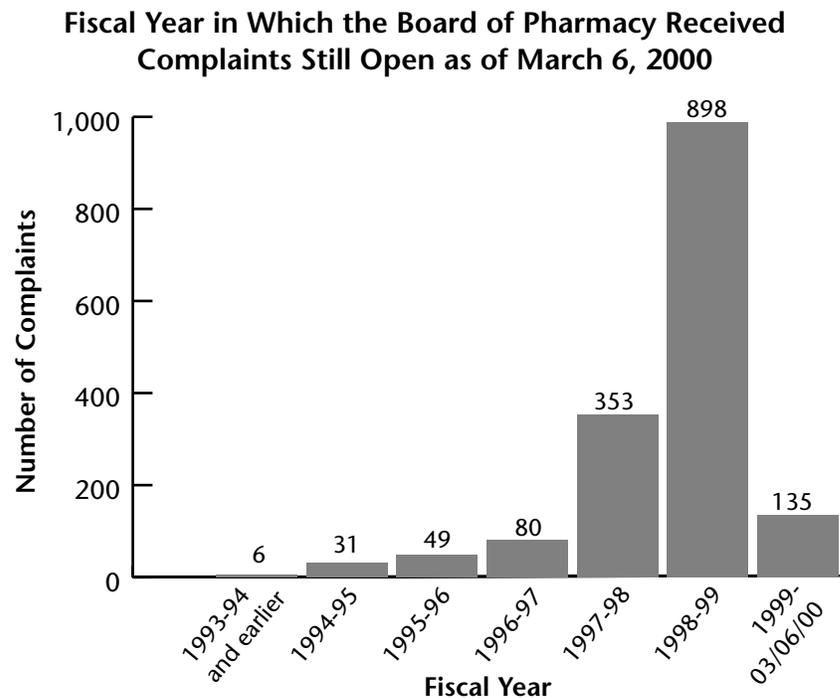
Source: Board of Pharmacy.

We considered a complaint resolved when the steps presented in Figure 2 were complete. We did not take into account any time the AG spent on the issue. We found that the board's time frames for resolving its complaints far exceeded the time frames established for 10 other state entities charged with protecting Californians. For example, state law requires complaints against health care service plans, such as health maintenance organizations, to be resolved within 30 days, which is about 10 percent of the board's 290-day time frame. In fact, the longest time frame we found was a state law allowing up to 120 days to review and investigate insurance complaints before a public hearing.

The Board Does Not Resolve Complaints Within Its Established Time Frames

On March 6, 2000, the board had 1,552 open complaints. Although the average length of time these complaints had been open was 394 days, or about 13 months, 199 had been open for more than two years. Figure 3 presents the fiscal years in which the board received these open complaints.

FIGURE 3



Source: Board of Pharmacy enforcement database.

Using the board’s 290-day time frame as a benchmark, on March 6, 2000, the board had a backlog of 770 complaints, or about half the total of open complaints.

The board does not have a good track record for resolving complaints promptly. For example, it took on average 441 days, or almost 15 months, to resolve the 5,265 complaints it closed between January 1994 and early March 2000. Moreover, the board could resolve only 291 (35 percent) of its 823 high-risk, complex complaints within 290 days and 118 (20 percent) of its 590 high-risk but less complex complaints within 140 days.

Of course, the amount of time the board spent investigating complaints contributed to delays resolving them. Specifically, the board allows its staff up to five months, or almost half of the 290 days, to investigate a complaint. However, we found that once a complaint was assigned to an inspector, board staff took an excessive amount of time to investigate and submit reports. On average, it took board staff about nine months to investigate a complaint once the inspector was assigned.

The Board’s System of Prioritizing Complaints Is Ineffective

The board implemented a procedure to assign priorities in an effort to improve its handling of complaints. The board prioritizes its complaints based on its initial review and case assessment using the categories shown in Table 5.

TABLE 5

The Board’s Categories for Prioritizing Investigations

Priority	Response	Examples of Violations
1	Urgent-immediate	Pharmacist arrest or conviction on drug charges; report of impaired pharmacist; report of theft by a pharmacist, and report of no pharmacist on duty.
2	Rapid	Prescription error resulting in patient death or injury; unlicensed activity; wholesale report of excessive purchases; and possible controlled substance shortage.
3	Active investigation	Prescription error resulting in patient injury or violation of the patient consultation requirements.
4	Standard, consistent turnaround	General consumer complaints resulting in no patient harm or injury; internal investigation of technical violations of pharmacy law; licensing issues.

The board ranks its high-risk complaints as priority 1, 2, or 3 and considers priority 4 complaints to pose less threat to patient health. The purpose of prioritizing work is to direct resources to complaints that pose a greater risk of harming consumers so they are resolved more quickly. However, we found that the board's system does not ensure that complaints involving potential consumer injury are investigated within the maximum allowed time of five months. We compared complaints assessed as high risk (that is, ranked as priority 1, 2, or 3) with those assessed as less risky. Our comparison indicates that, regardless of risk, the board took longer than five months to complete about 60 percent of its investigations.

Vacancies Contributed to Delays in Resolving Complaints

A recent shortage of inspectors contributed to the delays in investigating and resolving complaints. Although the board is authorized to have 19 inspectors and 2 supervising inspectors, as Table 6 shows, it has not been able to hire and retain this number of staff. The board believes that differences in the salary paid to public sector pharmacists compared with the private sector hinder its ability to attract qualified applicants.

TABLE 6

Authorized and Filled Inspector and Supervising Inspector Positions for Fiscal Years 1994-95 Through 1999-2000

	1994-95	1995-96	1996-97	1997-98	1998-99	1999-2000
Positions authorized	21	21	21	21	21	21
Positions filled	19.8	18.1	18	15.2	14.9	13.5*
Positions vacant	1.2	2.9	3	5.8	6.1	7.5
Percent vacant	5.7%	13.8%	14.3%	27.6%	29.0%	35.7%

* Filled as of 1/18/00.

Between July 1, 1994, and February 29, 2000, 18 inspectors left for varying reasons such as retirement, voluntary resignation, or transfer to another state department. If the vacancies had been filled, each board inspector would have been able to resolve an additional 51 complaints per year and a backlog would not exist.

THE BOARD HAS NO ASSURANCE IT HAS PAID ITS STAFF FOR ALL HOURS WORKED

Although the database used by the board to manage its workload and recover costs showed that 17 inspectors worked more than 3,450 hours of overtime, the State paid them for only 260 hours of overtime.

It appears the board violated federal law by not compensating its inspectors for all hours worked and not keeping accurate records of their hours. The board requires its inspectors to track the amount of time spent on various stages of the complaint-resolution process by logging their daily activity for each complaint into its timekeeping database. The board uses this database to determine cost recovery, resource allocation, and workload. The database indicates that 17 inspectors worked more than 3,450 hours of overtime during 15 of the 18 months between July 1996 and December 1997. However, payroll data from the State Controller's Office indicate that these employees received compensation for only about 260 (7.5 percent) of those overtime hours. If the board believes that its timekeeping database is accurate enough to support its cost recovery determinations, the discrepancy between the number of overtime hours recorded in the board's database and the number compensated indicates that the board has not paid its employees for all time worked.

State law requires state agencies to maintain effective systems of internal accounting and administrative control to minimize fraud, errors, abuse, and waste of government funds. It also states that elements of a satisfactory system of internal accounting and administrative control should include a system of authorization and record-keeping procedures adequate to provide effective accounting control over assets, liabilities, revenues, and expenditures. Further, this act requires that, when detected, weaknesses must be corrected promptly.

We observed that the board had no written policy concerning overtime until June 1997. Before June 1997, the board expected its inspectors to do the work necessary to complete their assigned tasks. If the inspectors worked overtime to finish the task, they were to take an equivalent amount of time off shortly thereafter. However, we found no evidence that the board directed its investigators to maintain sufficient documentation tracking the accumulation and usage of their overtime. Moreover, according to a memorandum issued by the director of the Department of Personnel Administration (DPA), effective July 1, 1995, certain employees covered by the federal Fair Labor Standards Act, such as the board's investigators, must be compensated in cash for all overtime worked. The use of compensating time off (CTO) is not permitted, except for CTO

accumulated before June 30, 1995. The DPA directive was still in effect on December 31, 1997. Thus, the board was required to compensate its investigators in cash at time and one-half for all overtime.

On August 28, 1998, the board requested that inspectors submit a claim for any overtime hours they worked without compensation between January 1, 1995, and December 31, 1996. For each day of overtime worked, the board required inspectors to identify, among other things, the specific tasks performed during the overtime period, why it was necessary to work the overtime, and whether a supervisor approved the overtime. The board also required the inspectors to attach supporting documents. Four employees filed claims. However, the board's review of these claims may have been flawed. Although the inspectors were claiming more than 560 hours of uncompensated overtime, the board denied more than 410 of these hours, using methods such as evaluating the frequency and length of e-mail activity and trying to estimate travel and lunch hours.

We believe the federal Fair Labor Standards Act indicates that such methods are not sufficient to allow an employer to deny payments for overtime. One court decision dictates that an employer cannot transfer its "burden of accurate record keeping" to employees and that it must keep track of the amount of overtime worked by its employees. Another court decision states that employees need merely show that they have in fact performed those services for which they were compensated improperly and produce evidence to show the amount and extent of work as a matter of just and reasonable inference. The burden then shifts to the employer to show the precise amount of work performed or to negate the reasonableness of the employee's inferences. Since the board's timekeeping database shows an inordinate amount of overtime worked between July 1996 and December 1997 in comparison to the State Controller's Office payroll data, it appears that the board has not fully compensated its employees for all hours worked. In addition, the board did not keep accurate records of overtime worked as required. As a result, it appears that the board violated the federal Fair Labor Standards Act.

AGENCY RESPONSE

The board agreed that it has not investigated and completed cases promptly and plans to focus on resolving some of the oldest pending complaints. It believes that once the backlog is eliminated, its system for prioritization will increase in importance. The board claims that as of March 8, 2001, it had 393 complaints older than 181 days that have not been investigated or mitigated. The board also reported that it was able to increase its salaries for pharmacists and has hired eight inspectors and one supervising inspector during the seven months ending January 2001 and expects to fill its remaining three vacant inspector positions soon. It also plans to evaluate the need to add one analyst and one technician to its complaint unit. Further, the board plans to strengthen its responsiveness to consumers by activating a toll-free number for consumer complaints and posting this number in every pharmacy later this year.

The board believes its procedures for reviewing overtime claims were appropriate or sufficient. The board stated that it sought advice from the Department of Consumer Affairs' (department) personnel unit. The department's chief of the Office of Human Resources states that the department consulted with legal staff at the DPA regarding the federal Fair Labor Standards Act and consequently supported the board's overtime claims review process. However, we also met with the DPA and believe that it may not have been fully aware of the issues discussed in our report. ■

CHAPTER 5

Department of Consumer Affairs: Improper Use of Confidential Information

ALLEGATION I990143

An investigator (employee A) for the Department of Consumer Affairs (department) used his state position to access a law enforcement information system and obtain confidential information about a person who had been involved in a car accident with the investigator's spouse.

RESULTS AND METHOD OF INVESTIGATION

We asked the Office of the Attorney General (AG) to investigate on our behalf. The AG substantiated the allegation, finding that employee A inappropriately accessed the law enforcement information system to obtain information for personal reasons. Employee A did so by using a department case number from an unrelated and closed case. Further, he provided information obtained from the system to another entity.

To investigate the allegation, the AG interviewed employee A and his supervisor. It also obtained a log of system activity providing information on this particular use of the system by employee A.

An employee abused his position to obtain confidential information on an individual who had been in a car accident with the employee's wife.

THE EMPLOYEE INAPPROPRIATELY USED A STATE INFORMATION ASSET TO OBTAIN CONFIDENTIAL INFORMATION FOR PERSONAL USE

On May 29, 1998, without his supervisor's approval, employee A used the California Law Enforcement Telecommunications System to obtain information about an individual who was involved in a car accident with the employee's spouse. Using a case number from an unrelated closed case, employee A accessed the system and checked the license plate number of the vehicle involved in the accident. After learning the identity of the vehicle's owner, employee A ran a criminal history search on the

individual. The search revealed the individual was on parole. Employee A subsequently contacted the individual's parole agent. Because the car accident was a personal matter, the department had no role in the incident. As a result, the employee used a state resource for private purposes.

The law prohibits state employees from using state resources for private gain or advantage or for an outside endeavor not related to state business.¹² Further, the department's Information Security Policy states a responsibility of "using state information assets only for state purposes." Employee A signed the Employee Information Security Agreement on January 1, 1997. He initialed the agreement to acknowledge that he had read, received, and understood the department's Information Security Policy; agreed to use reasonable precaution to ensure the department's information is not disclosed to unauthorized persons or used in an unauthorized manner; and understood that violations are cause for discipline, which may include termination. Additionally, the department's Incompatible Work Activity Policy prohibits using or accessing confidential information that is available by virtue of state employment for private gain or advantage or providing confidential information to persons not authorized to receive it. The access of the system for personal reasons, use of an unrelated case number, and release of information to an outside agency also violated the guidelines of the Department of Justice, which owns the system. During the investigation, employee A acknowledged that he had violated policy.

AGENCY RESPONSE

The department formally reprimanded the employee. ■

¹² For a more complete description of the laws, regulations, and policies discussed in this chapter, see Appendix B.

CHAPTER 6

Department of Health Services: Improper Travel Expense Claims

ALLEGATION I2000-686

An employee of the Department of Health Services' (DHS) Licensing and Certification Division submitted claims for mileage reimbursement even though she drove a state vehicle. She also submitted claims for other expenses that should not have been allowed.

RESULTS AND METHOD OF INVESTIGATION

We asked DHS to investigate the allegation on our behalf. DHS concluded that the employee claimed unallowable costs on 13 of the 35 travel expense claims she submitted from September 1998 through June 2000. The total cost of the unallowable expenses was \$422 and included \$310 for mileage and \$112 for meals and incidental expenses. DHS reported that, in April 2000, the employee and her superiors became aware that she had not been entitled to the \$310 in mileage reimbursements. On May 15, 2000, before we asked DHS to investigate the allegations, the employee refunded \$310 to DHS.

An employee submitted claims totaling \$422 for unallowable expenses.

To investigate the allegations, DHS reviewed personnel files, the employee's Statement of Economic Interests, e-mail files, vehicle monthly travel logs, and 35 travel expense claims submitted by the employee from September 1998 through June 2000. DHS investigators also interviewed the employee and the employee's supervisor and reviewed a written statement from the employee in which she explained some discrepancies on her travel expense claims.

EMPLOYEE MADE IMPROPER CLAIMS FOR MILEAGE

Once in 1999 and twice in 2000, the employee claimed reimbursement of a total of \$310 in mileage expenses, even though monthly travel logs for DHS vehicles showed she had driven a state vehicle on the trips in question. As previously stated, before we asked DHS to investigate the complaints, both the

employee and her managers discovered that she had improperly submitted the three claims for mileage reimbursement. The employee refunded the \$310 to DHS and prepared a written statement, in response to management's request for an explanation. The employee said that, because she travels so much and because her supervisor is at the DHS headquarters in Sacramento, she frequently prepares her travel expense claims in advance so she could submit them when she is in Sacramento. She said she generally indicates that she drives her personal vehicle because she does not know until the last minute if a state car will be available. She said she normally checks her claims for accuracy before she submits them.

Preparing travel expense claims before a trip and not based on actual trip information creates problems in addition to claiming mileage expenses when driving a state vehicle. We noted that the number of miles claimed by the employee was not consistent with other information on her claims. For example, in March 2000, the employee claimed 95 miles each way for a round trip between her home and the Sacramento airport. It is actually only 85 miles from her home to the airport. In addition, in December 1999, the employee claimed 102 miles each way between her district office and headquarters in Sacramento. It is actually only 90 miles between the two locations. After the employee's supervisor and manager read her statement, they directed her not to prepare her claims in advance. The supervisor told DHS investigators, however, that she would not know whether the employee had driven a state vehicle because the monthly travel logs for state vehicles are kept in the district field office.

THE EMPLOYEE ERRONEOUSLY CLAIMED REIMBURSEMENT FOR OTHER EXPENSES

The employee also claimed reimbursement for meals and incidentals totaling \$112 for which she was not entitled. State regulations allow employees to claim reimbursements for meals and incidental expenses only under certain circumstances. For example, employees can claim reimbursement for dinner expenses only if they are required to work or are returning home from a business trip two hours or more after the end of their regular work day. Reimbursement for incidental expenses of up to \$6 per day is allowed only for trips of more than 24 hours.

Based on her claims for the period from September 1998 through July 2000, the employee improperly claimed reimbursement for six meals and two incidental expenses.

The employee told DHS investigators that she used a “canned” travel expense claim form that indicated that her normal working hours are from 7:30 a.m. to 5:30 p.m. She said that she actually works a flexible schedule. DHS concluded that it did not appear that the employee intentionally claimed inappropriate reimbursements for meals or incidentals because “it would have been quite simple for [her] to put down a time that would have allowed her to claim an extra dinner or lunch.” The employee filed amended claims for those days when she inappropriately claimed a meal or incidental expense and then repaid DHS an additional \$112. ■

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CHAPTER 7

California Department of Transportation: Misuse of State Equipment

ALLEGATION 12000-812

A California Department of Transportation (Caltrans) employee delivered two loads of gravel in a state dump truck to a private residence during state business hours.

RESULTS AND METHOD OF INVESTIGATION

We asked Caltrans to investigate the allegation on our behalf. Caltrans substantiated the allegation, finding that the employee improperly used the state vehicle while on state time.

To investigate the allegations, Caltrans inquired into the vehicle's use and assignment for the date in question. While conducting interviews, Caltrans determined that management had been notified of the incident and had taken action against the employee.

THE EMPLOYEE IMPROPERLY USED STATE RESOURCES

On January 13, 2000, the employee delivered two loads of gravel to a family member's private residence using a state dump truck. Although the gravel was not state material, the employee used the state vehicle for private purposes during regular state business hours.

State law requires that state-owned vehicles be used only to conduct state business or in the performance or duties of state employment. Moreover, state employees are prohibited from using state resources such as equipment and time for an outside endeavor not related to state business. Finally, state employees are prohibited from engaging in any activity that is clearly inconsistent, incompatible, in conflict with, or inimical to the duties as a state employee.¹³

¹³ For a more complete description of the laws, regulations, and policies discussed in this chapter, see Appendix B.

AGENCY RESPONSE

Caltrans suspended the employee for one day without pay. ■

CHAPTER 8

Update on Previously Reported Issues

CHAPTER SUMMARY

The California Whistleblower Protection Act, formerly known as the Reporting of Improper Governmental Activities Act, requires an employing agency or appropriate appointing authority to report to the Bureau of State Audits (bureau) any corrective action, including disciplinary action, it takes in response to an investigative report not later than 30 days after the report is issued. If it has not completed its corrective action within 30 days, the agency or authority must report to the bureau monthly until it completes that action. This chapter summarizes corrective actions taken by state agencies related to investigative findings since we last reported them.

CALIFORNIA SCIENCE CENTER CASE I990031

On April 11, 2000, we reported that 13 public safety employees at the California Science Center (Science Center) improperly claimed duplicate overtime hours. As a result, the State paid the employees at least \$4,224 for 168 hours they did not work. In addition, at least four managerial employees claimed \$74,638 for 2,325 overtime hours, although state regulations prohibit them from receiving overtime compensation. One managerial employee was also in the group of 13 employees who claimed duplicate overtime. Further, at least 12 employees claimed improper reimbursement for \$730 for meals. Additionally, the Science Center improperly allowed one managerial employee to accumulate 476 hours of compensatory time valued at more than \$13,500.

The Science Center's accounting and personnel departments failed to detect these improper claims. In addition, we discovered that the personnel department does not charge employees' leave balances for absences.

The Science Center reported that it has revised existing personnel policies and developed new policies to address concerns raised in our report.

Updated Information

The Science Center also reported that it has obtained \$1,326 in reimbursement for excess payment from five nonmanagerial employees and is still collecting an additional \$2,475.

It is reviewing with counsel what action it should take with regard to the managerial employees.

CALIFORNIA STATE PRISON, SAN QUENTIN CASE I990090

On August 24, 2000, we reported that an employee of California State Prison, San Quentin (prison), misrepresented the prison's role in the management of a nonprofit organization (association). At the time of our investigation, the employee already had retired. However, while still an employee of the prison, the employee led the Secretary of State, the Internal Revenue Service, and the Franchise Tax Board to believe that the prison's wardens would oversee the association and its museum. He made these representations when filing documents with those entities to establish the association as a nonprofit public benefit corporation, thereby implying that the State and the prison accepted responsibility for the association. However, the employee never told the wardens that they were named as having responsibilities related to the association. Instead, through casual remarks to them, he led them to believe they had no such responsibilities.

In addition, contrary to state law and the association's articles of incorporation, the employee spent approximately \$1,338 of the association's cash for his own benefit from April 1998 through January 1999. In addition, the employee inappropriately wrote at least three checks totaling \$1,300 on the association's account for parties. The employee claimed that he inadvertently used the association's funds for his personal benefit and, in mitigation, he made donations to the association that total more than the amount of funds he used. Although the employee donated approximately \$3,265 to the association, it was improper for him to use the association's funds as he did.

The employee also paid association wages to at least five museum employees from 1995 through 1998, but did not withhold required taxes or remit them to the Employment Development Department as required. The employee told us he

considered the employees to be independent contractors. The wardens in charge at the time told us they thought the individuals were volunteers, not paid employees.

We sent our report to the Department of Corrections (Corrections). Corrections told us that it was investigating the issues raised in our report and will decide what action to take.

Updated Information

Corrections reported that neither its administration nor the prison's warden at the time was aware of the representations made by the employee to establish the association as a nonprofit organization. The current warden and Corrections' regional administrator have determined that it is in Corrections' best interest to reopen the museum due to its historical importance. As a result, Corrections is currently considering reopening the museum as a nonprofit entity, under the direction of an outside independent board of directors. However, before it reopens the museum, Corrections will insure that its tax status is properly established and that adequate accounting procedures are established. Corrections has referred the issue of tax withholding to the Franchise Tax Board for its review.

DEPARTMENT OF MOTOR VEHICLES CASE I2000-642

On August 24, 2000, we reported that an investigator at the Department of Motor Vehicles (DMV) abused the prestige of his official position with the State by using DMV letterhead to communicate to a court his support for one party in a private lawsuit. He also improperly used 14 hours of state time and drove a state vehicle roughly 300 miles to attend hearings involving disputes between the individuals who opposed each other in the private lawsuit.

DMV told us it was pursuing action against the investigator.

Updated Information

DMV suspended the investigator for five days without pay.

PRISON INDUSTRY AUTHORITY CASE I980123

On August 24, 2000, we reported that a Prison Industry Authority (PIA) manager abused the State's procurement system and improperly awarded PIA projects to a vendor without considering alternative sources and without following the Public Contract Code requirements. Specifically, the manager allowed one vendor (company A) to work on a PIA project under the authority of another vendor's (company B) contract because company A was not a state-approved vendor and company B was.

Although the State generally requires its agencies to use a competitive procurement process, agencies can opt to select from an established pool of prequalified vendors. The Department of Personnel Administration established the Office of Statewide Continuous Improvement (OSCI) to assist state agencies by creating this pool of prequalified vendors and by recommending them to agencies for specific projects. However, any contracts awarded under this option, including amendments, are limited to no more than \$100,000 per project. For its part, OSCI assesses a fee of 10 percent of the total amount of each selected vendor's bill.

The PIA manager abused this system when he suggested that company A perform work related to its wooden furniture product line under a subcontract with company B. The manager knew that company A was neither on the State's approved vendor list nor a prequalified vendor with OSCI. And, the manager selected company B to be the prime contractor from a list of four because company B agreed to allow company A to perform the work in exchange for an additional 10 percent fee.

The original agreement between PIA and OSCI, including company B's work and OSCI's fee, was \$19,350. However, the agreement was amended three times between November 11, 1996, and January 31, 1999. Ultimately, PIA agreed to pay \$271,780 to obtain company A's consultation services, about \$50,000 of which went to OSCI and company B for their parts in this scheme.

The manager also improperly awarded two other PIA projects to company A. Although PIA claimed it had obtained competitive bids for one of the projects, the bids it recorded were not credible. The PIA did not even claim that it sought competitive bids

for the other project. The first project was for design, layout, reproduction preparation, and printing of 20,000 16-page catalogs of PIA's freestanding office screens. PIA claimed that this was an emergency procurement, saying the catalog was needed in time for a 1998 government technology conference. However, we concluded that the situation did not meet the definition of an "emergency condition." And it appears that even PIA did not really believe an emergency condition existed, because it claimed to have obtained competitive bids. Because of several inconsistencies in PIA's documentation of the bids, we concluded that the bids were not credible. In total, PIA paid company A \$121,811, or more than \$6 each, for the 16-page catalogs. And, it appears that PIA paid more than twice as much as necessary for the printing alone.

The other PIA project awarded to company A was for the design and setup of an exhibit booth at the 1998 government technology conference. PIA had used internal resources for these booths during the seven previous years. Nevertheless, without issuing a request for proposal or obtaining any competitive bids, PIA paid company A almost \$25,000 for the project.

We sent our report to Corrections for response. Initially, Corrections told us that it would determine what action to take after reviewing the issues.

Updated Information

After Corrections did a follow-up investigation, PIA terminated the manager's management appointment. The manager then opted to retire from state service. In addition, PIA revised its policies and procedures for purchasing services and commodities with the objective of complying with state requirements.

We conducted this review under the authority vested in the California State Auditor by Section 8547 of the California Government Code and applicable investigative and auditing standards. We limited our review to those areas specified in the audit scope sections of this report.

Respectfully submitted,



ELAINE M. HOWLE
State Auditor

Date: April 3, 2001

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APPENDIX A

Activity Report

The Bureau of State Audits (bureau), headed by the state auditor, has identified improper governmental activities totaling \$10 million since July 1993 when it reactivated the Whistleblower Hotline (hotline), formerly administered by the Office of the Auditor General. These improper activities include theft of state property, false claims, conflicts of interest, and personal use of state resources. The state auditor's investigations also have substantiated improper activities that cannot be quantified in dollars but have had a negative social impact. Examples include violations of fiduciary trust, failure to perform mandated duties, and abuse of authority.

Although the bureau investigates improper governmental activities, it does not have enforcement powers. When it substantiates allegations, the bureau reports the details to the head of the state entity or to the appointing authority responsible for taking corrective action. The California Whistleblower Protection Act (act) also empowers the state auditor to report these activities to other authorities, such as law enforcement agencies or other entities with jurisdiction over the activities, when the state auditor deems it appropriate.

Corrective actions taken on cases contained in this report are described in the individual chapters. Table 7 summarizes all the corrective actions taken by agencies since the bureau reactivated the hotline. In addition, dozens of agencies modified or reiterated their policies and procedures to prevent future improper activities.

TABLE 7

Corrective Actions Taken July 1993 Through January 2001

Type of Corrective Action	Instances
Referrals for criminal prosecution	71
Convictions	5
Job terminations	39
Demotions	8
Pay reductions	9
Suspensions without pay	11
Reprimands	111

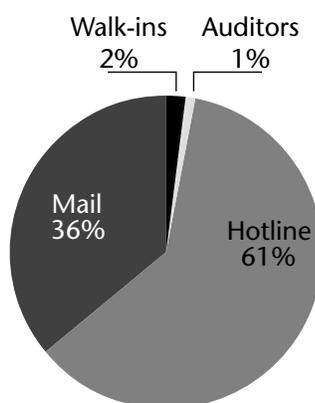
New Cases Opened July 2000 Through January 2001

From July 2000 through January 2001, we opened 137 new cases.

We receive allegations of improper governmental activities in several ways. Callers to the hotline at (800) 952-5665 reported 83 (61 percent) of our new cases.¹⁴ We also opened 49 new cases based on complaints received in the mail, 3 based on complaints from individuals who visited our office, and 1 referral from our audit staff. Figure 4 shows the sources of all cases opened from July 2000 through January 2001.

FIGURE 4

**Sources of 137 New Cases Opened
July 2000 Through January 2001**



Work on Investigative Cases July 2000 Through January 2001

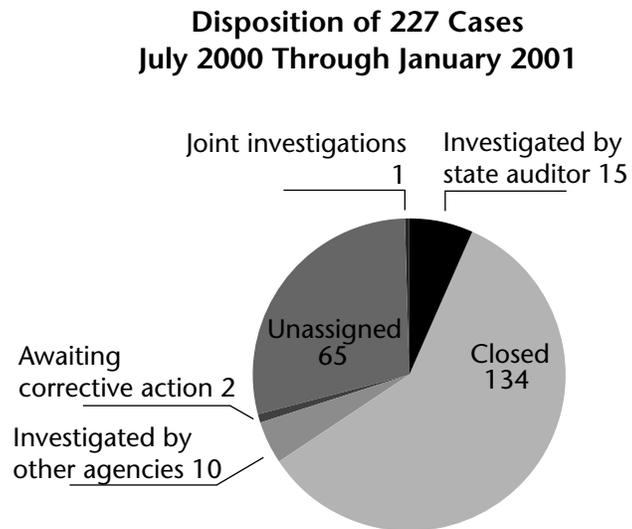
In addition to the 137 new cases we opened during this seven-month period, 69 previous cases were awaiting review or assignment and 21 were still under investigation, either by this office or by other state agencies, or were awaiting completion of corrective action, on June 30, 2000. As a result, 227 cases required some review during this period.

¹⁴ In total, we received 2,535 calls on the Whistleblower Hotline from July 2000 through January 2001. However, 1,886 (74 percent) of the calls were about issues outside our jurisdiction. In these cases, we attempted to refer the caller to the appropriate entity. Another 566 (22 percent) were related to previously established case files.

After reviewing the information provided by complainants and conducting preliminary reviews, we concluded that there was not enough evidence to begin investigations in 134 of those cases.

The act specifies that the state auditor can request the assistance of any state entity or employee in conducting an investigation. From July 2000 through January 2001, state agencies investigated 10 cases on our behalf and substantiated allegations on 3 (37.5 percent) of the 8 cases they completed during the period. The one case we jointly investigated with other agencies during the period has not been completed. In addition, we independently investigated 15 cases and substantiated allegations on 4 (57 percent) of the 7 cases we completed during the period. As of January 31, 2001, 65 cases were awaiting review or assignment. Figure 5 shows the disposition of the 227 cases worked on from July 2000 through January 2001.

FIGURE 5



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APPENDIX B

State Laws, Regulations, and Policies

This appendix provides more detailed descriptions of state laws, regulations, and policies that govern employee conduct and prohibit the types of improper governmental activities described in this report.

PROHIBITIONS AGAINST CONFLICTS OF INTEREST Chapters 1, 2, and 3 report conflicts of interest.

The Political Reform Act of 1974, which is contained in the California Government Code, beginning with Section 87100, states that no public official shall make, participate in making, or in any way attempt to use his or her official position to influence a government decision in which the official knows or has reason to know that he or she has a financial interest. A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the public generally, on the employee or his or her spouse. According to the California Code of Regulations, Title 2, Section 18702.2(b)(2), a public official participates in making a governmental decision when, acting within the authority of his or her position, the official advises or makes recommendations to the decision maker either directly or without significant intervening substantive review. The official can do this by preparing or presenting any report, analysis, or opinion, orally, or in writing, that requires the official to exercise judgment and whose purpose is to influence a governmental decision.

The California Code of Regulations, Title 2, Section 18702.3(b), sets forth requirements under the Political Reform Act of 1974 with regard to attempts to influence a governmental decision that is within or before an official's agency, or an agency appointed by, or subject to the budgetary control of, his or her agency. That regulation provides that a public official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official acts or purports to act on behalf of, or as a representative of, his agency to any member, officer, employee, or consultant of an agency.

The Political Reform Act of 1974 requires that, when a decision is found to have the required effect on a public official's financial interests, the official is disqualified from making, participating in the making, or attempting to use his or her official position to influence the making of that decision at any level of the decision-making process. A governmental decision has a reasonably foreseeable financial effect on a public official's personal finances if the decision will result in the personal expenses, income, assets, or liabilities of the official or his or her immediate family increasing or decreasing. Financial interest is defined to include any source of income that is \$250 or more received by or promised to a governmental official in any 12-month period, or \$500 or more received by the official's spouse in any 12-month period.

The Public Contract Code, Section 10410, prohibits state employees from engaging in any employment, activity, or enterprise in which they have a financial interest and that is sponsored or funded by any state agency or through a state contract, unless the employment, activity, or enterprise is required as a condition of their regular state employment. The California Government Code, Section 1090, prohibits state employees from being financially interested in any contract in which they participate in making a decision in their official capacity.

In addition to specific statutory prohibitions, according to the attorney general, common-law doctrines against conflicts of interest exist. Common law is a body of law made by decisions of the California Supreme Court and the California Appellate Courts. Both the courts and the attorney general have found conflicts of interest by public officials to violate both common-law and statutory prohibitions. For example, common-law doctrines state that a public officer is bound to exercise the powers conferred on the officer with disinterested skill, zeal, and diligence, and primarily for the benefit of the public. Another judicial interpretation of common-law doctrine is that public officers are obligated to discharge their responsibilities with integrity and fidelity. According to the attorney general, where no conflict is found in statutory prohibitions, special situations still could constitute a conflict under the long-standing common-law doctrine. Consequently, situations that have the mere appearance of a financial conflict of interest may still be subject to common-law prohibitions.

INCOMPATIBLE ACTIVITIES DEFINED

Chapters 1 and 3 report incompatible activities.

Incompatible activity prohibitions exist to prevent state employees from being influenced in the performance of their official duties or from being rewarded by outside entities for any official actions. Section 19990 of the California Government Code prohibits a state employee from engaging in any employment, activity, or enterprise that is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee. This law specifically identifies certain incompatible activities, including using the prestige or influence of the State for one's own private gain or advantage, or the private gain of another. They also include using state time, facilities, equipment, or supplies for private gain or advantage. In addition, state employees are prohibited from receiving or accepting, directly or indirectly, any gift, including money, or any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or is seeking to do business of any kind with their department.

The same law requires state departments to define incompatible activities. The California Department of Transportation's (Caltrans) policy states that "Caltrans employees do not willfully engage in any other employment or activities which are illegal; which are or give the appearance of being incompatible or in conflict with their duties as State employees; discredit their profession, the Department, or the State, or have an adverse effect on the confidence of the public in the integrity of government." Further, the policy requires employees to perform their duties and responsibilities honestly and objectively and to use state resources, information, and position only for the work of Caltrans, not for their own private gain or the private gain of another.

The Department of Correction's (Corrections) policy, found in Title 15 of the California Code of Regulations, Section 3413(a)(10), prohibits employees of Corrections from receiving or accepting any gift from anyone doing or seeking to do business with the State under circumstances from which it reasonably could be inferred that the gift was intended as a reward or for the purpose of influencing any official action on the employees' part.

CRITERIA GOVERNING STATE MANAGERS' RESPONSIBILITIES

Chapters 1, 3, and 4 report weaknesses in management controls.

The Financial Integrity and State Manager's Accountability Act of 1983 contained in the California Government Code, beginning with Section 13400, requires each state agency to establish and maintain a system or systems of internal accounting and administrative controls. Internal controls are necessary to provide public accountability and are designed to minimize fraud, abuse, and waste of government funds. In addition, by maintaining internal accounting and administrative controls, state agencies gain reasonable assurance that those measures they have adopted protect state assets, provide reliable accounting data, promote operational efficiency, and encourage adherence to managerial policies. It also states that elements of a satisfactory system of internal accounting and administrative control should include a system of authorization and record-keeping procedures adequate to provide effective accounting control over assets, liabilities, revenues, and expenditures. Further, this act requires that, when detected, weaknesses must be corrected promptly.

MANDATED DUTIES OF THE BOARD OF PHARMACY **Chapter 4 concerns the Board of Pharmacy.**

Sections 101(d) and 101.6 of the Business and Professions Code, require the Board of Pharmacy (board) to protect the public health, safety, and welfare of the people of California. Toward that end, the board is responsible for establishing minimum qualifications and levels of competency for licensing individuals who desire to be pharmacists in this state. The board is also responsible for investigating allegations of unprofessional conduct, incompetence, fraudulent action, or unlawful activity on the part of persons licensed to be pharmacists; and to institute disciplinary action against those individuals when warranted.

THE FEDERAL FAIR LABOR STANDARDS ACT **Chapter 4 discusses provisions of the federal Fair Labor Standards Act.**

The federal Fair Labor Standards Act generally makes it unlawful for an employer to employ a person for a workweek longer than 40 hours, unless the employee receives compensation for the

employment exceeding 40 hours at a rate not less than one and one-half times the regular rate or unless the nature of the employee's work makes the employee exempt from that requirement (Sections 207 and 213, Title 29, U.S.C.A.). Several courts have interpreted this section to place the burden of keeping proper records on the employer. For example, in *Caserta v. Home Lines Agency, Inc.*, (2d Cir. N.Y. 1959), 273 F. 2d 943, the court held that an employer was obligated to keep track of the amount of overtime work of its employees and that the employer could not discharge that responsibility by attempting to transfer the burden of accurate record keeping to the employees. In *Wessling v. Carrol Gas Co.* (N.D. Iowa 1967), 266 F. Supp. 795, the court held that an employee who made after-hour calls merely needed to show that he had performed the services for which he was compensated improperly and produce evidence to show the amount and extent of work as a just and reasonable inference from the fact that he performed those services. Moreover, the court held that once that inference is made, the burden shifts to the employer to show the precise amount of work performed or to demonstrate that the employee's claim of hours cannot reasonably be inferred from the services performed by the employee.

LAWS AND REGULATIONS CONCERNING PERSONAL USE OF STATE VEHICLES

Chapter 7 reports misuse of state vehicles.

The California Government Code, Section 19993.1, requires that state-owned motor vehicles be used only in the conduct of state business. Section 19993.2(a), requires the Department of Personnel Administration (DPA) to define what constitutes use of state-owned vehicles in the conduct of state business. In Section 599.800(e) of Title 2 of the California Code of Regulations, the DPA defines use of a vehicle in the conduct of state business as use when driven in the performance of or necessary to, or in the course of, the duties of state employment. The regulations permit employees to use a state vehicle to commute to work under certain approved circumstances, although both the DPA and the Office of the State Controller generally require employees who do so to report the value of this use as taxable income. In fact, Internal Revenue Service Regulation 1.61-21(a) states that gross income generally includes fringe benefits, such as the personal use of an employer-provided automobile.

PROHIBITIONS AGAINST USING STATE RESOURCES FOR PERSONAL GAIN

Chapters 5, 6, and 7 report personal use of state resources.

The California Government Code, Section 8314, prohibits state officers and employees from using state resources such as equipment, travel, or time for personal enjoyment, private gain or advantage, or for an outside endeavor not related to state business. If the use of state resources is substantial enough to result in a gain or advantage to an officer or employee for which a monetary value may be estimated or a loss to the State for which a monetary value may be estimated, the officer or employee may be liable for a civil penalty not to exceed \$1,000 for each day on which a violation occurs plus three times the value of the unlawful use of state resources.

APPENDIX C

Incidents Uncovered by Other Agencies

Three state agencies notified the bureau of 18 instances of improper governmental activity including:

- Selling of fraudulent driver's licenses to undocumented residents.*
 - Embezzling \$8,865 from a prison.*
 - Improperly dispensing prescription drugs at a student health center.*
 - Making \$1,565 in personal international calls at the State's expense.*
-

Section 20060 of the California State Administrative Manual requires state government departments to notify the Bureau of State Audits (bureau) and the Department of Finance of actual or suspected acts of fraud, theft, or other irregularities they have identified. What follows is a brief summary of incidents that involved state employees reported from July 2000 through January 2001. Although many state agencies do not yet report such irregularities as required, some agencies not only vigorously investigate such incidents but also put considerable effort into creating policies and procedures to prevent future occurrences. It is important to note that reported incidents have been brought to conclusion; we will not publish any reports that would interfere with or jeopardize any internal or criminal investigation.

Three state agencies notified the bureau of 18 instances of improper governmental activity they brought to conclusion during the last half of 2000. Those agencies were the Department of Motor Vehicles (DMV), two campuses of the California State University system, and one Department of Corrections facility. Fifteen instances of financial irregularities that were uncovered resulted in referrals for prosecution. The State lost \$14,565 as a result of financial irregularities. In one instance, the agency recovered \$9,000 in restitution. As a result of DMV employees fraudulently issuing driver's licenses or other documents, individuals paid the DMV employees or their accomplices at least \$40,800.

DMV is unique among state agencies in that its employees have a high level of contact with the public and handle a large amount of money every day. As a result, DMV employees have a greater opportunity to improperly bestow or deny benefits to the public than do employees in other state agencies. For many segments of the population—from teenagers seeking their first driving permit, to recent immigrants for whom transportation to work sites is critical, to senior citizens determined to retain the privilege of driving as long as possible—DMV and its personnel play a pivotal role. For those reasons and others having to

do with access to information, the department has special investigation and electronic oversight units that routinely investigate such issues as the alteration of government documents, sale of driver's licenses, and the theft of money intended for department coffers. DMV has reported more than 75 percent of all the incidents reported to the bureau since 1973.

During the most recent seven-month period, DMV advised this office of 15 investigations completed by its staff that substantiated improper activities by DMV employees. Ten of these involved the selling of fraudulent driver's licenses to 69 people, of whom 68 were undocumented immigrants who paid dearly for the privilege of driving. Many of these immigrants did not take (or pass, if taken) written, vision, or driving tests. According to the DMV reports for the current period, the undocumented immigrants paid at least \$40,800 to DMV employees or their accomplices for fraudulent licenses. DMV dismissed the employees involved in all 10 of these cases. The other five incidents involved these improprieties:

- One employee forged the name of a second employee to have parking fees deducted from the second employee's pay.
- A manager used a department postal meter to send personal mail.
- An employee waived vehicle registration fees and penalties for a friend.
- Another employee falsified a DMV record to indicate that a friend passed a vision test even though the friend was blind in one eye and could not pass the test.
- An employee illegally accessed DMV records on an undercover officer.

The DMV employees involved in these cases resigned, retired, or were dismissed, except in the case involving misuse of a postal meter. DMV gave that employee a formal reprimand.

The Department of Corrections reported that a cashier embezzled \$8,865 from one institution's cash payment fund. The department placed the employee on administrative leave

pending the outcome of criminal proceedings. The employee signed an agreement pleading guilty to felony embezzlement and forgery and was ordered to make restitution of \$9,000, sentenced to 90 days in jail, and placed on felony probation for five years. She also resigned from state service.

Two California State University campuses reported improper governmental activities. One campus uncovered numerous irregularities at its Student Health Center pharmacy, including two physicians and a pharmacist writing prescriptions to themselves, a pharmacist dispensing medications to herself, a pharmacist dispensing greater quantities of medication than indicated in the prescription, a pharmacist dispensing medications on a prescription that was altered, and unreliable information in the pharmacy database. The university also identified 21 expired medications in the pharmacy's inventory. The university suspended the pharmacist in charge pending legal review of possible personnel action. The university also submitted its report to the Board of Pharmacy for possible action. The pharmacist in charge subsequently resigned his position and the other pharmacist retired.

The other campus reported that a student assistant made unauthorized international telephone calls at a cost of \$1,565.

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cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State
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Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
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