

# 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:**

*February 2003 Through June 2003*



September 2003  
I2003-2

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# CALIFORNIA STATE AUDITOR

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ELAINE M. HOWLE  
STATE AUDITOR

STEVEN M. HENDRICKSON  
CHIEF DEPUTY STATE AUDITOR

September 17, 2003

Investigative Report I2003-2

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 February 2003 through June 2003.

Respectfully submitted,

ELAINE M. HOWLE  
State Auditor

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# SUMMARY

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## **Investigative Highlights . . .**

*State employees engaged in improper activities, including the following:*

- Embezzled more than \$256,000 in money and goods.*
- Misappropriated \$622,766 and directed a company to hold these funds outside the State Treasury.*
- Deposited \$80,759 in fees and charges associated with a state conference into a personal bank account.*
- Claimed military leave even though his military orders were rescinded.*
- Used a state vehicle for personal use on non-work days.*
- Stole a state-owned truck and forklift.*
- Inappropriately accessed confidential tax information and failed to disclose outside employment.*
- Inappropriately accessed Web sites unrelated to work, including chat rooms and adult Web sites.*
- Took two weeks off work without charging an official leave balance.*

*continued . . .*

## **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 action 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): (800) 952-5665 or (866) 293-8729 (TTY).

If the bureau finds reasonable evidence of improper governmental activity, it confidentially reports the details to the head of the employing agency or to the appropriate appointing authority. The act requires the employer or appointing authority 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 15 investigations completed by the bureau or by other state agencies on our behalf between February 1, 2003, and June 30, 2003, that substantiated complaints. This report also summarizes actions that state entities took as a result of investigations presented here or reported previously by the bureau. Following are examples of the substantiated improper activities and actions the agencies have taken to date.

### **UNIVERSITY OF CALIFORNIA, LOS ANGELES**

An administrator at the University of California, Los Angeles (UCLA), used her position of authority to embezzle more than \$256,000 in money and goods. The administrator generated at least 32 payroll payments totaling \$246,085 that management did not authorize. She did so by asking subordinates for their

*State departments engaged in the following improper activities:*

- ☑ *Improperly granted its employees four days off, costing the State approximately \$170,314.*
  - ☑ *Restricted competition for several roofing projects by setting proprietary bidding specifications.*
  - ☑ *Improperly reimbursed several of its employees \$19,803 in unnecessary travel expenses.*
- 

log-on codes so that she could access the employee database, circumventing the feature that prevents an employee from making any changes to his or her own personnel or payroll record. While logged on under her subordinates' identities, she entered false justifications for payments. In addition, the administrator falsified accounting records to use UCLA funds to pay for \$9,939 worth of unauthorized purchases that included two personal computers and a digital recording system for her husband's band.

UCLA terminated the employee and referred the matter to the university police for criminal investigation. In addition, UCLA stated that it would work to develop the appropriate tools to enable it to more successfully detect questionable transactions.

## **DEPARTMENT OF TRANSPORTATION**

An employee misappropriated \$622,776 by submitting purchase requests to a company for information technology (IT) products and verifying that the department received the products even though the company never sent them. The employee also violated state laws and policies by directing the company to retain state funds from these fictitious purchases in an account outside of the State Treasury and by allowing it to act as a fiscal agent for the State. Without department approval, the employee used these funds, which had been authorized for the purchase of specific IT products, to correct errors she made on previous purchase requests, to purchase training for department staff, and to purchase other IT products for the department.

## **PUBLIC UTILITIES COMMISSION**

A supervisor improperly deposited into his personal bank account \$80,759 in registration fees and other charges he received from participants in the annual state railroad conference he oversaw on behalf of his state employer during 1999, 2000, and 2001. Documentation we obtained suggests he profited by as much as \$37,000. In addition, the supervisor used funds he received from the 1999 conference to pay for \$1,408 in alcohol-related expenses incurred at that year's conference.

## **CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD**

The California Unemployment Insurance Appeals Board (Appeals Board) improperly granted all employees one day off for each quarter of 2002 in exchange for their dealing with increased workloads. Although the Appeals Board has some flexibility in granting informal leave to those employees who work in excess of 40 hours a week but hold positions that prohibit them from receiving overtime, the same flexibility does not extend to granting informal leave to employees who hold positions that entitle them to receive cash or time off for any overtime they work. We determined that the Appeals Board improperly granted leave valued at an estimated \$170,314 to 314 employees who were already compensated for their overtime. In addition, the Appeals Board failed to track its employees' use of the administrative leave.

We asked the Appeals Board to investigate another allegation on our behalf, and it found that an employee took two weeks off without charging the time to any officially recorded leave balance. Her supervisor erroneously believed that the employee was in a classification that did not permit her to earn official overtime. To compensate her for the extra hours she had been working, the supervisor granted the employee informal time credits and approved the employee's use of these time credits for her two-week absence. To correct this error, the Appeals Board charged 80 hours to the employee's official leave balance for the two-week absence. Further, the Appeals Board said it would give the supervisor a memorandum instructing him to comply with all attendance rules and requirements of the State and the Appeals Board, including proper tracking and compensation for employee overtime hours.

## **UNIVERSITY OF CALIFORNIA, SAN FRANCISCO**

The University of California, San Francisco (UCSF), used proprietary bidding specifications for several roofing projects that restricted fair competition. The specifications placed unnecessary requirements on potential bidders, which limited the number of contractors able to submit competitive bids for the projects. Further, the specifications unnecessarily forced contractors to use a specific manufacturer's products and limited the contractors' ability to use substitute products, even if the substitute products were less expensive and superior in quality.

## **CALIFORNIA HORSE RACING BOARD**

The California Horse Racing Board (Horse Racing Board) improperly reimbursed several employees for travel expenses incurred on days they did not work. Because the Horse Racing Board offered its employees the option to stay out of town at the State's expense on their days off and did not require them to demonstrate how this arrangement was in the State's best interest, it incurred unnecessary travel expenses totaling \$11,812 in 2000 and \$5,830 in 2001. One employee also improperly claimed and received reimbursement for excessive mileage totaling \$2,161, bringing the total improper travel costs to \$19,803.

## **DEPARTMENT OF MOTOR VEHICLES**

An employee claimed military leave even though he did not engage in military-related activities during a period he was absent from his state job. The employee, as a member of the National Guard, was entitled to take military leave for the first 30 calendar days of active duty served. However, during the period in question, the employee failed to notify the Department of Motor Vehicles (Motor Vehicles) that his military orders were rescinded. As a result, Motor Vehicles recovered \$2,954 from the employee for the period it determined he was absent without leave and dismissed him from his state position.

## **CALIFORNIA CONSERVATION CORPS**

A California Conservation Corps employee used a state vehicle to make personal trips. Records obtained from an institution that housed an inmate the employee visited indicated that the employee used a state vehicle to travel to the institution 21 times for personal visits on days she did not work. The employee failed to record these trips on the vehicle mileage logs. The employee acknowledged the improper use of the state vehicle and resigned from state service.

## **DEPARTMENT OF DEVELOPMENTAL SERVICES, LANTERMAN DEVELOPMENTAL CENTER**

An employee at the Lanterman Developmental Center (center) stole a state-owned truck and forklift. Although it could not determine the precise value of the stolen property, the center

reported that when it first received the property, the truck was valued at \$500 and the forklift was valued at \$9,858. The center retrieved the truck and the forklift.

## **FRANCHISE TAX BOARD**

An employee inappropriately accessed the confidential tax information of a close relative and failed to disclose her outside employment for one of two businesses she operates. Upon reviewing the employee's state computer, the Franchise Tax Board (Tax Board) found that she accessed her personal Internet e-mail account on 73 occasions and maintained a list of 38 clients' names and their Social Security numbers on her state computer. It also found that the employee used a state-owned fax machine and cell phone to conduct personal business. The Tax Board suspended the employee for 30 days without pay for inexcusable neglect of duty, dishonesty, willful disobedience, misuse of state property, and failure of good behavior causing discredit to the Tax Board.

In another investigation, the Tax Board concluded that an employee misused his state-issued computer by inappropriately accessing 428 Internet sites for personal use. The employee admitted the misuse. The Tax Board suspended the employee without pay for three days and will periodically monitor his Internet usage.

## **DEPARTMENT OF TRANSPORTATION**

An employee used his state computer to visit Web sites unrelated to his work, including chat rooms, retail establishments, an on-line auction site, and adult-oriented Web sites. Because the employee left state service before the Department of Transportation (Caltrans) completed its investigation, it did not take formal action against him. However, Caltrans placed a letter in his personnel file to alert a hiring manager to these issues should the employee attempt to return to state service. ■

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# CHAPTER 1

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## ***University of California, Los Angeles: Embezzlement of State Funds***

### **ALLEGATION I2002-853**

**A**n administrator at the University of California, Los Angeles (UCLA), embezzled more than \$256,000 through fraudulent payroll transactions and purchases.

### **RESULTS AND METHOD OF INVESTIGATION**

UCLA investigated and substantiated the allegation. To conduct its investigation, UCLA interviewed the administrator; examined personnel and payroll transactions; identified all payments, purchases, and other university resources that the administrator directed to herself and her household; and determined the means she used to generate the improper transactions.

### **THE ADMINISTRATOR USED HER POSITION OF AUTHORITY TO EMBEZZLE MORE THAN \$256,000 IN MONEY AND GOODS**

On January 22, 2002, an employee notified UCLA's Audit and Advisory Services of unusual activity involving checks issued to the administrator. A preliminary inquiry disclosed that since 1997 the administrator received from UCLA more than \$200,000 in stipends and incentives over and above her regular salary. Audit representatives then interviewed the administrator, who admitted to embezzling more than \$214,000. She was immediately placed on investigatory leave. UCLA determined that it sustained a loss of \$256,024, which it attributed solely to the administrator. The total loss consists of 32 payroll payments equaling \$246,085 and self-directed purchases of \$9,939.

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***The administrator generated 32 unauthorized payments totaling \$246,000.***

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The administrator generated at least 32 payroll payments totaling \$246,085 that management did not authorize. She did so by asking her subordinates for their log-on codes so that she could access the employee database, circumventing the feature that prevents an employee from performing any changes to his or her own personnel or payroll record. While

logged on under her subordinates' identities, she entered false justifications for payments. For example, she indicated that certain payments were related to specific projects that did not apply, or she falsely cited certain faculty members' approvals. Further, she used her position to prevent certain staff members from reviewing those improper payroll transactions. She did this by temporarily suspending the reviewer capabilities of other subordinates who would have received automatic notification of these transactions. By gaining access to the payroll database and creating unauthorized payments to herself, the administrator violated state law that prohibits state officers who are charged with performing certain obligations related to state funds from appropriating those funds for personal use and from making false entries into an account of state funds.<sup>1</sup> A violation of this law is a felony, and an individual who is entrusted with public funds and appropriates those funds for his or her own use, or makes false entries in a related account, can be punished by two to four years in state prison and is disqualified from holding any office in this State.

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*The administrator falsely accounted for \$9,939 worth of merchandise that she purchased with university funds.*

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In addition, the administrator falsely accounted for \$9,939 worth of merchandise that she purchased with UCLA funds. Although she was authorized to prepare on-line transactions that resulted in payments to various outside vendors, she circumvented existing controls by falsely claiming that the items were computer supplies for her department. For example, while submitting on-line purchase requests for two personal computers, the administrator assigned an incorrect accounting code to the items, which, in turn, prevented the purchases from being recorded in the campus inventory system. The computers comprised half of the \$9,939 of the unauthorized purchases. That total also included a \$974 digital recording system that was apparently for the administrator's husband, who is a musician.

## AGENCY RESPONSE

One day after learning of the allegation, UCLA placed the administrator on investigatory leave. Based on the results of its investigation, UCLA terminated her employment on March 19, 2002, in accordance with UCLA personnel policies. In addition, UCLA referred the matter to the university police for criminal investigation. Although the incident occurred

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<sup>1</sup> For a more detailed description of the laws discussed in this chapter, see Appendix B.

at UCLA's School of Medicine, UCLA stated that its provost office will work with campus central units to develop the appropriate tools to enable all schools to detect questionable transactions more successfully. ■

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# CHAPTER 2

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## ***Department of Transportation: Misappropriation and Unauthorized Holding of State Funds Outside the State Treasury***

### **ALLEGATION I2002-700**

**A**n employee (employee A) with the Department of Transportation (Caltrans) misappropriated state funds totaling \$622,776 by requesting the purchase and confirming the receipt of products that Caltrans did not receive.

### **RESULTS AND METHOD OF INVESTIGATION**

We investigated and substantiated the allegation, as well as other improper activities. The employee misappropriated \$622,776 by submitting purchase requests to a company (company 1) for information technology (IT) products that she then verified Caltrans received, even though the company never sent them. The employee also violated state laws and policies by directing that the company retain state funds from these fictitious purchases in an account outside of the State Treasury, which allowed it to act as a fiscal agent for the State.<sup>2, 3</sup> Without Caltrans' approval, the employee used the funds, which had been authorized for the purchase of specific IT products, to correct errors she had made on previous purchase requests, to purchase training for department staff, and to purchase other IT products.

To investigate the allegation, we researched applicable state laws and policies. We reviewed the contract with company 1 and examined purchase requests, purchase orders, and invoices between Caltrans and the company, as well as transactions and correspondence pertaining to the funds company 1 held. Further, we interviewed representatives of company 1 and Caltrans, including the employee.

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<sup>2</sup> For a more detailed description of the laws discussed in this chapter, see Appendix B.

<sup>3</sup> The State Treasury is responsible for safeguarding funds for all state agencies and making safe and prudent investments on their behalf.

## THE EMPLOYEE MISAPPROPRIATED STATE FUNDS

In violation of state law, employee A manipulated purchase documents to misappropriate \$622,776 that she then improperly allowed company 1 to administer outside the State Treasury.

Our review of Caltrans' records showed that in May 2000 and again in May 2001 employee A submitted purchase requests that later became purchase orders to company 1 in the amounts of \$343,747 and \$279,029, respectively. One month after she submitted the requests, employee A approved invoices that company 1 submitted for the products she ordered and wrote "okay to pay" above her signature, indicating that Caltrans had received the products. However, company 1 did not deliver the items. According to employee A, she directed company 1 to cancel delivery of the products and hold the payments in an account it maintained. Employee A told us she redirected the funds for these requests to correct errors she had made on other purchases and to make timely purchases of emergency products and training needed to support a computer network she helps maintain. Employee A allowed company 1 to act as a fiscal agent of the State by submitting invoices to it and having it use these "held" funds to pay for intensive IT certification training courses taught by third-party vendors.<sup>4</sup> She also used the funds to purchase other unapproved IT products and to correct clerical errors, such as transposed numbers and deleted line items she made on subsequent orders to company 1. For example, employee A told us that in one instance she accidentally entered a zero dollar amount on several purchase requests for an item that cost over \$7,000. Employee A used state funds held by company 1 to correct these and other errors that amounted to a total of \$48,000.

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*The employee misappropriated \$622,776 by requesting purchases and confirming the receipt of products that Caltrans did not receive.*

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Although some of the misappropriated public funds were ultimately used for state-related goods and services, by appropriating these funds to an account outside the State Treasury and fraudulently accounting for that public money, employee A may have violated state laws related to misappropriating funds and falsifying public records.

State law provides that any public officer charged with the receipt, safekeeping, or disbursement of public money who knowingly keeps a false account or makes a false entry or erasure in any account; who uses public money for a purpose not authorized

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<sup>4</sup> "Fiscal agents" are financial institutions or third parties receiving remittances or making disbursements on behalf of the State.

by law; or who willingly fails to transfer the money as required by law may be disqualified from holding office in the State and is subject to imprisonment. A person may be found in violation of this law regardless of whether he or she acted with specific fraudulent intent.

California law also provides that any public officer who falsifies or alters any record placed in his or her hands is punishable by imprisonment in state prison.

Additionally, state laws and administrative policies limit the circumstances under which employees may hold state funds outside the State Treasury. State law requires that all money belonging to the State under the control of any state employee other than the state treasurer shall be deposited under conditions that the director of finance prescribes. Further, state law provides that any state employee who deposits state money in any manner not prescribed by the Department of Finance may be subject to forfeiture of his or her employment. Furthermore, state policies specify that in order to open an account outside of the State Treasury, a department must request approval from the Department of Finance, justifying the need for such an account.

State policies also limit the circumstances under which departments may use fiscal agents, stipulating that departments should use fiscal agents only in unusual circumstances and should keep their use to a minimum. These policies further direct that departments must submit to the Department of Finance a formal request to use fiscal agents and that the fiscal agents must maintain a separate account for any money under their control.

## THE STATE PAID UNAUTHORIZED TAXES AND FEES

***The State incurred \$112,696 in unauthorized taxes and fees as a result of the misappropriation.***

Because employee A allowed company 1 to hold state funds in an account outside of the State Treasury, the State incurred \$112,696 in unauthorized taxes and fees (company 1 charged the State \$68,505 to maintain the account) and did not maximize its earning of interest. Company 1 also retained \$44,191 from the fund, which represented sales taxes associated with the false purchase requests. Moreover, although we believe

that company 1 may have earned interest over the two-year period it maintained state funds, it apparently did not allocate any of this interest to the State.

### **AS A RESULT OF THE MISAPPROPRIATION, THE STATE CANNOT FULLY ACCOUNT FOR ITS FUNDS**

Our review of documents that employee A and company 1 used to account for the funds the State paid shows that their balances do not reconcile. The spreadsheets that an account manager for company 1, employee A, and representatives of company 1 used indicate balances due to the State of \$50,191, \$43,813, and \$75,698, respectively. In July 2002 company 1 remitted \$75,698 to Caltrans, an amount it considered to be the balance of the funds the State paid for undelivered products. Although the balances differ, all three spreadsheets show, as we mentioned previously, that company 1 received \$68,505 to maintain the fund.

When we asked about discrepancies with the account, representatives from company 1 said they could not fully reconcile the balance due to the State. Company 1's inability to fully reconcile the account balance may be due in part to the fact that it commingled state funds with its own. Because company 1 cannot account for the precise credit balance remaining, we cannot determine exactly how Caltrans and company 1 used these funds and therefore cannot conclude whether any individual profited from the misappropriation.

Employee A asserted that all of the funds were used for state purchases and that she acted alone in submitting these false purchase requests. She added that no one from Caltrans knew about or profited from the misappropriation. During the course of our investigation, we did not find any evidence that contradicted her assertions; however, neither employee A nor company 1 could account fully for the misappropriated funds because of poor bookkeeping. To track the balance of the account, an account manager for company 1 sent spreadsheets by e-mail to employee A, documenting purchases made with state funds. However, neither employee A nor the account manager is an accountant, and as previously mentioned in this report, the spreadsheets that each used do not reconcile.

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***Neither employee A nor company 1 could fully account for the misappropriated funds.***

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Because employee A allowed company 1 to act as a fiscal agent for the State, she could not account for the funds and Caltrans could not ensure that expenditures against the account were

appropriate. According to employee A, in one instance company 1 paid \$2,295 for training an individual whom employee A did not authorize to receive training. When we asked employee A's manager to review the list of individuals whose training was paid for from the account, he identified three instances in which he would not have approved the training because the employees did not work in his section. Company 1 also delayed employee A's request to make a \$60,000 purchase for more than one month, which suggests that company 1 had more control of these state funds than Caltrans did.

### **POOR MANAGEMENT CONTRIBUTED TO THE MISAPPROPRIATION OF FUNDS**

Because Caltrans did not properly segregate employee A's duties and lacked sufficient controls over the request for and purchase of IT products, it failed to prevent the \$622,776 misappropriation. State law requires each state agency to establish and maintain an adequate system of internal controls, including an authorization system and record-keeping procedures adequate to provide effective accounting control over assets, liabilities, revenues, and expenditures. Caltrans' Information Technology Unit (IT unit) appears to have lacked such a system. It gave employee A, who is employed as an analyst, several administrative duties, including oversight of the training plans for herself and other employees who work on a specific project. It directed the other employees to submit all purchase requests for the project to employee A, making her responsible for monitoring funds for the project and tracking expenditures for both products and training. By giving employee A the responsibility and authority to request products, ensure their receipt, and monitor the funds used, the IT unit created the opportunity for her to misappropriate the funds.

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*The employee's manager acknowledged that he failed to verify the receipt of the products listed on the two false purchase requests.*

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Not only did the IT unit fail to have controls in place to prevent the misappropriation, it also failed to detect that it paid \$622,776 for products it never received. In part, this failure was due to the nature of the products involved. The false purchase requests were for small, expensive items that were not inventoried and have no visible serial numbers because they fit into larger components. In addition, the IT unit appears to have lacked an adequate system for ensuring that it received supporting documentation with its invoices. In this instance, Caltrans paid the invoices that employee A signed, even though

the invoices did not include supporting documentation such as packing slips or verification from Caltrans' Shipping and Receiving Unit (shipping unit).

An official who oversees employee A told us that employees in his unit receive products directly and do not use the shipping unit because in the past it has failed to adequately perform its functions. The official added that it is ultimately a manager's responsibility to ensure that purchase requests are necessary and that the unit receives and inventories the products. Nonetheless, we do not believe that the IT unit's practices adequately protected the State against misappropriations. Employee A's manager told us that he did not verify receipt of the items listed on the two purchase requests and acknowledged that the IT unit could have avoided the misappropriation had it required more than one employee to verify the receipt of goods. Moreover, an e-mail that employee A sent to her manager indicated that company 1 was making a \$60,000 purchase on Caltrans' behalf. The manager told us that he did not realize the purchase was related to the misappropriated funds and acknowledged that he may have given employee A too much responsibility for the project.

## **AGENCY RESPONSE**

Caltrans reported that it reinstated its prior policy of having all IT purchases shipped to, received, accepted, inventoried, and tagged by its Shipping and Property Control units. Further, Caltrans reported that it initiated a practice of utilizing the Department of General Services' Technology and Acquisitions Support Branch for all IT procurements over \$500,000. Caltrans transferred the employee to another branch where her duties do not include procurement-related duties and will take appropriate disciplinary action against the employee upon completion of its review of case documentation. Caltrans added that it has contacted the appropriate law enforcement agencies to investigate any criminal implications or activity relating to the misappropriation. Caltrans also reported that it reviewed its procurement procedures and internal controls and identified several deficiencies for which it will provide recommendations for corrective action. ■

# CHAPTER 3

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## **Public Utilities Commission: Misuse of State Funds**

### **ALLEGATION I2002-753**

**A** supervisor with the Public Utilities Commission (PUC) improperly deposited into his personal bank account funds he received from the annual state railroad conference (conference) he oversaw.

### **RESULTS AND METHOD OF INVESTIGATION**

We investigated and substantiated the allegation as well as other improper activities. The supervisor improperly deposited into his personal bank account \$80,759 in registration fees and other charges he received from participants in the conference he oversaw on behalf of his state employer in 1999, 2000, and 2001. Documentation we obtained suggests that after paying necessary conference expenses, he profited by as much as \$37,000 over the three years. The supervisor maintains that the conference lost money, but he could not provide any documentation to support his claim. The supervisor also said he did not view the conference as a state-sponsored event and (after having consulted with PUC officials) believed it was appropriate for him to deposit conference money into his personal bank account. However, state law characterizes such funds as state money and prohibits its deposit outside of the State Treasury except when authorized by the Department of Finance.<sup>5</sup>

To investigate the allegation, we reviewed applicable state laws and regulations. We also reviewed conference-related materials, including registration forms, flyers, and agendas. Because the supervisor told us he no longer had any records related to the conference for the years in question, we obtained accounting records from the facilities where the conferences were held. In addition, we obtained and reviewed the supervisor's bank records and interviewed the supervisor, other PUC employees, and individuals who assisted him with managing the conference. We then gave some individuals written summaries of their interviews and asked them to review the statements and

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*A supervisor improperly deposited into his personal bank account more than \$80,000 in registration and other fees related to annual state railroad conferences and profited by as much as \$37,000.*

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<sup>5</sup> For a more detailed description of the laws discussed in this chapter, see Appendix B.

make necessary changes. We also asked each of these individuals to sign his or her statement under penalty of perjury to ensure its accuracy. The supervisor met with us and responded to our inquiries but refused to sign significant portions of the statement we presented to him. Although we report our understanding of what he told us, we have less confidence in the accuracy of our understanding because of his unwillingness both to confirm most of the statements he made to us and to certify them under penalty of perjury.

## **BACKGROUND**

The PUC regulates privately owned telecommunications, electric, natural gas, water, railroad, rail transit, and passenger-transportation companies. The supervisor's duties with the PUC involve overseeing the safety of all public and private highway rail crossings throughout the State. In 1999, 2000, and 2001, the supervisor worked with other PUC staff, consultants, and representatives of the railroads and state and local governments to organize the annual state railroad conference, which the PUC appears to have sponsored. The supervisor's conference duties included setting the agenda, recruiting speakers, and acting as the master of ceremonies. He was also responsible for collecting fees and paying expenses related to the conference.

## **THE SUPERVISOR IMPROPERLY DEPOSITED CONFERENCE FUNDS INTO HIS PERSONAL BANK ACCOUNT**

Over the course of three years, the supervisor improperly deposited into his personal bank account at least \$80,759 he received as a result of his involvement with the conference. Between June and August 1999, he deposited \$30,056 in checks he received from various individuals or groups of individuals who attended that year's conference. The PUC also reimbursed him \$384 for conference expenses he declared on one of his travel claims. The conference did not involve a registration fee; however, those who attended paid the supervisor for the cost of lodging, meals, beverages, and room rental. Hotel records indicate that between 70 and 80 individuals attended the 1999 conference.

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*In 2001, the supervisor deposited funds related to the state railroad conference totaling almost \$42,000 into his personal bank account.*

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In 2000 and 2001 the conference began charging registration fees, which the employee also collected. Between May and August 2000, the supervisor deposited into his personal

account \$8,835, representing a \$95 registration fee for as many as 93 individuals. The following year, between July and October 2001, the supervisor deposited \$41,868 in his personal account, most of which related to a \$200 registration fee for more than 130 attendees. The remaining deposits related to fees that vendors paid to set up tables and booths at the conference and, according to the supervisor, reimbursements for costs he said he paid associated with special functions held at sites other than the host hotel. For example, when we asked the supervisor to explain why he received and deposited a check for \$6,378 from a railroad company, he said it was a reimbursement of costs related to an off-site dinner and private viewing held at a nearby zoo. Similarly, when we identified a \$3,305 check the supervisor received from another railroad company, he said the railroad company had reimbursed him for an off-site conference dinner for which he had paid.

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*The supervisor violated state law when he deposited state conference funds into his personal account.*

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State law declares that all money in the possession of or collected by any state agency or department, except for money in the Local Agency Investment Fund, is considered state money and must be deposited in the custody of the state treasurer unless otherwise authorized by the Department of Finance. The supervisor maintained that the conference was not a state-sponsored function but rather a joint effort involving various representatives from government, railroad companies, and consulting firms. He reasoned that the State paid only for registration and per diem costs for state-employed attendees. In addition, he said that his superiors knew of his involvement with the conference, that he had consulted with the PUC, and that no one indicated he was handling conference funds inappropriately.

Nonetheless, the decision to manage these funds outside the State Treasury is not consistent with state law. The law characterizes funds as public funds when employees receive them in their official capacity. Documentation such as conference announcements, registration forms, hotel contracts, and check copies clearly demonstrate that these events were advertised as a state conference that the PUC endorsed. This same documentation indicates that the supervisor was the designated recipient for any conference fees and that he was acting in his official capacity with the State when he accepted payments related to the conference.

## THE SUPERVISOR PROFITED FROM HIS INVOLVEMENT WITH THE STATE CONFERENCE

Because the PUC allowed the supervisor to control conference funds outside of approved state accounts, he was able to retain as much as \$37,542 in profits. State law prohibits state employees from engaging in any employment, activity, or enterprise that is clearly inconsistent, incompatible, in conflict with, or inimical to their duties as state officers or employees. Incompatible activities include using state time, facilities, equipment, supplies, and the prestige or influence of the State for one's own private gain or advantage. As shown in Table 1, our analysis indicates that the supervisor profited by at least \$3,725 from the 1999 conference, \$3,386 from the 2000 conference, and \$30,431 from the 2001 conference.

**TABLE 1**

### Amounts the Supervisor Received and Spent for Railroad Conferences

|                  | 1999     | 2000    | 2001     | Totals   |
|------------------|----------|---------|----------|----------|
| Deposits         | \$30,056 | \$8,835 | \$41,868 | \$80,759 |
| Expenses         | (26,715) | (5,449) | (11,437) | (43,601) |
| Reimbursements*  | 384      |         |          | 384      |
| Estimated profit | \$3,725  | \$3,386 | \$30,431 | \$37,542 |

\* The PUC directly reimbursed the supervisor \$384 for meals and lodging expenses, money to which he was not entitled because he had not paid for the expenses with his own funds.

We asked the supervisor to review our calculations and provide any additional evidence, particularly concerning any conference-related costs that might demonstrate he had not profited from these events. The supervisor insisted that he had lost money each year on the conference and that he had maintained detailed accounting records that proved this until one of his superiors told him that he no longer needed to keep them. After reviewing the accounting records and invoices we obtained from each of the facilities that hosted the conferences, the supervisor stated that he had paid for more, such as off-site dinners and mailing expenses, that these bills did not reflect. However, he was unable to provide documentation to support any of these additional costs.

### **1999 Conference**

The documentation we obtained shows that the supervisor realized a \$3,725 profit on the 1999 conference. We determined from the supervisor's bank statements that he deposited \$30,056 in checks he received from various parties who attended the 1999 conference. From this sum, the supervisor apparently paid the host facility \$26,715 for costs related to lodging, meals, beverages, and room rental. The facility's invoice shows that it received three payments of \$3,600, \$8,500, and \$14,615. We verified that the supervisor did pay the facility \$14,615 and attributed the remaining two payments to him even though we were unable to obtain supporting documentation. In reviewing the facility's bill, the supervisor admitted that it reflected most of the costs related to this conference. The supervisor insisted that he had lost money on this conference and that he had paid for other costs, such as conference gifts, T-shirts, and postage, but he was unable to provide any documentation concerning such costs.

### **2000 Conference**

According to available documentation, the supervisor made a profit of \$3,386 from the \$8,835 he collected for the 2000 conference. The supervisor reviewed the invoices from the host hotel and agreed that he had paid the costs we attributed to him. For example, the hotel provided several invoices, totaling \$6,506, related to banquet and room rental charges. Of this amount, the PUC paid \$1,520 directly to the hotel to pay for the registration fees of 16 PUC employees who attended the conference. Hotel records indicate that a coworker paid the remaining balance of \$4,986, but the coworker stated that the supervisor actually paid this amount, explaining that the billing statement erroneously attributed the payment to her because she had assisted with making hotel reservations for all conference attendees. We also identified two checks totaling \$463 with which the supervisor paid for other costs related to the conference.

The supervisor stated that the conference package included two dinners held at restaurants located away from the hotel grounds. According to the supervisor, he paid for one of these dinners either by personal check or credit card, and one of the companies attending the conference paid for the other dinner. However, we did not include the cost of this dinner in our calculations because the supervisor was unable to provide evidence showing he had paid for the meal.

### 2001 Conference

*The supervisor appears to have profited from the 2001 state railroad conference by as much as \$30,431.*

Although the supervisor deposited \$41,868 in checks he received from various parties who attended the 2001 conference, the hotel billed the PUC \$19,937 for various banquet charges. Of this amount, the supervisor paid \$11,437 with his credit card. The remaining balance (\$8,500) was paid with various checks that attendees made payable directly to the hotel for what appeared to be registration fees or donations.<sup>6</sup> This resulted in a profit for the supervisor of \$30,431.

The supervisor stated that he paid for other costs not reflected in the bills we obtained from the hotel. For example, a conference dinner schedule advertised three dinners at off-site restaurants. The supervisor said he paid for one of these dinners and part of another. The supervisor also said that he paid as much as \$1,500 for a hula dance that was part of a luau dinner held at the hotel. As with the 1999 and 2000 conferences, the supervisor was unable to provide support for these additional costs and suggested we speak with two coworkers who assisted him in handling conference funds and paying expenses. We spoke with both of these individuals, but neither could provide specifics concerning such costs or any other costs the supervisor claimed he paid. As a result, the supervisor was unable to provide evidence to support his claims, and documentation we obtained from other sources suggests he profited by as much as \$30,431 in 2001.

### THE SUPERVISOR USED FUNDS TO PAY FOR ALCOHOL-RELATED EXPENSES

Of the \$26,715 the supervisor paid the facility for costs associated with the 1999 conference, we identified \$1,408 that pertained to alcohol-related expenses. State law prohibits state officers and employees from using state resources for personal enjoyment, private gain, or personal advantage, or for an outside endeavor not related to state business. As we mentioned previously, because state law characterizes the conference funds the supervisor received and deposited as public money, its use to purchase alcohol constitutes a misuse of public funds.

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<sup>6</sup> Given that the supervisor never deposited these checks into his personal bank account, we did not include them in our analysis. In addition, we did not include various additional conference expenses because the supervisor never paid for them. For instance, the hotel provided a \$1,725 invoice for costs associated with appetizers and alcohol. Because the hotel billed these costs independently to a consulting firm that attended the conference, we did not include them in our analysis.

### **AGENCY RESPONSE**

The PUC discontinued the conference and plans to train all staff who may accept money from outside parties on proper record-keeping procedures and fiscal accountability. In addition, the PUC states it cannot initiate personnel action against the supervisor until it receives and completes its review of critical documentation. ■

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# CHAPTER 4

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## ***California Unemployment Insurance Appeals Board: Improper Granting of Unofficial Leave Was Economically Wasteful***

### **ALLEGATION I2002-661**

**T**he California Unemployment Insurance Appeals Board (Appeals Board) improperly granted nonexempt employees four days of unofficial leave time, even though these employees had already been compensated for the overtime they worked.

### **RESULTS AND METHOD OF INVESTIGATION**

We investigated and substantiated the allegation. On March 13, 2002, the Appeals Board granted all of its employees three days of administrative leave; and on October 22, 2002, it granted another day, for a total of four days of administrative leave during 2002. In addition, the Appeals Board did not have an adequate system to track this leave, thus we could not determine its exact cost. However, assuming all 314 of the Appeals Board's nonexempt employees used the leave, the cost to the State was approximately \$170,314.

To investigate the allegation, we reviewed employee time sheets, documents describing the administration of this leave, and applicable laws and regulations. We also spoke with current and former Appeals Board employees and with a representative of the Department of Personnel Administration (Personnel Administration).

### **BACKGROUND**

The Appeals Board conducts hearings of cases concerning claims for unemployment and disability benefits. These cases consider appeals of determinations the Employment Development Department (EDD) has made. The Appeals Board also holds hearings on petitions from taxpayers concerning assessments that EDD's tax branch has made.

The Appeals Board has approximately 517 employees, including both administratively exempt (exempt) and nonexempt employees. State regulations provide that positions designated as exempt include those with a minimum average workweek of 40 hours<sup>7</sup>. The regulations further state that the regular salary for exempt employees is “full compensation for all time” that is required for the employee to perform the duties of the position. Time in excess of the minimum average workweek is not compensable and shall not be deemed overtime for which compensatory leave is provided. However, according to a Personnel Administration official, departments have some discretion in granting informal leave to exempt employees (including administrative law judges) who work substantial amounts of overtime so that, on average, work schedules are at least 40 hours a week over the course of the year.

In October 2001 Appeals Board representatives began negotiating with the bargaining unit representing the Appeals Board’s administrative law judges (who are exempt employees)—California attorneys, administrative law judges, and hearing officers in state employment—to address an increase in the workload of bargaining unit employees in order to liquidate their backlog. As part of the negotiations, the Appeals Board and the bargaining unit entered into an agreement to grant the bargaining unit employees one day off for each quarter of 2002 in exchange for handling the increased workload.

Although the Appeals Board has some flexibility in granting informal leave to exempt employees who work substantial amounts of overtime, the same flexibility may not extend to granting leave to nonexempt employees. Regulations state that ordered overtime for these nonexempt employees is compensable by cash or by compensating time off, a formal way of granting and accounting for leave time. Thus, when nonexempt employees are ordered to work overtime, they may be either paid for the time worked or granted time off, but they should not receive both benefits.

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*The Appeals Board’s decision to grant administrative leave to all of its employees cost the State as much as \$170,314.*

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### **THE APPEALS BOARD WAS ECONOMICALLY WASTEFUL WHEN IT IMPROPERLY GRANTED LEAVE**

As we mentioned previously, the Appeals Board has some flexibility in setting the work schedules of its exempt employees; and for purposes of this investigative report, we are not

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<sup>7</sup> For a more detailed description of the laws discussed in this chapter, see Appendix B.

questioning the legality of granting administrative leave to those employees. However, we believe the Appeals Board was economically wasteful when it improperly granted leave valued at an estimated \$170,314 to 314 of its nonexempt employees who were already compensated for their overtime. According to the Appeals Board, in an effort to preclude labor issues with staff who are not administrative law judges, it decided to grant four days of administrative leave to all of its employees, both exempt and nonexempt. In a memorandum dated March 13, 2002, an executive granted this leave to the employees for their hard work over the previous six months. Nonexempt employees had already received overtime compensation for the overtime they worked, and this paid leave was in addition to that compensation.

As support for the authority to grant paid leave time to nonexempt employees, the Appeals Board relies on the California Government Code, Section 19991.10, which discusses authority to grant a paid leave of absence. However, a Personnel Administration official advised us that this section cannot reasonably be interpreted as providing that authority. The Personnel Administration official stated that the intent of this code section is to provide agencies the authority to administer paid leave to state employees for emergencies such as earthquakes or for situations where it is in the best interest of the State for the employee to stay away from work, as during an employee investigation. Our legal counsel concurs with the Personnel Administration official's interpretation, and although we realize that the Appeals Board's motivation for granting the leave was to acknowledge its employees' hard work, we do not believe that the statutes relied on by the board were intended to support grants of administrative leave to employees who had already been compensated for overtime worked.

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*The Appeals Board's decision to grant the administrative leave does not appear to be consistent with the intent of the law.*

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### **The Appeals Board Failed to Uniformly or Consistently Track Its Employees Use of the Unofficial Leave**

Although the State Controllers Office's (SCO) Leave Accounting System offers state departments a mechanism to track employees' use of administrative leave, the Appeals Board did not use that system. As a result, we could not determine the exact cost of the Appeals Board's granting four days administrative leave to all its employees. A board official told us that the Appeals Board did not have a formal method to track the leave it granted to its employees. Therefore, the time sheets it submitted to the

SCO reported the administrative leave as time worked and do not reflect that employees took administrative leave; Appeals Board officials left it up to each field office to keep track of the employees' administrative leave balances. The Appeals Board asserts that each field office kept written records of both the accrual and use of time though the records were not uniform between offices. However, we found that these records were not complete. State regulations require departments to keep complete and accurate time and attendance records for each employee.

We believe that by granting this administrative leave to the nonexempt employees, the Appeals Board compensated them again for work for which the State had already paid them. Although state law may give the Appeals Board some authority to grant administrative leave, we do not believe this authority was intended to be exercised in instances when those employees had already been compensated for overtime worked. Even if granting the leave was legal, as the Appeals Board asserts, it was economically wasteful. In addition, because the Appeals Board considered this leave to be informal, the method of recording employees' use of that time was left up to each office and, as a result, the Appeals Board cannot provide a uniform accounting of how many employees used the time or how much time they may have used.

## AGENCY RESPONSE

The California Labor and Workforce Development Agency (agency), to whom the Appeals Board reports, disagreed with our conclusion that the Appeals Board improperly granted leave. The agency argued that California Government Code, Section 19991.10, provides departments broad discretion to grant administrative time off as part of the appointing power's basic authority to manage its departments and that the statute sets forth no standards or criteria and provides no limitations upon the granting of such leave, except that no paid leave shall exceed five working days without prior approval of Personnel Administration. The agency also pointed out that the State Personnel Board (SPB) defined administrative time off as paid time granted by an appointing power to employees for the good of the service, to promote morale, and for other good reasons.<sup>8</sup> However, the agency failed to note that the SPB also provided examples of the specific types of situations where administrative

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<sup>8</sup> Refers to the SPB Handbook titled *Terms and Conditions of Employment for State Civil Service Employees, A Source Book*.

time off has been granted, such as uncontrolled circumstances, or when employee work facilities are not available or appropriate for use, as in severe storm or weather conditions, and when the appointing power determines that the safety of the employees is better served by their remaining at home or when work facilities have been destroyed or rendered uninhabitable because of lack of heat or electricity. Current state regulations concerning California Government Code, Section 19991.10, allow appointing powers to grant such employees administrative time off in emergency situations, and do not provide additional guidance on how the discretion provided by Section 19991.10 of the California Government Code may be exercised. Thus, the Appeals Board's use of administrative leave in this case does not appear to be consistent with the intent of state law and regulations. We also believe that the Appeals Board's decision to grant administrative leave to those employees who are already compensated for overtime is wasteful and duplicative. The agency asserts that the Appeals Board actually saved the State money, because it realized higher staff productivity and increased earnings, in an amount several times the cost, as a direct result of granting the administrative leave. It also asserts that it submitted a comparative staff and earnings study in support of this position. However, contrary to the agency's assertion, the agency's analysis does not in any way explain how there is a direct result between staff absences and the increased production. Thus, we have no basis to believe there is a cause-and-effect relationship.

Notwithstanding, the agency said that it has asked Personnel Administration to review and provide written clarification on the matter and that it would instruct the Appeals Board to abide by any instructions Personnel Administration provides. With regard to our conclusion that the Appeals Board failed to use a uniform system to account for its employees' use of the administrative leave, the agency reported that it believed there was an internal misunderstanding surrounding the recording of administrative leave granted because the Appeals Board did not provide its employees with clear directions on how to record the administrative leave used. As a result, the agency directed the Appeals Board to develop a formal policy for the reporting of such absences. ■

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# CHAPTER 5

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## ***University of California, San Francisco: Improper Contracting Practices***

### **ALLEGATION I2000-715**

**T**he University of California, San Francisco (UCSF), violated state contracting laws as well as University of California Regents' (Regents) policies by using bidding specifications for several roofing projects that unfairly restricted competition.

### **RESULTS AND METHOD OF INVESTIGATION**

After investigating the allegation, we determined that UCSF used proprietary bidding specifications that restricted fair competition for several roofing projects under a contract totaling \$495,000, in conflict with state law and Regents policies.<sup>9, 10</sup> The specifications placed unnecessary requirements on potential bidders, which limited the number of contractors able to submit competitive bids for the projects. Further, the specifications unnecessarily forced contractors to use a specific manufacturer's products and limited their ability to use substitute products, even if the substitute products were less expensive and superior in quality.

To investigate the allegation, we reviewed the roofing contract between UCSF and the contracting company, as well as applicable state contracting rules and Regents' policies pertaining to construction contracting. We also reviewed UCSF accounting records and hired a roofing consultant to evaluate the bid specifications in the contract.

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***The University of California, San Francisco, used proprietary bidding specifications that restricted fair competition for a contract totaling \$495,000.***

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<sup>9</sup> For a more detailed description of the laws discussed in this chapter, see Appendix B.

<sup>10</sup> The Louisiana Office of State Purchasing defines a "proprietary specification" as a specification that cites brand name, model number, or some other designation that identifies a specific product to be offered exclusive of others. Stephen M. Phillips, who serves as counsel for the National Roofing Contractors Association and the National Roofing Legal Resource Center, defines a "proprietary specification" (also known as a closed or restrictive specification) as any specification that is restrictive to a specific product.

## BACKGROUND

Part of the University of California system since 1873, UCSF is the only campus dedicated solely to graduate and professional study in the health sciences. Many consider the campus to be one of the nation's premier teaching, training, and research centers for health sciences. UCSF's Department of Capital Projects and Facilities Management is responsible for the maintenance and operation of all facilities and the management of campus renovation and construction projects.

The legislative intent of the California Public Contract Code, Section 100, is to protect the public from misuse of public funds; to stimulate competition in a manner conducive to sound fiscal practices; and to eliminate favoritism, fraud, and corruption in the awarding of public contracts. State laws that relate specifically to University of California construction contracts also contain competitive-bidding provisions. These sections require campuses to award construction projects to the lowest responsible bidder. This requirement promotes competition when awarding public contracts and ensures that the University of California receives the best available prices and products from companies competing for the State's business. Regents' policy reaffirms the necessity of competition, requiring competitive bidding for construction contracts and stating that contracts must be awarded to the lowest responsible bidder unless the acceptance of a responsible bid is not in the best interests of the university, in which case it must reject all bids.

## UCSF USED SPECIFICATIONS THAT RESTRICTED COMPETITIVE BIDDING FOR ROOFING PROJECTS

In conflict with state law and Regents' policies, UCSF used specifications for roofing projects that restricted competitive bidding. According to our roofing consultant, the language used in UCSF's specifications primarily limited competition in three ways.

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*Portions of the roofing specifications unnecessarily forced potential bidders to use specific products produced by a single manufacturer.*

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First, it included certain contractor requirements that served no purpose other than to limit the number of contractors competing for the work. Second, portions of it were proprietary, forcing potential bidders to use specific brand products produced by a single manufacturer. Third, it limited contractors' ability to use substitute products regardless of whether those substitutes were equal to or better than those products called for.

The roofing consultant found that the specifications included language that unnecessarily restricted the ability of all available contractors to submit bids. For example, the specifications required contractors to list three projects in which they employed a similar type of roof system within a 50-mile radius of the project location. The roofing consultant stated that requiring documentation of previous experience was valid; however, specifying a 50-mile limitation served only to restrict competition. The specifications also required that the materials manufacturer be nationally recognized in the moisture survey industry. The consultant found that because the roofing projects in question did not require moisture survey work, this requirement was not justified; it served only to limit competition because most manufacturers do not provide moisture survey work. Finally, the specifications required contractors that are not “manufacturer-certified” to hire the manufacturer’s inspectors to perform technical inspections. According to the roofing consultant, this requirement was inappropriate because no standard definition for a manufacturer-certified contractor exists. The consultant noted that manufacturers use a variety of terms to designate contractors authorized to install their products, and the requirements they use to determine whether to authorize a contractor vary significantly.

The roofing consultant determined that the specifications also included proprietary language that forced bidders to use a specific manufacturer’s products. The consultant concluded that requirements differed from applicable industry standards in regard to two of the necessary products, so that only one brand of product could meet the specifications. The specifications also listed physical properties for the entire roof membrane, a requirement the consultant labeled excessive and not customary. According to the roofing consultant, the only reason to impose such a requirement would be to limit contractors to using membrane products made by a single manufacturer.

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***The specifications limited the ability of potential bidders to use substitute products, even if the substitute products were less expensive and of superior quality.***

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In addition, the roofing consultant found that the specifications included at least four hurdles that limited the ability of potential bidders to use substitute products. In one instance, the specifications limited contractors’ ability to submit alternative products, even if the substitute products were less expensive and had adequate or superior performance properties. In two instances, the specifications limited bidders’ ability to fully assess the time and cost ramifications of providing substitute materials; in another instance, the specifications dictated

that the contractor incur additional costs associated with submitting substitute products. These are costs that, according to the roofing consultant, the contractor should not bear. The consultant noted that using proprietary products and not allowing substitutions is appropriate in some instances; however, in this instance it was not justified.

## **AGENCY RESPONSE**

UCSF reported that the contract in question contained detailed requirements that it believes are based on legitimate business needs to ensure contractor availability at the construction site, maintain the product warranty, and discourage substitutions of potentially inferior roofing products. UCSF agreed that the specifications relating to the manufacturer's products were tightly written, but added that was done to minimize any impact on patients in the buildings affected. However, UCSF reported that it no longer uses vendors for roofing specifications and that bid specifications for more recent contracts have been prepared with assistance from independent roofing consultants to avoid any appearance of inappropriate proprietary specifications that would unduly limit competition.

As we mentioned previously, our roofing consultant found that the specifications limited the number of contractors available to bid on the work as opposed to ensuring contractor availability as UCSF contends. Further, our consultant found that the specifications limited contractors' ability to submit alternative products even if they were superior to those called for in the specifications. ■

# CHAPTER 6

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## ***California Horse Racing Board: Improper Reimbursement of Travel Expenses***

### **ALLEGATION I2000-747**

**T**he California Horse Racing Board (Horse Racing Board) improperly reimbursed employees for travel expenses they were not entitled to receive.

### **RESULTS AND METHOD OF INVESTIGATION**

We investigated and substantiated the allegation. We found that the Horse Racing Board improperly reimbursed several employees for travel expenses incurred on days they did not work. Because the Horse Racing Board gives its employees the option to stay out of town at the State's expense on their days off, it incurred unnecessary travel expenses totaling \$11,812 in 2000 and \$5,830 in 2001. We also found that one employee (employee A) improperly claimed and received reimbursement for excessive mileage totaling \$2,161, bringing the total of improper travel costs to \$19,803.

To investigate the allegations, we reviewed applicable state laws and policies and examined personnel files, travel expense claims, attendance sheets, and other internal documents. Additionally, we interviewed employee A, her supervisors, and other Horse Racing Board employees. We also spoke with a Department of Personnel Administration (Personnel Administration) official regarding the Horse Racing Board's practice of reimbursing its employees for travel expenses incurred on days they do not work.

### **BACKGROUND**

The Horse Racing Board regulates horse racing events in the State that involve pari-mutuel wagering.<sup>11</sup> Its principal activities include licensing all racing associations, sanctioning all persons

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<sup>11</sup> "Pari-mutuel wagering" is a betting pool in which those who bet on competitors finishing in the first three places share the total amount bet minus a percentage for the management.

who participate in any phase of horse racing, enforcing the regulations and laws pertaining to horse racing, and collecting the State's share of revenues.

As part of their duties, license technicians at the Los Angeles District Office (LA office) may be assigned to work at the Del Mar Race Meet near San Diego for periods of four to eight weeks. While on assignment, many of these employees elect to stay in the San Diego area on the days they do not work.

### **THE HORSE RACING BOARD IMPROPERLY REIMBURSED EMPLOYEES FOR TRAVEL EXPENSES INCURRED ON DAYS THEY WERE NOT WORKING**

The Horse Racing Board pays for lodging, meal, rental car, and other incidental expenses for employees on short-term travel assignments who stay out of town on days they are not working. Further, the Horse Racing Board does not require its employees to show how staying out of town on their days off is in the State's best interest, even though many of the claims we reviewed showed that several employees traveled only short distances from their homes to their travel assignment locations. The Horse Racing Board cannot demonstrate that reimbursing employee living expenses for days they are not working is cost-effective, necessary, or in the State's best interest.

Our review of the travel expense claims that eight employees in the LA office submitted showed that these employees traveled from their homes in Los Angeles to San Diego on short-term travel assignments and received reimbursement for expenses they incurred in San Diego on the days they were not working. These employees traveled relatively short distances, between 78 and 132 miles (1½ to 2¾ hours). Instead of returning home to Los Angeles after their workweek was complete, they stayed in San Diego, receiving state-paid lodging and up to \$40 a day for meals and incidentals on days they did not work, even if they had two consecutive days off. For calendar years 2000 and 2001, the Horse Racing Board reimbursed employees of the LA office for \$21,345 in travel expenses incurred on days the employees did not work. In contrast, if the State had paid the state-authorized rate of 31 cents per mile for the lesser of the distance they traveled between the short-term travel location and their residences or their headquarters, the cost would have been only \$3,703.<sup>12</sup> Because the Horse Racing Board allows its employees to

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*The Horse Racing Board reimbursed its employees' travel expenses for days they did not work, resulting in \$17,642 in unnecessary travel costs over a two-year period.*

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<sup>12</sup> For a more detailed description of the laws discussed in this chapter, see Appendix B.

stay at their travel locations on their days off instead of requiring them to return home, it paid \$17,642 in unnecessary travel costs over the two-year period we reviewed. Had the Horse Racing Board required its employees to submit a cost-benefit analysis for these trips, it would have been aware of this excessive cost to the State.

The Horse Racing Board employees' bargaining unit contract states that for continuous short-term travel of more than 24 hours but less than 31 consecutive days, an employee will be reimbursed for the actual costs for meals, incidentals, and lodging expenses up to the maximum allowed for each complete 24 hours of travel, based on the employee's time of departure and return. The Horse Racing Board interprets this as allowing it to pay travel expense costs on days employees do not work. Although the California regulations allow for reimbursement of necessary out-of-pocket expenses that employees incurred while traveling on official state business, in this case it appears that no business need or official state business would require employees to stay at their short-term travel locations on days they do not work.

According to a Horse Racing Board administrator, its interpretation of the short-term travel rules allows it to reimburse its employees for travel expenses incurred on their days off. The administrator told us this interpretation is correct based on verbal approval that a representative of Personnel Administration gave to a Horse Racing Board official. However, when we interviewed the representative, she did not recall speaking to the Horse Racing Board about a specific incident involving short-term travel between Los Angeles and San Diego. Further, the representative told us that she advises departments to look at the rule that applies to their situation and to determine if their decision is the best business decision consistent with the rule. She then responds to departments' questions in regard to the application of the rule.

### **THE HORSE RACING BOARD IMPROPERLY REIMBURSED AN EMPLOYEE FOR TRAVEL EXPENSES SHE WAS NOT ENTITLED TO RECEIVE**

*The Horse Racing Board reimbursed an employee \$2,161, in violation of state regulations.*

The Horse Racing Board also improperly paid employee A \$2,161 in mileage reimbursements not allowed by state regulations. These regulations provide that when a trip begins or ends at the claimant's home, reimbursed mileage is to be computed from either headquarters or home, whichever

is the lesser distance. However, between June 1998 and November 1999, employee A submitted 10 claims for mileage that exceeded what the regulations allowed. She claimed 120 miles per trip, the distance from her home to alternate work locations. However, according to regulations, she should have claimed the distance from her headquarters to the alternate work locations (a difference of 60 miles).

## AGENCY RESPONSE

The Horse Racing Board told us that it did not knowingly or intentionally violate the State's travel reimbursement rules or policies and that it is cognizant of the fact that all of its operating expenditures must be appropriate, prudent, and supported. In regard to our findings related to the Del Mar Race Meet, the Horse Racing Board noted that this event is somewhat unique because of its distance from headquarters, its duration, and the fact that employees are expected to find lodging within allowable rates in a high-cost area at the height of tourist season. The Horse Racing Board asserts that employees typically enter into monthly lodging agreements to guarantee a room at the same establishment for the duration of the meet and to obtain an allowable lodging rate. However, we found no evidence that Horse Racing Board employees even attempted to obtain an allowable nightly lodging rate at the same establishment for the race meet's four- to eight-week duration without committing to monthly agreements. Further, as we discussed in this chapter, because Horse Racing Board employees do not submit cost analyses related to their travel expenses, it has no assurance that its practice of entering into monthly lodging agreements is cost-effective or in the State's best interest.

Further, the Horse Racing Board asserts that it has analyzed the costs of reimbursing per diem expenses versus mileage for the seven staff members assigned to the upcoming 2003 race meet, figuring that if it discontinued paying the \$40 per diem to employees for their two days off per week and instead paid round-trip mileage, it would save a total of only \$983. However, the Horse Racing Board's analysis does not accurately capture the true costs associated with having the employees stay on-site on their days off. Most significantly, the Horse Racing Board's analysis ignores the cost to the State for paying employees' lodging expenses on the two days per week they do not work. Based on the projected workload for the seven employees assigned to the 2003 race meet and the maximum

lodging rate allowed for state employees in San Diego, we determined that the Horse Racing Board could save up to an additional \$9,240 in travel costs by not paying for employee's lodging expenses on days they do not work. This savings is in addition to the \$983 in per diem savings that the Horse Racing Board identified, which brings a potential savings to the State for the 2003 race meet of up to \$10,223. Based on this analysis, we stand by our conclusion that the Horse Racing Board incurs unnecessary travel expenses when it pays employees' lodging expenses on days they do not work. The Horse Racing Board acknowledges that it can do a better job controlling the amount of travel allowance it pays to employees assigned to the race meet. Further, the Horse Racing Board said it will implement new practices for the 2003 and future race meets, including not paying per diem to employees on their days off and requiring them to submit cost proposals related to their travel expenses. Because the Horse Racing Board does not believe that any of its employees intentionally, knowingly, or fraudulently violated the State's travel reimbursement rules or regulations, it is not taking any adverse action against any of them.

The Horse Racing Board explained that employee A was new to state service and that the supervisor who signed her travel expense claims had been in her position less than a year, so both individuals were unaware of the mileage reimbursement rules. The Horse Racing Board believes requiring the employee to pay back the overpayment would be counterproductive and inequitable, and that no action is warranted. ■

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# CHAPTER 7

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## ***Department of Motor Vehicles: Improper Use of Leave***

### **ALLEGATION I2002-1020**

**A**n employee at the Department of Motor Vehicles (Motor Vehicles) falsely claimed that he was on military leave.

### **RESULTS AND METHOD OF INVESTIGATION**

We asked Motor Vehicles to investigate the allegation on our behalf. Motor Vehicles reported that it had received this allegation previously and had already investigated and substantiated the allegation and completed its corrective action. To conduct its investigation, Motor Vehicles interviewed the employee's supervisor, contacted the National Guard, examined court records, and reviewed payments made to the employee.

### **THE EMPLOYEE IMPROPERLY CLAIMED MILITARY LEAVE**

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***An employee claimed military leave even though his military orders were rescinded.***

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According to state law, an employee who is granted military leave is entitled to receive his or her salary for the first 30 calendar days of active duty served during the absence.<sup>13</sup> On August 22, 2002, the employee notified Motor Vehicles of his impending National Guard duty beginning August 23, 2002. Although his military orders were rescinded on September 2, 2002, the employee failed to notify Motor Vehicles.

The employee attempted to return to work on October 21, 2002; however, prior to his return, Motor Vehicles received a tip that the National Guard had rescinded the employee's military orders, so it considered him absent without leave and placed him on administrative leave pending the outcome of its investigation into his activities. State law provides that unexcused absence without leave is a cause for discipline. As part of its investigation, Motor Vehicles reviewed the payments

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<sup>13</sup> For a more complete description of the laws discussed in this chapter, see Appendix B.

made to the employee and the types of leave charged for his absences. Motor Vehicles recovered \$2,954 from the employee for the period it determined he was absent without leave.

#### **AGENCY RESPONSE**

Upon learning of the allegation against the employee, Motor Vehicles placed the employee on administrative leave, effective October 21, 2002. Once it completed the investigation, Motor Vehicles served the employee with its decision to dismiss him from his state position. The dismissal was effective on December 12, 2002. ■

# CHAPTER 8

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## **California Conservation Corps: Improper Use of State Vehicle and Falsification of Vehicle Mileage Logs**

### ALLEGATION I2002-816

**A** California Conservation Corps (CCC) employee used a state vehicle to make personal trips.

### RESULTS AND METHOD OF INVESTIGATION

We asked the CCC to investigate on our behalf, and it substantiated the allegation. The CCC reviewed information in the visitor log records obtained from the institution that housed the inmate the employee visited and mileage logs for the state vehicle. It also reviewed the employee's Absence and Additional Time Worked Reports and the monthly calendars she submitted to her manager; additionally, it interviewed the employee.

The CCC contacted the institution the employee visited and confirmed the check-in procedures for visitors. When visiting an inmate, the institution requires visitors to record name, vehicle type, license plate number, date of visit, and check-in and check-out times. The institution's records indicated that the employee used a state vehicle to travel to the institution 21 times between April 13, 2002, and July 7, 2002, for personal visits on days she did not work. According to state law, state-owned vehicles are only to be used in conducting state business. Violation of this law constitutes misuse of state property and may subject an employee to disciplinary action.<sup>14</sup>

The CCC also obtained vehicle mileage logs for the vehicle used to make the visits. State regulations require completion of a travel log for each state vehicle, including the itinerary and date and time of travel. According to the vehicle mileage logs, the employee failed to record these trips; therefore, the CCC concluded that she falsified these records.

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*An employee used a state vehicle to make personal visits to an inmate.*

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<sup>14</sup> For a more detailed description of the laws and regulations discussed in this chapter, see Appendix B.

The CCC manager assigned to investigate the allegation met with the employee and presented her with the findings from his investigation. The employee acknowledged the improper use of the state vehicle.

#### **AGENCY RESPONSE**

The CCC allowed the employee to resign. ■

# CHAPTER 9

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## ***Department of Developmental Services, Lanterman Developmental Center: Theft of State Equipment***

### **ALLEGATION I2002-1065**

**A**n employee at the Lanterman Developmental Center (center), part of the Department of Developmental Services (Developmental Services), stole a state-owned truck and forklift.

### **RESULTS AND METHOD OF INVESTIGATION**

We learned that the center had already investigated and substantiated the allegation, and we asked Developmental Services to report its findings to us. It found the employee had the state-owned truck and forklift on his property. To conduct its investigation, the center interviewed several employees and observed stolen equipment on the employee's land.

In violation of state law, the employee stole a state forklift and truck.<sup>15</sup> Between the months of June and August of 2001, the employee claimed he used a state truck to steal the forklift to move palm trees and granite pillars on his land. After the employee unloaded the forklift, he returned the truck to the center. In February 2002 the employee again took the truck and used it to move a palm tree to his home. The center kept the truck in a secured area, but the employee improperly opened secured gates to gain access. The employee said the truck was unlocked and the keys were inside the vehicle. Because the center property office had taken the vehicles out of service, the investigators could not determine their precise value. However, when the center first received the property, the truck was valued at \$500, and the forklift was valued at \$9,858.

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***An employee stole a state-owned truck and forklift with a total combined value of more than \$10,000.***

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The employee said a center official had allowed him to use the truck on three or four previous occasions to transport palm trees he donated to the center. However, the employee did not have permission to remove the truck or the forklift from the center on

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<sup>15</sup> For a more detailed description of the laws discussed in this chapter, see Appendix B.

the dates in question. Although he did not have permission to take or keep either item, the employee told investigators that his immediate supervisor drove by his house and saw what looked like a forklift covered up in the driveway. The employee further claimed that the supervisor later asked him how he got the forklift and told him to do a better job of concealing it.

On February 26, 2002, center staff realized that the truck was missing and searched the premises. The next day, these staff members notified the center police the truck had been stolen. The center's investigators went to the employee's house and observed the truck on his property; they then waited for the center police and contacted the local police department. When the officers approached the employee's residence, the employee attempted to flee the scene; the officers apprehended and arrested him for grand theft. The employee's son allowed the officers and investigators to search the premises where, in addition to the truck, they discovered a forklift belonging to the center. The investigators retrieved the truck and forklift and returned them to the center.

## **AGENCY RESPONSE**

On March 18, 2002, the center finalized a notice of adverse action to dismiss the employee for inefficiency, inexcusable neglect of duty, dishonesty, willful disobedience, misuse of state property, and failure of good behavior causing discredit to Developmental Services. The employee appealed his dismissal and then signed a stipulated settlement agreement that allowed him to voluntarily resign his position. However, the State Personnel Board said it could not approve the agreement because it did not include specific required language. The employee refused to sign the revised agreement, citing confusion and frustration with the process. On September 9, 2002, the employee pleaded guilty to felony grand theft auto; and the court sentenced him in October to 142 days in the county jail and three years probation. The judge found that the truck and forklift had no residual value, and thus did not order him to make restitution. On May 12, 2003, the employee was allowed to resign from his position, and further agreed not to seek or accept further employment with developmental services. ■

# CHAPTER 10

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## ***Humboldt State University: Improper Use of State Time and Equipment for Personal Gain***

### ALLEGATION I2002-798

**A** Humboldt State University (Humboldt) employee used state equipment and time to manage the employee's rental properties.

### RESULTS AND METHOD OF INVESTIGATION

We asked Humboldt to investigate the allegation on our behalf. To do so, Humboldt reviewed documents stored on the employee's state-owned computer. It also obtained and reviewed phone records of all off-campus calls the employee had made from the employee's state phone for a two-month period and interviewed witnesses, including the employee. Humboldt concluded that the employee improperly used state equipment for personal financial gain by making and receiving phone calls and maintaining documents on a state-owned computer relating to the employee's property rentals. In addition, Humboldt obtained an admission from the employee that on at least one occasion the employee listed a state telephone number as a contact number for renting the employee's property and that doing so interfered with the employee's state work.<sup>16</sup>

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***An employee used state time and equipment in operating a rental property business.***

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### AGENCY RESPONSE

Humboldt placed an official reprimand in the employee's personnel file and distributed to all staff and faculty information regarding the appropriate use of state time and equipment with references to applicable laws and policies. ■

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<sup>16</sup> For a detailed description of the laws and policies pertaining to the improper activities discussed in this chapter, see Appendix B.

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# CHAPTER 11

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## **California Unemployment Insurance Appeals Board: Employee Took Two Weeks of Unofficial Leave**

### ALLEGATION I2002-980

**A** California Unemployment Insurance Appeals Board (Appeals Board) employee took two weeks of unofficial leave without charging time to her leave balances.

### RESULTS AND METHOD OF INVESTIGATION

We asked the Appeals Board to investigate the allegations on our behalf, and it substantiated them. To investigate the allegation, the Appeals Board reviewed the employee's attendance records and interviewed the employee and her current supervisor.

The Appeals Board found that the employee took two weeks off during September 2002 without charging the time to any officially-recorded leave balances. State policy requires agencies to maintain complete records of attendance and absences for each employee during each pay period. The supervisor erroneously believed that the employee was in a classification that did not permit her to earn official overtime; to compensate her for the extra hours she had been working, the supervisor granted the employee a two-week absence without charging it against the appropriate leave balances. State regulations provide compensation for overtime with cash or compensating time off.<sup>17</sup> Although the employee may have earned the time she took off, the Appeals Board should have formally recorded it.

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*An employee, with her supervisor's approval, took a two-week absence without charging the time against her leave balances.*

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### AGENCY RESPONSE

The Appeals Board charged 80 hours to the employee's official leave credits for the two-week absence. Further, it said it would give the supervisor a corrective action memorandum instructing

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<sup>17</sup> For a detailed description of the regulations and policies discussed in this chapter, see Appendix B.

him to comply with all attendance rules and requirements of the State and the Appeals Board, including proper tracking and compensation for employee overtime hours. ■

# CHAPTER 12

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## ***Franchise Tax Board: Unauthorized Accessing of Confidential Information, Failure to Disclose a Business Interest, and Misuse of State Equipment and Resources***

### ALLEGATION I2002-1008

**A**n employee of the Franchise Tax Board (Tax Board) misused state equipment and resources for personal gain.

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*An employee inappropriately accessed confidential tax information and used state equipment to operate her private business.*

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### RESULTS AND METHOD OF INVESTIGATION

The Tax Board investigated and substantiated the allegation, as well as other improper governmental activities. It concluded that the employee inappropriately accessed a close relative's confidential tax information and failed to disclose her outside employment for one of two businesses she manages. The Tax Board also found that the employee used state equipment to operate these businesses. To investigate the allegation, the Tax Board examined the employee's personnel records; reviewed her Internet, telephone, cell phone, fax, and e-mail usage; and interviewed the employee.

### WITHOUT AUTHORIZATION, THE EMPLOYEE ACCESSED CONFIDENTIAL INFORMATION

On July 1, 2002, and September 16, 2002, in violation of Tax Board policy, the employee inappropriately accessed a close relative's confidential taxpayer account information.<sup>18</sup> The employee stated that she accessed the account to obtain information to be used for her private business; however, the Tax Board concluded that the employee's response was dishonest because it determined that the information the employee accessed did not fit her explanation. The Tax Board further determined that the employee had no work-related reason to access the account.

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<sup>18</sup> For a more detailed description of the state laws and department policies discussed in this chapter, see Appendix B.

### **THE EMPLOYEE FAILED TO DISCLOSE A BUSINESS INTEREST**

The employee worked as an independent agent for two businesses (company 1 and company 2) outside of her state employment. She did not provide tax advice or prepare tax returns for either of these two businesses, but she disclosed to the Tax Board her involvement only with company 1. After the Tax Board questioned the employee regarding the extent of her outside employment, she acknowledged her interest in company 2 and later submitted the required disclosure form.

By failing to disclose her business interest in company 2, the employee violated state law, which requires certain state employees, including this one, to file statements of economic interest to disclose investments and business positions, interests in real property, and income. Because the employee failed to disclose her interest in company 2, the Tax Board could not ensure that her interest in company 2 was not incompatible, inconsistent, or in conflict with her Tax Board duties.

### **THE EMPLOYEE MISUSED STATE RESOURCES FOR HER PERSONAL BUSINESS**

The employee violated state law by using state resources for private gain or advantage. The Tax Board reviewed the employee's state computer and found that over a 30-day period, she accessed her personal e-mail account and other non work-related Web sites on 128 occasions. It also found that she maintained a file folder on her state computer that included a list of names and Social Security numbers of 38 clients of company 2. In addition, the Tax Board determined that the employee used a state-owned fax machine to send a fax on behalf of one of her clients and used her state-owned cell phone on four occasions to conduct personal business. The employee admitted to occasionally using her state fax machine and cell phone for personal business.

### **AGENCY RESPONSE**

The Tax Board suspended the employee without pay for 30 working days. ■

# CHAPTER 13

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## ***Department of Transportation: Inappropriate Use of State Computer***

### **ALLEGATION I2001-684**

**A**n employee at the Department of Transportation (Caltrans) used his state computer to view inappropriate Web sites.

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*An employee used his state computer to access Internet chat rooms, adult-oriented Web sites, and other Internet sites not related to work.*

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### **RESULTS AND METHOD OF INVESTIGATION**

Caltrans investigated and substantiated the allegation. It found that the employee used his state computer to visit Web sites not related to work, including chat rooms, retail establishments, an on-line auction site, and adult-oriented sites. To investigate the allegation, Caltrans reviewed evidence and interviewed witnesses and the employee. It found documentary evidence supporting the allegation and obtained an admission from the employee that he had improperly used his state computer to view inappropriate Web sites.<sup>19</sup>

### **AGENCY RESPONSE**

The employee left state service before Caltrans completed its investigation. Thus, Caltrans did not take formal action against the employee. However, it placed a letter in the employee's personnel file to alert the hiring manager about these issues should the employee attempt to return to state service. ■

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<sup>19</sup> For a detailed description of the laws pertaining to the improper activities discussed in this chapter, see Appendix B.

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# CHAPTER 14

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## ***Franchise Tax Board: Misuse of State Computer***

### **ALLEGATION I2001-826**

**A**n employee at the Franchise Tax Board (Tax Board) used a state-issued computer for personal use.

### **RESULTS AND METHOD OF INVESTIGATION**

We asked the Tax Board to investigate the allegation on our behalf. The Tax Board reported that it reviewed the employee's Internet usage for a 30-day period and interviewed the employee. It concluded that the employee misused his state-issued computer by inappropriately accessing 428 Internet sites for personal use. The employee admitted that he used his state-issued computer inappropriately. State laws prohibit employees from using state resources for personal gain and from engaging in activities that are incompatible with their duties as state employees.<sup>20</sup>

### **AGENCY RESPONSE**

The Tax Board suspended the employee without pay for three working days and will periodically monitor his Internet usage. ■

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<sup>20</sup> For a detailed description of the laws pertaining to the improper activities discussed in this chapter, see Appendix B.

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# CHAPTER 15

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## ***Department of Corrections, California Institution for Men: Falsification of Time Sheets***

### **ALLEGATION I2001-632**

**T**wo employees at the Department of Corrections (department), California Institution for Men (CIM) falsified their time sheets.

### **RESULTS AND METHOD OF INVESTIGATION**

We asked the department to investigate the allegations on our behalf. The department reported that CIM had already investigated and substantiated the allegations. To investigate, CIM reviewed the employees' attendance records and interviewed several witnesses, including the employees. It concluded that on at least one occasion, the two employees falsified on their time sheets the time they had worked. California regulations require departments to keep complete and accurate time and attendance records for each employee; and state law prohibits state employees from not devoting their full time, attention, and efforts to their state jobs during hours of duty as state employees.<sup>21</sup>

### **AGENCY RESPONSE**

CIM served each employee with a formal letter of reprimand.

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<sup>21</sup> For a detailed description of the laws and regulations discussed in this chapter, see Appendix B.

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

Respectfully submitted,



ELAINE M. HOWLE  
State Auditor

Date: September 17, 2003

Investigative Staff: Ken L. Willis, Manager, CPA  
Scott Denny, CPA, CFE  
Cynthia A. Sanford, CPA  
Mike Urso

Audit Staff: Theresa M. Carey, CPA, CFE  
Arn Gittleman, CPA, CFE, CGFM  
Renju Jacob  
Daniel Jones  
Sang Park  
Dawn Tomita  
Siu-Henh Ung

Legal Counsel: Donna L. Neville, JD

# APPENDIX A

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## ***Activity Report***

The Bureau of State Audits (bureau), headed by the state auditor, has identified improper governmental activities totaling \$13.3 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 that 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.

The individual chapters describe the corrective actions that agencies took on cases in this report. Table A.1 on the following page summarizes all the corrective actions that agencies have taken since the bureau reactivated the hotline. In addition, dozens of agencies have modified or reiterated their policies and procedures to prevent future improper activities.

**TABLE A.1**

**Corrective Actions Taken  
July 1993 Through June 2003**

| Type of Corrective Action          | Instances |
|------------------------------------|-----------|
| Referrals for criminal prosecution | 74        |
| Convictions                        | 7         |
| Job terminations                   | 55        |
| Demotions                          | 10        |
| Pay reductions                     | 16        |
| Suspensions without pay            | 14        |
| Reprimands                         | 155       |

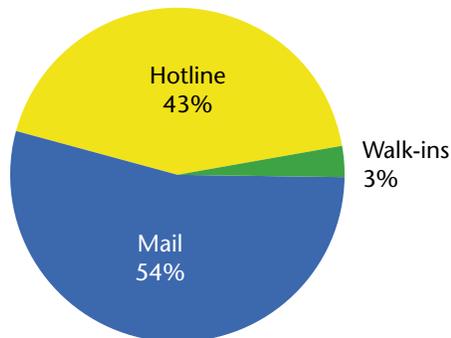
**New Cases Opened Between February and June 2003**

From February 1, 2003, through June 30, 2003, the bureau opened 237 new cases.

The bureau receives allegations of improper governmental activities in several ways. Callers to the hotline at (800) 952-5665 reported 73 of our new cases in this time period.<sup>22</sup> The bureau also opened 93 new cases based on complaints it received in the mail and five based on complaints from individuals who visited the office. Figure A.1 shows the sources of all the cases opened from February 2003 through June 2003.

**FIGURE A.1**

**Sources of 171 New Cases Opened  
February Through June 2003**



<sup>22</sup> In total, the bureau received 2,683 calls on the hotline from February through June 2003. However, 1,729 (66 percent) of the calls were about issues outside the bureau's jurisdiction. In these cases, the bureau attempted to refer the caller to the appropriate entity. An additional 753 calls (28 percent) were related to previously established case files.

### Work on Investigative Cases February 2003 Through June 2003

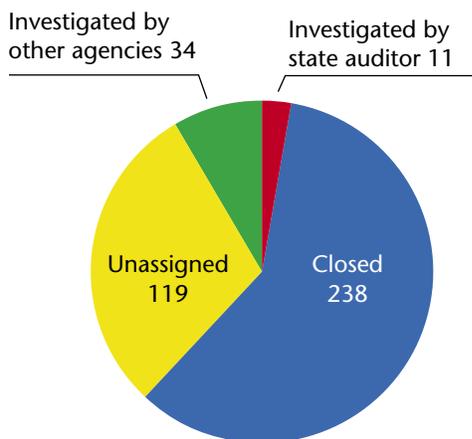
In addition to the 171 new cases opened during this five-month period, 164 previous cases awaited review or assignment as of February 1, 2003: 22 were still under investigation by this office or by other state agencies or were awaiting completion of corrective action. Consequently, 357 cases required some review during this period.

After reviewing the information gathered from complainants and preliminary reviews, the bureau concluded that 238 cases did not warrant complete investigation because of lack of evidence.

The act specifies that the state auditor can request the assistance of any state entity or employee in conducting an investigation. From February 1, 2003, through June 30, 2003, state agencies investigated 34 cases on the bureau's behalf and substantiated allegations on 11 (69 percent) of the 16 cases they completed during the period. In addition, the bureau independently investigated 11 cases and substantiated allegations on five of the six completed during the period. As of June 30, 2003, the bureau had 119 cases awaiting review or assignment. Figure A.2 shows the disposition of the 402 cases the bureau worked on from February through June 2003.

**FIGURE A.2**

**Disposition of 402 Cases  
February Through June 2003**



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# APPENDIX B

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## ***State Laws, Regulations, and Policies***

**T**his appendix provides more detailed descriptions of state laws, regulations, and policies that govern employee conduct and prohibit the types of improper governmental activities that this report describes.

### **CAUSES FOR DISCIPLINING STATE EMPLOYEES**

The California Government Code, Section 19572, enumerates the various causes for disciplining state civil service employees. These causes include incompetency; inefficiency; inexcusable absence without leave or neglect of duty; insubordination; dishonesty; misuse of state property; and other failure of good behavior, either during or outside of duty hours, that is of such a nature that it causes discredit to the appointing authority or the person's employment.

### **FELONY DEFINED**

**Chapters 1, 2, and 9 report on improper acts that may be felonies.**

California Penal Code, Section 17, defines a "felony" as a crime that is punishable by death or imprisonment in state prison.

### **FALSIFICATION OF PUBLIC RECORDS**

**Chapters 1 and 2 report on the falsification of public records.**

Section 6200 of the California Government Code provides that any public officer having custody of any public record who alters, falsifies, steals, or destroys any record placed in his or her hands is punishable by imprisonment in state prison for up to four years.

### **EMBEZZLEMENT OR MISAPPROPRIATION OF STATE FUNDS**

**Chapters 1 and 2 report violations of California Penal Code, Section 424.**

Section 424 of the California Penal Code provides that public officers or any other persons charged with the receipt, safekeeping, or disbursement of public money who knowingly keep a false account, make a false entry or erasure in any

account, use public money for a purpose not authorized by law, or willingly fail to transfer the money as required by law may be disqualified from holding office in the State and are subject to imprisonment for up to four years.

### **HOLDING FUNDS OUTSIDE OF THE STATE TREASURY** **Chapters 2 and 3 report on the improper holding of state funds outside of the State Treasury.**

State laws and administrative policies limit the circumstances under which employees may hold state funds outside the State Treasury. Section 16305.2 of the California Government Code defines “state money” as all money in the possession of or collected by any state agency or department, except for money in the Local Agency Investment Fund. In *Bennett v. Superior Court*, 131 Cal.App.2d 841, the court stated that the proper criterion to determine whether certain funds are public money is not ultimate ownership but rather the official character in which these funds are received or held.

Section 16305.3 of the California Government Code provides that state funds must be deposited in the custody of the state treasurer unless otherwise authorized by the director of finance or deposited directly in the State Treasury. Section 16506 requires that all money belonging to the State under the control of any state employee other than the state treasurer shall be deposited under conditions that the director of finance prescribes. Further, Section 16510 provides that any state employee who deposits state money in any manner not prescribed by the director of finance may be subject to forfeiture of his or her employment. Furthermore, the State Administrative Manual, Section 8002, specifies that in order to open an account outside of the State Treasury, the department must request approval from the Department of Finance, justifying the need for such an account.

### **USE OF FISCAL AGENTS** **Chapter 2 reports on the improper use of fiscal agents.**

State policies limit the circumstances under which departments may use fiscal agents. Section 8002.1 of the State Administrative Manual defines a “fiscal agent” as a financial institution or other third party receiving remittances or making disbursements on behalf of the State; it provides that departments should use fiscal

agents only when unusual circumstances require their use, and it states that their use should be kept to a minimum. This section further directs that departments must submit a formal request to the director of finance to use fiscal agents and that the fiscal agents must maintain a separate account for any money under their control.

## **CRITERIA GOVERNING STATE MANAGERS' RESPONSIBILITIES**

### **Chapter 2 reports weaknesses in management controls.**

The Financial Integrity and State Manager's Accountability Act of 1983 (accountability act) 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 these controls, agencies gain reasonable assurance that the measures they have adopted protect state assets, provide reliable accounting data, promote operational efficiency, and encourage adherence to managerial policies. The accountability act also states that the elements of a satisfactory system of internal accounting and administrative control shall 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.

## **INCOMPATIBLE ACTIVITIES DEFINED**

### **Chapters 3, 10, 12, 13, 14, and 15 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 state time, facilities, equipment, or supplies for private gain or advantage.

Incompatible activities also include using the prestige or influence of the State for one's private gain or advantage or the private gain of another. In addition, state employees are prohibited from receiving or accepting money or any other consideration from anyone other than the State for the performance of their duties. Further, Section 19990 prohibits state employees from not devoting their full time, attention, and efforts to their state jobs during hours of duty as state employees.

### **PROHIBITIONS AGAINST USING STATE RESOURCES FOR PERSONAL GAIN**

**Chapters 3, 4, 10, 12, 13, and 14 report personal use of state resources.**

The California Government Code, Section 8314, prohibits state officers and employees from using state resources such as land, equipment, travel, or time for personal enjoyment, private gain, or personal 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.

Humboldt State University policy indicates that its computing and communications resources are not to be used for commercial purposes or activities not related to the university without written authorization.

### **WASTE AND INEFFICIENCY**

**Chapters 4 and 6 report on waste and inefficiency in state government.**

California Government Code, Section 11813, provides that waste and inefficiency in state government undermine the confidence in government of Californians and reduces state government's ability to adequately address vital public needs.

## **IMPROPER LEAVE BENEFITS AND TIME AND ATTENDANCE ABUSE**

**Chapters 4, 7, 11, and 15 report violations regarding leave and time and attendance.**

Title 2 of the California Code of Regulations governs how leave may be awarded. Section 599.665 requires departments to keep complete and accurate time and attendance records for each employee. Section 599.703 states that positions designated as administratively exempt include those with a minimum average workweek of 40 hours. Further, the regulations state that the regular salary for exempt employees is “full compensation for all time” that is required for the employee to perform the duties of the position. Work in excess of the minimum average workweek is not compensable and shall not be deemed overtime, for which compensatory leave is provided. Sections 599.704 to 599.706 state that ordered overtime for nonexempt employees is compensable by cash or by compensating time off. Compensating time off for such employees shall be earned on a time-and-one-half basis and may be authorized in lieu of cash compensation. The State Administrative Manual, Section 8539, provides that agencies shall maintain complete records of attendance and absences for each employee during each pay period.

The California Government Code, Section 19775, provides that state employees with one year of continuous service who are granted a long-term military leave of absence shall be entitled to receive their salary for the first 30 calendar days of active duty served during the absence. Section 19773 defines “emergency military leave” as military leave of absence to an employee who is a member of the National Guard for the period of active duty and travel to and from such duty.

The California Government Code, Section 19991.1, provides that an appointing power may grant a leave of absence without pay to any employee under his or her jurisdiction for a period not exceeding one year.

## **CONTRACTING IMPROPRIETIES**

### **Chapter 5 reports violations of contracting rules.**

The Public Contracting Code provides that the State award contracts fairly. Section 100 furnishes all qualified bidders a fair opportunity to bid, thereby stimulating competition in a manner conducive to sound fiscal practices. Sections 10500 through 10506, which specifically relate to University of California construction contracts, also contain competitive-bidding provisions. These sections require campuses to award construction projects of \$50,000 or more to the lowest responsible bidder.

University of California Regents' Policy 6036 reaffirms the necessity of competition, requiring competitive bidding for construction contracts and stating that contracts must be awarded to the lowest responsible bidder unless the acceptance of a responsible bid is not in the best interests of the University of California, in which case it must reject all bids.

## **REGULATIONS COVERING TRAVEL EXPENSE**

### **REIMBURSEMENTS AND PAYMENT OF COMMUTING EXPENSES**

#### **Chapter 6 reports improper payment of travel or commuting expenses.**

The California Code of Regulations, Title 2, Section 599.615(a), states that each state agency shall determine the necessity for travel. Section 599.626 stipulates that reimbursement for travel expenses will be made only for the method of transportation that is in the State's best interest and disallows expenses that arise from travel between home or garage and headquarters. When a trip begins or ends at the employee's home, the distance the employee travels shall be computed from the lesser of the employee's home or headquarters.

Article 12, Section 12.1(a), of the Horse Racing Board employees' bargaining unit contract (bargaining unit 7) states that for continuous short-term travel of more than 24 hours but less than 31 consecutive days, the employee will be reimbursed for the actual costs for meals, incidentals, and lodging expenses up to the maximum allowed for each complete 24 hours of travel, beginning with the employee's time of departure and ending with the time of return.

## **CRITERIA COVERING STATE MOTOR VEHICLES**

### **Chapter 8 reports on the improper use of a state vehicle.**

California Government Code, Section 19993.1, provides that state-owned motor vehicles shall be used only in the conduct of state business. Section 19993.5 provides that using a state-owned motor vehicle for other than business purposes constitutes misuse of state property.

The California Code of Regulations, Title 2, Section 599.807(a), states that each state agency shall maintain an automobile travel log for each automobile. The form shall be completed on a daily basis and include daily mileage traveled, date and time of travel, itinerary, and the identity of the driver.

## **GRAND THEFT**

### **Chapter 9 reports on the theft of a state vehicle and forklift.**

The California Penal Code, Section 487(a), provides that grand theft occurs when the money, labor, or real or personal property taken is of a value exceeding \$400. California Vehicle Code, Section 10851(a), states that any person who, without consent, drives a vehicle not his or her own and intends to deprive the owner of possession of the vehicle may be subject to imprisonment and fine.

## **STATEMENTS OF ECONOMIC INTERESTS**

### **Chapter 12 reports on the failure to disclose economic interests.**

California Government Code, Section 87302(b), requires each designated employee to file statements disclosing reportable investments, business positions, interests in real property, and income.

## **IMPROPER ACCESS TO CONFIDENTIAL INFORMATION**

### **Chapter 12 reports on accessing confidential information for a purpose other than state business.**

Franchise Tax Board policy directs employees not to access or examine confidential information without a work-related reason for doing so. Failure to comply may result in disciplinary action.

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# APPENDIX C

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## ***Incidents Uncovered by Other Agencies***

Section 20080 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 involving state employees that departments reported to the bureau from February 2003 through June 2003. Although many state agencies do not yet report such irregularities as required, some vigorously investigate such incidents and put considerable effort into creating policies and procedures to prevent future occurrences. Note that all the incidents included here have been resolved; the bureau does not publish any report that would interfere with or jeopardize any ongoing internal or criminal investigation.

Ten state entities notified the bureau of 26 instances of improper governmental activity they resolved between February 1, 2003, and June 30, 2003. Those entities were the California Conservation Corps, the California Medical Facility, the California State University system, the Department of Consumer Affairs, the Department of Fish and Game, the Department of Forestry and Fire Protection, the Department of Motor Vehicles, the Department of Rehabilitation, the Department of Transportation, and the Franchise Tax Board. Incidents resulting in monetary loss to the State totaled \$1,403,918. Recovery and restitution of about \$829,313 has mitigated the financial losses of many of these entities.

### **CALIFORNIA STATE UNIVERSITY**

Four California State University campuses reported improper governmental activities. The San Francisco campus reported that a former university employee and his wife were arrested and charged with embezzlement, forgery, and tax evasion in a 19-count indictment. The former employee would request stipend payments for a participant in one of the programs he oversaw. He would then forge the signature of the project director and deposit the checks into a bank account he maintained in his wife's name.

The evidence presented to the grand jury included over \$350,000 in fraudulent payments from 1998 to 2002. A conviction could mean a maximum of 11 years in state prison.

The Bakersfield campus reported that an instructor collected money from students to cover course materials in addition to the university course fee. The fee was neither assessed nor approved by the appropriate administrator, as campus policy required. The instructor had been warned previously that accepting money directly from students and imposing a de facto course fee without campus approval violated campus and university system policies. The instructor received a formal reprimand and remitted \$699 to the campus, the total she had requested from students.

The San Diego campus reported that an employee used a procurement card in 1999 to make unauthorized purchases, concealed those purchases from her supervisor, and then sold some of the purchased items on the Internet. Although the campus recovered \$7,806 in equipment from the employee's home, the final amount of the theft was determined to be \$159,277. The employee resigned under threat of termination. The courts imposed a minimal jail sentence and required restitution of \$200 to \$300 per month.

Another employee at the San Diego campus also used a procurement card to make unauthorized purchases. During its regular monthly review of procurement card purchases, the campus accounting department identified several purchases, totaling \$1,459, that appeared to be unreasonable. The employee responsible for the procurement card admitted to making some of the unauthorized purchases and reimbursed the campus for \$459, but contested some of the charges. The campus terminated the employee's appointment and turned the case over to the district attorney.

Finally, the Los Angeles campus reported that an employee fraudulently claimed travel expenses and was absent from duty. The employee was authorized to attend an out-of-town training seminar but left the seminar three days early. However, the campus reimbursed the employee based on signed documents certifying full completion of the course, including travel and hotel accommodations and a course certificate. The campus determined that the documents and the certificate were fraudulent. In addition to leaving the seminar early, the employee did not report back to work on campus, resulting

in an unauthorized absence and overpayment of salary. The campus dismissed the employee, and the courts sentenced him to full restitution of \$1,736.

### **CAIFORNIA CONSERVATION CORPS**

The California Conservation Corps (CCC) became aware of theft of state funds by one of its employees. It found that the employee had endorsed and deposited into her personal account a check in the amount of \$2,400 that was made payable to the CCC. The employee, who admitted the theft, has been placed on an unpaid administrative leave; the CCC initiated the process of taking an adverse action to dismiss her from state service.

### **CALIFORNIA MEDICAL FACILITY**

The Department of Corrections investigated the loss of a \$312 check and \$200 in cash belonging to an inmate being released on parole from the California Medical Facility (facility). During the checkout process, the releasing officer placed the inmate and the inmate's check and cash in the custody of a parole agent. At the facility's exit, the parole agent discovered that the envelope containing the check and cash was missing. An investigation revealed that the parole agent dropped the envelope in the receiving and release area. Subsequently, the facility issued a replacement check to the inmate, and immediately replaced the cash loss. The facility invoiced the parole agent for the \$200. As a result of the incident, parole agents are now required to collect parolee funds at the facility's exit.

### **DEPARTMENT OF CONSUMER AFFAIRS**

The Department of Consumer Affairs investigated and substantiated an incident of bribery. An employee of the Contractor's State Licensing Board solicited a bribe from a licensing applicant to provide the applicant with information to obtain an expedited test date for his license. The employee was observed accepting \$800 in cash from the applicant. The employee was arrested. After a preliminary hearing, the district attorney dismissed felony counts of bribery, grand theft, and possession of an illegal weapon (for a leaded baton found on the employee during the arrest). However, the

investigation generated administrative allegations regarding conflict of interest and policy violations. The employee resigned his position.

## **DEPARTMENT OF FISH AND GAME**

The Department of Fish and Game (Fish and Game) determined that one of its employees engaged in improper contracting activities in relation to two contracts that Fish and Game awarded to the employee's business partner. The employee's responsibilities included, among other things, assisting Fish and Game with its marketing efforts. The first contract involved Fish and Game's decision to hire a consultant to improve the department's image. The employee developed the scope of work, set the rating criteria for bids in Fish and Game's request for proposal, and participated in evaluating the five proposals the department subsequently received. Fish and Game awarded the \$94,015 contract to the bidder with the highest score, a company owned by an individual who is the employee's partner in another business. The employee became the contract manager for the contract and approved invoices for the work performed.

The employee also developed the scope of work for a contract to conduct a customer service assessment. The contract was eventually awarded to the same company, which had submitted the lower bid of the two companies whose proposals exceeded the minimum score. The employee did not review or score the proposals, but he did oversee the work performed under the second contract. Based on allegations of contract improprieties, Fish and Game determined that the employee was, in fact, a business partner of the bidder who won both contracts.

Fish and Game initiated disciplinary action against the employee, and he retired from state service in lieu of submitting to that action. Fish and Game also determined that although the employee's actions violated state law and policy in connection with the contracts, it found no evidence to conclude that he gained from the contracts either directly or indirectly. The State appears to have had no financial loss from these two contracts.

## **DEPARTMENT OF FORESTRY AND FIRE PROTECTION**

The Department of Forestry and Fire Protection (Forestry and Fire Protection) investigated incidents of theft involving several unauthorized purchases of computer equipment. A probationary employee prepared state purchase orders, signed as authorizer, and had a student assistant sign as receiver on the purchase orders. Upon receipt, the employee converted the computers to his personal use. A search of the employee's home revealed a total of four computers, a digital camera, and various other office supplies purchased with Forestry and Fire Protection funds. One computer was recovered at the home of the employee's brother; others are still missing, representing a loss to the State of \$19,691. Forestry and Fire Protection released the employee from his probationary position and turned the case over to the district attorney, who has filed felony charges.

## **DEPARTMENT OF MOTOR VEHICLES**

The Department of Motor Vehicles (Motor Vehicles) advised us of 11 investigations that its staff completed, which substantiated improper activities by Motor Vehicles employees. One of these investigations involved an employee who used the Motor Vehicles computer system to issue fraudulent original and duplicate driver's licenses to her husband. The employee entered a fictitious Social Security number and an invalid out-of-state driver's license to manipulate the driver's license issuance process. Motor Vehicles also uncovered the following improprieties:

- An employee attempted to have false information entered on a driver's license record by involving herself in the processing of her brother-in-law's application for a driver's license, an incompatible activity.
- An employee inappropriately used the prestige or influence of his state position when, during the driving portion of the exam, he engaged an applicant in inappropriate sexual conversation and touching. Motor Vehicles terminated the employee.
- An employee had misused personalized license plates on another vehicle and displayed the incorrect month tabs on the license plate to avoid detection of the expiration date. After an investigation by Motor Vehicles, the employee resigned in lieu of facing adverse action.

- An employee who was investigating advertising practices at several auto dealerships prepared and submitted an official report of investigation that was inaccurate, misinterpreted facts, and lacked evidentiary support. As a result of its investigation, Motor Vehicles reduced the employee's pay.
- An employee stole and deposited into his account money orders from at least three Motor Vehicles' customers. The employee also manipulated and falsified Motor Vehicles' computer systems by fraudulently stripping fees from registration transactions and Motor Vehicles' dishonored check accounts to hide the theft. Motor Vehicles terminated the employee after he failed to report for work.

Motor Vehicles also investigated and substantiated five other incidents of improper database access or other improprieties related to falsifying documents.

## **DEPARTMENT OF REHABILITATION**

The Department of Rehabilitation (Rehabilitation) reported that an employee attempted to use a State of California procurement card for personal rental car expenses of \$2,579. The employee then reported that the procurement card was stolen and filed a police report. Additional charges of \$546 were incurred subsequent to the alleged theft of the card. The bank reversed those additional charges. However, because the procurement card limit is \$500 per transaction, Rehabilitation incurred only \$500 for the rental expense. The employee's supervisor had counseled her for misuse of the card on two earlier occasions (for which she reimbursed Rehabilitation). Rehabilitation referred the case to the California Highway Patrol (CHP), and during its investigation the employee reportedly confessed to making the rental charges. As a result, CHP referred the case to the district attorney for criminal prosecution.

Since the investigation was initiated, the employee has transferred to another State department. Rehabilitation has requested restitution from the employee for the \$500 in rental car charges. Further, Rehabilitation has notified the employee's current employer, as only the current employer may pursue adverse action.

## **DEPARTMENT OF TRANSPORTATION**

The Department of Transportation (Caltrans) reported that one of its permit inspectors circumvented the permitting process by telling applicants they could obtain permits for work faster than going through the normal process by paying a third party. Caltrans reports that the employee issued at least 20 invalid permits, and it estimates he fraudulently collected fees of \$60,000. Caltrans plans to terminate the employee, and it turned the case over to the district attorney for criminal prosecution.

## **FRANCHISE TAX BOARD**

The Franchise Tax Board (Tax Board) advised us that a bank, the Sacramento County Sheriff's department, and a taxpayer notified it that checks made payable to the Tax Board were identified in the possession of unauthorized persons and in some cases were deposited into other than Tax Board accounts. The Tax Board, working with various law enforcement agencies, reported that checks made payable to the Tax Board and totaling \$851,780 were identified as stolen. Of the amount stolen, \$145,446 was actually negotiated. In addition, one of the stolen checks was counterfeited and negotiated for \$38,000. The Tax Board reported that its staff is working with the affected taxpayers and their financial institutions to seek reimbursement from the negotiating banks. To date, the Tax Board has recovered all but \$29,946 of the stolen payments. The assistant United States attorney will prosecute the person for the crimes, and the Tax Board terminated the employee.

In another incident, the Tax Board was notified that one of its employees attempted to deposit into her own account seven checks that were submitted to the Tax Board as tax payments. None of the checks (totaling \$2,030) were negotiated. The Tax Board terminated the employee and referred the case to the district attorney for criminal prosecution.

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