

California State Auditor

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

Investigations of Improper Activities by State Employees:

July 2004 Through December 2004



March 2005
12005-1

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CALIFORNIA STATE AUDITOR

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March 22, 2005

Investigative Report I2005-1

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

Dear Governor and Legislative Leaders:

Pursuant to the California Whistleblower Protection Act, the Bureau of State Audits presents its investigative report summarizing investigations of improper governmental activity completed from July 2004 through December 2004.

Respectfully submitted,

A handwritten signature in cursive script that reads "Elaine M. Howle".

ELAINE M. HOWLE
State Auditor

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SUMMARY

Investigative Highlights . . .

State employees and departments engaged in improper activities, including the following:

- Improperly paid 25 nurses at four institutions \$238,184 in premium pay associated with inmate supervision.*
 - Improperly received \$3,067 by submitting false claims for wages and travel costs.*
 - Allowed employees to live rent-free at a state facility, resulting in a personal benefit to the employees of at least \$10,920.*
 - Improperly divulged confidential information.*
 - Violated conflict-of-interest provisions by hiring an employee who also owned a company that had a \$554,000 contract with the State.*
 - Purchased transit passes for family members via a state-subsidized program.*
-

RESULTS IN BRIEF

The Bureau of State Audits (bureau), in accordance with the California Whistleblower Protection Act (Whistleblower Act) contained in the California Government Code, beginning with Section 8547, receives and investigates complaints of improper governmental activities. The Whistleblower Act defines an “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. The Whistleblower Act authorizes the state auditor to investigate allegations of improper governmental activities and to publicly report on substantiated allegations. 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 Whistleblower 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 11 investigations completed by the bureau or with the assistance of other state agencies between July 1, 2004, and December 31, 2004, 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.

DEPARTMENT OF CORRECTIONS

In violation of state regulations and employee contract provisions, the Department of Corrections (Corrections) improperly paid 25 nurses at four institutions \$238,184 in premium pay associated with inmate supervision between July 1, 2001, and June 30, 2003. Corrections paid these nurses a premium even though they

either did not supervise inmates for the minimum number of hours required or they lacked sufficient documentation to support their eligibility to receive the increased pay. For 17 of the 25 nurses, Corrections reported that it could not provide documentation to support the pay increase it authorized because the institutions that employed these nurses either had no inmate supervisory hours to report, did not require nurses to track these hours, lacked sufficient documentation to support the hours claimed, or had destroyed all timekeeping records relating to inmate supervision. Although Corrections provided figures showing that the remaining eight nurses did incur inmate supervisory hours, we found that in most instances these nurses failed to accrue the number of supervisory hours required to qualify them for the premium pay.

DEPARTMENT OF HEALTH SERVICES

An employee improperly received \$3,067 by submitting false claims for wages and travel costs. By misrepresenting departure and return times on travel and attendance reports, the employee received \$1,894 for overtime and regular hours not worked. The employee also claimed and received \$1,173 for expenses related to travel that she did not incur or was not entitled to receive. Specifically, the employee claimed \$253 for parking expenses she did not incur, improperly claimed \$151 in mileage reimbursements by routinely overstating the distance to and from the airport when conducting state business, received \$259 for meal expenses she was not entitled to receive, and improperly received \$510 for travel expenses she claimed on days she did not work or that otherwise were not allowed.

DEPARTMENT OF VETERANS AFFAIRS

In violation of state law and department policy, the Department of Veterans Affairs (Veterans Affairs) allowed at least three employees to live at the Barstow Veterans Home (home) rent-free, resulting in a personal benefit to the employees of at least \$10,920. Despite having previously reported to us that it adopted policies in December 2002 establishing rental rates for employees who lodge at the home, Veterans Affairs failed to notify the home of such policies. As a result, the home continued to allow employees to stay in vacant resident rooms free of charge. It was only after we inquired about the matter in April 2004 that the home began charging the appropriate rent to employees who lodged there.

DEPARTMENT OF FINANCE

In violation of state law governing an individual's privacy rights, the Department of Finance (Finance) improperly disclosed confidential personal information when it published the names and Social Security numbers of state employees in a procedure manual (manual) that is distributed throughout the State and is available on the World Wide Web. After being notified of its breach of confidentiality, Finance revised and distributed the manual and removed the confidential information from its own Web site and any Web search engines that may have archived the information. Finance also revised its procedures to prevent violations of this nature in the future and began taking steps to notify individuals affected by the improper disclosure.

UNIVERSITY OF CALIFORNIA, SANTA BARBARA

The University of California, Santa Barbara (university), violated state contract law and its own policy when it hired an employee who also owned a company under contract for services in the amount of \$554,000 with the university. Payments against the contract totaled \$161,961, of which \$128,366 was paid subsequent to the employee's hiring. After we brought this matter to its attention, the university terminated its contract with the employee's business in August 2004 and developed policies designed to prevent such conflicts from occurring.

DEPARTMENT OF MOTOR VEHICLES

A manager at the Department of Motor Vehicles (Motor Vehicles) engaged in time and attendance abuse and failed to perform her duties. Motor Vehicles found that the manager routinely arrived at work late or left early and, while at work, was seen frequently playing card games on her personal computer or sleeping. The manager also took advantage of her position by bringing her child to work with her, and letting the child watch television or play games in her office. In addition, Motor Vehicles concluded that the manager failed to perform her supervisory duties by not taking appropriate action to stop unsuitable behavior among staff. Motor Vehicles demoted the manager and placed her in a position with clear oversight and supervision over her day-to-day activities.

DEPARTMENT OF PARKS AND RECREATION

A supervisor at the Department of Parks and Recreation (Parks and Recreation) used her state vehicle to transport her child to and from school and to transport groceries she had purchased from the local supermarket while on duty. Parks and Recreation also determined that the supervisor, whose duties include responding to emergency situations, used her state car to transport her child to school on at least one occasion after having received a verbal warning from her supervisor to refrain from such conduct. Parks and Recreation reduced the supervisor's pay by 5 percent for two months for misuse of state property, willful disobedience, and behavior that is of such a nature that it causes discredit to the department.

DEPARTMENT OF GENERAL SERVICES

A Department of General Services (General Services) employee inappropriately used a transit voucher to purchase transit passes under a state-subsidized program for use by his family members, who are not state employees. The employee admitted that he had used the state-subsidized transit vouchers to purchase youth passes for his children on two occasions. General Services discussed with the employee the inappropriate nature of his use of transit vouchers and told the employee he would be required to reimburse General Services a total of \$130, representing the cost of two \$65 vouchers. ■

CHAPTER 1

Department of Corrections: Improper Payments to Employees

ALLEGATION I2003-0834

The Department of Corrections (Corrections) improperly granted registered nurses (nurses) an increase in pay that they were not entitled to receive.

RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated the allegation. We found that 25 nurses received increased pay associated with inmate supervision even though they either did not supervise inmates for the minimum number of hours required or they lacked sufficient documentation to support their eligibility to receive the increased pay. Between July 1, 2001, and June 30, 2003, Corrections paid these nurses \$238,184 more than they were entitled to receive.

To investigate the allegation, we asked Corrections to provide a list of all nurses who worked at five designated institutions and received the pay increase between July 1, 2001, and June 30, 2003, along with the justification for having received the pay, including the names and number of inmates supervised and the number of supervisory hours provided. In determining the amount that Corrections improperly paid these nurses, we included instances when nurses received the pay increase even though Corrections lacked documentation to support it. We also included those instances when nurses reported inmate supervisory hours but failed to provide such supervision for the required number of hours. Finally, we reviewed state laws, regulations, and relevant provisions of the nurses' employment contract with the State.

BACKGROUND

The nurses discussed in this report received various types of payments in addition to their base salary. For example, most of the 25 nurses we reviewed received three types of recruitment and retention payments. These included a one-time payment of \$1,500, an annual payment of \$2,400, and monthly payments

of up to \$800 per month. In addition, most nurses were paid \$446 per month for inmate supervision. This report focuses only on the pay related to inmate supervision.

State regulations and employment contracts allow employees to receive increased pay, provided they meet certain conditions. Regulations related to alternate pay ranges require that, unless otherwise authorized by the Department of Personnel Administration (DPA), when an employee qualifies and moves from one alternate range to another alternate range of a classification, the employee shall receive a salary increase or decrease equivalent to the total range differential between the maximum salary rates of the alternate ranges. The state contract for the nurses discussed in this report permits the State to provide compensation by moving such employees into an alternate pay range so long as they have regular, direct responsibility for work supervision, on-the-job training, and work performance evaluations of at least two inmates, wards, or resident workers who substantially replace civil service employees for a total of at least 173 allocated hours per pay period. If the State determines that an overpayment has been made to an employee, the employee shall reimburse the State, provided the State initiates action to recoup the overpayment within three years of the date of the overpayment.¹

CORRECTIONS IMPROPERLY GRANTED NURSES INCREASED PAY

In violation of state regulations and employee contract provisions, Corrections paid 25 nurses at four institutions \$238,184 more than they were entitled to receive between July 1, 2001, and June 30, 2003.² Corrections reported that it could not provide documentation to support the pay increase it authorized for 17 of the 25 nurses because the institutions that employed these nurses either had no inmate supervisory hours to report, did not require nurses to track these hours, lacked sufficient documentation to support the hours claimed, or had destroyed all timekeeping records relating to inmate supervision. Although Corrections provided figures showing that the remaining eight nurses did supervise inmates, we found that in most instances these nurses failed to incur the required number of supervisory hours to merit the pay

Over a two-year period, Corrections improperly granted 25 nurses \$238,184 in premium pay associated with inmate supervision.

¹ For a more detailed description of the laws, regulations, and employee contract discussed in this chapter, see Appendix B.

² Corrections reported that one of the five institutions we inquired about, Ironwood State Prison, did not grant its nurses the pay increase during the period of our review. That institution is not included in Table 1.

TABLE 1

**Improper Payments for Inmate Supervision Made to Corrections' Registered Nurses
From July 1, 2001, Through June 30, 2003**

| Institution/Employee | Total Payments | Total Improper Payments | Percentage of Payments That Was Improper |
|--|------------------|-------------------------|---|
| Avenal State Prison | | | |
| Nurse 1* | \$ 11,435 | \$ 2,606 | 22.8% |
| Nurse 2* | 7,983 | 7,030 | 88.1 |
| Nurse 3† | 10,358 | 10,358 | 100.0 |
| Nurse 4† | 12,132 | 12,132 | 100.0 |
| Nurse 5† | 11,739 | 11,739 | 100.0 |
| Nurse 6* | 6,772 | 6,772 | 100.0 |
| Nurse 7* | 15,176 | 13,755 | 90.6 |
| Nurse 8* | 13,283 | 12,802 | 96.4 |
| Nurse 9* | 16,030 | 14,003 | 87.4 |
| Nurse 10* | 13,554 | 11,083 | 81.8 |
| Nurse 11* | 2,963 | 1,820 | 61.4 |
| Nurse 12† | 11,043 | 11,043 | 100.0 |
| Institution Subtotals | 132,468 | 115,143 | 86.9 |
| California Institution for Women | | | |
| Nurse 13‡ | 8,505 | 8,505 | 100.0 |
| Nurse 14‡ | 11,318 | 11,318 | 100.0 |
| Nurse 15‡ | 10,723 | 10,723 | 100.0 |
| Institution Subtotals | 30,546 | 30,546 | 100.0 |
| California State Prison, Sacramento | | | |
| Nurse 16*§ | 9,977 | 9,977 | 100.0 |
| Institution Subtotals | 9,977 | 9,977 | 100.0 |
| Chuckwalla Valley State Prison | | | |
| Nurse 17 | 11,361 | 11,361 | 100.0 |
| Nurse 18 | 11,695 | 11,695 | 100.0 |
| Nurse 19 | 12,548 | 12,548 | 100.0 |
| Nurse 20 | 3,698 | 3,698 | 100.0 |
| Nurse 21 | 2,460 | 2,460 | 100.0 |
| Nurse 22 | 11,998 | 11,998 | 100.0 |
| Nurse 23 | 4,740 | 4,740 | 100.0 |
| Nurse 24 | 11,253 | 11,253 | 100.0 |
| Nurse 25 | 12,765 | 12,765 | 100.0 |
| Institution Subtotals | 82,518 | 82,518 | 100.0 |
| Totals | \$255,509 | \$238,184 | 93.2% |

* Corrections reported that these nurses incurred inmate supervisory hours, but we found that the hours reported did not meet the required threshold.

† Corrections reported that the institution destroyed all records after eliminating these positions.

‡ Corrections reported that the institution had no information available.

§ Corrections initially reported that this nurse incurred inmate supervisory hours, but documentation it provided later did not support any of the inmate supervisory hours reported.

^{||} Corrections reported that the institution lacked sufficient documentation, such as employee time sheets, to justify the pay increase because it did not require nurses to keep track of hours of inmate supervision. Corrections also reported that, effective January 5, 2004, these nurses stopped receiving pay for inmate supervision.

increase. For example, one nurse received approximately \$7,983 due to the pay increase over a 16-month period. However, the nurse met the inmate supervisory threshold of 173 hours per month on only two occasions, resulting in an overpayment of \$7,030. As shown in Table 1 on the previous page, \$238,184 of the \$255,509 in inmate supervisory pay received by these nurses were not justified.

Corrections also may have violated state law prohibiting gifts of public funds by paying the nurses more than they were entitled to receive. Although paying a public employee the appropriate salary clearly serves a public purpose, when a public employee receives an excessive salary that he or she is not entitled to, that excess amount serves a purely private purpose and violates the constitutional prohibition against making public funds available for private purposes.

Because its employees received premium pay they were not entitled to receive, Corrections may have violated state law prohibiting gifts of public funds.

In addition, Corrections' inability to provide supporting documentation violates state law that 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, errors, abuse, and waste of government funds, according to the Financial Integrity and State Manager's Accountability Act of 1983 (act) contained in the California Government Code, beginning with Section 13400. By maintaining these controls, agencies gain reasonable assurance that measures they have adopted protect state assets, provide accurate and reliable accounting data, promote operational efficiency, and encourage adherence to managerial policies. The 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, it requires that, when detected, weaknesses must be corrected promptly. Without supporting documentation, Corrections has no way of ensuring that the pay increases for these nurses were justified.

AGENCY RESPONSE

As of the date of this report, Corrections' review was still ongoing. Corrections reported that because the issues raised in our report impacted several areas including personnel, inmate assignments, labor relations, and business services, it assigned a team to research the various aspects of the report findings to determine the best approach for correcting the problems identified and to determine the extent of the problem throughout the entire department. ■

CHAPTER 2

Department of Health Services: False Claims for Wages and Travel Expenses

ALLEGATION I2003-1067

An employee of the Department of Health Services (Health Services) submitted false travel and attendance reports in order to receive wages and travel expenses that she was not entitled to receive.

RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated the allegation as well as other travel-related improprieties. The employee, whose duties require her to travel regularly throughout the State to monitor and provide training to retail businesses, improperly received \$3,067 by submitting false claims for wages and travel costs. We determined that, by misrepresenting her departure and return times on her travel and attendance reports, the employee was paid \$1,894 for overtime and regular hours she did not work. We also found that the employee claimed and was paid \$1,173 for expenses related to her travel that she either did not incur or was not entitled to receive. Specifically, the employee claimed \$253 for parking expenses that she acknowledged to us she did not incur. The employee also improperly claimed \$151 in mileage reimbursements by routinely overstating the distance to and from the airport when conducting state business. Because the employee presented false information on her travel claims, she also received \$259 for meal expenses that she was not entitled to receive. Finally, the employee improperly received \$510 for travel expenses that she claimed on days she did not work or that otherwise were not allowed.

To investigate the allegation, we reviewed the employee's travel expense claims and time sheets from October 2002 through September 2004, as well as supporting documentation she provided to explain her travel expenses. We also reviewed pertinent state laws and regulations and travel rules outlined in the employee's bargaining unit contract. Furthermore, we interviewed the employee and her manager, but we did not

interview the employee’s supervisor, who approved the majority of the improper claims, because the supervisor left state service in June 2004.

THE EMPLOYEE SUBMITTED FALSE TRAVEL CLAIMS AND ATTENDANCE REPORTS

On at least 45 occasions, the employee claimed reimbursement for parking expenses that she later admitted she did not incur. In addition, on at least 27 occasions the employee submitted false claims for mileage between her residence and the airport. Furthermore, on numerous occasions the employee adjusted her travel claims and attendance reports by inflating the number of hours she claimed to have worked so she could receive travel expenses and wages, including overtime pay, that she was not entitled to receive. Table 2 provides a breakdown of the expenses and wages the employee improperly claimed.

TABLE 2
Improper Wages and Travel Costs Claimed by the Employee

| Expense Type | Amounts |
|---|----------------|
| False parking claims | \$ 253 |
| Excessive mileage | 151 |
| Meals due to false departure/return times | 259 |
| Overtime associated with false time sheets | 947 |
| Wages associated with false time sheets | 947 |
| Expenses claimed on days off or otherwise not allowed | 510 |
| Total | \$3,067 |

Improper Claims for Parking Expenses

The employee inappropriately claimed \$253 for parking, most of which reportedly occurred in remote locations, even though she did not incur any parking-related expenses. Each travel claim submitted and signed by the employee contains a certification as follows: “I hereby certify that the above is a true statement of the travel expenses incurred by me in accordance with Department of Personnel Administration rules in the service of the State of California.” Because the employee falsely indicated that she had incurred the expenses when she had not, we believe she may have committed a theft and violated California law, which provides that any person who presents a false or fraudulent claim for payment to

any state officer is punishable by imprisonment in county jail for a period of not more than one year, by a fine not to exceed \$1,000, or by both imprisonment and a fine; or by imprisonment in state prison, by a fine not to exceed \$10,000, or by both imprisonment and a fine.³

On numerous occasions, the employee claimed expenses of \$5 or \$6 for parking in remote locations, such as retail stores in Gilroy and Morgan Hill, where individuals typically are not required to pay for parking. When we asked the employee about parking in these locations, she admitted that she did not have to pay to park but added that she claimed the expense in an effort to recover the cost of providing treats and candy to participants in her training classes. Regardless of her explanation, the labor agreement between the State and the bargaining unit representing the employee (labor agreement) allows reimbursement for actual costs for parking and other transportation expenses that are incurred appropriately and necessarily as a result of conducting state business. The labor agreement also allows employees to claim \$6 per day for actual incidental expenses—an expense the employee regularly claimed.

Excessive Mileage Claims

The employee inappropriately submitted travel expense claims for mileage between her residence and the airport. According to the labor agreement, if travel begins or ends one hour before or after her workday or occurs on a day off, she is allowed to claim mileage for travel to and from her residence. Otherwise, she is entitled to reimbursement only for the lesser of the mileage between her headquarters and the airport (8 miles) or her home and the airport (18 miles). In almost every instance in which the employee claimed reimbursement for mileage for traveling to the airport, she indicated that the distance traveled was 30 miles each way, regardless of when her travel began or ended. The employee told us that she always claimed the distance from her residence to the airport because it was her practice during the workday to travel home from her headquarters, pack for her trip, and leave from her residence to the airport, even though her home is in the opposite direction. However, the employee could not explain why she indicated on her travel claims that the distance was 30 miles even though she acknowledged that she

By routinely overstating the distance between her home and the airport, the employee received \$151 in mileage reimbursements she was not entitled to receive.

³ For a more detailed description of the laws, rules, and regulations discussed in this chapter, see Appendix B.

understood the distance from her residence to the airport is less than 20 miles. As a result, she received \$151 in mileage reimbursements that she was not entitled to receive.

Improper Claims for Meals, Wages, and Overtime

Because of poor administrative controls and supervision, the employee was able to falsify travel claims and attendance reports to improperly receive \$2,153 in meals and wages, including overtime pay. Even a cursory review of the employee's travel and attendance reports by her supervisor would have revealed that the employee frequently inflated her hours so she could receive meals and pay that she was not entitled to receive. However, as we mentioned previously, we did not interview the supervisor who approved these claims because she retired before we began our investigation. State regulations require that each employee making a claim for travel expenses show the inclusive dates for which the expenses are claimed and the times of departure and return. Regulations also state that it is the responsibility of the officer approving the claim to ascertain the necessity and reasonableness of the expenses for which the reimbursement is claimed and that state departments are required to keep complete and accurate time and attendance records for each employee. We identified at least 16 instances in which the employee misrepresented her departure or return times on her travel claims so she could improperly receive a total of \$259 for meals. We also identified at least 22 instances in which the employee falsely indicated that she was conducting state business in order to receive a total of \$1,894 in wages, including overtime, for work she did not perform.

On a least 22 occasions, the employee falsely indicated she was working in order to receive \$1,894 in wages and overtime.

In one instance, the employee indicated on her travel claim that her trip ended at 9:30 p.m., and claimed \$18 for dinner. Based on provisions in the labor agreement, this expense would be allowable provided the trip ended at or after 7 p.m. However, the airport parking receipt the employee submitted with her travel claims indicated that her trip ended at 2:30 p.m.; therefore, she returned earlier than she claimed and was not entitled to reimbursement for dinner. The attendance reports submitted by the employee for this date also show that her day ended at 9:30 p.m. and that she claimed five hours of overtime, even though her parking receipt shows that her day ended seven hours earlier. In another example, the employee's travel claim showed that her trip ended at 7 p.m. and that she claimed \$40 for meals and incidental expenses. She also claimed on her attendance reports that she worked until 7 p.m., which represented a full day's wages

plus 2.5 hours of overtime, despite submitting airport parking receipts with her travel claim showing that her trip ended that morning at approximately 8:15 a.m.

When we asked the employee about these and other inconsistencies, she was unable to explain the discrepancies and could not demonstrate that she had performed any state work to account for the time she claimed. As we mentioned previously, we determined that the employee improperly received \$1,894 in overtime and wages in addition to \$259 in unallowable meals as a result of listing false start and end times on her travel and attendance reports. However, because the employee did not always provide time-stamped receipts with her travel claims, we were unable to determine if she received unallowable wages and meals beyond what we have identified in this report.

Excessive Reimbursements and Unallowable Expenses

In addition to submitting false travel and attendance reports, the employee claimed and was paid \$510 for excessive reimbursements, expenses incurred on days off, and other unallowable expenses. In several instances the employee claimed reimbursements for meals while traveling, despite indicating on her travel claims a trip departure or return time that made the expense unallowable. In many other instances, the employee claimed reimbursements for more than she was allowed. For example, the employee claimed and was reimbursed \$185 for a dinner expense, even though the labor agreement allows the employee to claim only \$18 for dinner. When we asked the employee to explain this expense, she told us it was a clerical error and that she would repay Health Services the \$167 difference between the amount allowed and the amount claimed.

The employee claimed and received \$185 for a dinner expense even though she was only allowed to claim \$18.

The employee also claimed excessive reimbursements for airport parking. We identified five instances in which the employee claimed reimbursement for parking at the airport hourly lot, which charges \$24 per day, when she could have parked at a daily lot that charges \$10 per day. State regulations require that departments determine the necessity for travel and that such travel represents the State's best interest. When we asked the employee why she used the hourly parking lots, she told us that she did so because she was in danger of missing her flights and that the hourly lot is closer to the terminal. However, arriving at the airport in a timely manner is the employee's responsibility, and it does not appear that this practice of parking in the hourly lot is in the State's best interest.

We also identified numerous instances in which the employee claimed reimbursements for travel expenses on her days off. The employee explained that in some cases she left for a trip the night before when she needed to be at a certain location early the next morning, or she returned home the next day because her work ended late at night and she was too tired to travel home. This may be an effective practice in certain situations; however, we found several instances in which the employee claimed reimbursement for travel expenses on her days off but could not demonstrate a business reason for doing so. For example, in one instance the employee rescheduled her flight and extended her vehicle rental for an additional day, with no apparent business reason for doing so. As a result, the State incurred an additional \$59 related to rental car and parking expenses. The employee could not explain why she extended her trip, and records she provided to us indicate that her state business was concluded early the prior day.

It concerns us that Health Services lacked the necessary controls to ensure that the employee did not receive the improper reimbursements and wages identified in this report. State law requires each state agency to establish and maintain a system or systems of internal accounting and administrative controls. Further, this act requires that, when detected, weaknesses must be corrected promptly. As the examples in our report illustrate, we believe most of the improper payments the employee received could have been identified if the employee's supervisor or other individuals responsible for reviewing the employee's claims had performed an adequate review.

AGENCY RESPONSE

As of the date of this report, Health Services' review was still ongoing. Based on its preliminary review, Health Services acknowledged that the employee's supervisor should have identified and denied many of the inappropriate charges on the employee's travel claims. Health Services also reported that it will provide training to all its supervisors working in the employee's branch so that they can better understand their responsibilities for reviewing travel claims and overtime requests submitted by those under their supervision. ■

CHAPTER 3

Department of Veterans Affairs: Misuse of State Property and Resources

ALLEGATION I2004-0711

The Department of Veterans Affairs (Veterans Affairs) allowed employees to lodge at the Barstow Veterans Home (home) rent-free.

RESULTS AND METHOD OF INVESTIGATION

We asked Veterans Affairs to assist us with the investigation, and we substantiated the allegation. In violation of state law and Veterans Affairs policy, the home allowed at least three employees to live at the facility rent-free, resulting in a personal benefit to the employees of at least \$10,920.⁴ Despite having previously reported to us that it adopted policies in December 2002 establishing rental rates for employees who lodge at the home, Veterans Affairs failed to notify the home of such policies. As a result, the home continued to allow employees to stay in vacant resident rooms free of charge. To investigate the allegation, we asked Veterans Affairs to provide us with information regarding employee lodging at the home since July 1, 2003, including relevant department policies, the dates and total number of nights employees stayed at the home, and supporting documentation showing that the employees listed had reimbursed the State for this benefit.

BACKGROUND

Prior to this investigation, we sent an inquiry on October 25, 2002, asking Veterans Affairs to provide a list of employees who had lodged at the home in the past two years, schedules showing the housing and service rates these individuals were charged, and departmental policies and procedures pertaining to such arrangements. On November 25, 2002, Veterans Affairs responded that it had not been able to fill the facility and had difficulty recruiting personnel since opening the home. Because of these recruitment difficulties, Veterans Affairs reported that it hired employees who lived far away from the home, and that the

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

home permitted various personnel to stay in unoccupied resident rooms rent-free. It added that the home kept no records of these arrangements because it did not charge its employees for the use of these vacant rooms.

Subsequently, Veterans Affairs developed a policy effective December 1, 2002, that allowed employees who lived long distances from the home to lodge at the home provided the employees paid an established rental rate and the arrangement did not displace any of the home's veteran patients. Specifically, the policy set lodging rates at \$300 per month or \$10 per day for management employees, and \$210 per month or \$7 per day for all other employees. The policy also specified that no veteran resident is to be displaced to provide temporary housing to employees and that such arrangements may be terminated for any reason after a 24-hour notice.⁵ This policy is designed to avoid violating the provision of the California Constitution that prohibits the giving of any gift of public money or thing of any value to any individual for a private purpose, and to avoid violating the state law that prohibits state officers and employees from using state resources such as buildings, facilities, or equipment for personal enjoyment or private gain.

DESPITE BEING NOTIFIED OF THE ISSUE, VETERANS AFFAIRS FAILED TO ENSURE THAT THE HOME COLLECTED RENT FROM THESE EMPLOYEES

In violation of state law and department policy, and despite our previous notification to Veterans Affairs about the matter via our October 2002 letter, the home allowed at least three employees to live at the facility rent-free, resulting in a personal benefit of at least \$10,920. Although one of these employees ceased boarding at the facility after separating from Veterans Affairs in 2003, the other two continued to live rent-free at the home until we again brought the matter to the attention of Veterans Affairs in April 2004. We acknowledge the difficulty the home reportedly experienced in recruiting employees, and the fact that Veterans Affairs may provide housing to its employees at a rate that may be less than fair market value in order to retain employees, but we believe that providing housing at no cost may have constituted a gift of public funds and violated other state laws as well as Veterans Affairs' own policy.

The Barstow Veterans Home allowed three employees to live at the home rent-free, resulting in a personal benefit to the employees of \$10,920.

⁵ Lodging rates are for the use of vacant resident rooms, which are 500 square feet or less, share common bath and shower facilities with other rooms, and do not include regular cooking facilities.

Veterans Affairs stated that the current home administrator was unaware of existing policy, explaining that frequent turnover within Veterans Affairs' management and executive branches led to its failure to disseminate and implement the policy. In failing to implement its own policy, Veterans Affairs and the home violated state law making each state agency responsible for establishing and maintaining a system or systems of internal accounting and administrative controls. Internal controls are necessary to provide public accountability and should be designed to minimize fraud, errors, abuse, and waste of government funds. Further, state law declares that when an agency detects weaknesses, it must correct them promptly, a requirement that Veterans Affairs failed to fulfill.

AGENCY RESPONSE

Shortly after our second inquiry regarding the matter—in April 2004—the home began charging the appropriate rent to employees who lodged there. However, Veterans Affairs reported that it did not attempt to collect rent from these employees for the months before April 2004 because it apparently failed to disseminate the policy restricting such arrangements, and past executive and management employees may have provided verbal approval for employees to lodge rent-free at the home. In addition, Veterans Affairs revised its employee housing policy, establishing a single lodging rate of \$300 per month or \$10 per day for all employees. ■

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CHAPTER 4

Department of Finance: Improper Disclosure of Confidential Information

ALLEGATION I2004-1104

The Department of Finance (Finance) improperly disclosed an individual's name and Social Security number on its Web site and in one of its publications.

RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated the allegation. We found that Finance published the name and Social Security number of a former state employee in a publication that is distributed throughout the State and is available on the World Wide Web (Web). To investigate the allegation, we used a popular Web search engine to search for the individual's name. The first two results were links to Finance's Web site, which contained multiple references to the individual's name and Social Security number.

We asked Finance to determine the cause and extent of the improper disclosure and to explain how it plans to remedy the situation. As part of its review, Finance identified two other state employees and a state vendor whose names and Social Security numbers also had been disclosed improperly. Finance told us that the staff members who prepared the publication were responsible for the improper disclosures. We believe that these disclosures by Finance violated the individuals' privacy rights.⁶

AGENCY RESPONSE

After being notified of its breach of confidentiality, Finance quickly took action to remove the confidential information from its own Web site and from any Web search engines that may have archived information from the Web site before the time it was updated. In addition, Finance provided updates, without the confidential information, to users with hard copies of the publication and revised its procedures to prevent violations of

⁶ For a more detailed description of the law discussed in this chapter, see Appendix B.

this nature in the future. Finally, upon discovering that it had disclosed other individuals' confidential information, Finance began taking steps to notify those individuals of the improper disclosure. ■

CHAPTER 5

California State University, San Marcos: Inappropriate Access of the California Law Enforcement Telecommunications System

ALLEGATION I2004-0613

A public safety office manager at California State University, San Marcos (CSU San Marcos), improperly directed his subordinates to use passwords assigned to coworkers to access confidential law enforcement information via the California Law Enforcement Telecommunications System (CLETS).

RESULTS AND METHOD OF INVESTIGATION

We asked the California State University, Chancellor's Office (chancellor's office) and the Department of Justice (Justice) to assist us with the investigation, and they substantiated the allegations. To investigate the allegations, the chancellor's office reviewed applicable policies and procedures, interviewed CSU San Marcos employees and others, and reviewed the training and CLETS access records of 18 public safety office employees.⁷

The chancellor's office concluded that the manager improperly directed his subordinates to use passwords assigned to coworkers to access confidential law enforcement information via CLETS. In addition, the chancellor's office found that the employees who borrowed the passwords had not received required training in the use of CLETS and that CSU San Marcos failed to maintain sufficient records to demonstrate whether it had complied with training requirements.

⁷ For a more detailed description of the laws and policies discussed in this chapter, see Appendix B.

Improper Distribution and Use of Passwords

Many CSU San Marcos public safety employees, including police officers and dispatchers, have access to CLETS, which is maintained by Justice.⁸ CLETS is a telecommunications system that provides access to highly sensitive information and may only be used by designated personnel who have met specified requirements and have had the required training. Each CLETS user is required to have CLETS training and his or her own user identification and unique password to access the system and is accountable for all transactions under that identification. In addition, according to state law it is a misdemeanor to furnish a record or information obtained from a record to a person who is not authorized by law to receive the record or information. Nevertheless, the chancellor's office found that 12 of the 18 public safety employees whose usage it reviewed had no record of an individual CLETS user identification, and 11 of those 12 employees accessed CLETS with other employees' user identifications.

Several employees told the chancellor's office that public safety office management had required them to provide their CLETS user identification and password to other employees and further stated that this was common practice when new employees, including dispatchers, were being trained, even though new dispatchers should have received their own user identification and password upon beginning employment with the public safety office. For example, one dispatcher who was hired in March 2004 did not receive a CLETS user identification and password until July 2004. Although the employees interviewed did not know how long the new employees were permitted to use their CLETS information, one employee stated that management directed him to provide his user identification and password to another employee in May 2002, and believed that the other employee had never been assigned her own user identification and password, even though she was assigned dispatcher shifts without another dispatcher on duty. Because the public safety office did not maintain a historical list of user identifications with corresponding creation and termination dates, the chancellor's office was unable to determine which employees used which identifications during particular periods of time. The chancellor's office also requested the same information from Justice; however, Justice does not maintain a listing of user identifications. The maintenance of CLETS user identifications is the responsibility of the user agency.

One employee stated that management directed him to provide his user identification and password to another employee and believed this employee had never been assigned her own user identification and password.

⁸ CLETS provides computer links that allow law enforcement and others to access the extensive database in the Criminal Justice Information System. The network includes computer links to similar federal law enforcement information systems and the California Department of Motor Vehicles.

The chancellor's office interviewed several individuals who stated that they had used the public safety office manager's user identification and password to access CLETS, and the manager confirmed this fact. The manager explained that these individuals knew how to perform basic CLETS inquiries and said that he believed their access to this information was necessary for officer safety purposes and was, therefore, appropriate.

Failure to Comply With Training Requirements

The chancellor's office concluded not only that the manager improperly directed the employees to share passwords but that some employees who used a borrowed password to access CLETS had not received required CLETS training and that CSU San Marcos was not maintaining sufficient training records to show compliance with the requirements.

The chancellor's office concluded that none of its 18 public safety employees met CLETS certification and recertification standards.

The chancellor's office attempted to determine compliance with training requirements for 18 public safety employees but found that CSU San Marcos did not adequately document training for any of them. In addition, using other sources of information, such as interviews with the employees, the chancellor's office concluded that none of the 18 employees met current CLETS certification and recertification standards per the CLETS policy manual. As we mentioned previously, CLETS provides access to highly sensitive information, including state summary criminal history records, and persons that access this law enforcement information are to meet stringent training requirements and be assigned a unique user password before access is granted by the law enforcement agency.

AGENCY RESPONSE

CSU San Marcos reported that it counseled the manager to safeguard the passwords of all CLETS users and told him that no one is to access CLETS unless they have their own unique password in addition to the proper access authorization. Further, all dispatchers have completed their initial certification for CLETS and are being scheduled to complete the two-hour training that is required every two years. All dispatchers, sergeants, and police officers have their own unique passwords and CSU San Marcos has assigned a new CLETS Agency Terminal Coordinator. The chancellor's office provided Justice with the results of the investigation because Justice administers CLETS. Justice noted that the chancellor's office investigation confirmed that violations of policy had indeed occurred and that furthermore, to conceal the violations, CSU San Marcos

police department staff was less than truthful with Justice's inspectors during their onsite inspections. Justice issued a letter of censure and imposed sanctions that included placing the CSU San Marcos Department of Public Safety on probation for 12 months, denying all requests for additional terminals during the probationary period, and boosting Justice's onsite inspections from every two years to twice a year. Justice also suspended the manager's access to CLETS for four months, required the new CLETS Agency Terminal Coordinator to personally ensure and certify each month that CSU San Marcos is in compliance with all policies, and informed the new CLETS coordinator that he will be asked to appear before the next advisory committee to report on CSU San Marcos' compliance with CLETS policies. ■

CHAPTER 6

University of California, Santa Barbara: Conflict of Interest

ALLEGATION I2004-0657

The University of California, Santa Barbara (university), violated state law and university policy by hiring an employee to work for the university who also owned a company that had a contractual relationship with the university at the time of hire.

RESULTS AND METHOD OF INVESTIGATION

We asked the university to assist us with the investigation, and it substantiated the allegation. The university confirmed that it had hired an employee who also owned a company under contract for services in the amount of \$554,000 with the university. Payments against the contract totaled \$161,961, of which \$128,366 was paid subsequent to the employee's hiring, thereby violating state law and university policy intended to prohibit such practices.⁹ To investigate the allegation, the university reviewed applicable accounting, personnel, contracting, and purchasing records. It also conducted interviews with personnel from its human resources, communications services, business services, and administrative services departments.

University policy prohibits the university from purchasing goods or services from any university employee or near relative of such an employee unless the goods or services are not available from commercial sources or the university itself. In addition, a state law that became operational in June 2003 prohibits University of California (UC) employees, except those with teaching or research responsibilities, from contracting with universities within the UC system. The university violated its own policy when, in June 2003, it hired an individual who owned a company that contracted with the university for \$554,000 from September 2002 through September 2004. In addition, by continuing to contract with the employee's business after the new state law became operational in June 2003, the university

⁹ For a more detailed description of the laws and policies discussed in this chapter, see Appendix B.

was in violation of this law, which prohibits employees from engaging in any employment, enterprise, or activity from which the employee receives compensation or in which the employee has a financial interest if that employment, enterprise, or activity is sponsored or funded by the university.

The university explained that even though the employee disclosed his contractual relationship with the university when applying for the job, the university's business services unit determined that no conflict existed because the position the employee applied for did not involve purchasing authority and was not related to the services being provided pursuant to the contract. However, after we brought this matter to the university's attention, it terminated its contract with the employee's business in August 2004. At the time of the contract's termination, payments under the contract totaled \$161,961, of which \$128,366 was paid subsequent to the employee's hiring.

AGENCY RESPONSE

The university acknowledged the problem and reported that it discussed the nature of the problem with the employees involved and will provide ongoing training for employees regarding existing and new policies. Additionally, the university will require future vendors to certify that no one with a greater than 10 percent ownership share of the vendor is a UC employee. It will also amend its current employment application to ask whether the applicant is an employee of or has a greater than 10 percent ownership interest in any companies contracting with the university. ■

CHAPTER 7

Department of Motor Vehicles: Time and Attendance Abuse and Failure to Perform Duties

ALLEGATION I2004-0682

A manager at the Department of Motor Vehicles (Motor Vehicles) engaged in time and attendance abuse and failed to perform her duties.

RESULTS AND METHOD OF INVESTIGATION

We asked Motor Vehicles to assist us in conducting the investigation, and we substantiated the allegations. To investigate the allegations, Motor Vehicles obtained the manager's time sheets and interviewed 21 of the 26 field office employees, including the manager. In addition, we reviewed criteria related to incompatible activities and causes for discipline.

During the interviews conducted by Motor Vehicles, most of the staff in the manager's office said the manager routinely arrived at work one hour or more late and left an hour or more before the office closed. At least one employee who was an attendance clerk in the manager's office for two years reported that the manager was absent from work for one to five hours almost daily. The manager told the office timekeepers not to record these absences on her attendance reports because she does not take breaks or lunch. Employees also reported that, even when the manager is at the office, she spends most of her time in her private office playing card games on her personal computer or sleeping. Motor Vehicles found that 70 percent of the staff members it interviewed were experiencing workplace tensions, the primary source of which involved the dominant perception that the manager frequently was absent and often was inaccessible to the office staff when she was present. State law prohibits employees 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.¹⁰ One such incompatible activity is not devoting

¹⁰ For a more detailed description of the laws and regulations discussed in this chapter, see Appendix B.

one's full time, attention, and efforts to state employment during hours of duty as a state employee. In addition, state regulations require departments to keep complete and accurate time and attendance records for each employee.

The manager was aware of inappropriate staff behavior but did not take action to stop the behavior.

Motor Vehicles also found that the manager failed to perform her duty to halt inappropriate behavior exhibited by staff under her supervision. Specifically, Motor Vehicles found that the manager was aware of inappropriate behavior by her staff and did not take action to stop the behavior, thereby failing to follow Equal Employment Opportunity policies and training. By failing to take action to stop the inappropriate behavior, the manager may have created a potential liability for the State if employees offended by the behavior had decided to file grievances or lawsuits against Motor Vehicles. In addition, many employees had complaints about the manager, saying she showed favoritism to a particular employee, was a poor role model for the staff, and took advantage of her position by bringing her child to work and letting the child watch television or play games in her office. Although this manager was not the only manager in this particular office, Motor Vehicles found that "an atmosphere of serious tension clearly exists among the staff . . ." and that "management leadership is weak, unfocused and volatile." State law also outlines causes for discipline of a state employee, including inefficiency, inexcusable neglect of duty, dishonesty, discourteous treatment of the public or other employees, and willful disobedience.

AGENCY RESPONSE

Motor Vehicles took adverse action against the manager in the form of a two-step demotion. The adverse action recommendation stated that, due to the seriousness of the charges against her, the demotion should place the manager in a role in which her day-to-day activities are closely supervised. ■

CHAPTER 8

Department of Corrections: Misuse of State Resources and Time and Attendance Abuse

ALLEGATION I2004-0745

Two employees of the Department of Corrections (Corrections) misused state resources to conduct personal business and engaged in time and attendance abuse.

RESULTS AND METHOD OF INVESTIGATION

We asked Corrections to assist us in conducting the investigation and it substantiated these and other allegations. To investigate the allegations, Corrections examined information on the employees' state computers, interviewed employees, including the two subjects and their manager, and conducted surveillance of the two employees. Corrections found that both employees used their state computers to conduct personal business and falsified their time sheets by indicating they were at work when surveillance indicated they were not. As a result of their falsification of the time sheets, the employees received approximately \$3,900 in overpayments. In addition, the employees' manager failed to monitor the employees adequately.

Employee A used her state computer to shop and make reservations unrelated to her state job and visited a computer dating service on state time. Employee B used her state computer to shop and order tickets for community events. In addition, Corrections found that on one occasion, Employee A claimed she worked a full eight-hour day when surveillance agents actually followed her to another city approximately 40 miles away, where she conducted personal business and never reported to work. Corrections substantiated that there were a total of at least five instances in which Employee A falsified her time sheets, resulting in overpayments of approximately \$2,200.

Surveillance of Employee B indicated that she was not at work during her full workday, as her time sheet reflected, on more than one occasion. On two occasions, agents followed Employee B while she ran errands and reported to work after 10 a.m., two hours past

her scheduled start time. Corrections estimates that Employee B received \$1,700 in overpayments as a result of her falsified time sheets. Further, Employee B was negligent in her duties because she did not follow procedures related to her attendance and took time off without prior notification. In addition, Employee B refused to work with her designated supervisor and was unable to complete tasks required for her position.

Even though he received numerous complaints about Employee A and Employee B from other staff, the employees' manager failed to confirm their attendance and overtime claims.

The employees' manager failed to implement proper procedures to monitor employee attendance and overtime. Numerous employees confirmed that the manager did not have processes in place to monitor staff work hours. Further, staff had complained to the manager on numerous occasions about the issues with Employee A and Employee B, and he failed to address their concerns adequately. Finally, the manager signed the time sheets of Employee A and Employee B without confirming the hours worked or investigating the staff's complaints.

State law prohibits employees 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.¹¹ Two such incompatible activities are using state time or equipment for private gain or advantage, and not devoting full time, attention, and efforts to state employment during hours of duty as a state employee. In addition, state regulations require departments to keep complete and accurate time and attendance records for each employee.

AGENCY RESPONSE

Corrections has not determined its disciplinary or corrective actions. ■

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

CHAPTER 9

Department of Corrections: Falsification of Time Sheets and Failure to Perform Duties

ALLEGATION I2003-0915

An employee of the Department of Corrections (Corrections), Parole and Community Services Division falsified her time sheets.

RESULTS AND METHOD OF INVESTIGATION

We asked Corrections to assist us with the investigation, and it substantiated the allegation and other improprieties. It found that the employee provided false information on her time sheets. The employee admitted that she flexed, or modified, her regular work hours, took extended lunches, and sometimes took work home without amending her time sheets or work schedules to reflect these changes. Corrections also determined that the employee was negligent in her duties and responsibilities to supervise and maintain an active caseload and that she was less than truthful during its investigation. In addition, Corrections found that the employee's supervisor allowed the employee to flex her work hours regularly, to take extended lunches, and to take work home with the informal understanding that the employee would make up the time. However, the supervisor failed to follow up with the employee to ensure that the employee made up the time and modified her work schedule to reflect any changes. To conduct its investigation, Corrections reviewed the employee's time sheets, work schedules, and caseloads and interviewed staff, including the employee.

State law prohibits state employees from not devoting their full time, attention, and efforts to their jobs during hours of duty as state employees. It also enumerates various causes for disciplining state civil service employees, including inefficiency, neglect of duty, and dishonesty.¹²

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

AGENCY RESPONSE

Corrections issued a letter of instruction, which included a corrective action plan that directed the employee to correct casework deficiencies within an allotted time period. Corrections also instructed the employee to stop taking work home, to complete her work during regular business hours, and to obtain prior approval from her supervisor when situations dictate a need to change her schedule. In addition, Corrections instructed the supervisor to ensure that any modifications to pre-approved work schedules are duly noted, to reconcile employee time sheets to work schedules every month, and to retain copies of employee time sheets and work schedules for a period of three years for each employee under her supervision. ■

CHAPTER 10

Department of Parks and Recreation: Misuse of State Vehicle

ALLEGATION I2003-0943

A supervisor at the Department of Parks and Recreation (Parks and Recreation) used her state car to transport her child and to run personal errands.

RESULTS AND METHOD OF INVESTIGATION

We asked Parks and Recreation to assist us in investigating the allegation, and it substantiated the allegation. Parks and Recreation found that the supervisor, whose duties include responding to emergency situations, used her state vehicle to transport her child to and from school and to transport groceries she had purchased from the local supermarket while on duty. Parks and Recreation also determined that the supervisor used her state car to transport her child to school on at least one occasion, even after having received a verbal warning from her supervisor to refrain from such conduct. To investigate the allegation, Parks and Recreation reviewed the supervisor's time sheets, schedules, and radio logs and interviewed witnesses and the supervisor.

State laws generally prohibit employees from using state resources for any outside endeavor not related to state business and allow an employer to discipline an employee for various reasons, including misuse of state property and neglect of duty. State law also specifically prohibits employees from using state-owned vehicles for matters unrelated to state business. In addition, state regulations provide that misuse of state vehicles includes transporting any persons other than those directly involved with official state business, except with the approval of the employee's immediate supervisor for each trip.¹³ The supervisor not only violated state laws and regulations when she transported her child in a state vehicle while on duty, she also exposed Parks and Recreation and the public to the potential risk that she would not have been able to respond in a timely manner to emergency calls she might have received during these times.

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

AGENCY RESPONSE

Parks and Recreation reduced the supervisor's pay by 5 percent for two months for misuse of state property, willful disobedience, and behavior of such a nature that it causes discredit to the department. ■

CHAPTER 11

Department of General Services: Misuse of State Transit Vouchers

ALLEGATION I2003-1036

A Department of General Services (General Services) employee misused state-supplied transit vouchers to purchase transit passes for his family members.

RESULTS AND METHOD OF INVESTIGATION

We asked General Services to assist us with the investigation, and it substantiated the allegation. To investigate, General Services reviewed relevant records and criteria pertaining to the transit voucher program (program) and interviewed several General Services employees who participate in the program.

A 1988 Governor's Executive Order included a provision for a transit subsidy to be provided to state employees to assist in reducing commute trips.¹⁴ Subsequently, the following language pertaining to the program was added to the State's employee bargaining unit contracts: "Employees working in areas served by mass transit, including rail, bus, or other commercial transportation licensed for public conveyance, shall be eligible for a 75 percent discount on public transit passes sold by State agencies up to a maximum of \$65 a month. Employees who purchase public transit passes on their own shall be eligible for a 75 percent reimbursement up to a maximum of \$65 per month."

General Services concluded that on at least two occasions, the employee inappropriately used a transit voucher to purchase transit passes under this state-subsidized program for use by his family members, who are not state employees. When questioned by General Services, the employee admitted that he had used the state-subsidized transit vouchers to purchase several youth passes for his children on two occasions, but that in all other instances he used the transit vouchers to purchase passes for his own commute to and from work. The employee indicated that he was not aware that the transit voucher should be used only for his personal commute and that he had never read the

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

language on the top of the Transit Voucher Log stating that in signing for the voucher the employee is certifying that he will be the sole recipient and user of that voucher.

During its investigation, General Services interviewed several employees participating in the transit voucher program and became concerned that employees did not fully understand program requirements. Specifically, General Services said it was apparent that some employees perceived the program to be a monthly benefit that is available whether or not an employee currently needs a transit pass. General Services also stated that an underlying assumption of the commute program is that transit vouchers should be obtained only based on current need and not on future projected need.

AGENCY RESPONSE

General Services discussed with the employee the inappropriate nature of his use of transit vouchers and told the employee he would be required to reimburse General Services a total of \$130, representing the cost of two \$65 vouchers. General Services also said it would work to ensure that commute program participants receive additional guidance on program requirements. ■

CHAPTER 12

Update of Previously Reported Issues

CHAPTER SUMMARY

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

DEPARTMENT OF TRANSPORTATION CASE I2002-700

We reported the results of this investigation on September 17, 2003. An employee with the Department of Transportation (Caltrans) 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 Caltrans approval, the employee used these 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, including herself, and to pay for other IT products for the department. In addition, because the employee allowed the company to hold state funds outside of the State Treasury, the State incurred \$112,696 in unauthorized taxes and fees.

Caltrans reported that it made several changes to strengthen its IT procurement process and transferred the employee to a branch where she does not perform procurement-related duties. Caltrans also reported that it contacted the appropriate law enforcement agencies to investigate any criminal activities related to the misappropriation.

After Caltrans served the employee with a letter of warning regarding her misappropriation of \$622,776 in state funds, the employee retired and Caltrans recovered \$112,696 from the vendor.

Updated Information

At the request of Caltrans, the California Highway Patrol (CHP) completed a criminal investigation of the employee's activities and submitted the case to the Sacramento District Attorney's Office, which determined that there was insufficient basis to prosecute the case. The CHP did not find any evidence that the employee personally benefited from these transactions. Caltrans reported that although it had recovered the balance of unspent funds and received substantial IT training benefits from the improper procurement, it would pursue the recovery of questionable sales taxes associated with fictitious purchase orders generated by the employee. Caltrans served the employee with a letter of warning, advising her that her activities were unauthorized, inappropriate, and in violation of state laws that carry potential penalties to the employee of up to four years in state prison and civil penalties of up to \$10,000. The employee retired from Caltrans on October 4, 2004. Caltrans reported that it recovered \$112,696 in unauthorized taxes and fees from the vendor on December 16, 2004.

DEPARTMENT OF HEALTH SERVICES CASE I2003-0853

We reported the results of this investigation on September 23, 2004. In an effort to justify a business need for the number of vehicles leased by a Department of Health Services (Health Services) office (office), the office manager (Manager A) allowed employees under her supervision to use state vehicles for their personal commutes. Nine employees, including Manager A and another manager (Manager B), used state vehicles to commute between their homes and the office, in violation of state laws and regulations. We determined that office employees received a personal benefit of \$12,346 as a result of their misuse of state vehicles. Because the employees received a personal benefit as a result of the manager's decision, it appears that they violated state law prohibiting the use of state resources for personal gain.

Health Services reported that after conducting a cost/benefit analysis of state vehicle usage, it returned four of the 12 state vehicles the office leases from the Department of General Services. Additionally, as of April 8, 2004, it discontinued allowing office employees to use state vehicles for home commutes and required that all state vehicles be parked overnight in the office parking lot. Finally, Health Services reported that it would conduct a

detailed review of the state vehicle mileage logs with employee time sheets to determine the actual misuse by each employee and would propose appropriate disciplinary action.

Updated Information

Health Services reported that it served Manager A and Manager B with adverse actions and issued formal or informal reprimands to nine other employees for using state vehicles for personal purposes. Specifically, Health Services stated that the adverse action reduces Manager A's salary by 10 percent for one year, and directs her to reimburse the State \$11,051. This reimbursement represents her personal use of state vehicles and the misuse of state vehicles she authorized for her subordinates. Similarly, Manager B's adverse action reduces her salary by 5 percent for one year, and directs her to reimburse the State \$1,466 for her personal use of state vehicles. In addition, Health Services issued a formal reprimand to three employees and requested that they pay the State \$582 for instances when they used state vehicles on days they did not work. Finally, Health Services served six employees with informal counseling memos but did not seek reimbursement from these employees because Health Services determined their misuse of state vehicles was under the direction of Manager A.

DEPARTMENT OF CORRECTIONS CASE I2003-0896

We reported the results of this investigation on March 24, 2004. The California State Prison-Los Angeles County (Los Angeles County Prison) of the Department of Corrections (Corrections) mismanaged \$3,300 it collected from television and motion picture production companies that filmed at the prison for costs prison staff incurred when providing security for film production activities. An employee responsible for coordinating with production companies misappropriated \$1,500 that the Los Angeles County Prison received from a television show for filming at the prison by directing money that should have been deposited into the department's general operating fund into the prison's employee association, an association used to support activities boosting employee morale. Additionally, Los Angeles County Prison could not demonstrate that it was reimbursed \$1,800 in costs it incurred to accommodate filming parts of two movies at the prison.

Los Angeles County Prison also participated in an improper plan to route \$4,150 in donations it received from production companies through an inmate religious account before subsequently transferring the money into the employee association so that donors could claim their donation as a tax-deductible contribution.

Corrections' review was still ongoing but it reported that the Los Angeles County Prison suspended the use of the employee association funds and all activities related to the employee association pending development of operational procedures, bylaws, and direction from its management. The Los Angeles County Prison is also reviewing all film records to determine whether it billed and received payment from production companies for monitoring costs.

Corrections rescinded the appointment of one employee for his role in mismanaging funds collected from television and motion picture production companies.

Updated Information

As of February 28, 2005, Corrections reported it completed its investigation of the employees involved in this case. Corrections rescinded the appointment of one employee, who held a high-level managerial position, and is pursuing action against other employees who were involved.

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: March 22, 2005

Investigative Staff: Ken L. Willis, Manager, CPA
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APPENDIX A

Activity Report

The Bureau of State Audits (bureau), headed by the state auditor, has identified improper governmental activities totaling \$14.6 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 (Whistleblower 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 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

**Corrective Actions
July 1993 Through December 2004**

| Type of Corrective Action | Instances |
|------------------------------------|-----------|
| Referrals for criminal prosecution | 76 |
| Convictions | 8 |
| Job terminations | 63 |
| Demotions | 12 |
| Pay reductions | 47 |
| Suspensions without pay | 15 |
| Reprimands | 225 |

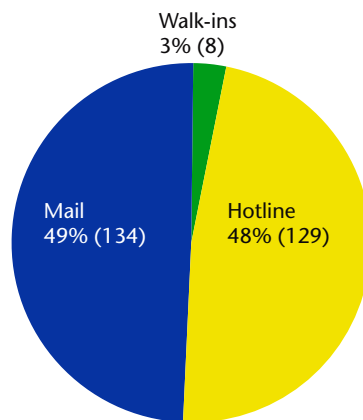
New Cases Opened Between July 2004 and December 2004

From July 1, 2004, through December 31, 2004, the bureau opened 271 new cases.

The bureau receives allegations of improper governmental activities in several ways. Callers to the hotline at (800) 952-5665 reported 129 of our new cases in this time period.¹⁵ The bureau also opened 134 new cases based on complaints it received in the mail and eight based on complaints from individuals who visited the office. Figure A.1 shows the sources of all the cases opened from July 2004 through December 2004.

FIGURE A.1

**Sources of 271 New Cases Opened
July 2004 Through December 2004**



¹⁵ In total, the bureau received 2,275 calls on the hotline from July 2004 through December 2004. However, 1,342 (59 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 804 calls (35 percent) were related to previously established case files.

Work on Investigative Cases July 2004 Through December 2004

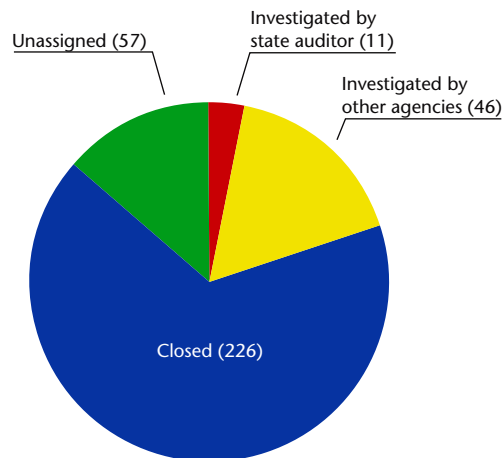
In addition to the 271 new cases opened during this six-month period, 47 previous cases awaited review or assignment as of July 1, 2004; 22 were still under investigation by this office or by other state agencies or were awaiting completion of corrective action. Consequently, 340 cases required some review during this period.

After examining the information gathered from complainants and preliminary reviews, the bureau concluded that 193 cases did not warrant complete investigation because of lack of evidence.

The Whistleblower Act specifies that the state auditor can request the assistance of any state entity or employee in conducting an investigation. From July 1, 2004, through December 31, 2004, state agencies assisted the bureau in investigating 46 cases and substantiated allegations on nine (30 percent) of the 30 cases completed during the period. In addition, the bureau independently investigated 11 cases and substantiated allegations on four of the six completed during the period. Figure A.2 shows the disposition of the 340 cases the bureau worked on from July 2004 through December 2004. As of December 31, 2004, the bureau had 57 cases awaiting review or assignment.

FIGURE A.2

**Disposition of 340 Cases
July 2004 Through December 2004**



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APPENDIX B

State Laws, Regulations, and Policies

This appendix provides more detailed descriptions of the 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, lists the various causes for disciplining state civil service employees. These causes include incompetence, 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.

CRITERIA COVERING EMPLOYEE PAY

Chapter 1 reports on improper employee payments.

Section 19826 of the California Government Code requires the Department of Personnel Administration (DPA) to establish and adjust salary ranges for each class of position in the state civil service. The California Code of Regulations, Title 2, Section 599.681, requires that unless otherwise authorized by the director of DPA, employees who qualify under established criteria and move from one alternate salary range to another shall receive an increase or decrease equivalent to the total of the range differential between the maximum salary rates of the alternate ranges and shall retain the salary adjustment anniversary date.

DPA's Pay Scales and Section 11.8 of the state contract for employees belonging to Bargaining Unit 17 permit the State to provide Alternate Range 40 compensation to incumbents in positions approved by DPA as having regular, direct responsibility for work supervision, on-the-job training, and work performance evaluation of at least two inmates, wards, or resident workers who substantially replace civil service employees for a total of at least 173 allocated hours per pay period. If the State overpays these employees, Section 19838 of the Government Code and Section 5.6 of the contract permit the State to seek reimbursement

by following agreed-upon collection methods but prohibit the State from taking this action unless it is initiated within three years from the date of the overpayment.

GIFT OF PUBLIC FUNDS

Chapters 1 and 3 report on gifts of public funds.

The California Constitution, Section 6, Article XVI, prohibits the giving of any gift of public money or thing of any value to any individual for a private purpose. This constitutional prohibition is designed to ensure that the resources of the State will be devoted to public purposes.

The Department of Veterans Affairs Administrative Manual, policy 01-0004, states that staff who live long distances from a veterans home may request lodging in vacant resident rooms. This grant of temporary housing is a privilege, not a right, and can be terminated with 24 hours' notice for any reason. In addition, the employee occupying a room shall be responsible for paying the rental rate on a timely basis.

CRITERIA GOVERNING STATE MANAGERS' RESPONSIBILITIES

Chapters 1, 2, and 3 report on weaknesses in management controls, and Chapters 2, 7, 8, and 9 report on department responsibilities concerning time and attendance abuse.

The Financial Integrity and State Manager's Accountability Act of 1983 (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 act also states that the elements of a satisfactory system of internal accounting and administrative controls shall include a system of authorization and record-keeping procedures adequate to provide effective accounting control over assets, liabilities, revenues, and expenditures. Further, the act requires that, when detected, weaknesses must be corrected promptly.

Title 2 of the California Code of Regulations, Section 599.665, requires departments to keep complete and accurate time and attendance records for each employee.

REGULATIONS COVERING TRAVEL EXPENSE REIMBURSEMENTS

Chapter 2 reports improper payment of travel expenses.

The California Code of Regulations, Title 2, Section 599.615.1, requires each state agency to determine the necessity for travel and states that this travel shall represent the State's best interest. Sections 599.638(a) and (c) relate to the travel expense account claim form and state that it is the responsibility of the officer approving the claim to ascertain the necessity and reasonableness of incurring expenses for which reimbursement is claimed and that each officer and employee making a claim for travel expenses must show the inclusive dates of each trip for which allowances are claimed and the times of departure and return.

CRITERIA COVERING FALSE CLAIMS AND THEFT

Chapter 2 reports on false travel expense claims.

The California Penal Code, Section 72, states that every person who, with intent to defraud, presents for payment any false or fraudulent claim, bill, account, voucher, or writing, is punishable by imprisonment in the county jail for a period of not more than one year, by a fine not exceeding \$1,000, or by both imprisonment and a fine, or by imprisonment in the state prison, by a fine not exceeding \$10,000, or by both imprisonment and a fine.

Penal Code, sections 487 and 488, discuss grand theft and petty theft. Section 487(a) provides that grand theft occurs when the money, labor, or real or personal property taken is of a value exceeding \$400, and according to Section 488, theft in other cases is petty theft.

PROHIBITIONS AGAINST USING STATE RESOURCES FOR PERSONAL GAIN

Chapters 3 and 10 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.

IMPROPER DISCLOSURE OF CONFIDENTIAL INFORMATION

Chapter 4 reports on disclosing confidential information.

Title 5, Section 552a, of the United States Code, known as the Privacy Act of 1974, and Article 1, Section 1, of the California Constitution address privacy rights. Section 1798 of the California Civil Code, known as the Information Practices Act, recognizes the increased threat to privacy rights, given the proliferation of computers and other types of information technology, and imposes strict limits on the maintenance and dissemination of personal information. Section 1798.24, contained within that act, prohibits state agencies from disclosing any personal information in a manner that would link the information to the individual to whom it pertains.

CRITERIA COVERING THE CALIFORNIA LAW ENFORCEMENT TELECOMMUNICATIONS SYSTEM

Chapter 5 reports on inappropriate access to confidential information.

Section 15150 et seq. of the California Government Code gives the Department of Justice authority to maintain a statewide telecommunications system, called the California Law Enforcement Telecommunications System (CLETS), for use by law enforcement agencies. According to the California Penal Code, Section 11105, the Department of Justice shall maintain state summary criminal history information, which is the master record of information compiled by the attorney general pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, fingerprints, photographs, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person. In addition, California Penal Code, Section 11077(d), states that the attorney general (the head of the Department of Justice) is responsible for the security of criminal offender record information and shall initiate a

continuing education program in the proper use and control of that information for all agencies with employees who maintain, receive, or are eligible to maintain or receive that information.

Section 15160 of the California Government Code states that the attorney general shall adopt and publish the CLETS operating policies, practices and procedures, and conditions of qualification for membership. The CLETS Policies, Practices and Procedures, Section 1.6.7, states that each terminal operator must log on with a unique user ID and password, and is accountable for all transactions transmitted under that user ID and password.

CRITERIA COVERING CONFLICTS OF INTEREST

Chapter 6 reports on a conflict of interest.

Section 10516 of the Public Contract Code states that no officer or employee of the University of California shall engage in any employment, activity, or enterprise from which he or she receives compensation or in which he or she has a financial interest if that employment, activity, or enterprise is sponsored or funded by a university contract unless the employment, activity, or enterprise is within the course and scope of the officer's or employee's regular university employment. No officer or employee in the university shall contract on his or her own individual behalf as an independent contractor with any university department to provide services or goods.

In addition, University of California, Santa Barbara, Policy 5327, states that it is university policy to separate an employee's university and private interests and to safeguard the university and its employees against charges of favoritism in the purchase of goods and services. No purchase of goods or services shall be made from any officer or employee of the university or from a near relative of any such officer or employee unless there has been a specific determination that such goods or services are not available from other commercial sources or from the university's own facilities.

INCOMPATIBLE ACTIVITIES DEFINED

Chapters 7, 8, and 9 report incompatible activities.

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. In addition, Section 19990 requires state employees to devote their full time, attention, and efforts to their state jobs during hours of duty as state employees.

CRITERIA COVERING STATE MOTOR VEHICLES

Chapter 10 reports on the improper use of a state vehicle.

The California Government Code, Section 19993.1, provides that state-owned motor vehicles shall be used only in the conduct of state business. Section 599.802(c) of Title 2 of the California Code of Regulations states that misuse of a state-owned vehicle includes carrying in the vehicle any persons other than those directly involved with official state business, except with the approval of the employee's immediate supervisor for each trip.

CRITERIA COVERING TRANSIT VOUCHERS

Chapter 11 reports on the improper use of transit vouchers.

Governor's Executive Order D-73-88, in an effort to have California state government take leadership in resolving traffic congestion through the efficient use of the transportation system, includes a provision for a transit subsidy to be provided to state employees to assist in reducing commute trips.

In addition, according to state bargaining unit contracts, employees working in areas served by mass transit, including rail, bus, or other commercial transportation licensed for public conveyance, shall be eligible for a 75 percent discount on public transit passes sold by state agencies up to a maximum of \$65 a month. Employees who purchase public transit passes on their own shall be eligible for a 75 percent reimbursement up to a maximum of \$65 per month.

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