

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:

August 2002 Through January 2003



April 2003
I2003-1

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CALIFORNIA STATE AUDITOR

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April 17, 2003

Investigative Report I2003-1

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 August 2002 through January 2003.

Respectfully submitted,

ELAINE M. HOWLE
State Auditor

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SUMMARY

Investigative Highlights . . .

State employees engaged in improper activities, including the following:

- Influenced a \$345,000 state contract that was awarded to a prospective employer.*
- Improperly received \$17,529 in travel reimbursements.*
- Treated employees inappropriately and improperly claimed 479 hours of leave.*
- Awarded contracts totaling more than \$75,000 to businesses owned by relatives.*
- Used state computers to access adult chat rooms during work hours and provided false information on an employment application.*
- Divulged examination questions to another testing candidate.*
- Used state resources to make personal long-distance calls, send personal e-mails, and ship packages to a friend.*
- Used a state-owned cellular phone to make \$327 in personal calls.*

continued . . .

RESULTS IN BRIEF

The Bureau of State Audits (bureau), in accordance with the California Whistleblower Protection Act (act) contained in the California Government Code, beginning with Section 8547, receives and investigates complaints of improper governmental activities. The act defines “improper governmental activity” as any action by a state agency or employee during the performance of official duties that violates any state or federal law or regulation; that is economically wasteful; or that involves gross misconduct, incompetence, or inefficiency. To enable state employees and the public to report these activities, the bureau maintains the toll-free Whistleblower Hotline (hotline): (800) 952-5665 or (866) 293-8729 (TDD).

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

This report details the results of the 12 investigations completed by the bureau and other state agencies on our behalf between August 1, 2002, and January 31, 2003, that substantiated complaints. Following are examples of the substantiated improper activities and actions the agencies have taken to date.

HEALTH AND HUMAN SERVICES AGENCY DATA CENTER

A manager influenced a \$345,600 contract between the Health and Human Services Agency Data Center (data center) and a private company with whom he was negotiating future employment while he was still employed at the data center. Further, as the individual performing the services under this contract, the manager derived a material benefit from the contract. The cost to the State for the manager’s services as a consultant was more than three times the previous cost of his state salary and benefits, despite the fact that his job duties did not significantly change.

State departments engaged in the following improper activities:

- ☑ *Allowed a supervisor to exercise the powers of a peace officer when he did not meet the necessary requirements to do so.*
 - ☑ *Illegally appointed two individuals to psychologist positions.*
 - ☑ *Failed to monitor telecommuting employees.*
-

DEPARTMENT OF INDUSTRIAL RELATIONS

An official improperly received reimbursement for relocation, commuting expenses, lodging, and meals. The Department of Industrial Relations determined that the official improperly received reimbursement of \$5,726 for lodging and relocation expenses over a 20-month period, but we found that an additional \$11,803 of the official's travel expenses were improper, bringing the total improper travel costs to \$17,529.

DEPARTMENT OF FISH AND GAME

A manager engaged in contracting improprieties involving a business owner who also worked part-time for the Department of Fish and Game (department). The employee's companies billed \$62,000 in invoices, which regional staff split into smaller purchase orders in order to circumvent bidding requirements. The manager also sought payment for another \$60,000 that one of the companies had invoiced, despite not knowing whether a contract was in place or whether the company had provided the services listed on the invoice.

The company's owner violated conflict-of-interest and incompatible-activity laws when he submitted an invoice for payment during the same time he worked as a department employee. The manager also subjected subordinates to inappropriate treatment, conduct that the department concluded was inexcusable and a discredit to the State. The manager further claimed and received 479 hours of annual and sick leave to which he was not entitled.

DEPARTMENT OF MENTAL HEALTH, ATASCADERO STATE HOSPITAL

The Atascadero State Hospital (hospital) awarded 21 projects totaling more than \$75,000 to three businesses owned by relatives of an employee, and the hospital employees responsible for sending the jobs out to bid failed to follow the hospital's bidding procedures. One employee, who initiated work requests for 14 of the 21 projects in question, received more than \$5,600 in payments from one of these companies, violating conflict-of-interest laws. We also determined that two of the employee's relatives violated state contracting law because they submitted bids and were awarded projects during the same period the

hospital employed them as seasonal employees. Furthermore, the hospital violated department nepotism policies by allowing an employee to supervise family members.

DEPARTMENT OF DEVELOPMENTAL SERVICES, SONOMA DEVELOPMENTAL CENTER

The Sonoma Developmental Center (center), under the Department of Developmental Services, allowed a supervisor to exercise a peace officer's powers even though he did not meet the requirements to do so. Specifically, when the center hired the supervisor as a peace officer in 1995, it failed to ensure that he met the training requirements for the position. When the center learned of the problem in January 2000, it informed the supervisor that he was not to use his peace-officer powers until he completed the required training, which he did in February 2000.

DEPARTMENT OF DEVELOPMENTAL SERVICES, PORTERVILLE

The Porterville Developmental Center (center), under the Department of Developmental Services (department), illegally appointed two individuals to psychologist positions. The department investigated and found that the two employees did not have the required qualifications to be appointed as psychologists. In addition, the investigation showed that the center failed to follow its own hiring procedures. The employees subsequently transferred to psychology-associate positions.

SAN JOSE STATE UNIVERSITY

An employee of San Jose State University (university), used state computers to access adult chat rooms during work hours. The employee also provided false information on her employment application to the university. The employee's supervisor instructed her to stop spending work time in computer chat rooms. The employee continued to chat online. The university investigated the allegations against the employee. Based on the evidence that staff gathered confirming the allegations, the university decided to terminate the employee. However, the employee resigned when presented with the evidence.

DEPARTMENT OF INDUSTRIAL RELATIONS

An employee participating in a promotional examination compromised the security of the exam. Specifically, the employee sent an e-mail message divulging the examination questions to another testing candidate. A form the employee signed prior to her exam expressly prohibited discussing and giving information about the examining panel's questions to another competitor. In addition, because the employee's responsibilities within the Department of Industrial Relations included planning, developing, and administering civil service examinations, as well as ensuring the security and confidentiality of exam questions, the employee was well aware of the seriousness of her breach of security. These factors resulted in the termination of this employee.

DEPARTMENT OF FORESTRY AND FIRE PROTECTION

An employee of the Department of Forestry and Fire Protection (CDF) used state equipment to make long-distance calls and to send personal e-mails during work hours. In addition, the employee used a state-paid shipping account to send packages to a friend. We do not know how much his improper use of state time cost the State. However, CDF determined that the employee's long-distance phone calls cost \$237 and his shipping charges \$219. CDF suspended the employee for 31 days without pay and required him to pay restitution of \$456.

CALIFORNIA STATE UNIVERSITY, NORTHRIDGE

California State University, Northridge, failed to monitor its telecommuting employees adequately. Although university policy requires supervisors to meet with their telecommuting employees to provide job assignments and review completed work, one employee failed to report to campus for more than one year.

DEPARTMENT OF MENTAL HEALTH

An administrator improperly used his state-owned cellular phone to make \$327 in personal phone calls over a 17-month period. The Department of Mental Health required the

administrator to repay the State for the cost of the personal calls and instructed him not to make personal calls on his state-issued cellular phone.

DEPARTMENT OF FORESTRY AND FIRE PROTECTION

An employee resided on state property in her motor home and used state utilities without paying a rental fee, violating state and Department of Forestry and Fire Protection policy. ■

CHAPTER 1

Health and Human Services Agency Data Center: Improper Contracting Practices and Conflicts of Interest

ALLEGATION I2002-652

A manager of the Health and Human Services Agency Data Center (data center) violated conflict-of-interest laws.

A manager negotiated employment with a company while he was in a position to influence a \$345,000 contract between the data center and that company.

RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated the allegations. Our investigation showed that work the manager performed influenced the formation of a \$345,600 contract between the data center and company 1, a private corporation that the manager began to work for as an independent contractor the next business day after he ended his employment with the data center. Our investigation further revealed that the manager was negotiating with company 1 for employment while he was in a position to influence the contract. As the individual who then performed the services under this contract, the manager also derived a material benefit from the contract by receiving compensation for those services.

Because the manager performed work that was relied on to establish a contract between the data center and company 1, a prospective employer with whom he was negotiating while employed by the data center, we believe the manager violated the Political Reform Act (act).¹ In addition, because the manager derived a material financial benefit from a contract that he influenced, we believe he violated other conflict-of-interest laws.

To investigate the allegation, we reviewed various internal documents from the data center and its contract with company 1. We also reviewed applicable conflict-of-interest laws and regulations. Finally, we interviewed several data center employees and a representative of company 1. We then gave

¹ For a detailed description of the laws pertaining to the improper activities discussed in this chapter, see Appendix B.

each person a written summary of the interview and asked him or her to review the statement and to make any necessary changes. We also asked each of these individuals to sign the statement under penalty of perjury to ensure accuracy. One data center official, official A, met with us and responded to our inquiries, but refused to sign his statement. Although we report our understanding of what he told us, we have less confidence in the accuracy of our understanding because of his unwillingness both to confirm the statement and to certify it under penalty of perjury. In fact, after reviewing it, official A told us he found that the statement did not accurately reflect what he had said in response to our questions and that rather than taking the time to indicate corrections, he decided simply to return the statement and request that we not contact him further regarding this matter.

Company 1's representative did not return a signed copy of his statement. According to the representative, he was unable to make changes to the statement before the release of this report due to time constraints. However, he told us that he would submit a signed statement as his business permits. Therefore, we report our understanding of his statements during the interview, which two of our investigators witnessed. We also contacted the data center manager for an interview, but he declined. Therefore, we report our understanding of the manager's activities based on the documentation we reviewed and our other interviews, but we are unable to provide the manager's perspective.

BACKGROUND

The data center, formerly known as the Health and Welfare Data Center, provides large-scale computer processing and telecommunication services to the departments within the California Health and Human Services Agency. The mission of the data center is to provide its users with information technology leadership, services, and technical infrastructure that allow them to deliver quality program services.

The manager began working for the data center in 1985 and held the position of software asset manager from August 1999 until he left state service in December 2001. His duties at the data center consisted of negotiating and procuring software and hardware products; renegotiating prices, terms, and conditions of existing hardware and software contracts as necessary to reduce costs; preparing the annual budget for software

The data center provides large-scale computer processing and telecommunication services to departments within the California Health and Human Services Agency.

acquisitions and monitoring actual expenditures against that budget; and managing the software portfolio to ensure that the data center and vendors were in compliance with contract terms.

THE MANAGER'S ACTIVITIES CREATED A CONFLICT OF INTEREST

While employed at the data center, the manager was involved in work directly related to a contract from which he personally and materially benefited, thus violating a state law that prohibits employees from having a financial interest in any contract they make in their official capacity. For an employee to participate in the process of developing, negotiating, or executing such a contract is a violation of the law.

Additionally, because the manager influenced a decision directly relating to company 1, the company to which the data center ultimately awarded the contract and with which he was negotiating future employment, we believe the manager violated the act. The act prohibits state officials from making, participating in making, or using their positions to influence governmental decisions directly relating to a prospective employer with whom they are negotiating or with whom they have any arrangement concerning prospective employment. The formation of a contract is a governmental decision that this prohibition covers. This section of the act applies to state administrative officials, including employees such as the manager. An employee who makes decisions concerning contracts or who participates in research or analysis that is used in the establishment of a contract is considered to be participating in a governmental decision and is subject to this prohibition.

Under this prohibition, an employee may be considered to be “negotiating” with a prospective employer after having an interview or discussing an offer of employment with the employer or the employer’s agent.

The Manager Was Directly Involved in Preparing the Contract With Company 1

While he was employed at the data center, the manager drafted the statement of work that is incorporated as part of the contract between the data center and company 1, a private consulting

The manager drafted contract language that was incorporated into the contract between the data center and a company that he began working for one business day after ending his employment with the State.

firm that the manager began to work for one business day after ending his state employment. A statement of work is a written description of the tasks that the contractor will perform to satisfy particular needs of a state agency; the parties developing a statement of work can be the buyer (in this case, the data center) or the buyer and the contractor (company 1). It describes the State's and contractor's responsibilities, contract duration, tasks for the contractor to perform, payment methods, and other provisions.

Official A stated that the manager disclosed his intent to leave the data center, and because official A was not aware of anyone else in state service who could perform the job as well as the manager, he decided that, as long as it was legal, the data center would contract for the manager's services through whichever company he chose to affiliate with.² Official B told us that because the data center would essentially be contracting out for services that the manager had previously provided, three data center officials (officials A, B, and C) made the decision that the manager would draft the statement of work used for the contract with company 1 to ensure that the services the data center contracted for accurately reflected the manager's duties as a data center employee.

The Manager Was Also Indirectly Involved in the Contract with Company 1

During his employment at the data center, the manager was also indirectly involved in creating the contract between the data center and company 1 because he prepared documents that data center staff ultimately relied on to establish the contract.

We learned that the manager drafted a budget-change proposal requesting additional funds to allow the data center to hire a consultant for software asset management.³ Although the data center never officially submitted this budget-change proposal to the Department of Finance, another data center employee relied on it to prepare a feasibility-study report that the data center used for a proposed contract with company 2, which it

² As we mentioned, official A found that our summary of his statements did not accurately reflect his responses. Nevertheless, because he refused to clarify our summary, we report our understanding of his statements during our interview, which two of our investigators witnessed.

³ A budget-change proposal is a document that state agencies submit to the Department of Finance when they seek either to change the level of service or funding sources for activities the Legislature has authorized or to propose new program activities not currently authorized.

originally considered as a possible provider of software asset management.⁴ The supporting materials for this proposed contract included a statement of work that the manager developed, specifically identifying the manager as the individual who would perform the services under this proposed contract. Although the proposed contract was never executed, the data center used language from this same feasibility-study report for the contract it established with company 1, indirectly making the manager's work product an integral part of the contracting process with company 1.

We also substantiated that while he was employed at the data center, the manager negotiated for employment with company 1. According to a representative of company 1, the manager approached him in November 2001 and asked what he would have to do to work for company 1. The representative told us that the manager told him he had an opportunity to provide consulting services to the data center. The representative further stated that he and the manager had several conversations about the conditions the manager would have to meet before company 1 would hire him. The representative said that official B later contacted him about the type of services company 1 could provide. The representative's understanding was that the manager was planning to leave state service and that the data center wanted to retain the manager's services. According to the representative, official B provided him with a draft copy of the statement of work for a contract to provide software asset management. The representative was not aware that the manager had developed the statement of work used for the contract. The data center and company 1 collaborated to finalize the statement of work, and on December 10, 2001, company 1 submitted the final statement of work to the data center, identifying the manager as the individual who would provide the agreed-upon services.

The manager's services under the contract cost the State more than three times the previous cost of his state salary and benefits, despite the fact that his duties were essentially the same.

The manager began negotiating with company 1 as early as November 2001 but did not terminate his employment with the State until December 14, 2001. The next business day, December 17, 2001, the data center entered into the contract with company 1, and the former data center manager began working at the data center for company 1 on that same day. The cost to the State for the manager's services under this contract

⁴ A feasibility-study report documents the results of a feasibility study the agency conducts to address a business problem or opportunity; it identifies measurable business objectives and functional business requirements. The agency uses it to present the business case for investing in an information technology project.

was more than three times the previous cost of his state salary and benefits, despite the fact that the manager's duties were essentially the same. Although the original contract termination date was December 31, 2002, the data center canceled it on October 17, 2002, for "internal business considerations." We determined that company 1 billed the data center a total of \$237,960 for the manager's services over the 10-month period the contract was in effect. By comparison, the data center paid only \$76,447 for the manager's services for the 10-month period just prior to his departure from state service.

POTENTIAL PENALTIES AFFECT BOTH THE MANAGER AND THE CONTRACT

Because the manager performed work that was related both directly and indirectly to a contract between his state employer and company 1, with whom he was negotiating for private employment during his state employment, and because he worked under a contract from which he derived a material benefit, the manager violated state laws; consequently, he could be subject to a fine of up to \$1,000, be forever disqualified from holding any office in the State, and may be subject to other penalties as well. Additionally, under these circumstances the State may be entitled to recover any payments made to the contracting party.

Because the manager violated state contracting laws, the State may be entitled to recover all payments made under the contract and the manager faces potential penalties, including fines and disqualification from holding any office in state service.

AGENCY RESPONSE

The data center reports that immediately upon information from this report being available for release it will refer relevant portions of this report to appropriate authorities, including the Fair Political Practices Commission and the attorney general for evaluation of the alleged violations of the act. At the same time, the data center will request a review by the Department of Personnel Administration to determine whether any adverse action against employees who may have aided or assisted in the violation of any state laws is warranted. The data center also has provided mandatory in-service training to educate key employees involved in the procurement process of their responsibilities under the act and other state laws. ■

CHAPTER 2

Department of Industrial Relations: Improper Travel, Lodging, and Relocation Expenses

ALLEGATION I2002-605

An official with the Department of Industrial Relations (department) improperly claimed reimbursements for relocation and commute expenses for travel between his residence near San Diego and his headquarters in San Francisco. The official also improperly claimed payment for lodging and meals incurred within a close proximity of his headquarters.

RESULTS AND METHOD OF INVESTIGATION

At the time we received the allegation, the department was already investigating these issues, and we asked that it report its findings to our office. The department concluded that the official improperly claimed \$5,726 in travel costs related to relocation and lodging expenses. After receiving the department's report, we performed some additional analysis and follow-up work and determined that the official had claimed an additional \$11,803 in improper travel expenses.

To investigate the allegations, the department reviewed the official's travel expenses from the time of his employment with the department in April 2000 through November 2001. It also reviewed pertinent state regulations and policies. We reviewed the department's report and its supporting documents; we also interviewed department employees, including the investigator and the official.

BACKGROUND

The objective of the department is to protect California's workforce, improve working conditions, and advance opportunities for profitable employment. It oversees the State's workers' compensation system; promulgates and enforces laws relating to wages, hours, and conditions of employment; and assists in negotiations when a work stoppage is threatened.

The department also enforces labor and workplace safety and health laws for more than 14 million workers and 1.3 million employers throughout California.

Headquartered in San Francisco, the official travels extensively, giving speeches, attending meetings, and overseeing 19 district offices located throughout the State. The travel expense claims (travel claims) he submits for reimbursement note his residence and headquarters location. Although his headquarters location is San Francisco, his travel claims indicate that most of his travel begins and ends in San Diego, which is located near the home address he lists on his travel claims.

THE OFFICIAL CLAIMED IMPROPER TRAVEL COSTS

The department concluded that the official improperly claimed reimbursement of \$5,726 for lodging and relocation expenses between April 2000 and November 2001. We found that an additional \$11,803 of the official’s travel expenses were improper, bringing the total improper travel costs to \$17,529. Table 1 summarizes the improper travel expenses the official claimed.

TABLE 1

Improper Travel Expenses the Official Claimed

Improper Claims the Department Identified	
Relocation expenses	\$ 4,939
Lodging within 50 miles of San Francisco headquarters	787
Total improper expenses identified by the department	5,726
Improper Claims the Bureau of State Audits Identified	
Relocation expenses	43
Meals and incidentals incurred within 50 miles of San Francisco headquarters	1,082
Weekend rental car with no explanation given	635
Lodging within 50 miles of San Diego residence	2,334
Travel costs for trips between San Diego residence and San Francisco headquarters	3,941
Travel costs for trips between San Diego residence and Sacramento	3,768
Total improper expenses identified by the Bureau of State Audits	11,803
Total improper expenses identified by the Bureau of State Audits and the department	\$17,529

THE OFFICIAL CLAIMED RELOCATION EXPENSES BUT DID NOT RELOCATE

The State reimbursed the official for relocation expenses when he neither relocated nor obtained the necessary approval for the reimbursement. State regulations allow individuals who must change their place of residence (relocate) in order to accept employment with the State to receive reimbursement for a maximum of 30 days' temporary lodging and meals at the headquarters location.⁵ Employees receiving this benefit must obtain approval in advance from the director of the Department of Personnel Administration (DPA). Regulations also allow a onetime mileage reimbursement for the distance between an employee's old and new residences, at the rate of 9 cents per mile. To be eligible for relocation expenses, an employee must change his or her place of residence for the purpose of accepting employment with the State.

The official claimed nearly \$5,000 for relocation expenses but failed to relocate.

The department found that \$4,939 of the official's \$4,982 claim for relocation expenses was improper, and it recommended disallowing these costs. The official claimed \$1,524 in relocation expenses for meals and lodging within 30 days of his appointment without prior approval from DPA, and he claimed \$2,554 in relocation costs beyond the 30 days allowed. In addition, the official incurred \$904 in airfares related to his relocation claims. Of this amount, the department disallowed \$861 but determined that the remaining \$43, which represents a 9-cent-per-mile reimbursement for relocation travel between the official's home near San Diego and his headquarters in San Francisco, should be allowed. However, we determined that the State should not have paid the \$43 because the official did not relocate.

The fact that the official claimed reimbursement for relocation expenses when he did not relocate concerns us. The official told us that he intended to move near San Francisco; however, he later determined that the cost of real estate, combined with his belief that he could perform his duties effectively from any location in the State, made the move prohibitive and unnecessary.

⁵ For a more complete description of the regulations concerning travel, lodging, and relocation expenses, see Appendix B.

THE OFFICIAL SUBMITTED IMPROPER CLAIMS FOR LODGING AND MEAL EXPENSES

The official also made improper claims for lodging and meals. State regulations prohibit payment of per diem expenses such as meals and lodging if the employee incurs the expense within 50 miles of headquarters. The department reported that the official improperly received \$787 in reimbursement for unallowable lodging expenses that he incurred within 50 miles of the official's headquarters location. Our analysis determined that the official also improperly received \$1,082 in meal and incidental expenses incurred within 50 miles of his San Francisco headquarters.

THE OFFICIAL CLAIMED OTHER UNALLOWABLE EXPENSES

California regulations specify that each agency shall determine whether the travel is necessary and whether it represents the State's best interest. Further, these regulations state that the agency shall not allow expenses arising from travel between an employee's home and headquarters and that when a trip commences or terminates at the employee's home, the travel distance subject to reimbursement shall be computed based on the lesser of the distance between the employee's home and the destination or the distance between the employee's headquarters and the destination. In addition, state regulations prohibit reimbursement for per diem or other subsistence expenses on the premises of an employee's primary dwelling. A DPA representative advised us that this prohibition, although not expressly stated in the regulations, extends to any per diem expenses incurred within 50 miles of an employee's residence. Nevertheless, of \$47,790 in travel costs the official incurred between April 2000 and November 2001, the State paid \$2,334 for 24 days of lodging in San Diego, which is within 35 miles of the official's home, \$3,941 for flights between San Diego and his San Francisco headquarters, and \$3,768 more than he was entitled to receive for costs associated with flights between San Diego and Sacramento.⁶

The official incurred nearly \$50,000 in travel costs within the 20-month period we reviewed.

⁶ The \$47,790 includes \$31,831 in travel claims that the official submitted for reimbursement and \$15,929 in travel expenses not included on a travel claim, but that the State paid directly to a vendor. This figure does not include any relocation expenses.

Our review of the official's travel claims shows that between April 2000 and November 2001, he claimed an expense of some kind on 304 days. Of these days, the official spent all or part of 206 days (68 percent) in San Diego.⁷ Moreover, our analysis shows that for almost every week within the 20-month period we reviewed, he regularly traveled at state expense to San Diego on Fridays and back to his headquarters in San Francisco on Mondays. Although state regulations prohibit reimbursement for commuting expenses between home and headquarters, the department reimbursed these expenses.

THE OFFICIAL INCURRED UNNECESSARY RENTAL CAR EXPENSES

A portion of the rental car expenses the official claimed was for weekend rentals for which he stated no business purpose. California regulations require state officers and employees to indicate the purpose of each trip and meal for which they claim reimbursement. Although the department did not address the issue, we found that of the \$3,417 in rental car expenses the official incurred during the 20-month period we reviewed, \$635 related to vehicles he rented in San Diego on weekends. The official's travel claims, and the explanation of travel he submitted to the department after it began its investigation, do not provide any business reasons for these weekend vehicle rentals. As a result, these rental car expenses appear to be unallowable according to state regulations. Although he described only two specific examples, the official responded to our queries about these rental car expenses by stating that he had a business need for the vehicle rentals for most of the weekends; however, in some instances, he indicated that keeping the vehicle over the weekend and not paying for shuttle transportation to and from the rental car location was simply more convenient. Although such an arrangement may have been more convenient for the official, it is somewhat unclear whether these car rental expenses were in the State's best interest.

The official incurred more than \$600 worth of weekend car rental expenses near his home.

⁷ Our analysis does not include the official's claims for relocation expenses because such costs are not consistent with business-related travel.

THE DEPARTMENT DID NOT QUESTION THE OFFICIAL'S TRAVEL CLAIMS

We found that even though a majority of the \$31,831 in travel claims that the official submitted lacked sufficient explanations for his trips, as state regulations require, the department approved his claims. We spoke with executives A and B about the department's process for reviewing and approving travel claims, because they had approved a number of the official's claims. Both executives told us they do not or usually do not attempt to verify the purpose of each trip listed on the claims. Executive A told us he followed a previously established process of disallowing any expenses the official incurred in San Diego as well as costs associated with trips between San Diego and any location within 50 miles of the official's San Francisco headquarters.

Nevertheless, the department paid approximately \$2,334 for 24 days of lodging expenses the official incurred in San Diego and \$3,941 for flights he took between San Diego and San Francisco or Oakland. When we provided executive A with an example of a travel claim he approved for lodging expenses the official had incurred in San Diego, executive A said that he should not have approved it. He further explained that the costs the State pays directly, such as airfare and rental car expenses, may have been paid even though they should have been disallowed, because his review was limited to the official's reimbursement claims.

We also found that the department paid \$5,520 for flights the official took between San Diego and Sacramento. However, we determined that the department paid \$3,768 more than state regulations allow because these trips began and ended in San Diego, near the official's residence. Based on mileage reimbursement rates, the State should have paid \$1,752 for the distance he traveled between his San Francisco headquarters and Sacramento, which is substantially less than the distance between San Diego and Sacramento.

The department paid \$3,768 more than state regulations allow for the official's travel between San Diego and Sacramento.

AGENCY RESPONSE

The department reported that, in addition to the \$5,726 it required the official to reimburse the State for improper relocation and travel expenses it had identified through its

investigation, it required the official to reimburse the State for the \$43 in improper relocation expenses and the \$1,082 in meal and incidental expenses he incurred within 50 miles of the official's headquarters identified in this report. Further, the department reported that it will require an executive level civil service officer familiar with state reimbursement rules to authorize all exempt employee travel claims before submitting them to the accounting department for processing. The department also reported that it will require a senior level (or higher) accounting officer to audit all exempt employees' travel claims before making payment.

By determining that the official's headquarters in San Francisco would also be his primary dwelling, the department allowed the official to travel between San Francisco and San Diego at state expense.

After the department began its investigation of the official's travel expenses, and well after the official had incurred the expenses and received reimbursement, the department consulted with DPA to determine which costs were proper. DPA provided the department with an interpretation of DPA rule 599.616 that found that it was permissible for the department to designate the official's primary dwelling as one and the same with his San Francisco headquarters. Based on that consultation, the department decided that, for the purpose of determining which costs were valid and in compliance with state requirements, it would consider the official's San Francisco headquarters to be his "primary residence." This determination was based on the California Code of Regulations, Title 2, Section 599.616.1(b), which states that a place of primary dwelling shall be designated for each state officer and employee and that the primary dwelling shall be defined as the actual dwelling place that bears the most logical relationship to the employee's headquarters and shall be determined without regard to any other legal or mailing address.

The department's determination that the official's primary dwelling was one and the same as the San Francisco headquarters allowed the official to travel between San Francisco and San Diego at state expense, based on the assumption that all such travel is for a business purpose. Consequently, the department did not recommend that the official repay the State for \$2,334 in lodging expenses and \$635 in rental car expenses he incurred in San Diego, the \$3,768 overpayment for trips the official took between San Diego and Sacramento, or the \$3,941 in airfare for flights between San Diego and San Francisco. Since the department determined that for the purpose of calculating travel expenses, the official's residence is his

headquarters in San Francisco and not where he resides (near San Diego), these expenses became allowable; however, we question this determination and find no indication that the official's headquarters is an "actual dwelling place." Moreover, the department does not appear to have used the best interests of the State as its guiding principle when making this after-the-fact determination that contradicted statements on the travel claims. Although the department disagrees with our conclusion, it officially changed the official's headquarters to a location in Los Angeles that bears a more logical relationship to where the official purportedly conducts much of his business, effective February 1, 2003. ■

CHAPTER 3

Department of Fish and Game: Mismanagement, Contracting Improprieties, Conflicts of Interest, and Discreditable Conduct

ALLEGATIONS I2002-636, I2002-725, AND I2002-947

A manager of the Department of Fish and Game (department) claimed vacation and sick leave hours he was not entitled to receive, engaged in various contracting improprieties, and mistreated employees.

RESULTS AND METHOD OF INVESTIGATION

We asked the department to investigate the allegations on our behalf. The department reported that the manager had engaged in or contributed toward irregularities in contracting and leave accounting. The manager's regional office had not updated the State's leave-accounting system for over two years, and after it took steps to correct the system, the manager retained 479 hours of leave balances that he was not entitled to receive—a potential benefit worth \$20,322.

In addition, the manager and other regional staff engaged in various contracting improprieties involving a business owner who also worked part-time for the department (employee A). Regional staff split \$62,000 in purchases the region made from companies that employee A owned or was affiliated with into smaller purchase orders in order to circumvent bidding requirements, thereby denying other companies the opportunity to compete for the State's business. The manager also sought payment for \$60,000 in costs for which employee A's company had billed the department despite not knowing whether a contract was in place for the work or whether the company had provided the services the department required. In addition, employee A violated conflict-of-interest laws because his company billed the department more than \$10,000 during the same time he worked as a department employee.

The department also concluded that the manager subjected subordinates to inappropriate treatment and that his behavior was inexcusable and a discredit to the State.

BACKGROUND

During September 2001 the department began an Equal Employment Opportunity (EEO) investigation that focused on allegations that the manager engaged in unprofessional and discourteous treatment of subordinates. On October 24, 2001, the department directed its audit branch to review other alleged improprieties that EEO investigators had uncovered, including suspected irregularities in contracts and leave balances and potential conflicts of interest. Subsequently, the department requested that its legal staff conduct a follow-up review to address some of the issues that the audit branch's review had raised.

THE DEPARTMENT MISMANAGED ITS LEAVE-ACCOUNTING SYSTEM

State law requires agencies to maintain effective systems of internal controls to minimize fraud, errors, abuse, and waste of government funds.⁸ By maintaining internal accounting and administrative controls, state 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. However, a manager of one of the department's regions failed to maintain and follow effective systems of control. The manager's region had not made monthly updates to the State's leave-accounting system for more than two years, and even after the region took steps to bring the system up to date, the manager claimed 479 hours of leave balances to which he was not entitled.

The State's leave-accounting system tracks vacation, sick leave, and annual leave as well as other employee leave balances, such as compensatory time off and personal holidays. The leave-accounting system automatically posts credits to the employees' monthly leave balances, but regional staff must account for any leave its employees have taken—which it had not done for more than two years. Thus, for the 180 regional employees the manager oversaw, the region reported leave

⁸ For a more complete description of the laws pertaining to the improper activities discussed in this chapter, see Appendix B.

The manager claimed 479 hours of leave to which he was not entitled—a benefit potentially worth more than \$20,000.

balances that were greater than the employees' actual balances. In doing so, the region exposed the State to undue liability in that employees might have taken more leave than they were entitled to. Also, employees may have found planning vacations difficult, given that they did not receive an accurate accounting of their leave balances. To correct this problem, regional staff, under the manager's direction, began reconciling each employee's leave balances. However, this process was flawed, as at least one employee, the manager, claimed 479 hours of sick leave and annual leave that he was not entitled to, a benefit worth approximately \$20,322. In addition, in some instances regional staff were unable to locate employees' time sheets. In such cases, their only recourse was to grant those employees the automatic leave accrual, even though the employees might already have taken time off, because the region lacked supporting documentation by which to reduce the employee's leave balances.

One employee who was involved in correcting the region's leave-accounting system, employee B, told the department that beginning in 1999 through June 2001, the region did not update the leave-accounting system. This meant that an employee's leave balances would continue to accrue each month but would not reflect any leave the employee might have taken. To correct these errors, employee B and another member of the region's staff obtained employee time sheets and began keying in the information regarding each employee's leave balances. Employees then received an itemized printout that detailed their monthly leave balances and showed how the department had arrived at the new, corrected balance. All employees could dispute any balances they believed were not accurate by providing documentation to support their claims. In those instances in which regional staff could not locate time sheets, they allowed for the automatic leave accrual.

Although the manager asserted that he had support for the 479 hours of leave to which he claimed he was entitled, the department concluded that the support was inadequate.

According to employee B, most employees agreed with the recalculations. Staff easily resolved most cases in which individuals identified discrepancies; these ranged from eight to 16 hours. However, some controversy remained involving the manager's leave balances. The department concluded that the manager received a combined 479 hours of sick and annual leave hours to which he was not entitled. Employee B told the department that the manager had disputed the recalculation and, rather than provide documentation to support his dispute, had supplied employee B with amounts he believed were correct.

Employee B said that she felt uncomfortable but she keyed the manager's figures into the leave-accounting system, even though he failed to provide adequate support. When the department's investigators questioned him, the manager stated that he had support for these adjustments; however, after reviewing the information the manager provided, the department concluded that the support was inadequate.

THE MANAGER AND OTHER EMPLOYEES VIOLATED CONTRACTING LAWS AND PROCEDURES

State laws governing contracts are intended to eliminate favoritism, fraud, and corruption, as well as provide all qualified bidders with a fair opportunity to enter the bidding process, thereby stimulating competition in a manner conducive to sound fiscal policies. To ensure this, state laws and policies generally require state agencies to solicit competitive bids when contracting. Public Contract Code, Section 10329, states that no person shall willfully split a single transaction into a series of transactions for the purposes of evading bidding requirements. Despite this prohibition, regional staff split various transactions into smaller ones. These transactions related to the purchase of equipment or services provided by companies that a seasonal employee of the department (employee A) owned or was affiliated with. For example, from February through June 2001, company 1 and company 2 invoiced the department a total of \$62,000 for five underground storage tanks used to provide water for sheep and deer. Instead of treating this as one transaction, regional staff spread these costs among five purchase orders, thereby circumventing competitive-bidding requirements. The department confirmed that these companies are related; finding that employee A is the chief executive officer of company 1 and the founder of company 2. Both companies also list the same business address.

By splitting \$62,000 worth of purchases into five separate transactions, regional staff were able to circumvent competitive-bidding requirements.

In another example, company 3 invoiced the department a total of \$21,000 for work related to a project to plant grain for dove and pheasant. Instead of treating this work as a single transaction, regional staff prepared six short-form contracts for varying amounts under \$5,000 to avoid competitive-bidding requirements. Company 3 is also related to employee A: its owner is the president of company 2, which employee A founded.

The department also determined that supporting documents associated with the purchase of the five underground storage tanks lacked evidence that the department actually obtained a bid. Specifically, two of the five purchase orders include bid sheets indicating that staff obtained two bids, one from company 2 and another from a competitor. However, after reviewing these purchases and interviewing regional staff, the department concluded that no evidence indicated that company 2 provided a bid; staff merely copied one of the bid sheets, thereby using the same bid sheet to justify two purchases. Two other bid sheets, which the manager signed, falsely reflected that company 2 had sole-source status and therefore was not subject to competitive-bidding requirements. The manager also admitted that he was the one who prepared the bid sheets, even though the sheets indicate that regional staff prepared them.

The manager and regional staff also allowed company 2 to begin work related to the underground storage tanks and the planting projects before the department had established contracts for the work, thereby exposing the State to additional liabilities. For example, the manager sought approval to pay a \$60,000 invoice that company 2 submitted for planting grain for the dove and pheasant project. However, when the department interviewed the staff biologist overseeing the project, he said that the department had not yet written a contract for these services and that company 2 was more than six months from completing the work for which it had billed the department. Although the department indicated that it had not yet paid these costs at the time of our review, this example further illustrates the careless manner in which the manager oversaw contractor activities.

EMPLOYEE A VIOLATED CONFLICT-OF-INTEREST LAWS

California Government Code, Section 19990, states that a state officer or employee shall not engage in any employment, activity, or enterprise that is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties. In addition, the Public Contract Code, Section 10410, states that no state officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide services or goods. The department concluded that employee A violated these prohibitions because his company, company 1, submitted a \$10,667 invoice for one underground storage

An employee violated state law when his private business submitted an invoice of more than \$10,000 to the department for payment.

tank at the time he was a state employee. The department, however, concluded that several factors influenced whether there was a need to take further action regarding this violation. First, the department discovered that another member of the regional staff, employee C, actually prepared the invoice using company 1's letterhead on behalf of the company. Second, the department reported that employee A is no longer working for the State.

THE MANAGER MISTREATED SUBORDINATES

The department investigated several complaints concerning the manager's conduct and concluded that from about December 2000 through May 2001, the manager made sexually suggestive comments or jokes in the presence of female staff members (who found his comments offensive), made inappropriate gestures to a staff member on several occasions, repeatedly cursed in staff members' presence, and intimidated staff by yelling at them to an extent that they perceived as unprofessional.

AGENCY RESPONSE

As we mentioned previously, the department conducted three separate reviews—the EEO investigation, the audit branch review, and the follow-up legal review—to look into the various allegations involving the manager. The department concluded these reviews by initiating an administrative action against the manager on May 16, 2002, for violating provisions of the Government Code: inexcusably neglecting his duty; treating the public or other employees inappropriately; and breaching other norms of good behavior, either during or after duty hours, in a way that discredited the department. In a subsequent agreement with the department, which the manager signed on May 31, 2002, he agreed to take a 5 percent reduction in pay beginning May 31, 2002, and ending October 30, 2002; have his leave balances reduced by 479 hours; and complete department-specified training, including topics on management techniques, equal employment opportunity, conflicts of interest, and contracting. However, the department did not reduce the manager's leave balances by the agreed-upon amounts until February 4, 2003, after we made further inquiries into the matter. ■

The department concluded that the manager's conduct was unprofessional and a discredit to the department.

CHAPTER 4

Department of Mental Health, Atascadero State Hospital: Improper Contracting Practices, Conflicts of Interest, Incompatible Activities, and Violations of Nepotism Policy

ALLEGATION I2000-649

We received an allegation that employees at Atascadero State Hospital (hospital), part of the Department of Mental Health (DMH), failed to properly obtain bids for projects the hospital awarded to businesses owned by relatives of a hospital employee.

RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated the allegation as well as other improper activities. The hospital awarded 21 projects totaling more than \$75,000 to three businesses (companies 1, 2, and 3) belonging to family members of an employee, employee A. However, employees responsible for obtaining bids for these projects, including employee A, did not follow the hospital's bidding procedures. In addition, employee A, who initiated 13 of the 14 projects that the hospital awarded to company 1, received more than \$5,600 in payments from the company, creating a conflict of interest. We also determined that the owners of company 1 and company 2 were seasonal employees of the hospital during the same period that their businesses submitted bids and were awarded projects, violating state contracting law. Finally, we found that the hospital had violated its nepotism policy by allowing employees to supervise family members.

To investigate the allegation, we researched applicable state laws and regulations as well as department and hospital policies and procedures. We also reviewed purchase and service orders between companies 1, 2, and 3, and the hospital. We contacted various companies listed as providing bids for jobs that the hospital awarded to companies 1, 2, and 3. In addition, we reviewed financial records of employee A and employment histories of the subject employees. Finally, we interviewed the

subject employees and other pertinent staff. To individuals who orally provided us with relevant information, we gave a written summary of what they said. We then asked them to review the summary for accuracy and to make any necessary changes. We also asked each of these individuals to sign the summary under penalty of perjury to ensure the accuracy of our understanding of the information provided. However, we were unable to interview employee A.

BACKGROUND

The mission of the hospital is to design and provide treatment for mentally ill and disordered patients; to provide professional evaluations and recommendations to the courts and other agencies; and to maintain security and control of patients in a safe, therapeutic, and supportive environment. The Department of General Services (General Services) has granted the hospital delegated purchase authority for individual purchases.⁹ This delegated authority provides an annual expenditure amount from which authorized hospital staff can make individual purchases through a competitive-bidding process without having to obtain General Services' approval. Since April 2000, the hospital's purchasing procedures have required employees to obtain three bids for purchases exceeding \$500. For purchases cited here that the hospital made prior to this period, hospital procedures required three competitive bids for purchases greater than \$200.

EMPLOYEES DID NOT FOLLOW HOSPITAL BIDDING PROCEDURES FOR PROJECTS AWARDED TO BUSINESSES BELONGING TO AN EMPLOYEE'S FAMILY MEMBERS

An employee initiated work requests for 13 projects that the hospital awarded to his father's business and another project that was awarded to a company owned by the employee's brother.

During the period October 1998 through December 2000, the hospital awarded at least 21 projects with purchase and service orders totaling more than \$75,000 to three companies owned by relatives of employee A. Employee A initiated work requests for 14 projects, 13 of which the hospital awarded to his father's business, company 1, and one of which was awarded to a business owned by one of his brothers, company 2. A second employee, employee B, initiated one project the hospital awarded to company 1 and two projects it awarded to a business owned by another of employee A's brothers, company 3. A third

⁹ For a detailed description of the laws and policies pertaining to the improper activities we discuss in this chapter, see Appendix B.

employee, employee C, initiated three projects that the hospital awarded to company 2. These employees' actions effectively circumvented procurement policies intended to ensure that the State receives the best value for its money.

As Table 2 on the following page shows, the hospital awarded 14 projects totaling nearly \$65,000 to company 1, five projects to company 2, and two projects to company 3. Hospital purchasing policies required competitive bids for all of these projects.

Despite this requirement, employees responsible for soliciting and obtaining bids for the projects did not properly obtain bids and instead simply awarded them to the businesses belonging to employee A's family members. According to employee B, who approved a number of these projects, the project initiator is responsible for soliciting and obtaining bids in most instances. Thus, employees A, B, and C would have been responsible for obtaining competitive bids for these projects. As we mentioned previously, we were unable to interview employee A. Employee B said that if he were the initiator, he believed he would have obtained the required bids, but he said that the procurement forms may sometimes have listed him as the initiator when in fact he had asked staff to obtain the bids. Employee C said he had obtained the necessary bids, and he explained that in instances in which companies were unable or unavailable to perform the work, he would indicate this information on the procurement form and consider it to be a bid.

Hospital employees violated procurement policies and denied other companies the opportunity to compete for the State's business by failing to obtain bids or to provide enough information so that bidders could provide competitive estimates for the hospital projects.

Supporting documentation for the projects we reviewed indicate that the hospital obtained at least three bids, as hospital procurement procedures require. However, when we contacted a sample of six businesses listed as bidders for jobs awarded to employee A's relatives, four of these businesses stated that they had no record or knowledge of having provided such bids to the hospital for these jobs, and two businesses said they had been contacted or might have been contacted but that neither received enough information to prepare a bid. In fact, one company told us that it could not find anything to indicate it had provided bids to the State, even though hospital employees had listed the company as having provided bids for five of the 21 jobs the hospital awarded to employee A's relatives. Consequently, based on the responses of the companies we contacted, it appears as though hospital employees violated procurement policies and denied other companies the

TABLE 2
Hospital Projects Awarded to Employee A's Relatives

Company 1			
Project Awarded	Date of Request	Project Initiator	Project Amount*
1	10/22/1998	Employee B	\$ 3,904
2	11/02/1998	Employee A	709
3	02/16/1999	Employee A	999
4	02/25/1999	Employee A	999
5	06/18/1999	Employee A	375
6	05/23/2000	Employee A	15,149
7	06/12/2000	Employee A	15,642
8	06/15/2000	Employee A	3,105
9	06/16/2000	Employee A	3,078
10	06/27/2000	Employee A	1,000
11	08/16/2000	Employee A	850
12	09/08/2000	Employee A	2,547
13	10/19/2000	Employee A	3,223
14	11/16/2000	Employee A	13,294
Total amount awarded to Company 1			64,874
Company 2			
15	03/15/1999	Employee A	999
16	06/05/2000	Employee C	999
17	06/26/2000	Employee C	500
18	08/10/2000	Employee C	700
19	10/18/2000	None provided	500
Total amount awarded to Company 2			3,698
Company 3			
20	06/16/2000	Employee B	4,297
21	12/05/2000	Employee B	2,864
Total amount awarded to Company 3			7,161
Grand total amount awarded			\$ 75,733

Source: Hospital service and purchase order records.

* All projects required the hospital to solicit competitive bids.

opportunity to compete for the State's business by failing to obtain bids or to provide enough information so that bidders could provide a competitive estimate for the hospital projects.

In addition, the employees did not adhere to hospital policy requiring written documentation of bids. The hospital purchasing policies require that employees obtain detailed written bids on the bidding company's letterhead for purchases over \$2,500. The policy states that these bids must be attached to the requisition form. However, when we asked to see documentation pertaining to bids over the \$2,500 limit for the projects that companies 1, 2, and 3 received, a representative from the hospital accounting unit told us that the hospital was not enforcing the policy to obtain written bids at the time the projects were awarded. This employee, who is responsible for receiving bid documentation obtained by staff during the procurement process, explained to us that the hospital did not begin enforcing this policy until September 2001. As a result, the hospital enabled employees to procure goods or services without ensuring that it actually solicited and received bids and that the State paid the lowest price.

EMPLOYEE A'S FINANCIAL INTEREST IN COMPANY 1 CREATED A CONFLICT OF INTEREST

Employee A violated conflict-of-interest laws and departmental policies by initiating at least 13 projects awarded to company 1, which his father owned, while having a financial interest in the company. California law states that public officials are prohibited from making, participating in the making of, or attempting to influence governmental decisions in which they have a financial interest. Further, California law prohibits state officers or employees from creating a contract in which the employee has a financial interest. A violation of these laws constitutes a conflict of interest. Additionally, department policy prohibits employees from seeking or receiving any gratuities, gifts, personal loans, or discounted property or services from anyone doing business with DMH.

An employee initiated contracts awarded to a company from which he received compensation.

During the period in which employee A initiated hospital project contracts awarded to company 1, he received payments from the company. Between November 1998 and May 2001, employee A received \$5,653 in payments from company 1 and its owner. According to company 1's owner,

most of the money employee A received was for a personal loan, and the remainder was compensation for work that employee A performed for company 1.

THE OWNERS OF COMPANY 1 AND COMPANY 2, WHILE SEASONAL EMPLOYEES AT THE HOSPITAL, VIOLATED CONFLICT-OF-INTEREST PROHIBITIONS AND DMH’S NEPOTISM POLICY

The owners of company 1 and company 2, while working at the hospital as seasonal employees, submitted bids for a number of the jobs that the hospital awarded to the two companies, thus violating sections of the California Public Contracting Code. Specifically, it prohibits any state employee from contracting on his or her own behalf as an independent contractor with any state agency to provide goods or services. Additionally, unless his or her employment requires it, the Public Contracting Code prohibits state employees from engaging in any activity, enterprise, or employment from which the employee receives compensation or in which the employee has a financial interest and is sponsored or funded by any state agency or department through or by state contract. It also prohibits separated or former employees of the State from entering into any contract for which the employee was involved in any part of the decision-making process relevant to the contract while employed by the State.

We determined that the hospital awarded five projects to company 1 during periods in which its owner was an employee at the hospital and that it awarded two projects to company 2 during that owner’s employment at the hospital, thereby violating California contracting laws. Both owners admitted that they had submitted bids from their respective companies while they were employed as seasonal workers, but they said that they did not at any time perform work on hospital projects while employed there. Company 2’s owner added that even though his company may have been awarded a hospital contract while he was employed there, he was not informed that his company had won the contract until after his employment with the hospital had ended. This, however, does not alter the fact that their companies benefited materially from the formation of these contracts.

Two employees violated state contracting laws by submitting bids for projects, which the hospital ultimately awarded to their private businesses, while employed as seasonal workers with the hospital.

We also determined that the hospital violated DMH's nepotism policy that expressly prohibits family members from directly supervising one another. According to employee B, company 1's owner was never supervised by his son, employee A, while company 1's owner was employed at the hospital. However, company 1's owner told us that his son had supervised jobs he worked on during his own employment at the hospital as a seasonal employee. Additionally, company 2's owner admitted that his father, company 1's owner, supervised him while both were in the hospital's employ as seasonal employees.

AGENCY RESPONSE

The hospital reports that it is taking adverse action against employees B and C but no adverse action is possible for employee A, who died in 2002. Additionally, the hospital has taken steps to improve its procurement procedures and will correct improprieties detected during this investigation by making additional changes to their documentation and bidding procedures and will formulate written policies to address all inappropriate activities identified in this report. ■

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CHAPTER 5

Department of Developmental Services, Sonoma Developmental Center: Failure to Ensure That a Peace Officer Met Training Requirements

ALLEGATION I2000-676

The Sonoma Developmental Center (center), under the Department of Developmental Services (department), allowed a supervisor to exercise the powers of a peace officer even though he did not meet the requirements to do so.

RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated the allegations. Specifically, when the center hired the supervisor as a peace officer in 1995, it failed to ensure that he met the training requirements for the position. Although the supervisor had worked as a peace officer in the early 1980s, he had a significant break in law enforcement service; as a result, he no longer met the training requirements for peace officers.

To conduct the investigation, we examined a Commission on Peace Officer Standards and Training (POST) review of the department's recruitment and training records for peace officers. In addition, we reviewed the center's police logs and interviewed department and center employees, including the peace officer.

BACKGROUND

In part through its developmental centers and regional centers, the department provides services and support for over 155,000 children and adults with developmental disabilities. The department operates five developmental centers that provide services to individuals who require programs, training, care, treatment, and supervision in a structured health-facility setting on a 24-hour basis. The department maintains its own law enforcement personnel at the developmental

centers, comprising both uniformed peace officers and special investigators, to keep the peace; prevent crime; investigate offenses occurring on the grounds; and protect clients, employees, visitors, and state property. Their duties and responsibilities closely resemble those of city, county, and university campus law enforcement officers.

The department is a certified agency of POST. POST is responsible for setting minimum selection and training standards for California law enforcement officers, and state law requires those working as peace officers to meet these standards. Participating agencies agree to abide by POST's standards, and POST conducts periodic reviews to determine compliance with those standards. It conducted reviews at the department in 1997, 1999, and 2001.

THE SUPERVISOR DID NOT HAVE THE AUTHORITY TO EXERCISE PEACE-OFFICER POWERS

Although he did not have the authority to do so, the supervisor exercised peace-officer powers, including issuing traffic citations and making at least one arrest. We examined a 1999 POST review of the department's recruitment and training records that concluded the supervisor did not meet the necessary requirements to exercise peace-officer powers. The California Penal Code, Section 832(e), requires individuals who previously completed a California Penal Code 832 Arrest and Firearms Course (PC 832 training) to requalify prior to exercising peace-officer powers if they have had a three-year or longer break in service as a California peace officer, with certain limited exceptions.

The supervisor did not meet necessary training requirements.

The supervisor worked as a peace officer for a local California law enforcement agency during the early 1980s and completed a course that included the PC 832 training. He left that job in 1984 and worked in a non-peace-officer position with another local agency until approximately 1991. Because he was in a non-peace-officer position, POST later concluded that the supervisor's PC 832 training had expired and was no longer valid as of June 5, 1987, three years after he left his peace-officer position.

The center hired the supervisor and appointed him to a peace-officer position effective June 1995, eight years after his PC 832 training expired. However, we found no specific evidence that the center checked the supervisor's compliance with PC 832. In

a letter dated December 16, 1999, POST notified the department of the results of its review. In that letter, POST concluded that the supervisor's PC 832 training had expired and that he must attend and pass a PC 832 course prior to exercising any peace-officer duties. Further, POST suggested that the department remove the supervisor from any duties that might require him to make an arrest, serve an arrest warrant (including a traffic citation), or serve any court order.

On January 3, 2000, the department notified the center of POST's findings. On that same day, the center notified the supervisor that he was not in compliance with the PC 832 requirement and would need to complete the training. Further, the center told the supervisor that he was not to use his peace-officer powers until he completed the required training. Although the supervisor believed he had already met all the requirements for his position, he agreed to take the training and completed the five-day training between January 31 and February 4, 2000. Between January 3 and February 7, the supervisor remained in his position and was allowed to supervise his staff but not to exercise peace-officer powers. The center reinstated the supervisor's peace-officer powers effective February 7, 2000, after he had completed the POST training.

We did not review the supervisor's activities during his entire tenure with the center (which began in June 1995); however, in an attempt to quantify instances in which the supervisor exercised peace-officer powers without the legal authority to do so, we examined the center's police logs for 1999. For each officer on duty, the logs indicate various activities, including the areas they patrol, traffic citations they issue, and arrests they make. According to those logs, the supervisor issued 41 citations during 1999 and made one arrest. Although the consequences of the supervisor's issuing citations and making arrests when he did not have peace-officer powers are unclear, POST advised the department to seek legal advice on any civil lawsuits or complications with criminal complaints that might arise from the supervisor not having peace-officer powers.

During 1999, without the authority to do so, the supervisor issued 41 citations and made one arrest.

POST FOUND ANOTHER IMPROPER APPOINTMENT

In its August 2001 report, POST noted that the department had appointed another employee to a peace-officer position at another state developmental center (Porterville Developmental Center) even though he also had a three-year or longer break

in service as a peace officer. POST concluded that the employee needed to complete the PC 832 training before he could work as a peace officer. However, the department had appointed the employee to his peace-officer position on April 1, 1999, and the employee did not complete the PC 832 training until April 26, 2002, more than three years after his appointment. We did not attempt to quantify the number of occasions on which the employee exercised peace-officer powers he did not have. Again, although the actual effect of the employee's improper appointment is unknown, it may have created a potential liability for the State.

AGENCY RESPONSE

To ensure that all of its peace officers meet the training requirements mandated by POST, the department reorganized the entire law enforcement function under its Office of Protective Services (OPS), which reports to the director. When the department hires for peace-officer positions, the process is now monitored by the Professional Standards Branch of OPS to ensure that applicants have completed all required training before being appointed as peace officers. Further, the department will use a database to track and monitor its peace-officers' training and POST can review those records annually. ■

CHAPTER 6

Department of Developmental Services, Porterville Developmental Center: Illegal Hiring

ALLEGATION I2002-952

The Porterville Developmental Center (center), under the Department of Developmental Services (department), illegally appointed two individuals to psychologist positions.

RESULTS AND METHOD OF INVESTIGATION

The department investigated and substantiated the allegation. In May 2002 the department received information that two psychologists at the center did not meet the minimum qualifications for the position. In October 2002, based on an allegation this office received, we sent an inquiry to the department, which notified us that it was already conducting an investigation. The department reviewed applicable statutes and the center's procedures relating to the hiring process. The department reviewed the credentials of all 23 of the center's psychologists and found that two center employees did not meet the necessary education requirements for legal appointment as psychologists.

BACKGROUND

In part through its developmental centers and regional centers, the department provides services and support for over 155,000 children and adults with developmental disabilities. The department operates five developmental centers that provide services to individuals who require programs, training, care, treatment, and supervision in a structured health-facility setting on a 24-hour basis. In order to help provide services and support for its clients, the center employs several psychologists.

THE CENTER MADE ILLEGAL APPOINTMENTS

In violation of state law, the center appointed two individuals, employee A and employee B, to psychologist positions, even though neither of the individuals met the educational requirements for the position.¹⁰ The State Personnel Board's job specifications for the psychologist position state that applicants who are within six months of receiving their doctoral degree may be admitted to the examination but cannot be appointed to the position until they complete their degree. The ramification of having two individuals illegally employed as psychologists is unclear, but it could potentially lead to complaints.

Employee A

Employee A began working for the center as a psychology intern in October 1999. That position required enrollment in and completion of at least one year of a postgraduate program leading to a doctoral degree in psychology. When employee A applied for the intern position, she projected a completion date of May 2000 for her doctorate. In August 2000 employee A applied for the psychologist position and revised her projected completion date for her degree to September 2000. Although the center appointed employee A to a psychologist position in October 2000, no one verified that she had completed her doctoral degree, even though completion of the degree is required prior to such an appointment. In early 2002 the department was notified that employee A did not meet the minimum qualifications to be legally appointed to the psychologist classification.

As of July 31, 2002, employee A still had not met the educational requirements for the position she had been working in for nearly two years. On August 23, 2002, the center informed employee A that it had appointed her in error, and effective August 30, 2002, the employee voluntarily transferred to a psychology-associate position.

Employee B

Employee B began working for the center in August 2001 as a psychology associate. In October 2001 he took the exam for a psychologist position with the center. In a memorandum

The center failed to verify whether two employees had completed the education requirements for the positions to which they were appointed.

¹⁰ For a more complete description of the laws we discuss in this chapter, see Appendix B.

dated October 3, 2001, an adviser at the school employee B was attending projected that he would complete the requirements for his doctoral degree by April 2002. As we mentioned previously, applicants who are within six months of receiving their degree may be admitted to the examination but cannot be appointed until they receive the degree. The center appointed employee B to a psychologist position on October 31, 2001. Employee B questioned the exam analyst about the appropriateness of his appointment because he had not completed his doctorate, but the analyst assured him that nothing hindered his appointment. As with employee A, no one at the center verified whether employee B had completed his doctoral degree prior to his appointment as a psychologist.

As of July 31, 2002, employee B still had not met the educational requirements for his position. Effective October 31, 2002, employee B voluntarily transferred back to a psychology-associate position.

EMPLOYEE A AND CENTER EMPLOYEES FAILED TO FOLLOW OTHER CENTER HIRING PROCEDURES

On July 28, 2000, a program within the center advertised a vacancy for a psychologist position. The proper procedure is for names of applicants who submit their applications to the exams unit to be incorporated with the list of eligible candidates. As of the August 4, 2000, final filing date, the exams unit had received two applications, one from employee C and one from employee D, which it forwarded to the appropriate program to schedule interviews. Subsequently, a nursing coordinator for the program directly accepted applications from employee A and another employee, employee E. The exam analyst later wrote a note on employee E's application form acknowledging that the employee had changed his mind and decided to apply for the position. The analyst's notation indicates that the exams unit was aware of employee E's application, although the employee had submitted it to the wrong individual and apparently after the final filing date. Center procedures state that an applicant submitting an application after the final filing date must obtain approval from the center's personnel officer for admission to the interview process.

The center accepted two additional applications after the final filing date had already passed.

However, no record indicates that the exams unit was aware that the nursing coordinator also directly accepted an application from employee A. If employee A had submitted her application

directly to the exams unit as procedure required, its staff could have determined that she did not currently meet the educational requirements for the position and notified the program personnel. Neither employee A nor the nursing coordinator notified the exams unit of employee A's application; as a result, the exams unit did not find out about the application until after it had interviewed employee A and approved her appointment to the position.

By failing to follow its own procedures, the center does not have assurance that it appropriately reviews applications to verify that applicants meet the minimum qualifications. Further, the center is giving preferential treatment to some employees by accepting late applications as well as applications that applicants did not file with the appropriate unit. These actions could result in allegations of state liability.

AGENCY RESPONSE

The department conferred with the State Personnel Board and has taken corrective action by having employees A and B voluntarily transfer to psychology-associate positions. In addition, the center has implemented new procedures to prevent this type of illegal appointment from occurring in the future. The new procedures include a stringent process for review of applicants' credentials by at least three levels of personnel, including two levels at the center and one at the department. ■

CHAPTER 7

San Jose State University: Misuse of State Equipment

ALLEGATION I2002-795

A San Jose State University (university) employee accessed adult chat rooms on the Internet during work hours, using a university computer. The employee also falsified her employment qualifications by indicating that she had graduated from high school.

RESULTS AND METHOD OF INVESTIGATION

We asked the university to investigate the allegations on our behalf. The university substantiated the allegations. To investigate, the university examined the employee's performance evaluations, computer records, and high school transcripts and spoke with the employee and her supervisors.

The university concluded that the employee, despite previous admonishments, continued to misuse university resources and provided false information on her employment application form.¹¹ Specifically, the employee's supervisor counseled her on two occasions not to use the computer for personal reasons during work hours; on a semiannual performance evaluation, the supervisor instructed her to stop spending work time in computer chat rooms. In spite of these warnings, the university investigation revealed that the employee continued to use university equipment to regularly access adult chat rooms and Internet gambling Web sites during work hours.

In addition, the university substantiated that the employee had falsified her employment qualifications by indicating that she had graduated from high school, even though her high school records indicated that she did not graduate.

¹¹ For a more detailed description of the law we discuss in this chapter, see Appendix B.

AGENCY RESPONSE

The university elected to terminate the employee. However, when the university presented the evidence to the employee for her response, she decided to resign. ■

CHAPTER 8

Department of Industrial Relations: Breach of Security During an Examination

ALLEGATION I2002-988

An employee of the Department of Industrial Relations (department) participating in an examination compromised the exam by revealing information about the questions to another testing candidate.

RESULTS AND METHOD OF INVESTIGATION

We asked the department to investigate the allegation on our behalf. The department told us it had already investigated and substantiated the allegation. Its investigators examined e-mail records and interviewed the two employees.

One employee, whose job duties included overseeing examination security, gave another employee an unfair advantage by divulging information about the exam questions.

On August 20, 2002, the department held interview examinations for an associate-level position. The department found that on that same day, two employees shared information about the questions. Specifically, employee A took the examination first. Immediately after completing her interview, employee A sent an e-mail message to employee B, who was yet to be interviewed, divulging information about the examination questions, thereby not only breaching examination security but giving employee B an unfair advantage over other candidates.

As a part of the examination process, employee A signed a form explaining that the law expressly prohibits discussing or giving information about questions asked by the examining panel to another competitor.¹² This form also stated that the department may take formal disciplinary action, up to and including dismissal, against violators. In addition, because employee A's responsibilities included planning, developing, and administering civil service examinations such as this one, as well as overseeing examination security and confidentiality of exam questions, employee A should have been aware that divulging

¹² For a description of the state law pertaining to sharing examination information, see Appendix B.

information about an exam is a serious breach of security. When a department investigator interviewed her, employee A stated that at the time she wrote the e-mail, she did not consider it to be a breach of exam confidentiality. However, in hindsight, she agreed that it was a breach. The e-mail did, in fact, reveal the contents of the examination to a competitor before the competitor took the exam.

AGENCY RESPONSE

Effective November 1, 2002, the department terminated employee A and issued an informal reprimand to employee B before transferring her to another division within the department. ■

CHAPTER 9

Department of Forestry and Fire Protection: Misuse of State Resources and Equipment

ALLEGATION I2002-964

An employee for the Department of Forestry and Fire Protection (CDF) used state equipment to correspond with and to send gifts to a friend.

RESULTS AND METHOD OF INVESTIGATION

We asked CDF to investigate the allegation on our behalf. CDF substantiated the allegation and other improprieties. CDF determined that the employee mailed 16 personal packages to a friend at CDF's expense, incurring \$219 in shipping charges. The employee also accumulated \$237 in long-distance charges for personal calls. Because the employee made these personal calls during work hours, CDF concluded that the State lost 33 hours of productive time—the equivalent of \$553 in state-paid wages. In addition, CDF recovered 831 e-mails either sent or received by the employee during a nine-day period. Of these, only 14, or 2 percent, related to state business. Finally, CDF determined that the employee violated department policy when a review of the employee's computer records revealed he had stored approximately 230 pictures, most of which were adult-oriented material, on network and hard drive directories.¹³

Only 14 of the 831 e-mails the employee sent or received during a nine-day period were related to state business.

To investigate the allegation, CDF obtained and reviewed the employee's state phone records, e-mail directory, and shipping records. We sent CDF shipping reports listing packages that the employee sent to his friend, as well as copies of correspondence between the employee and the friend.

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

AGENCY RESPONSE

CDF reported that it suspended the employee for 31 days without pay. CDF also required the employee to pay restitution of \$456 to the State for the combined phone and shipping charges. The unit in which the violation occurred now requires all of its employees to review and sign copies of CDF's incompatible-activities policy. In addition, the unit sent out reminders to all staff about the inappropriateness of using state resources for nonstate purposes. ■

CHAPTER 10

California State University, Northridge: Violations of Telecommuting and Nepotism Policies

ALLEGATIONS I2002-802 AND I2000-877

We received allegations that a California State University, Northridge (CSUN), employee violated telecommuting policies and that CSUN did not properly supervise the employee. In addition, a manager violated CSUN's nepotism policy.

RESULTS AND METHOD OF INVESTIGATION

We asked CSUN to investigate the allegations on our behalf. Although CSUN concluded that no improper governmental activities occurred, we believe, based on the evidence it provided, that the allegations were substantiated. To conduct its investigation, CSUN interviewed university employees and reviewed pertinent records, including policies, procedures, performance reviews, status reports, and prior investigations.

EMPLOYEES RARELY REPORTED TO THE OFFICE

CSUN confirmed that one telecommuter, employee A, failed to report to the office for more than one year. According to CSUN policy, telecommuting employees must meet with their supervisors to receive assignments and review completed work.¹⁴ CSUN's investigation found that although the majority of telecommuters come to campus to pick up their work, employee A did not report to campus for more than a year and another telecommuter rarely reported to campus. In both of these cases, the employees' spouses, who worked at the campus, facilitated the employees' ability to stay at home by transporting work back and forth.

***A telecommuting
employee failed to report
to her office for more
than a year.***

¹⁴ For a detailed description of the laws and policies we discuss in this chapter, see Appendix B.

CSUN INADEQUATELY SUPERVISED TELECOMMUTERS

CSUN failed to establish adequate control measures to properly evaluate its telecommuters' performance. State law requires each state agency to establish and maintain a system 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. CSUN did not document performance standards for the quantity and quality of work to be performed, making it difficult to measure the performance of its telecommuting employees. Specifically, the telecommuters' work must pass through a second level of processing where staff detect and report errors to the supervisor; however, CSUN did not routinely maintain statistics on the error rate. In addition, employee A's supervisor relied on weekly time reports rather than status reports to monitor the telecommuters' activity. By failing to measure telecommuters' performance adequately, CSUN cannot accurately determine the quality and quantity of its telecommuting employees' work.

A MANAGER VIOLATED CSUN'S NEPOTISM POLICY

CSUN also discovered that a manager participated in personnel decisions concerning a close relative, employee B. A California State University policy on nepotism prohibits employees from making personnel decisions pertaining to a close relative. CSUN found that over the years the manager signed off as a reviewing officer on several performance evaluations of a close relative and also completed several nomination recommendations for the relative to receive salary increases.

A manager recommended salary increases for a close relative.

AGENCY RESPONSE

Although CSUN agrees that a reasonable interpretation of its telecommuting policy would be for telecommuting employees to report to the campus to receive assignments and review completed work, it also believes that a supervisor can adequately assign and review work by e-mail and telephone in many situations. Nevertheless, CSUN hired a consultant to review its telecommuting program, and it now requires telecommuters to report to campus for performance evaluations and mandatory meetings. It is also considering rotating those employees interested in participating in its telecommuting program. Further, CSUN said it would establish written performance

standards to evaluate the quantity and quality of telecommuters' work. For business reasons, CSUN reassigned employee A to a position on campus. With regard to the manager, CSUN said that the manager understands he must recuse himself from any personnel decisions concerning close relatives. In addition, employee B resigned in March 2002. ■

CHAPTER 11

Department of Mental Health, Vacaville Psychiatric Program: Improper Use of State Telephone

ALLEGATION I2002-726

An administrator at the Vacaville Psychiatric Program (VPP) improperly made personal calls on a state-issued cellular phone.

RESULTS AND METHOD OF INVESTIGATION

We asked the Department of Mental Health (DMH) to investigate the allegation on our behalf. VPP had already investigated the allegation in July 2002, and DMH reported the findings to us. VPP reviewed the administrator's cellular phone bills from December 2000 through May 2002 and concluded that during the 17-month period, the administrator violated state law by improperly using his state-issued cellular phone to make personal calls totaling \$327.¹⁵

AGENCY RESPONSE

VPP asked the administrator to repay the State for the cost of the personal calls, which he did in August 2002. Further, VPP instructed the administrator not to make personal calls using his state-issued cellular phone. VPP will continue to monitor the administrator's cellular-phone usage. ■

¹⁵ For a detailed description of the laws pertaining to the improper activities we discuss in this chapter, see Appendix B.

CHAPTER 12

Department of Forestry and Fire Protection: Misuse of State Property and Resources

ALLEGATION I2002-631

An employee of the Department of Forestry and Fire Protection (CDF) parked her motor home on state grounds without paying the associated rent and utilities.

RESULTS AND METHOD OF INVESTIGATION

We asked CDF to investigate the complaint on our behalf. We obtained photographs showing that the employee apparently connected to state utilities by running an electrical cord from her motor home to an adjacent building, and we forwarded these to CDF. CDF substantiated that the employee parked her motor home adjacent to a department emergency-command center (command center) without paying the appropriate rental fees as department and state policy require.¹⁶

To investigate the allegation, CDF reviewed relevant department and state policies and interviewed the manager of the unit where the employee worked. The manager said that the employee was allowed to park her motor home next to the command center and sleep in it during nonwork hours because her residence was a considerable commute from the unit and sleeping quarters at the unit were limited. Nevertheless, the employee received a personal benefit because she was not asked to pay the required rental fees.

AGENCY RESPONSE

CDF reported that the employee has permanently removed the motor home from the unit and is no longer using state utilities for personal use.

¹⁶ For a more detailed description of these policies, see Appendix B.

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

Respectfully submitted,



ELAINE M. HOWLE
State Auditor

Date: April 17, 2003

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 \$11.6 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 (act) also empowers the state auditor to report these activities to other authorities, such as law enforcement agencies or other entities with jurisdiction over the activities, when the state auditor deems it appropriate.

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

TABLE A.1

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

Type of Corrective Action	Instances
Referrals for criminal prosecution	73
Convictions	7
Job terminations	48
Demotions	10
Pay reductions	13
Suspensions without pay	13
Reprimands	145

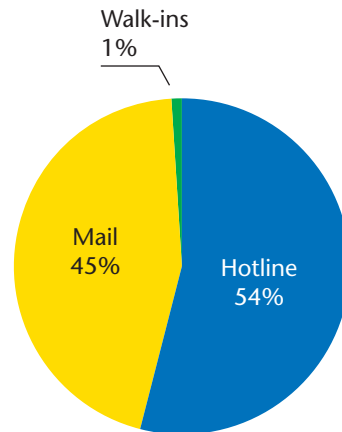
**New Cases Opened
August 2002 Through January 2003**

From August 1, 2002, through January 31, 2003, we opened 237 new cases.

We receive allegations of improper governmental activities in several ways. Callers to the hotline at (800) 952-5665 reported 127 (54 percent) of our new cases.¹⁶ We also opened 108 new cases based on complaints we received in the mail and three based on complaints from individuals who visited our office. Figure A.1 shows the sources of all the cases we opened from August 2002 through January 2003.

FIGURE A.1

**Sources of 237 New Cases Opened
August 2002 Through January 2003**



¹⁶ In total, we received 2,115 calls on the hotline from August 2002 through January 2003. However, 1,357 (64 percent) of the calls were about issues outside our jurisdiction. In these cases, we attempted to refer the caller to the appropriate entity. An additional 637 (29 percent) were related to previously established case files.

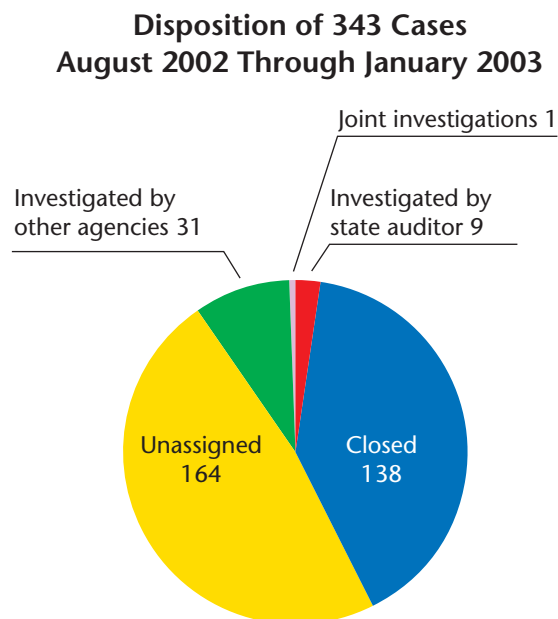
Work on Investigative Cases August 2003 Through January 2003

In addition to the 237 new cases we opened during this six-month period, we had 84 previous cases awaiting review or assignment as of January 31, 2003: 22 were still under investigation, either by this office or by other state agencies, or were awaiting completion of corrective action. Consequently, 343 cases required some review during this period.

After reviewing the information we gathered from complainants and preliminary reviews, we concluded that 138 cases did not warrant complete investigation because of lack of evidence.

The act specifies that the state auditor can request the assistance of any state entity or employee in conducting an investigation. From August 1, 2002, through January 31, 2003, state agencies investigated 31 cases on our behalf and substantiated allegations on nine (64 percent) of the 14 cases they completed during the period. In addition, we independently investigated nine cases and substantiated allegations on four of the five cases we completed during the period. As of January 31, 2002, we had 164 cases awaiting review or assignment. With the Department of Industrial Relations, we investigated and substantiated allegations on one other case. Figure A.2 shows the disposition of the 343 cases we worked on from August 2002 through January 2003.

FIGURE A.2



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, enumerates the various causes for disciplining state civil service employees. These causes include incompetency; inefficiency; inexcusable neglect of duty; insubordination; dishonesty; misuse of state property; fraud in securing employment; and other failure of good behavior, either during or outside of duty hours, of a nature that causes discredit to the appointing authority or the person's employment with the State.

CRITERIA CONCERNING CONTRACTING

Chapters 1 and 4 report contracting improprieties.

The California Government Code, Section 1090, prohibits state employees from having a financial interest in any contract in which they participate in making a decision in their official capacity. The penalties for any employee who willfully violates this prohibition are a fine of not more than \$1,000 or imprisonment in state prison; the employee is permanently disqualified from holding any office in the State.

REQUIREMENTS AND PROHIBITIONS OF THE POLITICAL REFORM ACT OF 1974

Chapters 1 and 4 report violations of the Political Reform Act.

Section 87100 of the California Government Code, part of the Political Reform Act of 1974, states that no public official shall make, participate in making, or in any way attempt to use an official position to influence a government decision in which that public official knows or has reason to know that he or she has a financial interest. The law defines a financial interest as

any business entity in which the public official holds an office, is an employee, or has a direct or indirect investment of \$1,000 or more. Participation in decision making includes negotiations, advice by way of research, investigation, or preparation of reports or analyses for the decision maker.

The California Government Code, Section 87407, specifies that no state administrative official, elected state officer, or designated employee of the Legislature shall make, participate in making, or use his or her official position to influence any governmental decision directly relating to any person with whom he or she is negotiating, or has any arrangement concerning prospective employment.

REGULATIONS COVERING TRAVEL EXPENSE REIMBURSEMENTS AND PAYMENT OF RELOCATION EXPENSES

Chapter 2 reports improper payment of travel or commuting expenses.

The California Code of Regulations, Title 2, Section 599.615.1, decrees that each state agency shall determine the necessity for travel and that such travel shall represent the State's best interest. Section 599.616.1(a) prohibits payment of per diem expenses such as meals and lodging if the employee incurs the expense within 50 miles of headquarters. Section 599.616.1(b) specifies that a place of primary dwelling shall be designated for each state officer and employee and that the primary dwelling shall be defined as the actual dwelling place of the employee that bears the most logical relationship to the employee's headquarters and shall be determined without regard to any other legal or mailing address.

Section 599.626.1 of the California Code of Regulations stipulates that reimbursement for travel expenses will be made only for the method of transportation that is in the State's best interest and, regardless of the employee's normal mode of transportation, disallows expenses that arise from travel between home or garage and headquarters. When a trip begins or ends at the employee's home, the distance the employee travels shall be computed from the lesser of the employee's home or headquarters.

Section 599.638.1(d) of the California Code of Regulations requires state officers and employees to state the purpose of each trip and meal for which they claim reimbursement.

Finally, the California Code of Regulations, Section 599.723.1, allows employees who must change their place of residence for the purpose of accepting employment with the State, with advance approval of the director of the Department of Personnel Administration, to receive reimbursement for a maximum of 30 days' temporary lodging and meals at their headquarters location. The Code of Regulations further allows employees to receive reimbursement for travel from the old residence to the new residence at a rate of 9 cents per mile.

CRITERIA GOVERNING STATE MANAGERS' RESPONSIBILITIES

Chapters 3 and 10 report weaknesses in management controls.

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 adopt 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 control shall include a system of authorization and record-keeping procedures adequate to provide effective accounting control over assets, liabilities, revenues, and expenditures. Further, this act requires that the agency correct promptly any weaknesses it detects.

INCOMPATIBLE ACTIVITIES DEFINED

Chapters 3, 8, 9, and 11 report incompatible activities.

Prohibitions on incompatible activity exist to prevent state employees from bending to outside influences in the performance of their official duties or from receiving rewards from outside entities for any official actions. Section 19990 of the California Government Code prohibits a state employee from engaging in any employment, activity, or enterprise that is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee. This law

specifically identifies certain incompatible activities, including using state time, facilities, equipment, or supplies for private gain or advantage.

It also includes using the prestige or influence of the State for one's own or another's private gain or advantage. In addition, it prohibits state employees from receiving or accepting money or any other consideration from anyone other than the State for performing his or her duties.

CRITERIA CONCERNING BIDDING REQUIREMENTS **Chapter 3 reports failure to follow bidding requirements.**

Public Contract Code, Section 100, provides all qualified bidders with a fair opportunity to bid, thereby stimulating competition in a manner conducive to sound fiscal practices. Additionally, Public Contract Code, Section 10329, states that no person shall willfully split a single transaction into a series of transactions for the purposes of evading bidding requirements.

The Department of General Services has delegated purchasing authority to the Department of Mental Health (DMH) for purchases under \$15,000 and requires DMH employees to obtain a minimum of two quotes for all purchases over a certain amount. For fiscal year 1998–99, this amount was \$1,000; for fiscal years 1999–2000 and 2000–01, it was \$2,500. Atascadero State Hospital purchasing procedures require employees to obtain a minimum of three bids for any requisitions over a certain amount. For fiscal year 1998–99, this amount was \$200; for fiscal years 1999–2000 and 2000–01 it was \$500. Hospital purchasing procedures require employees to obtain three written bids for requisitions greater than \$2,500.

PROHIBITIONS AGAINST CONFLICTS OF INTEREST **Chapters 3 and 4 report conflicts of interest.**

Section 10410 of the California Public Contract Code specifically prohibits a state employee from contracting on his or her own behalf with any state agency to provide services or goods. Further, it prohibits state employees from engaging in any employment, activity, or enterprise for which they receive compensation or in which they have a financial interest and that is sponsored or funded by any state agency or department

through or by a state contract unless the employment, activity, or enterprise is required as a condition of the employee's regular state of employment.

Furthermore, Section 10411 prohibits former employees of the State from entering into any contract in which the employee engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed by the State for the two-year period beginning on the date the person left state employment.

Additionally, DMH Policy Directive 713 prohibits employees from seeking or receiving any gratuity, gifts, personal loans, or discounted property or services from anyone doing business with the department.

PROHIBITIONS AGAINST NEPOTISM

Chapters 4 and 10 report violations of nepotism policies.

DMH's nepotism policy (Special Order No. 420) specifically prohibits work situations in which one or more members of a personal relationship are in a direct supervisor-subordinate relationship. Personal relationships include, but are not limited to, associations by blood, adoption, marriage, and/or cohabitation or romantic and sexual relationships.

The California State University's Executive Order 340 states that no one may serve in capacities that require him or her to make decisions on a close relative's personnel status.

TRAINING REQUIRED OF PEACE OFFICERS

Chapter 5 reports failure to ensure that a peace officer met training requirements.

The California Penal Code (code), Section 832, states that peace officers shall satisfactorily complete an introductory course of training that the Commission on Peace Officer Standards and Training prescribes. With few exceptions and according to Section 832(e), any person completing the described training who has a three-year or longer break in service as a peace officer shall pass the examination described in the code prior to exercising the powers of a peace officer.

CRITERIA CONCERNING HIRING PRACTICES

Chapter 6 discusses illegal appointments.

Section 18900(a) of the California Government Code decrees that the State shall establish eligibility lists as a result of free competitive examinations open to persons who lawfully may receive appointments to any position within the class for which these examinations are held and who meet the minimum qualifications requisite to the performance of the duties of that position as prescribed by the specifications for the class or by board rule. Further, Section 19050 requires the appointing powers to fill all civil service appointments, including promotions, in strict accordance with the civil service laws and rules.

The Personnel Management Policy and Procedures Manual, Section 395, provides examples of illegal appointments, including a department's allowing a person to compete in an examination when the person does not meet the minimum qualifications for competition and later appoints that person from the eligibility list.

PROHIBITIONS AGAINST USING STATE RESOURCES FOR PERSONAL GAIN

Chapters 7, 9, and 12 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 an 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.

CRITERIA CONCERNING EXAMINATION SECURITY

Chapter 8 reports a breach in examination security.

The California Government Code, Section 19680(c), states that it is unlawful for any person willfully to furnish to any person any special or secret information for the purpose of either improving or injuring the prospects of any person examined or certified or to be examined or certified.

Further, according to Section 19681(b), it is unlawful for any person to obtain examination questions or other examination material except by specific authorization either before, during, or after an examination or use or purport to use any such examination questions or materials for the purpose of instructing, coaching, or preparing candidates for examinations.

CRITERIA GOVERNING TELECOMMUTING EMPLOYEES

Chapter 10 reports on violations of telecommuting policies.

The telecommuting agreement of California State University, Northridge, states that the employee will meet with the supervisor to receive assignments and to review completed work. Further, staff is responsible for arranging to secure new work and for returning completed work to the office in an orderly and timely manner.

CRITERIA CONCERNING HOUSING AND SPACE RENTAL CHARGES

Chapter 12 reports on violations of rental regulations.

The California Department of Forestry and Fire Protection's (CDF) Accounting Procedures Handbook, Section 3639.7.1, requires CDF units to use a rental agreement when renting housing units, trailer pads, and spaces to employee-tenants. Further, Section 3639.6.1 states that the employee-tenant will pay the most current fair-market rental rates unless the current collective bargaining unit agreements limit these.

Section 599.645(b) of the California Code of Regulations, Title 2, states that the monthly space rental charge for a privately owned trailer is \$9 per month.

THE PROHIBITION AGAINST MAKING GIFTS OF PUBLIC FUNDS

Chapter 12 reports a situation that constituted a gift of public funds.

The California Constitution, Article XVI, Section 6, prohibits gifts of public funds. In determining whether to consider an appropriation of public funds a gift, the primary question is whether funds are to be used for a public or private purpose.

APPENDIX C

Incidents Uncovered by Other Agencies

Section 20080 of the California State Administrative Manual requires state government departments to notify the Bureau of State Audits (bureau) and the Department of Finance of actual or suspected acts of fraud, theft, or other irregularities they have identified. What follows is a brief summary of incidents involving state employees that departments reported to the bureau from August 2002 through January 2003. Although many state agencies do not yet report such irregularities as required, some vigorously investigate such incidents and put considerable effort into creating policies and procedures to prevent future occurrences. (Note that all the incidents we show in Appendix C have been resolved; we will not publish any report that would interfere with or jeopardize any ongoing internal or criminal investigation.)

Seven state entities notified the bureau of 28 instances of improper governmental activity that they had resolved from August 2002 through January 2003. Those entities were the California State University system, the Department of Forestry and Fire Protection, the Department of Motor Vehicles, the Franchise Tax Board, the Department of Rehabilitation, the Department of Social Services, and the Department of Parks and Recreation. Incidents resulting in monetary loss to the State totaled \$432,431. Violators' restitution of \$203,903 has mitigated the financial losses of some of these entities.

CALIFORNIA STATE UNIVERSITY

Five California State University campuses reported improper governmental activities. One campus reported two separate incidents involving fraudulent activity. In one case, two employees improperly used \$610 from an auxiliary organization for bridal and baby showers while claiming the expenses were for staff training. The campus suspended the two employees for 30 days without pay. A third employee improperly approved these expenses and was suspended for three days without pay. A second case involved a nonstate employee's attempt to cash

a payroll check he had obtained fraudulently. Although the employee who was responsible for the check stock from which the check was missing, denied any direct involvement with the impropriety; the campus held her responsible for the incident and terminated her within her probationary period because she failed to demonstrate she could perform her duties in an acceptable manner.

A second campus also reported two incidents of improper governmental activity. The first involved an employee whom the campus suspected of improper recruiting practices. In the course of the investigation, the campus obtained information indicating that the employee was also working for several campus and noncampus vendors during the normal working days, thus abusing both state funds and resources. The employee ultimately resigned before the end of the investigation. In another investigation, this same campus reported a loss of nearly \$22,000 as a result of a student assistant's embezzlement of parking meter funds. The campus terminated the student assistant, and the courts later convicted him of felony grand theft. The campus expects full restitution of these funds.

An additional two campuses reported incidents of embezzlement. One campus reported that a state employee embezzled \$152,000 over four years. The campus terminated the individual, who served nearly five months in jail and has made full restitution of all the stolen funds. The other campus determined that a temporary employee working as a cashier had a cash shortage of more than \$2,000 during two cashiering sessions. The campus terminated the employee's services after she failed to report to work. The campus has not been able to locate the employee to determine the cause of the shortage or to recover the missing funds.

A fifth campus reported that an employee fraudulently claimed \$70,000 for travel and entertainment costs, improperly transferred \$42,000 of campus funds to other projects, and forged federal audits that cost the campus \$50,000 to correct. The employee resigned his position and made partial restitution. The courts found the employee guilty on nine felony charges and sentenced him to county jail for one year.

DEPARTMENT OF FORESTRY AND FIRE PROTECTION

The Department of Forestry and Fire Protection (CDF) investigated an incident of embezzlement. The employee claimed and received payment for \$3,800 in improper salary and travel advances from several funds, including one of which she was custodian. In addition to demoting the employee, CDF required her to make full restitution of these funds and barred her access to all departmental fiscal functions in the future.

DEPARTMENT OF MOTOR VEHICLES

The Department of Motor Vehicles (DMV) advised us of 16 investigations that its staff completed, which substantiated improper activities by DMV employees. One of these investigations involved an employee selling fraudulent driver's licenses or other related documents to as many as 37 people, many of whom were undocumented immigrants. DMV estimates that these individuals paid a total of \$28,000 for the privilege of driving; none took the written, vision, or driving tests. The DMV also uncovered the following improprieties:

- One employee inappropriately touched clients during the driving portion of the exam. As a result of its investigation, the department terminated the employee.
- In order to avoid assessment fees, one employee filed falsified documents and caused another employee to enter falsified documents on his behalf. The employee transferred to another state department before DMV completed its investigation, and it has referred this case to the legal authorities for further action. DMV also investigated and substantiated 13 other incidents of improper database access or other computer-related improprieties.

FRANCHISE TAX BOARD

The Franchise Tax Board (FTB) reported that an employee fraudulently cashed approximately \$55,000 worth of checks by altering the payee's name on checks that taxpayers had submitted for payment of taxes. FTB terminated the employee.

DEPARTMENT OF REHABILITATION

The Department of Rehabilitation (DOR) investigated an employee who altered a travel advance check that DOR had issued to another employee. In the course of its investigation, DOR determined that the employee also stole cash and personal belongings from coworkers, resulting in a total theft of nearly \$700 in cash as well as other items including two credit cards. The employee voluntarily resigned.

DEPARTMENT OF SOCIAL SERVICES

In response to an anonymous complaint, the Department of Social Services (DSS) investigated and substantiated that an employee improperly used both his e-mail account and Internet access for personal use. DSS noted that during a 76-hour period, the employee downloaded various unapproved programs. It also noted that 65 of the 87 e-mails the employee sent or received during this time were of a personal nature. After determining that the employee had spent only 25 percent of his work hours on work-related activities during this time, DSS counseled the employee and advised him that any similar conduct in the future could result in adverse action.

DEPARTMENT OF PARKS AND RECREATION

In response to a law enforcement agency's inquiry, the Department of Parks and Recreation (DPR) investigated an employee who fraudulently rented storage facilities under the name of California State Parks Nonprofit. DPR also concluded that the employee stole \$721 worth of state property. It dismissed the employee, whom the courts subsequently convicted of these and other charges unrelated to his state employment.

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