

# 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:**

*March 2002 Through July 2002*



November 2002  
I2002-2

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# CALIFORNIA STATE AUDITOR

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November 13, 2002

Investigative Report I2002-2

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

Dear Governor and Legislative Leaders:

Pursuant to the California Whistleblower Protection Act, the Bureau of State Audits presents its investigative report summarizing investigations of improper governmental activity completed from March 2002 through July 2002.

Respectfully submitted,

ELAINE M. HOWLE  
State Auditor

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# SUMMARY

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## *Investigative Highlights . . .*

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

- Verbally and physically abused employees.*
  - Filed an improper claim to pay a vendor \$515 in state money to repair a computer that was the employee's personal property.*
  - Received credit for questionable overtime claims.*
  - Made economically wasteful decisions.*
  - Improperly billed Medicare \$55,000 for visits that the staff physician did not make.*
  - Continued to incur excessive overtime costs by claiming commute time as time worked.*
  - Opened an unauthorized bank account and commingled state and personal funds.*
  - Misused state equipment for personal projects.*
- 

## 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). **The hotline number is (800) 952-5665.**

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

This report details the results of the six investigations completed by the bureau and other state agencies on our behalf between March 1, 2002, and July 31, 2002, that involved substantiated complaints. Following are the substantiated improper activities and actions taken to date.

## CALIFORNIA CONSERVATION CORPS

A manager verbally and physically abused employees. Among other incidents, the manager cursed at and pushed one subordinate and engaged in a physical altercation with another employee. The same manager filed an improper claim to pay a vendor \$515 in state money for repairs to a computer that was his personal property. The California Conservation Corps took steps to fire the manager, but he retired before the termination could take effect. In addition,

a supervisor received credit for questionable overtime claims she submitted to the manager after he had retired from state service and no longer was authorized to approve such claims.

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

California Department of Forestry and Fire Protection (CDF) officials made economically wasteful decisions when they allowed an executive to obtain a pilot's license at CDF's expense and to fly CDF aircraft. The cost to CDF for the executive's flight training was approximately \$9,151. Based on the billing rate CDF charges to other entities for the use of its aircraft, the cost of the executive's nontraining flight hours was \$78,116. The executive retired from state service before we completed our investigation.

## **VETERANS HOME OF CALIFORNIA, YOUNTVILLE**

The Veterans Home of California, Yountville (home), made improper billings to Medicare. The information system the home uses to bill insurers showed that one doctor saw patients 2,614 times over a two-year period, but we concluded that the doctor did not see the patient in question in 1,792 of those visits. Further, as of January 22, 2002, the home had billed Medicare \$131,000 for 1,488 of these visits, but \$55,000 was for 887 visits that we concluded the doctor did not make. The Department of Veterans Affairs (DVA) reports that it is actively working to upgrade its billing system and is working with its billing agent to resolve any charges billed and reimbursed incorrectly. Further, the DVA states that it will ensure it obtains the signature of the attending physician/technician to maintain proper practices and Medicare compliance.

## **GOVERNOR'S OFFICE OF EMERGENCY SERVICES**

In April 2000 we reported that poor supervision and inadequate administrative controls enabled employees in the fire and rescue branch of the Governor's Office of Emergency Services (OES) to commit various improprieties, including claiming excessive overtime and travel costs. One of the employees has continued to incur excessive amounts

of overtime. During fiscal year 1999–2000, the employee received \$35,743 (36 percent of his wages) for overtime, and he received \$40,523 (38 percent of his wages) for overtime in fiscal year 2000–01. The employee incurred this overtime in part because OES permitted him to claim his commute as work time even though the employee lived at least two hours from his assigned work area. This issue was brought to the attention of OES in 1998 and again in 2000, but it continued to allow him to claim his commute as work time. Recently, OES reported that the employee has been reassigned to a work area where he lives. OES also reported that it has established administrative controls concerning overtime authorization and that it has counseled all branch employees that nonemergency overtime will not be incurred without prior authorization.

### **CALIFORNIA STATE UNIVERSITY, NORTHRIDGE**

The director of a research center at California State University, Northridge (CSUN), opened an unauthorized bank account in connection with his administration of the center, commingled personal and university funds, and paid personal expenses from the account. Checks from the account totaling \$9,520 were written directly to the director or to cash, or were used to pay for the director’s personal expenses. CSUN closed the center.

### **DEPARTMENT OF GENERAL SERVICES**

Employees misused state equipment and may have abused overtime and failed to charge leave balances. All allegations could not be evaluated properly due to a lack of timely and/or specific information and a lack of documentation. The Department of General Services (DGS) took adverse action against an employee who misused state computers to access sexually suggestive Web sites and said it will take steps to improve controls over the use of state equipment. In addition, the DGS agreed to implement a formal overtime system.

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

Appendix A contains statistics on the complaints received by the bureau from March 1, 2002, through July 31, 2002, and summarizes our actions on those and other complaints pending as of July 31, 2002. It also provides information on the cost of improper activities substantiated since 1993 and the corrective actions taken as a result of our investigations.

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

Appendix C provides information on actual or suspected acts of fraud, theft, or other irregularities identified by other state entities. Section 20080 of the State Administrative Manual requires state agencies to notify the bureau and the Department of Finance of actual or suspected acts. It is our intention to inform the public of the State's awareness of such activities and to publicize that agencies are acting against wrongdoers and working to prevent improper activities.

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

# CHAPTER 1

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## ***California Conservation Corps: Abuse of Power, Personal Use of State Funds, and Questionable Overtime***

### **ALLEGATION I990174**

**A** manager at the California Conservation Corps (CCC) verbally and physically abused employees and used state funds for personal gain.

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

We investigated and substantiated these allegations and other improper activities. We found that the manager mistreated and intimidated employees for more than a decade. Initially, most incidents involved verbal abuse, such as inappropriate yelling or cursing at employees. The manager later resorted to physical abuse as well. Even though the CCC knew for years of the manager's verbal abuse of employees, we found little evidence that it had taken action against the manager until he began physically assaulting employees.

In one instance, an investigator hired by the CCC substantiated a complaint that the manager had cursed at and pushed a subordinate. During the time the external investigation began, the CCC conducted its own internal investigation and substantiated other allegations involving the manager. The CCC disciplined the manager, but his abusive treatment continued. Approximately two months after it completed its internal investigation of the manager, the CCC determined that he had engaged in yet another physical altercation with an employee. As a result, the CCC took steps to fire the manager, but the manager retired from state service before his termination became effective.

In addition, the manager filed an improper claim to pay a vendor \$515 in state money for repairs to his personal computer. Furthermore, a supervisor received credit in the form of compensatory time off for questionable overtime claims she submitted to the manager for his approval months after he had retired from state service and no longer was authorized

to provide such approval. We found that many documents she provided did not sufficiently support her overtime claims, contained erroneous information, or included claims for overtime that she was not entitled to receive.

To investigate the allegations, we reviewed grievance and complaint files maintained by the CCC and documents related to the CCC's internal and external investigations of the manager. We also reviewed applicable state laws and the CCC's policies pertaining to violence in the workplace, injury and illness prevention, accounting procedures, and travel. In addition, we reviewed federal and state guidelines regarding workplace violence issues. Finally, we interviewed the manager and individuals who knew him or had witnessed his interaction with employees. After interviewing the manager and other individuals who provided important information verbally, we gave them a written summary of their statements and asked them to make any necessary changes. We also requested that they sign the statements under penalty of perjury to ensure their accuracy. The manager and a supervisor, identified in this report as supervisor 1, refused to sign their statements. Although we report our understanding of what they told us, we have less confidence in the accuracy of our understanding because of their unwillingness to confirm these statements and to certify them under penalty of perjury.

## **BACKGROUND**

The CCC's mission is to engage young men and women, primarily between 18 and 23 years of age, in meaningful work, public service, and educational activities that assist them in becoming more responsible citizens while protecting and enhancing the State's environment, human resources, and communities. In addition to performing conservation work such as planting trees, clearing streams, building trails, developing parks, working on energy conservation projects, making forest improvements, assisting in plant nursery operations, and restoring wildlife habitat, the CCC responds to emergencies caused by fires, floods, earthquakes, and other natural disasters.

At the time of the incidents in this report, the CCC's organizational structure consisted of 11 service districts that include 16 residential centers and more than 40 nonresidential satellite facilities throughout the State. The manager cited in

this report oversaw the operations of one of the CCC's service districts and was responsible for the development and well-being of employees under his supervision as well as for promoting and maintaining a positive living and working environment.

## THE MANAGER INTIMIDATED AND MISTREATED EMPLOYEES

*Despite the fact that CCC knew of the manager's behavior, it did not do enough to stop or correct it until after it learned he had begun to assault subordinates physically.*

The manager mistreated certain employees and, in the course of doing so, violated provisions of the CCC's Violence in the Workplace Protection Plan (workplace protection plan).<sup>1</sup> The purpose of the workplace protection plan is to express clearly and emphatically the CCC's "zero tolerance" philosophy by implementing policies and procedures for dealing with acts or potential acts of violence in the workplace.<sup>2</sup> Every employee is responsible for helping to maintain a safe working environment by following the policies and procedures outlined in the workplace protection plan. In addition, the workplace protection plan states that the CCC will not tolerate acts of violence committed by or against employees or members of the public while on state property or while conducting state business at other locations. Such actions are grounds for immediate disciplinary action and may lead to dismissal. The workplace protection plan defines workplace violence as an act or behavior that is physically assaultive; is intensely focused on a grudge, grievance, or romantic interest in another person; is communicated or reasonably perceived as menacing or as being a threat to harm or endanger the safety of another individual; involves destroying property or throwing objects in a manner reasonably perceived to be threatening; or is a communicated or reasonably perceived threat to destroy property. In addition, federal guidelines define workplace violence as including abuse of authority, intimidating or harassing behavior, and threats. In spite of these guidelines, and despite the fact that the CCC knew of the manager's intimidating approach, it did not do enough to stop or correct his behavior until after it learned that he had begun to assault subordinates physically.

<sup>1</sup> For the purposes of this report, references to employees include individuals who hold the title corpsmember, special corpsmember, or individuals who are civil service employees.

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

**THE MANAGER HAD A HISTORY OF INTIMIDATION**

During our review of employee grievances and complaints filed against the manager, we found several examples that revealed the manager’s confrontational and authoritative style. As Table 1 shows, these incidents cover approximately 13 years before the manager abruptly retired in December 1999. We describe these incidents in more detail later in the report.

**TABLE 1**

**Grievances and Complaints Filed Against the Manager, 1986 to 1999**

Incident	Date of Incident	Allegation	Action Taken
1	Approximately May 1986 to May 1987	Insubordination, discourteous treatment, willful disobedience	CCC ordered a suspension without pay for five working days.
2	November 23, 1993*	Harassment: yelled and screamed at an employee	No action noted.
3	December 15, 1993*	Threatened an employee	No action noted.
4	Various dates, approximately April 1995 to January 1996	Discrimination, created a hostile work environment, yelled and cursed at an employee (employee A) in front of peers	State Personnel Board investigated but did not substantiate the charge of discrimination. It did find that the manager engaged in unprofessional behavior and that the behavior created a hostile work environment.  No action on investigative findings noted.
5	November 25, 1998	Intimidated an employee (employee B), yelled at her union representative	No action noted. However, a CCC personnel analyst recommended to the personnel manager that the manager be strongly encouraged to participate in counseling for anger management.
6	April 13, 1999	Physical assault: pushed and cursed at an employee (employee C)	CCC hired an external investigator to investigate allegations; the investigation substantiated the allegations. These findings led to disciplinary action as discussed under incident 8.
7	May, 1999	Discourteous treatment, failed to provide clear instructions to an employee (employee D)	CCC initiated an internal investigation sometime in or after June 1999; the investigation substantiated the charges. These findings led to disciplinary action as discussed under incident 8.
8	August 25, 1999	Discourteous treatment, yelled at an employee (employee E)	Included allegations in ongoing internal investigation. After external and internal investigations substantiated various allegations, the CCC ordered a salary reduction equivalent to a 10-day suspension and participation in anger management and conflict resolution classes, and it made a management referral to the employee assistance program on the manager's behalf.
9	December 8, 1999	Physical assault: struck an employee (employee F)	CCC initiated an internal investigation; on December 21, 1999, it notified the manager that he was on paid administrative leave effective December 24, 1999, until his January 13, 2000, dismissal date; the manager retired December 30, 1999, before his scheduled termination date.

\*Available documentation did not specify an incident date. These dates represent the date the employee filed his or her complaint.

As shown in the table, more than 13 years before the manager separated from the State after his physical altercation with an employee on December 8, 1999, the CCC investigated and suspended the manager without pay for five working days effective June 1, 1987, for insubordination, discourteous treatment, and willful disobedience. Specifically, on May 14, 1986, when a former CCC executive attempted to discuss several issues with the manager, the manager became rude and noncommunicative. He also made disrespectful comments to the executive. Later, on April 17, 1987, on behalf of the executive, an employee relayed instructions to the manager on how to handle a particular issue, but the manager repeatedly and adamantly told the employee that he would not follow the executive's orders. On or about May 1, 1987, the executive specifically asked the manager how he intended to handle the matter, but even after repeated inquiries the manager flatly refused to answer the executive's questions.

For the next six years, we were not able to locate any grievances or complaints filed against the manager. Some of this may be due to the fact that he resigned from the CCC effective on December 31, 1990, and did not return until January 21, 1993. Not long after his reinstatement, there is some indication that the manager continued his confrontational, aggressive style. One complaint, filed on November 23, 1993, charged that the manager's constant yelling and screaming made the workplace unbearable for several employees. On December 15, 1993, another employee alleged that the manager made what could be construed as a threat. We were unable to locate any additional documentation related to these complaints or to determine whether the CCC took any action.

When we asked the manager about these incidents, he told us that he remembered the incident involving the executive in 1987, but said that it started when the executive began pointing his finger at him. The manager also said that, although he recalls not discussing or answering some of the executive's questions, he did not recall the executive ever asking anything specific of him. Regarding the two complaints filed in 1993, the manager said he could not recall receiving any feedback on at least one of the complaints and that nothing ever materialized from either of them.

However, there is some indication that the manager's supervisor knew that the manager had problems with staff. In a performance report dated December 22, 1993, his supervisor wrote that, although the manager's experience,

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***The manager's supervisor wrote in his evaluation that the manager's "tough love" approach to addressing concerns with staff might not be appropriate in some instances.***

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knowledge, and skills were an asset to the CCC, his “tough love” approach to addressing concerns with staff might not be appropriate in some instances. Such comments, and the fact that he specifically addressed the issue of diplomacy even though this was not a category listed on the performance report, indicate that the supervisor was aware of the questionable manner in which the manager sometimes communicated with and treated employees.

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***The manager’s supervisor knew some employees were intimidated and that complaints against the manager involved his aggressive communication style.***

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We spoke with the manager’s supervisor, who had known the manager for approximately 20 years and who had worked under him at one time. He admitted that he had known that some people were intimidated by the manner in which the manager communicated. Although he said he did not recall any details, the supervisor noted that complaints regarding the manager usually involved his aggressive style of verbal communication. He stated that he was not aware of any incidents of a physical nature between the manager and employees until July 1999, when the manager admitted to an external investigator that he had pushed an employee.<sup>3</sup> The supervisor added that he handled problems that arose from the manager’s method of communicating mainly by having informal discussions with him.

The performance report mentioned earlier is the only instance we found in which the supervisor documented his concerns regarding the manager’s method of communicating with employees. The supervisor told us that after he completed this evaluation, he noted considerable improvement in the manager’s communications with employees. Thus, he did not feel the need to provide formal written instructions or training that might help the manager improve his methods of communicating with employees until sometime in 1999, when he learned that the manager had been involved in several disputes with employees. However, we found two other instances that occurred after the 1993 performance report and before 1999 in which the manager continued to mistreat employees but apparently was not disciplined. The following sections describe these complaints and how they were handled.

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<sup>3</sup>We discuss this matter later in our report.

**Employee A**

On May 9, 1997, the State Personnel Board (personnel board), on behalf of the CCC, completed an investigation involving a discrimination complaint filed against the manager by employee A. Employee A also alleged that the manager, through his harassing behavior, created a hostile work environment and that the manager's supervisor did nothing to stop the manager's behavior even after allegedly having witnessed it firsthand. Specifically, employee A claimed that the manager yelled and cursed at her in front of coworkers and peers, made harassing phone calls, and engaged in other behaviors that established a hostile work environment. Although the personnel board concluded that the evidence did not support the employee's charge of discrimination, it did determine that many of the comments the manager made to employee A during meetings were unprofessional and that his behavior created a hostile environment.

In discussing one particular meeting, the manager's supervisor told the personnel board that both the manager and the employee had engaged in "strong dialogue" and that the manager had called the employee a liar several times. He said the manager and the employee typically talked in "loud voices" and added that it was his opinion that the manager's behavior was not uncharacteristic or unreasonable "compared to his behavior in prior meetings." Based on his knowledge of the manager's past behavior, his supervisor told the personnel board he did not believe the manager had taken advantage of employee A, nor did he feel compelled to intervene. Such comments indicate that the supervisor not only knew about the manager's behavior but also chose to accept it even though it appears to violate the CCC's "zero-tolerance" policy for violence, threats, harassment, and intimidation in the workplace.

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***Although the State Personnel Board reported instances of unprofessional conduct and suggested that it address these issues, the CCC failed to discuss them with the manager and his supervisor.***

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Furthermore, even though the personnel board cited instances of unprofessional conduct and suggested that the CCC address these issues to prevent future allegations of discrimination, the CCC apparently never informed the manager about all the personnel board's findings. Both the manager and his supervisor told us that although they had learned that employee A's complaint was not substantiated, they never learned of any other findings related to the personnel board's investigation. We also spoke with a manager and an analyst from the CCC's personnel office who were familiar with the issues surrounding

the complaint. However, they could provide no evidence that the CCC ever discussed the issues cited by the personnel board with the manager or his supervisor.

***Employee B***

In another example, a union representative filed a grievance against the manager on behalf of another employee, employee B, on December 8, 1998. According to the grievance, the manager inappropriately denied the union representative the chance to assist employee B in discussing another grievance, became belligerent and started yelling, and threatened to have the representative removed from a meeting held on November 25, 1998. The manager asserted that because the issues raised by the employee did not constitute a grievance, she did not have the right to representation, and he told us his decision was based on advice he received from the CCC's labor relations officer. The manager also denied yelling at the representative during the meeting or threatening to remove him if he continued to disrupt the meeting.

Although the CCC did eventually take disciplinary action after substantiating various allegations involving the manager, the grievance filed against the manager on employee B's behalf was not part of the basis for the disciplinary action taken. When we asked the manager's supervisor about the incident, he indicated that he had done nothing more than discuss the matter with the manager.

**THE MANAGER'S ABUSE LATER TURNED PHYSICAL**

According to state guidelines for workplace security, employees with a history of assault or who have exhibited belligerent, intimidating, or threatening behavior to others present a risk of violence in the workplace. In addition, the guidelines suggest that employers establish a clear anti-violence management policy; apply the policy consistently and fairly to all employees, including supervisors and managers; and provide appropriate supervisory and employee training in an effort to prevent workplace violence. As we believe the previous examples demonstrate, the CCC did little to ensure that the manager, and therefore the CCC itself, followed these guidelines. Because the CCC did so little to hold the manager accountable or to provide consequences for his actions, and in spite of his attendance

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***The CCC did little to hold the manager accountable for his actions.***

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at Violence in the Workplace training on June 19, 1999, the manager not only continued to mistreat and intimidate employees verbally but also resorted to physical assault.

### **The CCC Received Complaints About the Manager**

*The CCC responded to complaints that the manager physically abused an employee by having an external investigator do an investigation.*

Between April and June 1999, the CCC received at least one phone call and three letters alleging, among other things, that the manager had manhandled and pushed an individual and had yelled at others. The CCC responded to the first three complaints by notifying its human resources division and, in two of those cases, the divisional office that oversaw the manager's activities. All three complaints were from anonymous sources and did not contain much specific information. On May 10, 1999, the CCC received a more specific complaint that not only reiterated the allegation that the manager had physically and verbally abused employees but also provided specific dates and names of those involved as well as potential witnesses. This provided the CCC with what it believed was sufficient information to proceed with an investigation. Because of the sensitive nature of the complaints, the CCC decided to use an external investigator to review the allegations.

### **Employee C**

The investigation essentially focused on allegations that the manager and other employees under his direction continually harassed one employee until she resigned and that the manager had used profane language and pushed another employee, employee C. Although the investigator was not able to substantiate the harassment charges, he did substantiate the allegation that the manager had used profane language and pushed an employee.

During an interview with the investigator on June 28, 1999, the manager admitted that he had pushed employee C and said he may have used profanity during a confrontation with the employee on April 13, 1999. The manager told the investigator that the incident started after someone called for him because there was a problem between employee C and another employee. When explaining how he handled the matter, the manager said that a lot of what he did was instinctive and that he took pride in being able to read young people. The manager said he believed employee C needed a "good jolting." After the altercation, the manager said he and employee C had a real "heart to heart" talk and

that the jolt had brought a lot out of him as intended. We believe the manager's statements demonstrate his willingness to use verbal and even physical intimidation as a strategy for resolving problems with employees.

#### ***Employee D***

In June 1999, around the time the external investigation into the incident with employee C began, the manager's supervisor decided to have CCC conduct its own internal investigation in response to additional allegations involving the manager. One allegation involved an employee, employee D, who alleged that the manager had threatened and intimidated her and that his actions constituted harassment. The employee also complained that the manager had directed her to accomplish certain tasks but failed to provide clear instructions. The CCC's internal investigation substantiated these allegations, concluding that the manager not only treated employee D discourteously on several occasions, but also failed to provide her with a clear understanding of what he expected of her.

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***An internal CCC investigation concluded that the manager not only treated an employee discourteously, but also failed to provide her with a clear understanding of what he expected of her.***

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#### ***Employee E***

Before the CCC completed its review of the allegations raised by employee D, a representative of yet another employee, employee E, filed a grievance against the manager on September 8, 1999. According to the grievance, the manager called employee E into his office on August 25, 1999, to discuss an issue related to a vehicle inspection sheet. As the employee attempted to explain, the manager began yelling at him in an intimidating fashion and accused him of lying. At one point, the manager stood up over the employee and pointed his finger at the employee while continuing to yell at him. The manager said he did not raise his voice and denied having told employee E that he was lying. However, another employee, whom the manager had called to his office as the discussion between he and employee E ensued, described their conversation as heated and loud. She told the CCC that she believed the manager treated employee E in a discourteous and disrespectful manner.

### The CCC Took Action Against the Manager

On October 3, 1999, the CCC completed its internal investigation, and on November 18, 1999, it notified the manager of its findings as well as the findings from the external investigation. The CCC concluded that on several occasions the manager's behavior toward employees was inappropriate and unprofessional. Specifically, the CCC found that the manager:

- Shoved employee C and used profanity toward him.
- Provided vague and unclear instructions to employee D.
- Treated employee E discourteously when he yelled at him in his office.
- On at least one occasion had been known to yell at employees and slam his fist on the table.

The CCC told the manager that he was expected to intervene when an employee became irate, rude, or outrageous in his or her behavior, not to participate in such behavior himself. The CCC then imposed the equivalent of a 10-day salary suspension, ordered the manager to participate in anger management and conflict resolution classes, and referred the manager to an employee assistance program.

### *Employee F*

Despite the actions just described, the abuse persisted. The CCC determined that the manager had engaged in yet another physical altercation with an employee, employee F, on December 8, 1999. Both individuals sustained injuries as a result of their fight. However, the CCC could not determine who started the altercation. Both the manager and employee F claimed the other had started it, but both lacked witnesses to support their statements. The CCC concluded that even if employee F had started the altercation, the manager failed to take sufficient steps to defuse the situation properly. He also admitted striking the employee. As a result, the CCC took steps to fire the manager in January 2000, but the manager retired from state service on December 30, 1999, before his termination became effective.

The CCC terminated employee F in December 1999 for his involvement in the altercation. On January 3, 2000, employee F appealed, but the manager's supervisor upheld the termination.

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*Despite having been previously disciplined for abusive behavior, the manager engaged in yet another physical altercation with an employee.*

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In explaining his decision, the manager's supervisor wrote that there were no witnesses available to support employee F's claim that the manager had initiated the altercation. He also referred to the CCC's policies regarding violence in the workplace and stated that acts of violence are not tolerated.

### **THE MANAGER CHARGED A PERSONAL EXPENSE TO THE STATE**

In violation of state law and CCC policy, the manager filed an improper claim and succeeded in getting the CCC to pay for \$515 in repairs to a laptop computer that he owned. California law prohibits state officers and employees from using state resources such as state funds for private gain or advantage. State law also provides that every person who, with intent to defraud, presents any false or fraudulent claim for allowance or payment to an officer authorized to make the allowance or payment can be punished by imprisonment, by fine, or both. In addition, CCC policy prohibits employees from using state purchasing procedures to obtain services or property for personal use. The manual also requires the approval of the information systems manager for purchases exceeding \$499 that pertain to computer hardware.

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*The State paid \$515 for repairs to the manager's personal laptop computer.*

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In October 1999, the manager approved his own \$515 request for funds to pay for a computer repair. Because the request related to a repair of computer hardware, it also was approved by a member of the CCC information systems staff, who told us he approved the request after the manager told him the funds were needed to repair one of the CCC's computers. The CCC disbursed a check for that amount payable to the vendor.

The vendor signed and returned a disbursement voucher to the CCC, indicating that it had received the check. That was the extent of the supporting documentation the CCC required from the vendor. We obtained additional documentation from the vendor that indicated the repair work actually was done on the manager's own laptop computer, not a CCC computer, which the manager later confirmed. The manager told us he did not remember ever being questioned about the request or telling anyone that the funds would be used to fix a CCC computer. Further, he said he initiated the request because he used his home laptop computer to conduct state business when working at home or on travel assignments. However, the CCC had issued the manager a laptop computer before his request

for funds. He returned the laptop after the CCC issued him a newer desktop computer for his office. The manager explained that he no longer needed the state-issued laptop after receiving the new desktop computer. Consequently, we question why he felt he needed to use his own laptop to conduct state business. Likewise, we do not believe it is reasonable for the State to pay for the repair to the manager's personal laptop computer.

### **A SUPERVISOR RECEIVED CREDIT FOR QUESTIONABLE AND UNALLOWABLE OVERTIME**

*The claims for overtime lacked sufficient supporting documentation, contained erroneous information, and included hours for which the supervisor was not entitled to receive overtime.*

A supervisor, supervisor 1, revised monthly attendance reports and overtime request forms and sent them to the manager for his approval as support for her overtime claims, even though the manager had retired and no longer was authorized to approve such claims. In addition, the information she provided lacked sufficient supporting documentation, contained erroneous or incomplete information, or included claims for overtime that the supervisor was not entitled to receive. After she obtained the manager's approval, she submitted her revised attendance reports to CCC's headquarters for final review and approval. The CCC then credited the supervisor for approximately 187 hours of compensatory time off, or \$5,353, based on her current rate of pay.

### **The Supervisor Sought and Obtained Unauthorized Approval of Overtime**

Supervisor 1 told us that when she began her employment with the CCC under the manager, he told her she was not entitled to claim any overtime. As a result, she did not think she could claim any overtime worked. However, the manager's successor subsequently informed her that she could claim overtime. She told us that she then spoke with the manager's former supervisor about the matter and that he told her she could claim any overtime she previously had worked as long as she received the manager's approval. The manager's former supervisor, however, told us that at no time did he discuss with supervisor 1 any overtime claims for periods before December 1999 (the date the manager retired), nor did he review such claims or tell her she could submit them if she obtained the manager's approval. He added that if supervisor 1 believed she was entitled to additional overtime, he would have expected her to file a grievance and discuss the matter with himself or with the manager's successor.

***The manager approved revised overtime attendance reports after he had retired and was not authorized to provide such approval.***

When we spoke with the manager's successor, he told us that he recalled having a discussion with supervisor 1 regarding overtime in which she told him that his predecessor, the manager, had told her she was not entitled to overtime. He then informed her that her job classification did allow her to claim overtime. According to the manager's successor, supervisor 1 then asked him what might be done in the event that she had worked overtime previously, and he responded that he could not provide her with a definitive answer other than to say that it probably would require further review by the CCC's personnel office. He says that he never heard anything more from her about it. Nevertheless, during April, May, and June 2000, supervisor 1 revised 14 different attendance reports to reflect overtime she supposedly worked from July 1998 through November 1999. Supervisor 1 then submitted these reports to the manager for his approval. This occurred four to six months after he had retired from state service, so he no longer was authorized to provide such approval.

According to the supervisor at CCC's headquarters who is responsible for ensuring that CCC attendance reports contain the appropriate information, whom we will refer to as supervisor 2, supervisor 1 contacted one of supervisor 2's staff and requested instructions for submitting corrected attendance reports for overtime worked in prior periods. The staff member told supervisor 1 that she would need to submit corrected attendance reports with the signature of the supervisor she had worked for at the time—that is, the manager. The staff member did not realize that the manager no longer worked for the CCC when he signed supervisor 1's revised attendance reports. As a result, once the staff member received the revised attendance reports with the manager's signature, she approved supervisor 1's overtime requests, even though they lacked the appropriate authorization. According to supervisor 2, had she and her staff known that the manager who signed the corrected attendance reports no longer worked for the CCC, they would have requested a second signature from the current or acting manager, who, in turn, would have requested documentation for the overtime in question.

### The Supervisor Provided Erroneous or Incomplete Information for Her Claims

The documents the supervisor provided to support her claims contained erroneous or incomplete information. For instance, on her revised June 1999 attendance report, supervisor 1 indicated that she worked six hours of overtime on June 6, but elsewhere on the same attendance report she indicated that the overtime occurred on June 16.<sup>4</sup> Neither date corresponds with her overtime request (a separate document), which shows the overtime occurring on June 19. Similarly, on her revised October 1999 attendance report and overtime request, she claimed to have worked eight hours of overtime on October 10, but the same attendance report indicated that she had worked the overtime on October 8, and she even noted the wrong year in her explanation.

In addition, we found several instances in which supervisor 1 claimed overtime that she was not entitled to receive. Specifically, four revised attendance reports show the supervisor claimed to have worked 22 hours of overtime related to travel time she incurred when attending various overnight training sessions. However, as is consistent with the federal law, CCC policy stipulates that employees who travel overnight are not compensated for travel outside of normal work hours unless they are engaged in work while traveling. When we spoke with her about these training trips, supervisor 1 told us she did not conduct any work while traveling. In addition, she told us she thought she was entitled to be compensated for business travel time outside her normal work hours. Based on her current rate of pay, the value of the unallowable overtime is approximately \$930.

Supervisor 1 told us she calculated her overtime by comparing her original attendance reports to her travel expense claims, the attendance reports of other CCC employees, or, in some cases, notes in her day planner. When we asked the supervisor to provide written support for the overtime she had claimed, she was able to do so for only about half of the 14 claims and later became unwilling to discuss the issue further. As we mentioned previously, supervisor 1 refused to sign under penalty of perjury a written statement of our understanding of the discussions we had with her. Based on what she did provide, we found that

***Only 13.5 of the 187 hours of overtime the supervisor received credit for were allowable and sufficiently supported with documentation.***

<sup>4</sup> Supervisor 2 wrote conflicting dates on the calendar and narrative sections of her attendance report.

only 13.5 of the 187 hours of overtime she received credit for in the form of compensatory time off were allowable and included documentation that sufficiently supported her overtime claims.

### **AGENCY RESPONSE**

The CCC reported that its action against the manager led to his retirement and effectively corrected the instances involving his mistreatment and intimidation of employees. In order to improve its violence in the workplace prevention efforts, CCC will revise its violence in the workplace protection plan; provide additional violence prevention training to all employees; and conduct supervisory training on issues concerning employee complaints, appropriate use of counseling and corrective measures, and progressive discipline processes. The CCC also reported it will attempt to recoup any funds due the State concerning the personal computer repairs the manager improperly charged to the State and will assess its internal controls and make the appropriate revisions. The CCC is investigating the matter involving the supervisor, supervisor 1 in this report, who received credit for overtime we identified as questionable or in some cases, unallowable. The CCC said it would require the supervisor to provide supporting documentation, identify any overtime that is not sufficiently documented or allowed, and recoup any funds due the State. The CCC also will assess its internal controls related to the authorization of overtime claims. ■

## CHAPTER 2

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### ***California Department of Forestry and Fire Protection: Economically Wasteful Decisions***

#### **ALLEGATION I2000-709**

Officials at the California Department of Forestry and Fire Protection (CDF) made economically wasteful decisions when they allowed an executive to obtain a pilot's license at CDF's expense and to fly CDF aircraft.

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

We investigated and substantiated the allegation. The executive received at least 38 hours of ground and flight instruction plus 14 training hours in CDF aircraft. Including the \$1,500 cost of instruction and the estimated \$7,651 cost of aircraft usage, the executive's training cost CDF \$9,151. In addition, the executive used various CDF aircraft for administrative and other travel totaling more than 343 flight hours. Based on the billing rate CDF charges other entities for the use of its aircraft, the estimated cost of these nontraining flight hours is \$78,116.

To investigate the allegation, we obtained the flight logs related to the CDF aircraft and invoices paid by CDF for the executive's flight training. We also reviewed the executive's travel expense claims and information pertaining to CDF's acquisition of a new aircraft. In addition, we interviewed CDF employees, including the executive.

#### **BACKGROUND**

The CDF's mission is to protect the people of California from fires, respond to emergencies, and protect and enhance forest, range, and watershed values, thus providing social, economic, and environmental benefits to citizens. CDF's firefighters, fire engines, and aircraft respond to an average of 6,400 wildland fires each year. Within CDF is the Aviation Management Unit (AMU). The AMU maintains and operates the aircraft used in CDF's firefighting efforts. Many of these aircraft, including aircraft used for administrative, non-fire-related purposes, are

located in Sacramento, the executive's headquarters. Before his retirement in December 2001, the executive had indirect oversight of the AMU.

## **CDF MADE CERTAIN ECONOMICALLY WASTEFUL DECISIONS**

CDF paid for the executive's commercial pilot's license training and allowed him to use CDF aircraft for his lessons and other training flights. The total estimated cost for this training, including ground and flight instruction and additional flight training hours in CDF aircraft, is \$9,151. In addition, shortly before the executive retired, CDF sent the executive to receive training to fly a new plane it had acquired; the cost of that training was \$11,100. The executive used CDF aircraft to fly throughout the State to attend meetings and perform other administrative work; we believe many of these trips may not have been cost-efficient or necessary and, therefore, not in the State's best interest.

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*Shortly before the executive retired, CDF paid \$11,100 to train him to fly a newly purchased aircraft.*

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State law declares that waste and inefficiency in state government undermine the confidence of Californians in government and reduces the state government's ability to address vital public needs adequately.<sup>5</sup> In addition, state law declares that all levels of management of state agencies must be involved in assessing and strengthening the systems of internal accounting and administrative control to minimize fraud, errors, abuse, and waste of government funds.

### **CDF Paid for the Executive's Flight Instruction and Supplied Aircraft for the Lessons**

According to the executive, in the late 1990s he had started working to obtain his commercial pilot's license, using his own time and money. The executive said his flight instructor mentioned that CDF had paid him to train another pilot who was a retired CDF employee. When the executive asked representatives from the AMU why CDF had paid to train the retired employee, who apparently was working for CDF as a retired annuitant, he said they told him they were short of pilots to fly CDF's administrative aircraft, and they then suggested that CDF also could pay for the executive to complete his training.

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

Between April 1999 and April 2000, the executive received at least 38 hours of ground and flight instruction that were paid for by CDF. Of these 38 hours, 22 related to flight instruction and 16 were for ground instruction. The total instruction cost was \$1,500. In addition, there were other costs to CDF because it allowed the executive to use CDF aircraft for his training. CDF's current reimbursement rate for the use of one of its aircraft is \$190 or \$250 per flight hour, depending on the type of aircraft, and not including pilot time.<sup>6</sup> Based on the applicable rate, the estimated value of the executive's use of CDF aircraft for training purposes was approximately \$4,439, bringing the total estimated value of the executive's ground and flight instruction training to \$5,939.

From April 1999 through May 2001, the executive used CDF aircraft for an additional 14 hours of training that were essentially additional practice time for the executive. Again, using CDF's reimbursement rates and applying them to the noninstruction flight training hours flown by the executive, the value of his 14 hours of practice time is approximately \$3,212.

In June 2001, CDF entered into a \$5 million agreement to acquire a new plane that could be used to carry infrared equipment to detect fires through heavy smoke and pinpoint the exact location and size of the fires. CDF wanted to have three flight crews of two pilots each that were trained to fly the new plane. Training for two pilots was included in the acquisition price, but the cost to train additional pilots was \$11,100 each. The executive was one of the five pilots so far to receive the training, held in Kansas, and he did so in July 2001. The executive and another of the five pilots have since retired.<sup>7</sup>

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***Had the executive informed CDF that his retirement was imminent, CDF could have considered other options.***

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The executive retired from the State effective December 1, 2001, but he told us he had been thinking about retiring for about a year and a half. Given that fact, we question the executive's decision to accept this very expensive training, which he completed less than five months before his retirement. CDF is now left with only three employees trained to fly the new plane,

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<sup>6</sup> According to a CDF official, the rates prior to June 2000 were approximately \$135 or \$215 per flight hour.

<sup>7</sup> We did not interview the other pilot who retired. CDF told us that the other pilot now works for a CDF contractor and is still available to fly for CDF. He retired from CDF in early 2002.

although the executive told us that the AMU had asked him if he would be willing to come back as needed to fly the plane, and that he had said yes. Nevertheless, if the executive had informed CDF that his retirement was imminent, CDF could have considered other options.

### **THE EXECUTIVE MADE NUMEROUS FLIGHTS IN CDF AIRCRAFT**

In addition to the training flights discussed previously, between May 1999 and September 2001 the executive used CDF aircraft for flights on at least 111 other days, for a total of more than 343 hours of flight time at a cost of \$78,116. In addition to the sections discussed previously addressing waste in state government, according to state regulations, reimbursement for travel expenses will be made only for the method of transportation that is in the State's best interest, considering both direct expense as well as the officer's or employee's time. Although in this case the executive was not reimbursed for the cost of the aircraft usage—CDF pays those costs directly—we believe the guiding principle of using the method of transportation that is in the State's best interest is relevant and applicable.

When we spoke with the executive, he told us he did not believe he had done anything wrong. He said he believed that his usage of CDF aircraft had always been in the State's best interest because it was more time-efficient. He also pointed out that some places he needed to travel to are somewhat remote and are not served by any commercial flights, and that driving instead of flying would have wasted time. Although some of the executive's trips may well have been time- and cost-effective, we believe many were not.

Table 2 summarizes the different types of flights flown by the executive, including training flights, noted on the CDF flight logs.

### **Some Uses of CDF Aircraft Were Questionable**

On several occasions, the executive used CDF aircraft to pick up and drop off passengers—a sort of shuttle service for CDF employees and others. The executive also used CDF aircraft to fly to locations where driving or taking a commercial flight may have been the mode of transportation that was most cost effective and therefore in the State's best interest.

**TABLE 2**

**Types of Flights Flown by the Executive**

Mission Type*	Hours
<b>Administrative:</b> CDF resource management flights, department support flights that are not fire-related, Resources Agency support flights.	315.8
<b>Training:</b> Pilot initial check, pilot recurrency training.	36.0
<b>Fire:</b> Wildfires, fire support missions such as engine access survey, communications during fire emergencies.	16.5
<b>Non-fire:</b> Other emergency flights such as support of floods, earthquake, etc.	7.0
<b>Unknown</b>	4.5
<b>Total</b>	<b>379.8</b>

\*The mission type definitions are not documented; we obtained these definitions from an executive in the Aviation Management Unit.

*The executive flew to Lake Tahoe, approximately a 2-hour drive from Sacramento, twice in one day to transport administrators to meetings.*

We found three instances in which the executive used CDF aircraft to fly to the Lake Tahoe area, approximately a 2-hour drive from Sacramento. Specifically, the executive told us that on May 21, 1999, he was a guest speaker at a conference in that area and that he and another CDF employee used the aircraft “due to time constraints on other meetings.” On April 17, 2001, the executive flew to the area twice. According to the executive, he flew two other CDF administrators to the area to speak at a meeting. The administrators were transported by department vehicle to the meeting site, but one of them needed to be back in Sacramento before the other administrator’s speech, so the executive made two trips back and forth. Using the CDF’s cost reimbursement rates, the cost of the 3.2 total hours of flight time is \$800. Further, we believe that transporting administrators to meetings is an inefficient use of an executive’s time.

State policy outlines criteria for selecting a mode of transportation and says to select the least costly method of transportation, considering direct expense and employee time away from the office. The policy also discusses the use of agency-owned or agency-leased aircraft and says, “Do not use aircraft for executive travel if the destination is within two hours’ driving time or a regular commercial airline serves the location.” Commercial transportation is to be used whenever its total cost is less than that of

agency-provided aircraft, and it requires that individuals consider and document various criteria when deciding the least costly method of travel, including the cost of personnel hours lost in travel, total commercial travel costs, added per diem costs, accessibility and/or urgency of the situation, and commercial airline service and schedules. We found no evidence that the executive nor anyone else at CDF performed these analyses when deciding to use CDF aircraft for his travel.

In another example of a flight that appears to be more for convenience than business necessity, we also asked the executive about a December 1999 flight from Monterey. He said that he had been stuck in Monterey and that someone from the AMU had flown to Monterey to pick him up. He then flew the plane back to Sacramento. He told us he needed to return to Sacramento early for a meeting. The executive provided no further information about how he got to Monterey in the first place or whether he had considered other modes of transportation, such as a commercial flight or rental car.

In addition, we noted at least six instances in which the executive deviated, sometimes significantly, from a direct flight plan in order to pick up and drop off passengers. For example, in three instances the executive flew from Sacramento to Santa Rosa to pick up a passenger, flew to Southern California, and then dropped off the passenger in Santa Rosa before returning to Sacramento. One of the trips was to attend the dedication of a new fire station, and another was to attend a CDF employee's retirement function; the purpose of the third trip was not noted. In another instance, the executive stopped in Fresno to pick up another CDF employee before proceeding to Monterey to tour the ranger unit. He returned the employee to Fresno before he flew back to Sacramento. Further, the executive flew a state official to Redding but stopped in Santa Rosa before and after going to Redding to pick up other CDF employees. In the sixth instance, the executive flew from Sacramento to Arcata to pick up a CDF employee and flew to Porterville; they then both returned to Sacramento. The map in Figure 1 indicates the location of the towns and cities mentioned in the six instances above and provides a sense of how far the executive deviated from an otherwise direct flight in order to transport other CDF employees. We found no evidence or other indications that any of the individuals had considered using alternate modes of transportation or had determined whether there was a business need for making these trips.

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***We found no evidence in the documents we reviewed that any of the CDF employees considered using alternative modes of transportation or had determined whether there was a business need for making certain trips.***

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FIGURE 1

Map of Selected Administrative Flight Destinations



We also asked the executive about a trip in which he flew from his headquarters in Sacramento to the Santa Rosa area to pick up a passenger before proceeding to Redding. The executive told us the passenger's time is very valuable and that the time it would take for him to drive from Santa Rosa to Redding and back is excessive. He explained that CDF is an emergency department, and oftentimes they do not have the flexibility to waste their time on the highway. We agree that there are emergency, and even nonemergency, situations in which the use of aircraft is in the State's best interest; however, without appropriate documentation of the circumstances surrounding the decision to use this more costly mode of transportation, CDF leaves itself open to criticism that the use of the aircraft is not in the State's best interest.

### **THE EXECUTIVE RENTED PRIVATE AIRCRAFT FOR NONEMERGENCY FLIGHTS**

In addition to using CDF aircraft for numerous administrative flights, the executive rented aircraft from a private company at least five times between April 1999 and February 2001, costing the CDF approximately \$1,535. According to CDF policy, emergency hiring of aircraft is authorized, as necessary, to meet emergency fire situations. The policy goes on to say that this privilege must be administered judiciously to avoid unnecessary expenditure of public funds.

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*Contrary to CDF policy for emergency hiring of aircraft, it appears that on at least four occasions it rented aircraft for administrative purposes, not for emergency fire situations.*

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Contrary to this policy, it appears that at least four of these five trips were for administrative purposes, not emergency fire situations. We were unable to determine the purpose or destination of the fifth trip. As we mentioned previously, according to state policy, agencies should not use aircraft for executive travel if the destination is within 2 hours' driving time or a regular commercial airline serves the location. One of these four trips was to Yreka, a relatively remote area several hours' drive from Sacramento. However, the other three were to Truckee, San Jose, and Monterey. Each of these locations is within approximately 2 to 3.5 hours' driving time of Sacramento, where the executive worked. Although driving time from Sacramento to San Jose and Monterey exceeds the 2-hour guideline, as we mentioned previously, both direct and indirect expenses should be considered and documented when determining the method of transportation that is in the State's best interest.

The executive told us that using the aircraft is the most time-efficient method of travel. However, we question the time- and cost-efficiency in these situations. In addition to the flight time required and the cost of using the aircraft, other factors should be weighed in determining the time- and cost-efficiency. These factors include the cost of the executive's travel time, and possibly the travel time of other passengers, to and from the airport at both the departure and arrival points, and the need to have ground transportation once the executive reached his destination. Because the executive did not document the factors he considered to determine whether using the CDF aircraft was in the State's best interest, we were unable to evaluate his decisions fully.

Finally, according to state regulations, where it is authorized and necessary to hire special conveyances, a full explanation, stating the facts constituting the necessity, shall accompany the expense claim. We found no such explanations accompanying the expense claims we reviewed.

### **THE EXECUTIVE KEPT INCOMPLETE AND INACCURATE RECORDS**

The information presented in the preceding sections is based on the CDF flight logs, but the executive also maintained his own logbook. We should point out that the executive admitted to us that, "In regards to the dates, I sometimes would not make entries in my logbook the same day as the flight. Also, sometimes it gets so busy, I'm not accurate on the dates in my logbook or the department's flight log." The executive's records—that is, aircraft flight logs, his logbook, and his travel expense claims—indicated conflicting flight dates at least five times.

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***Because the executive did not keep complete and accurate information about his flights, it is difficult to determine whether much of his use of the aircraft was appropriate.***

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We asked the executive about several trips for which the information in the CDF flight logs was unclear or incomplete. On at least two occasions, the executive said he did not have a corresponding entry or trip in his logbook.

Although the executive asserted that he transported only authorized personnel on his flights, we discovered at least 21 instances in which the executive failed to note the fact that there were passengers on board and/or to give the identity of the passengers; as a result, we could not verify the accuracy of his assertion. These numerous examples of

inaccurate and incomplete information make it more difficult to determine whether much of the executive's use of the aircraft was appropriate.

### **AGENCY RESPONSE**

CDF said it would take steps to improve its procedures for determining and documenting the relative merits of using aircraft or automobiles, ensure that an explanation is provided when aircraft rental is necessary, and provide training to CDF executives and the CDF AMU on the need for and the use of procedures to document transportation decisions. However, CDF does not believe that the examples we have outlined regarding the executive's use of CDF aircraft are examples of wasteful decisions and stressed that it sees air travel as a way to increase efficiency and increase the work accomplished by its executives. Further, it believes that air transportation enables executives to do more public outreach and have more face-to-face meetings, both of which are important to assuring the full readiness of field locations to fulfill their statewide fire protection and public safety and valuable to the CDF's mission. ■

# CHAPTER 3

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## ***Veterans Home of California, Yountville: Improper Billings to Medicare***

### **ALLEGATION I2000-876**

The information system used by the hospital at the Veterans Home of California, Yountville (home), for processing charges for services provided to the home's residents contains charges attributed to one doctor for services that the doctor could not have provided.

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

We investigated and substantiated the allegation. The information system the home uses to bill insurers showed that the doctor saw patients 2,614 times from July 1, 1999, through July 17, 2001, but we concluded that the doctor did not see a patient in question for 1,792 of those visits. As of January 22, 2002, the home had billed Medicare \$131,000 for 1,488 of these 2,614 patient visits. However, \$55,000 was for 887 visits that we concluded the doctor did not make. We did not determine whether the home has billed other insurers for any such visits or if it will do so in the future.

To investigate the allegation, we reviewed policies and procedures related to the information system the home uses to bill insurers. In addition, we reviewed the home's record of claims submitted to Medicare for reimbursement of charges related to the doctor's patient visits from July 1, 1999, through July 17, 2001. To assess the accuracy of these claims and of the home's system for billing insurers, we compared the records of services provided by the doctor contained in the information system the home uses to bill insurers to the doctor's clinic schedules from July 1, 1999, through July 17, 2001.<sup>8</sup> To determine which source of information was more accurate, we also reviewed the medical records for

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<sup>8</sup> The home was unable to provide clinic schedules for the doctor for 21 days during the period.

three of the doctor's patients. We did not review the home's records of services provided by other doctors or the home's billings for those services.

In addition, we interviewed the former scheduling supervisor for the home's ambulatory care clinic, the former chief of patient scheduling, the current chief of medical records, the current chief medical officer, and the doctor. We relied on information provided by these people for our understanding of how the scheduling section processes some records and for explanations of how the information system could contain records of more patient visits than were recorded on the doctor's clinic schedule. We gave each of them a written summary of our understanding of their statements and asked them to make any changes or to rewrite the statements if necessary. To ensure their accuracy, we also asked them to sign the summaries under penalty of perjury. However, the former ambulatory care clinic scheduling supervisor, the former chief of patient scheduling, and the doctor refused to sign our summaries of their statements. Although we report our understanding of what they told us, we have less confidence in our understanding of their accounts due to their unwillingness to confirm the summaries and to certify them under penalty of perjury.

We also discussed the information system with members of our staff who recently completed an audit of the same information system and reported that it has many weaknesses.<sup>9</sup> However, that audit did not address the issue of excess charges in the system.

## BACKGROUND

The California Department of Veterans Affairs (DVA) runs a veterans' home in Yountville. Among other services, the home provides medical services to its residents, including an ambulatory care clinic (clinic). According to the home's medical staff, every patient treated by a doctor in the clinic should be reflected on the doctor's daily clinic schedule. The clinic schedule is printed daily, but patients may be added manually if they schedule appointments after the schedule is printed or if they arrive at the clinic without an appointment.

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<sup>9</sup> We issued report number 2001-113, titled *Department of Veterans Affairs: Weak Management and Poor Internal Controls Have Prevented the Department From Establishing an Effective Cash Collection System*, in December 2001.

Furthermore, there should be a charge slip for every patient treated by a doctor. The charge slips identify the patient, the doctor, the clinic, and the services the doctor provided. After a series of reviews to ensure that each charge slip's information is accurate, they are forwarded to the data entry personnel where the information is entered into the system used to obtain reimbursement from Medicare, the California Medical Assistance Program (Medi-Cal), and other insurance providers for some of the costs of treating these patients.

### **THE HOME PROCESSED CHARGES FOR SERVICES THE DOCTOR COULD NOT HAVE PROVIDED**

The home began using data in its medical information system to bill Medicare, Medi-Cal, and other insurers for patient services beginning on July 1, 1999. Our review of records in the home's medical information system showed that the doctor saw patients in the clinic on 2,614 occasions from July 1, 1999, through July 17, 2001. During the same period, her clinic schedules reveal that she treated patients only 748 times. There were 74 visits in the system on 20 days for which the home was unable to provide a clinic schedule for the doctor. Because we cannot be certain that she did not see patients on those days, we do not consider these 74 visits to be in error. Nevertheless, of the 2,614 patient visits listed in the system, the doctor appears not to have seen the patient in 1,792 (69 percent) instances. Some of these excess visits in the system were for patients who were not on the doctor's clinic schedule for that day. In 400 other cases, the doctor was not working on the day in question, including weekends, holidays, and days that she was on vacation or sick leave. Furthermore, 148 incorrectly recorded visits were on 50 days on which the doctor worked from home. As further evidence of the information system's lack of credibility, it indicated that the doctor saw patients on every day of 35 consecutive days spanning August and September 1999, 34 consecutive days spanning June and July 2000, and 26 consecutive days spanning May and June 2001. In fact, the billing system indicated that the doctor saw patients on all but three of the 70 days from July 15 through September 22, 1999.

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*The home billed insurers for the physician's services for 400 cases on days she did not work.*

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Because there was such a large discrepancy between the two sources of information, we wanted further confidence in the information presented on the clinic schedules. We took a close look at the recorded visits for three specific patients. Specifically,

we compared patient visit information from the doctor's clinic schedules and the billing system to these patients' medical records to see whether the doctor had treated them on these dates. During a period of 64 days for one of the patients, 163 days for another, and 182 days for the third, we found that the information system showed the doctor saw these three patients a total of 216 times. The clinic schedules for the same periods showed that the doctor treated the three patients only 9 times. The patients' medical records showed that the doctor treated them only 12 times. Although the medical records showed slightly more visits than did the clinic schedules, it is clear that the clinic schedules were more reliable than the system used to bill insurers. The billing system showed that the doctor treated the patients 204 more times than she did.

Although none of them could say with certainty how these excess visits had ended up in the billing system, medical and administrative staff provided some possible explanations, including the following:

- Some visits attributed to the doctor could be for services that nurses provided to unscheduled patients. Staff explained that the information system would not accept the nurses' names for these costs, and so, based on their erroneous understanding of a consultant's advice, scheduling staff used doctors' names. One staff member explained further that the home would not have sought reimbursement for these costs but recorded them only so the system could track them.
- Charge slips may have been created showing the patients' usual attending physician, but the patients actually were seen by the medical officer of the day. If the scheduling section staff failed to change the name to the name of the medical officer of the day, the billing system would reflect incorrectly the name of the usual attending physician.
- The excess recorded visits might include errors in the information system, or staff may have entered everything under the doctor's name for the sake of convenience.
- Incorrect dates may have been entered on charge slips.

Although staff told us that the home would not have sought reimbursement for charges in those cases in which it used doctors' names to record charges in the system when nurses actually provided the services, we are not confident that the system can isolate these types of charges. In fact, we saw

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*Of the \$131,000 the home billed Medicare between July 1999 and July 2001, \$55,000 was billed incorrectly.*

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nothing that indicated it could do so. For example, the home billed Medicare \$131,000 for 1,488 patient visits presumably made by the doctor from July 1, 1999, through July 17, 2001. However, when we compared the claimed visits to the doctor's clinic schedules, we found that she did not see patients on 887 (60 percent) of the 1,488 occasions. Thus, of those visits that actually were billed to Medicare, it appears that the home billed \$55,000 (42 percent) of the \$131,000 incorrectly. Our recent audit reviewed the home's information system to determine the validity of data in various management reports. Although that review focused on the management of cash flow and did not consider the issue of excess charges, it found that the department lacks adequate knowledge of the data in its system and is, therefore, unaware of the number or amounts of charges it has billed.

State law requires each state agency to establish and maintain an adequate system of internal accounting and administrative controls to provide public accountability and to minimize fraud, errors, abuse, and waste of government funds.<sup>10</sup> In addition, it states that the controls should be evaluated on an ongoing basis and identified weaknesses promptly corrected.

We found no evidence that employees of the home knowingly and intentionally entered incorrect data in the system to fraudulently obtain reimbursements from Medicare or other insurers. In fact, the services it lists may have been provided by other doctors or by nurses. However, the home does not have accurate records to support the claims it makes to Medicare or other insurers.

## AGENCY RESPONSE

The DVA reports that it is actively working to upgrade its billing system and is working with its billing agent to resolve any charges billed and reimbursed incorrectly. Further, the DVA states that it will ensure it obtains the signature of the attending physician/technician to maintain proper practices and Medicare compliance. ■

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<sup>10</sup> For a description of the state law pertaining to internal controls, see Appendix B.

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# CHAPTER 4

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## ***Governor's Office of Emergency Services: Excessive Wages, Overtime, and Travel Costs***

### **ALLEGATION I2000-607**

**W**e and the California Highway Patrol (CHP) previously investigated and substantiated allegations involving employees of the fire and rescue branch of the Governor's Office of Emergency Services (OES). In April 2000 we reported, among other things, that poor supervision and inadequate administrative controls had enabled employees to commit various improprieties, including claiming excessive overtime and travel costs.<sup>11</sup> Subsequently, we received information that one employee continued to claim excessive amounts of overtime.

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

We investigated and substantiated this and other improprieties. During fiscal year 1999–2000, employee A received \$100,207 in wages, of which \$35,743, or approximately 36 percent, was for overtime, and in fiscal year 2000–01 he received \$107,137 in wages, of which \$40,523, or approximately 38 percent, was for overtime pay. Employee A incurred this overtime, in part, because OES permitted him to continue to claim his commute time even after it became aware of this issue in 1998.<sup>12</sup> Although we did not calculate the total commute hours or travel costs for which employee A was compensated, they were significant, considering that he lived at least two hours from his assigned work area and that he had been claiming his commute since he began his employment in May 1996. The current manager of the fire and rescue branch estimated that as much as 25 percent of employee A's overtime was due to his commute.

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<sup>11</sup> When we notified the director of OES that we would be investigating the allegations, he informed us the CHP had begun a similar investigation at OES's request. To avoid duplicating investigative efforts, we met and coordinated with the CHP. We reported these improprieties in investigative report I2000-1.

<sup>12</sup> The CHP first reported this issue to OES in November 1998.

In addition, we obtained evidence that, rather than ensuring that employee A ceased to claim his commute, OES may never have intended to stop such claims. Not only did OES enter into a questionable agreement with employee A's bargaining unit—an agreement that the current manager of the fire and rescue branch believes permitted the employee to continue to claim his commute—but it also did not provide the Department of Personnel Administration (DPA) an opportunity to review and approve the agreement as required. When we asked the appropriate DPA official to review the agreement, he questioned its appropriateness and said he considered it invalid. OES eventually resolved this issue by reassigning employee A to a work area in which he lives, but it did not do so until February 2002. Furthermore, OES failed to adequately monitor and control overtime and related costs because it did not always ensure that employee A and other employees of the fire and rescue branch obtained prior authorization before incurring nonemergency overtime.

To investigate the allegations, we interviewed OES employees, a former employee, and a representative of the DPA. We also reviewed employee travel expense claims, attendance reports, telephone records, mileage logs, and other related documents and reports. In addition, we reviewed pertinent laws and departmental policies.

## **BACKGROUND**

As a result of our prior investigation, OES reported that it had terminated one employee, received voluntary demotions from two, and received resignations from three others. OES also reported that it told an employee, employee A in this report, that he no longer could claim his commute and that it had developed and implemented an administrative control system for overtime and travel costs.

## **DESPITE PRIOR KNOWLEDGE, OES CONTINUED TO PAY EMPLOYEE A FOR HIS COMMUTE**

State policy prohibits state agencies from paying employees for time spent commuting from their home to the work area.<sup>13</sup> Even though OES became aware that this was occurring as

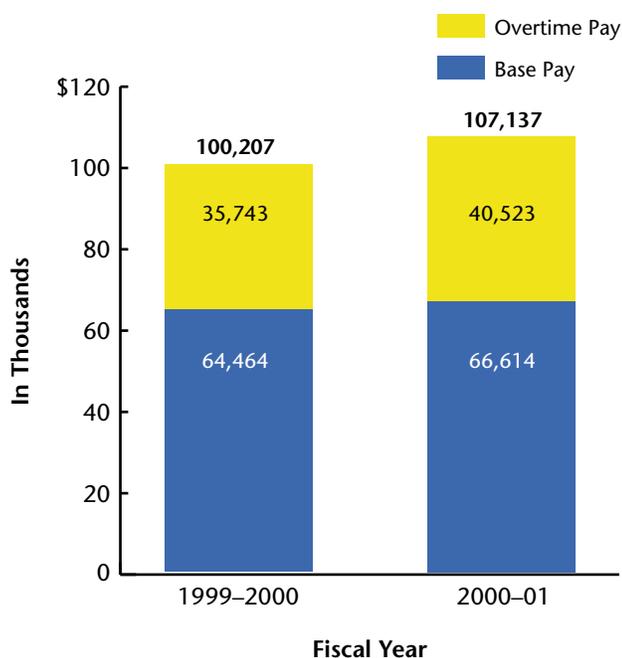
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<sup>13</sup> For a more complete description of the laws, regulations, and policies discussed in this chapter, see Appendix B.

early as November 1998, it continued to allow employee A to claim his commute time, which contributed, in part, to the extraordinary amount of overtime he subsequently received. As shown in Figure 2, for the fiscal year 1999-2000, employee A received approximately \$100,207 in wages, of which \$35,743, or 36 percent, was overtime pay. For the next fiscal year 2000-01, he was paid approximately \$107,137, of which \$40,523, or 38 percent, was overtime.

**FIGURE 2**

**Employee A Base and Overtime Pay  
Fiscal Years 1999-2000 and 2000-01**



Although much of employee A's overtime related to emergency events, nearly half was associated with nonemergency activities such as meetings or training classes. For example, of 815 hours of overtime employee A claimed in fiscal year 1999-2000, 370 hours, or approximately 45 percent, was for nonemergency events. In fiscal year 2000-01, he claimed 862 hours of overtime, of which 390 hours, or about 45 percent, pertained to nonemergency activities.

Moreover, although we did not specifically identify and extract all the commute hours for which employee A was compensated, his commute time had a significant impact

on the regular pay, overtime, and travel costs he received, considering that he lived at least 2 hours from his assigned work area. For example, of the 68 hours of nonemergency overtime employee A claimed in March 2001, more than 22 hours, or approximately 33 percent, related to his commute between his home and his assigned work area. In July 1999, of the 73 hours of nonemergency overtime employee A claimed, more than 18 hours, or 25 percent, was attributable to his commute.<sup>14</sup> When we spoke with the current manager of the fire and rescue branch, he estimated that as much as 25 percent of employee A's overtime was due to his commute.

### **Employee A May Not Have Been Told to Stop Claiming His Commute Time**

Employee A and his managers have provided conflicting information regarding whether he was told to stop claiming his commute time. In July 1999, as our prior investigation drew to a close, we spoke with the former manager of the fire and rescue branch about the matter.<sup>15</sup> He told us that it was his understanding that employee A had been told that he no longer could claim his commute time and that he had stopped doing so. During our current investigation, employee A told us that it had always been his understanding that his home was his designated headquarters and, as a result, he claimed the time it took him to drive from his home to locations within his assigned work area. He added that to compensate for this, he sometimes did not claim all the time he spent conducting state business, such as when he worked late or responded to e-mail messages or pages on his days off. It is unclear to us why, if employee A believed this arrangement was appropriate, he felt he needed to compensate in some way for charging commute time as work hours. Regardless, we found no written evidence that OES instructed the employee that he no longer could claim his commute.

Employee A not only continued to claim his commute time, but it appears that OES never intended to prevent him from claiming this time unless it could reassign him to a work area closer to his home. In a letter dated April 7, 1999, the former manager thanked the chief of a fire district located within

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*It appears OES never intended to stop the employee from claiming his commute time unless it could assign him to a work area closer to his home.*

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<sup>14</sup> In addition to claiming overtime to commute to and from his assigned work area, employee A's commute also led to inflated travel expenses and regular work hours.

<sup>15</sup> This manager retired from OES effective March 30, 2001.

employee A's work area for offering OES the ability to locate one of its employees, employee A, at the fire district's headquarters. However, the former manager added, "We have reevaluated our situation and do not currently plan to relocate [employee A's] office from his current home office at this time." OES allowed the abuse to continue by declining the offer to move the employee's office from his home to a more central location within his assigned work area.

### **OES Entered Into a Questionable Agreement With Employee A's Bargaining Unit**

On April 7, 1999, the same day OES formally rejected the chance to relocate employee A's office to a location within his assigned work area, OES entered into a questionable agreement with employee A's bargaining unit. The current manager of the fire and rescue branch believed this agreement entitled employee A to continue claiming his commute time.

The current manager told us the issue surrounding employee A's commute first came up after OES developed a policy in October 1998 concerning headquarters designations for employees. The policy allows staff who have regional responsibilities in areas in which no state-owned or state-leased facilities are reasonably available to have their residence designated as their headquarters. However, the policy further states that when an employee's residence is designated as his or her headquarters, it must be located within the assigned work area. The policy also specified that commute time between an employee's home and his or her designated headquarters or work area is not considered work time for regular pay, overtime, or travel costs, except as may be specified in DPA or collective bargaining agreements.

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*In 1998 OES adopted a policy allowing staff with responsibilities in areas with no state-owned or state-leased facilities to have their residence designated as their headquarters.*

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After OES developed this policy, DPA, on February 8, 1999, delegated to OES limited authority to meet and confer with the employee's bargaining unit to discuss its impact. On April 7, 1999, after meeting to discuss these issues with employee A's bargaining unit representative, OES entered into an agreement that effectively exempted employee A from complying with the policy. The agreement states that the bargaining unit concurred with the adoption of OES's headquarters designation policy, except to the extent that it may adversely impact incumbent employees who currently live outside their assigned work area.

The manager of the fire and rescue branch said he believed that the exemption provided under this agreement allowed employee A to continue to use his home as his headquarters and that it effectively permitted him to consider any travel time he incurred while traveling from his home to his assigned work area as time worked. However, another OES manager who took part in discussions with the bargaining unit said the agreement was never intended to allow employee A to continue to claim his commute time. In fact, he said it was his understanding that the fire and rescue branch would take the necessary steps to ensure that employee A did not continue to claim commute time to and from his home and his assigned work area. Clearly, the fire and rescue branch did not share the same understanding, as employee A continued to be paid for his commute.

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*According to a DPA official, it makes no sense to designate an employee's home as headquarters in instances such as this, where the employee's residence is a two-hour commute from his assigned work area.*

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The DPA official who delegated to OES the limited authority to meet and confer with the employee's bargaining unit questioned the agreement's validity. Specifically, the DPA official told us his records indicated that OES did not submit to DPA copies of any agreement OES may have entered into with the bargaining unit concerning headquarters designation, as required. He pointed out that the document he signed granting OES the authority to meet and confer with the employee's bargaining unit stated explicitly that any agreement reached between OES and the bargaining unit would be effective only upon approval and signature of the appropriate DPA official—in other words, himself. Consequently, the DPA official said, the agreement reached by OES was invalid and could not be executed. According to the DPA official, had OES afforded him the opportunity to review the agreement, he would have questioned who it affected and why OES sought specific exemptions. He added that it made no sense to designate an employee's home as headquarters in instances such as this, where an employee's residence is a two-hour commute from his assigned work area. He said it would be reasonable and prudent for the appropriate state agency to designate a headquarters location somewhere within the employee's assigned work area.

### **THE FIRE AND RESCUE BRANCH STILL DOES NOT ADHERE TO ADMINISTRATIVE CONTROLS CONCERNING OVERTIME**

Because the fire and rescue branch failed to follow its own administrative controls concerning overtime, employees have continued to incur nonemergency overtime that lacked advance

authorization. State law 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. California regulations state that, in order to be compensable by cash or compensating time off, overtime must be authorized in advance, except in an emergency, by the appointing authority or its designated representative.

In an attempt to address the past failure of the fire and rescue branch to control excessive nonemergency overtime and related expenses, OES reported to us on February 10, 1999, that it had implemented an administrative system that required employees in the fire and rescue branch to submit in a timely manner various documents that included but were not limited to a monthly calendar of planned activities, overtime authorization and claim forms, authorization for on-call hours, and absence and time reports. OES reported that supervisors would compare each document with previously approved authorizations and individual planning documents to ensure agreement and to continuously monitor overtime use and travel expenses. However, one supervisor responsible for performing these control functions admitted that some employees under his supervision had not submitted the appropriate documents by the third working day of each month, as required. As a result, the supervisor said that there might have been instances when he was not able to review and approve planned overtime and travel incurred by employees under his supervision.

Although we did not perform an extensive review of the records of each employee in the fire and rescue branch, we did note several instances in which employees did not receive advance approval of nonemergency overtime. For instance, during July 1999, employee A claimed 84.5 hours of overtime, 73 of which related to nonemergency events. However, none of the documents we obtained from the fire and rescue branch show that employee A received prior approval for the nonemergency overtime he claimed. In June 2000, of 99.5 hours of overtime claimed by employee A, 60.5 hours were nonemergency overtime. Again, the documents we obtained did not show that employee A obtained prior authorization to work the overtime. In June 2001, another employee, employee B, claimed 43.75 hours of overtime, all for nonemergency events. Yet none of the documents we reviewed indicated

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***Of the 84.5 hours of overtime employee A claimed in July 1999, 73 hours were related to nonemergency events; however, the employee had not obtained prior approval to work overtime.***

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that he had received prior approval for the overtime. Given that employee A and the rest of the fire and rescue branch historically have incurred significant amounts of nonemergency overtime, we believe it would be prudent for OES to follow its own administrative procedures designed to monitor and control overtime and travel costs.<sup>16</sup>

## AGENCY RESPONSE

OES reported that the unresolved supervisory and administrative issues associated with the fire and rescue branch were a result of miscommunications during changes to fire and rescue branch management or inadequate training, but that these issues have now been addressed. OES suggests that the issue of the questionable agreement with employee A's bargaining unit is "moot" because employee A has been reassigned to a work area where he lives and the circumstances of all other OES employees potentially covered by the agreement have changed so the agreement is applicable to no one. OES also reported that it has established administrative controls concerning overtime authorization and that it has counseled all fire and rescue branch employees that nonemergency overtime will not be incurred without prior authorization. ■

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<sup>16</sup> We previously reported that only 41 percent of overtime claimed by employees at the fire and rescue branch from November 1996 through June 1997 related directly to emergency conditions.

## CHAPTER 5

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### **California State University, Northridge: Unauthorized Bank Account**

#### **ALLEGATION I2001-709**

The director of a research center (center) at California State University, Northridge (CSUN) opened an unauthorized bank account in connection with his administration of the center.

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

CSUN investigated and substantiated the allegation and other improper activities and reported its findings to us. To investigate the allegation, CSUN reviewed records pertaining to the center, including bank records, and conducted interviews. CSUN found that not only did the director open an unauthorized bank account, but he also commingled personal and university funds and paid personal expenses from the account. In addition, he deposited checks into the account that were made payable to other organizations. Further, checks from the account totaling \$9,520 were written directly to the director or to cash, or were used to pay for the director's personal expenses. CSUN has closed the center.

#### **BACKGROUND**

The center, under the auspices of CSUN, was established to focus research on particular issues, including the hosting of symposia and conferences, and to serve as a clearinghouse for the collection and dissemination of national and global information. All lectures, programs, and activities were to be open to the entire university and the general public.

### **THE DIRECTOR IMPROPERLY OPENED AN UNAUTHORIZED BANK ACCOUNT FOR THE CENTER**

In early 1998, the director opened a checking account in the center's name. However, because the center was a CSUN entity, CSUN concluded that he did not have legal authority to open such an account. Specifically, CSUN policies require that one of the three CSUN financial service agencies (the University Accounting Office, the University Corporation, or the CSUN Foundation) be consulted to certify that (1) the purposes of the center do not violate the agency's regulations and (2) the procedures for handling and being accountable for funds conform to the agency's regulations.

### **THE DIRECTOR COMMINGLED PERSONAL FUNDS AND CENTER FUNDS**

The director deposited \$15,924 into the center account. Of the checks then written against the center's account, \$9,520 was paid to the director himself, to cash, or for the director's personal expenses. State law requires each state agency to establish and maintain an adequate system of internal controls.<sup>17</sup> Internal controls are designed to prevent errors, irregularities, and illegal acts. Because cash and checks are highly liquid assets, they can be converted easily for improper uses, such as theft or misappropriation.

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*Although the director deposited some personal income into the account, checks paid to the director or made out to cash exceeded the director's deposits by \$3,437.*

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The director stated that he established the account in order to keep a record of personal income spent for the center's operation. The director did deposit approximately \$2,840 of his personal funds into the center account and an additional \$3,243 that represented revenues from the sale of course materials to his students. However, the checks paid to the director, used to pay his personal expenses, or made out to cash exceeded the director's personal deposits to the account by \$3,437. Further, some of the checks payable to the director had the word "loan" written in the note section. There was no documentation showing that any of the "loans" were paid back to the account.

Other sources of deposited funds were \$2,610 in cash, \$2,050 from another association, and \$2,489 from other outside entities. Included in the deposits were 17 checks totaling

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<sup>17</sup> For a more complete description of the laws discussed in this chapter, see Appendix B.

\$2,550 that were payable not to the center but to other entities. Of these 17 checks, 16 (totaling \$2,050) related to one association of which the director formerly served as president. CSUN concluded that, without a corresponding payment to the association, the situation had the appearance of embezzlement of the association's funds.

### **THE DIRECTOR FAILED TO PROVIDE A COMPLETE ACCOUNTING FOR CENTER FUNDS**

Despite repeated requests from the dean and the CSUN internal auditor, the director never provided a complete accounting of center funds, including documentation of all revenues and expenditures. The director argued that this was his personal account and refused to provide access to any account of which he was the sole proprietor. CSUN disagreed that the account was personal or private because "the account, its purpose and its operation are clearly related to the function of university operations and to the holdings and operation of the [center]."

CSUN defines state money as follows: "If the entity or persons responsible for developing and/or overseeing a program (the owner of the program) is an official campus organization or campus employee, the revenue generated by the program is campus money." According to a document prepared by the dean, he concluded that, "By this definition and by university and state policies, it is clear that monies and records related to the above account, although improperly opened by [the director] and operated for 19 months without authorization, reflect financial activities of a university center and are to be deemed state monies."

***Because of the director's refusal to provide requested information, CSUN had no assurance that the center's funds were being administered properly.***

As we mentioned, state law requires each state agency to establish and maintain an adequate system of internal controls. Because of the director's refusal to provide the requested information, CSUN had no assurance that the center's funds were being administered properly and prudently to prevent errors, irregularities, or illegal acts.

### **AGENCY RESPONSE**

CSUN closed the center. In addition, CSUN revised its policies to state that outside bank accounts are not permitted under any circumstances and distributed new guidelines to all center directors regarding an acceptable design for the financial

summary of the annual report. Finally, CSUN provided the director with a notice of dismissal dated May 17, 2002. The director has filed an appeal with the State Personnel Board. ■

# CHAPTER 6

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## ***Department of General Services, Office of State Publishing: Misuse of State Equipment and Inadequate Documentation of Overtime***

### **ALLEGATIONS I2000-643, I2000-750, AND I2001-656**

**E**mployees in the Office of State Publishing (OSP), part of the Department of General Services (DGS), misused state equipment and abused overtime.

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

We asked the DGS to investigate the allegations on our behalf. It substantiated some aspects of the allegations but was not able to evaluate others properly due to a lack of timely and/or specific information and inadequate documentation. To investigate the allegations, DGS auditors reviewed adverse action files related to an employee's use of state computer equipment for improper purposes. In addition, the auditors discussed the allegations with OSP's senior management; conducted interviews with management personnel and some individuals mentioned in the allegations; and reviewed leave balances, overtime hours, policies, and practices.

### **EMPLOYEES MISUSED STATE EQUIPMENT**

We received allegations that two OSP employees routinely and blatantly used state equipment for personal projects. In addition, one employee allegedly used a state computer to access obscene or pornographic Web sites. State law prohibits state employees from using state resources such as state equipment for personal enjoyment, private gain, or personal advantage, or for an endeavor not related to state business.<sup>18</sup>

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<sup>18</sup> For a more complete description of the laws discussed in this chapter, see Appendix B.

Although the DGS auditor determined that OSP employees have used state equipment for personal projects, they could not independently verify the degree of the usage. One manager told the auditors that his policy calls for state equipment to be used for state business only. However, he said he was aware that all his employees have on occasion used the equipment for personal purposes. Based on his observations, he said the use was minimal and not abusive.

The DGS had investigated and resolved another allegation before receipt of our letter. Specifically, an OSP employee used state computer equipment for improper purposes, including accessing sexually suggestive Web sites. The DGS took adverse action against the employee, including reducing his pay by 10 percent for six months.

### **OSP'S SYSTEM OF RECORD KEEPING MAKES CONFIRMING ABUSE OF OVERTIME DIFFICULT**

Although the DGS reported that it was unable to investigate fully and therefore possibly substantiate allegations that employees abused overtime and failed to charge leave balances, we nevertheless have concerns about these issues. State law requires each state agency to establish and maintain a system or systems of internal accounting and administrative controls. Internal controls are necessary to provide public accountability and are designed to minimize fraud, errors, abuse, and waste of government funds. The elements of a satisfactory system of internal accounting and administrative control include a system of authorization and record-keeping procedures adequate to provide effective accounting control over assets, liabilities, revenues, and expenditures.

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***Two managers admitted that abuse of overtime or leave time could occur because on-site supervision may not be available and practical on all three daily work shifts.***

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According to the DGS, the accuracy of claimed overtime and leave at the OSP depends primarily on the honesty of employees in recording their time and the diligence of supervisors in verifying the accuracy of that time. The DGS stated that it did not have enough credible, specific, and timely information to investigate the allegations fully. However, the DGS did review overtime practices and discuss the allegations of abuse with the two managers in charge of the relevant areas at OSP. The managers indicated that they were not aware of any specific instances of abuse of overtime or leave time but recognized that overtime abuse could occur and not be detected

readily because of the often unplanned nature of the work performed and the existence of three shifts for which on-site supervision may not be available and practical.

Other than the final time sheet submitted by each employee, no formal records are maintained regarding overtime worked. Further, the time sheets contain information regarding the days on which overtime was worked and the hours claimed, but they do not provide details on the actual jobs performed. At least one manager indicated that he informally tracks the overtime and leave taken by his employees through the use of calendars and logs. However, these records are not maintained for audit or external review purposes. The DGS concluded that the current system of informal record keeping does not allow an independent party to evaluate fully whether the overtime is being controlled effectively.

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*One employee increased his salary \$24,000 (49 percent of his annual salary) by working overtime.*

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As we mentioned, the DGS was unable to substantiate the allegation, but it did acknowledge a potential for abuse. One employee, whose base pay during calendar year 2000 was approximately \$49,000, received about \$24,000 (49 percent of his annual salary) in overtime pay that year, bringing his total pay for the year to \$73,000. The DGS did find that the employee's overtime hours were significantly higher than those of his coworkers, but the employee's manager did not find the amount to be excessive, as the employee never turns down overtime when he is scheduled to work it and readily volunteers to work other people's scheduled overtime. Nevertheless, due to inadequate record keeping and a possible lack of on-site supervision, the DGS has less assurance that all the overtime was necessary and actually was worked.

## AGENCY RESPONSE

As we mentioned, the DGS took adverse action against the employee who misused state computers to access sexually suggestive Web sites. Also, OSP management agreed to take action to ensure that state equipment no longer is used for personal projects. To prevent even the perception of misuse, this policy will not allow any personal use, including that of an incidental and minimal nature. Management also agreed to implement a new formal overtime system. This system will include provisions for the prior approval of overtime requests or assignments, the identification of the job to be performed, and the reason overtime is needed to complete the job. ■

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# CHAPTER 7

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## ***Update on Previously Reported Issues***

### **CHAPTER SUMMARY**

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

### **DEPARTMENT OF TRANSPORTATION CASE I980141**

On April 3, 2001, we reported that a Department of Transportation (Caltrans) employee had a conflict of interest and had engaged in incompatible activities. Specifically, the employee participated in making departmental decisions that benefited a company owned by his wife. In addition, he misused his state position to influence Caltrans' contractors and private businesses to do business with his wife's company. The employee also used state resources to solicit work for his private consulting business. The employee discredited Caltrans and the State because of his conflicts of interest and his attempts to influence private businesses.

Caltrans initially told us it had suspended the employee for 45 days without pay, but we discovered that this information was incorrect. After being served with notice of a 60-day suspension without pay, the employee appealed to the State Personnel Board (personnel board), and a formal agreement between the parties, approved by the personnel board on February 15, 2001, stipulated a 30-day suspension without pay. Although Caltrans says the employee did not report to work for 30 working days per the agreement, the employee continued to receive his full salary and failed to notify Caltrans of this fact.

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***A suspended employee inappropriately received his full salary during his suspension but ultimately repaid Caltrans for the error after we brought it to Caltrans' attention.***

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After we brought this matter to its attention in October 2001, Caltrans notified the employee that he would have to repay approximately \$7,300. It gave him a number of repayment options. Because Caltrans had made the error, it did not take any further action against the employee for failing to disclose that he had continued to receive his full salary and benefits during his suspension. It is unclear whether Caltrans would have discovered the error or whether the employee would have brought it to Caltrans' attention. Nevertheless, Caltrans' error essentially led to the employee receiving an interest-free loan. In April 2002, Caltrans provided us with a copy of a check signed by the employee's wife and dated March 22, 2002, to repay the full amount.

### **UPDATED INFORMATION**

In late 2000, the employee's supervisor warned the employee not to engage in any activity related to erosion control (the industry in which his wife's company operates) during work hours or in his capacity as a Caltrans employee. In direct violation of this warning, the employee attended a Caltrans-sponsored meeting for the erosion control industry in June 2001. In addition, only six days after the personnel board approved the stipulated agreement from the employee's previous disciplinary action, on February 21, 2001, the employee posted an inquiry on the Caltrans intranet related to erosion control.

To discipline the employee, Caltrans attempted to reduce the employee's pay by approximately 17 percent for 12 months. The employee appealed this decision to the personnel board, which modified the disciplinary action to a 5 percent salary reduction for 6 months.

We conducted this review under the authority vested in the California State Auditor by Section 8547 et seq. of the California Government Code and in compliance with 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: November 13, 2002

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

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## ***Activity Report***

The Bureau of State Audits (bureau), headed by the state auditor, has identified improper governmental activities totaling \$11.2 million since July 1993, when it reactivated the Whistleblower Hotline (hotline), formerly administered by the Office of the Auditor General. These improper activities include theft of state property, false claims, conflicts of interest, and personal use of state resources. The state auditor's investigations also have substantiated improper activities that cannot be quantified in dollars but have had a negative social impact. Examples include violations of fiduciary trust, failure to perform mandated duties, and abuse of authority.

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

Corrective actions taken on cases contained in this report are described in the individual chapters. Table A.1 on the following page summarizes all the corrective actions taken by agencies 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 July 2002**

Type of Corrective Action	Instances
Referrals for criminal prosecution	73
Convictions	7
Job terminations	46
Demotions	8
Pay reductions	10
Suspensions without pay	12
Reprimands	135

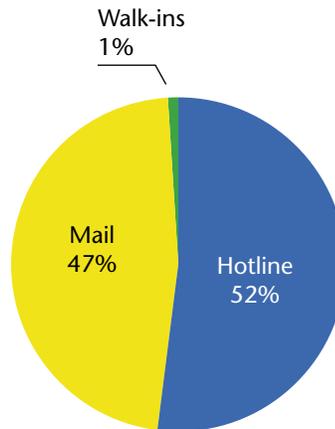
**New Cases Opened  
March 2002 Through July 2002**

From March 1, 2002, through July 31, 2002, we opened 270 new cases.

We receive allegations of improper governmental activities in several ways. Callers to the hotline at (800) 952-5665 reported 139 (52 percent) of our new cases.<sup>19</sup> We also opened 128 new cases based on complaints received in the mail and 3 based on complaints from individuals who visited our office. Figure A.1 shows the sources of all cases opened from March 2002 through July 2002.

**FIGURE A.1**

**Sources of 270 New Cases Opened**



<sup>19</sup> In total, we received 2,115 calls on the hotline from March 2002 through July 2002. 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.

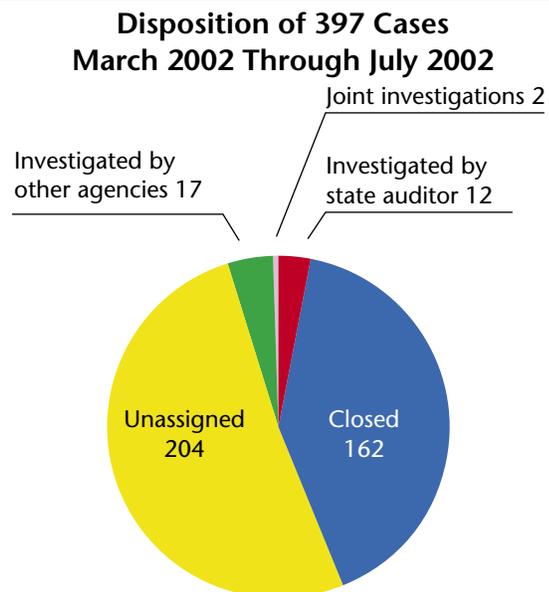
## Work on Investigative Cases March 2002 Through July 2002

In addition to the 270 new cases we opened during this five-month period, 93 previous cases were awaiting review or assignment as of February 28, 2002, and 34 were still under investigation, either by this office or by other state agencies, or were awaiting completion of corrective action. Consequently, 397 cases required some review during this period.

After reviewing the information provided by complainants and conducting preliminary reviews, we concluded that 162 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 March 1, 2002, through July 31, 2002, state agencies investigated 17 cases on our behalf and substantiated allegations on 2 (22 percent) of the 9 cases they completed during the period. In addition, we independently investigated 12 cases and substantiated allegations on all 4 of the cases we completed during the period. As of July 31, 2002, 204 cases were awaiting review or assignment. With the California State University, Northridge, we jointly investigated and substantiated allegations on one of the two joint investigations during the period. Figure A.2 shows the disposition of the 397 cases worked on from March 2002 through July 2002.

**FIGURE A.2**



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# APPENDIX B

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

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

### **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, and other failure of good behavior, either during or outside of duty hours, which is of such a nature that it causes discredit to the appointing authority or the person's employment.

### **REGULATIONS COVERING TRAVEL EXPENSE REIMBURSEMENTS AND PAYMENT OF COMMUTING EXPENSES**

**Chapters 2 and 4 report improper payment of travel or commuting expenses.**

The California Code of Regulations, Title 2, Section 599.615.1, states 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 expense is incurred 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 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 traveled shall be computed from the lesser of the employee's home or headquarters. Section 599.627.1 states that, in cases in which it is authorized and necessary to hire special conveyances, a full explanation, stating the facts constituting its necessity, shall accompany the expense claim. Section 599.638.1(d) requires state officers and employees to state the purpose of each trip and meal for which reimbursement is claimed.

## **WORKPLACE VIOLENCE DEFINED**

**Chapter 1 reports violations of violence in the workplace policies.**

The Department of Health and Human Services' *Understanding and Responding to Violence in the Workplace* defines workplace violence as including abuse of authority, intimidating or harassing behavior, and threats. The California Conservation Corps' *Violence in the Workplace Protection Plan* defines workplace violence as an act or behavior that is physically assaultive; is intensely focused on a grudge, grievance, or romantic interest in another person; is communicated or reasonably perceived as menacing or as being a threat to harm or endanger the safety of another individual; involves destroying property or throwing objects in a manner reasonably perceived to be threatening; or is a communicated or reasonably perceived threat to destroy property.

In addition, guidelines established by the California Department of Industrial Relations' Division of Occupational Safety and Health concerning workplace security states that employees with a history of assault or who have exhibited belligerent, intimidating, or threatening behavior to others present a potential risk of violence in the workplace. An employer's considerate and respectful management of his or her employees represents an effective strategy for preventing workplace violence by employees. In addition, the guidelines suggest that employers establish a clear anti-violence management policy; apply the policy consistently and fairly to all employees, including supervisors and managers; and provide appropriate supervisory and employee training in an effort to prevent workplace violence.

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

**Chapters 1 and 6 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 state-compensated time for personal enjoyment, private gain, or personal advantage, or for an outside endeavor not related to state business. If the use of state resources is substantial enough to result in a gain or advantage to an officer or employee for which a monetary value may be estimated, or a loss to the State for which a monetary value may be estimated, the officer or employee may be liable for a civil penalty not to exceed \$1,000 for each day on which a violation occurs plus three times the value of the unlawful use of state resources. In addition, the California Conservation Corps' Operations Manual prohibits employees from using state purchasing procedures to obtain services or property for personal use.

## **CRITERIA CONCERNING TRAVEL TIME**

**Chapter 1 discusses provisions governing employee compensation while on travel status.**

Both the federal Fair Labor Standards Act and the California Conservation Corps' travel policy stipulate that employees who travel overnight are not compensated for travel outside of normal work hours unless they are engaged in work while traveling.

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

**Chapters 2, 3, 4, 5, and 6 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 those measures they have adopted protect state assets, provide reliable accounting data, promote operational efficiency, and encourage adherence to managerial

policies. The act also states that the elements of a satisfactory system of internal accounting and administrative control shall include a system of authorization and record-keeping procedures adequate to provide effective accounting control over assets, liabilities, revenues, and expenditures. Further, this act requires that, when detected, weaknesses must be corrected promptly.

In addition, the California Government Code, Section 11813, declares that waste and inefficiency in state government undermine Californians' confidence in government and reduce the state government's ability to address vital public needs adequately.

## **CRITERIA GOVERNING USE OF STATE-OWNED OR LEASED AIRCRAFT**

**Chapter 2 discusses executive use of state-owned or leased aircraft.**

The State Administrative Manual discusses the use of agency-owned or leased aircraft. Section 742 prohibits the use of such aircraft for executive travel if the destination is within two hours' driving time or a regular commercial airline serves the location. Section 748 outlines transportation selection criteria and says to select the least costly method of transportation, considering direct expense and employee time away from the office. Commercial transportation will be used whenever its total cost is less than agency-provided aircraft. Agency aircraft may be used when it proves to be the least costly method, but individuals should consider and document various criteria including the cost of personnel hours lost in travel, total commercial travel costs, added per diem costs, accessibility and/or urgency of the situation, and commercial airline service and schedules.

In addition, Section 7761.10 of the California Department of Forestry and Fire Protection's *Hired Equipment Policies, Procedures, and Payment Rates* states that emergency hiring of aircraft is authorized, as necessary, to meet emergency fire situations, but the policy also says this privilege must be administered judiciously to avoid unnecessary expenditure of public funds.

## **CRITERIA GOVERNING COMMUTES**

### **Chapter 4 reports improper compensation for commutes.**

The California Department of Personnel Administration's (DPA) *Policy Guidelines Applicable to State of California Civil Service Employees* prohibits state agencies from paying employees for ordinary home-to-work and work-to-home commuting. In addition, the Governor's Office of Emergency Services developed a policy concerning headquarters designation for employees. The policy allows for staff who have regional responsibilities in areas where there are no state-owned or leased facilities reasonably available to have their residence designated as their headquarters. However, the policy further states that an employee's residence must be located within his or her assigned work area to be designated as the employee's headquarters. The policy also specifies that commute time between an employee's home and the designated headquarters or work area is not considered work time for regular pay, overtime, or travel costs except as may be specified in DPA or collective bargaining agreements.

## **REGULATIONS CONCERNING PAYMENT OF OVERTIME**

### **Chapter 4 reports improper compensation for overtime.**

The California Code of Regulations, Title 2, Section 599.702, states that in order to be compensable by cash or compensating time off, overtime must be authorized in advance, except in an emergency, by the appointing authority or its designated representative.

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# APPENDIX C

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

Section 20080 of the California State Administrative Manual requires state government departments to notify the Bureau of State Audits (bureau) and the Department of Finance of actual or suspected acts of fraud, theft, or other irregularities they have identified. What follows is a brief summary of incidents involving state employees reported from March through July 2002. 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. It is important to note that the reported incidents have been brought to conclusion; we will not publish any reports that would interfere with or jeopardize any ongoing internal or criminal investigation.

Seven state entities notified the bureau of 22 instances of improper governmental activity that had been brought to conclusion from March through July 2002. Those entities were the Department of Transportation; the California State University system; the Department of Motor Vehicles; the Business, Transportation and Housing Agency; the Victim Compensation and Government Claims Board; the Department of Fish and Game; and the Franchise Tax Board. Incidents resulting in monetary loss to the State totaled \$412,738. Financial losses to some of these entities have been mitigated by restitution of \$154,372.

### **DEPARTMENT OF TRANSPORTATION**

The Department of Transportation (Caltrans) reported three investigations involving embezzlement, unauthorized purchases, misuse of state property and conflicts of interest. One employee stole \$250,000 in an accounts payable scheme. By the time the fraud was uncovered, most of the money had either been spent or transferred to another country. The employee was prosecuted and convicted. Caltrans fired the employee, improved weaknesses in its internal controls, and requested that the remaining funds (\$76,000) be returned to the State. Another employee made \$2,137 in unauthorized purchases using a state credit card. The employee resigned and Caltrans deferred

further investigative efforts to legal authorities for criminal prosecution. A third investigation involved an employee who, in his official state position, used state letterhead and equipment to write a letter to a local entity expressing support for a certain transportation project. Caltrans concluded the employee's actions were inconsistent with his duties as a state employee and represented a conflict of interest and confirmed that the project's consultant had hired and paid the employee \$12,748 for work related to the project. Caltrans restricted the employee's work duties and communications with parties outside the department in his official capacity.

### **CALIFORNIA STATE UNIVERSITY**

Four California State University (university) campuses reported improper governmental activities. One campus reported that its investigation concerning fiscal irregularities led to a grand jury indictment of an employee on forgery, fraud, and embezzlement charges. The employee pled guilty and restitution was set at \$147,000. A second campus reported an employee devised a purchasing scheme to obtain merchandise for herself at the State's expense. The employee purchased \$28,000 worth of merchandise for the university using her university credit card, then used vendor merchandise credits to obtain \$2,000 in additional merchandise for herself in lieu of taking a vendor discount for the university. The campus retrieved some of the stolen merchandise, canceled the employee's university credit card, and fired her. A third campus discovered an employee used a university procurement card to purchase personal items totaling \$5,810. The campus fired the employee, received \$1,500 from the employee, authorized another \$1,071 be taken from her final paycheck, and accepted a promissory note for the remaining balance. A fourth campus reported that a student employee falsified attendance reports by adding hours that had not been worked, totaling \$1,450 in unearned wages. The campus discharged the student from employment and received full restitution.

## **DEPARTMENT OF MOTOR VEHICLES**

During the five-month period from March through July 2002, the Department of Motor Vehicles (DMV) advised this office of 11 investigations completed by its staff that substantiated improper activities by DMV employees. Three of these investigations involved the selling of fraudulent driver's licenses or other related documents to 11 people, of which 8 were undocumented immigrants who paid \$13,000 for the privilege of driving. Many of these individuals did not take (or pass, if taken) written, vision, or driving tests. The DMV also uncovered these improprieties:

- Three employees misappropriated \$296 by falsifying or altering the DMV database.
- One employee through misrepresentations obtained for family members \$124 in discounted bus passes subsidized by the State.
- Two employees falsified records to show a friend had passed a written exam.

## **BUSINESS, TRANSPORTATION AND HOUSING AGENCY**

The Business, Transportation and Housing Agency (BTHA) reported an employee billed personal air flights to his state credit card and used his state cell phone and vehicle for personal use. In total, the employee obtained \$4,422 in personal benefits at the State's expense. The employee also used the prestige of the State to obtain government discounts for his personal air flights. BTHA recovered \$4,422 from the employee and revoked his state credit card.

## **VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**

The Victim Compensation and Government Claims Board (board) informed us an employee used state equipment to access pornographic Web sites. The board filed an adverse action against the employee then withdrew it and accepted a voluntary resignation with fault as part of a settlement agreement with the employee.

## **DEPARTMENT OF FISH AND GAME**

The Department of Fish and Game advised us of one investigation involving contract and leave accounting irregularities, and personal use of a state vehicle. It completed its review and initiated training and other corrective actions commensurate with the nature of the irregularities.

## **FRANCHISE TAX BOARD**

The Franchise Tax Board reported an employee inappropriately accessed and obtained tax information. The employee voluntarily resigned.

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cc: Members of the Legislature  
Office of the Lieutenant Governor  
Milton Marks Commission on California State  
Government Organization and Economy  
Department of Finance  
Attorney General  
State Controller  
State Treasurer  
Legislative Analyst  
Senate Office of Research  
California Research Bureau  
Capitol Press