



**U.S. OFFICE OF SPECIAL COUNSEL**

1730 M Street, N.W., Suite 218  
Washington, D.C. 20036-4505  
202-254-3600

**Analysis of Disclosures, Agency Investigation and Report, Whistleblower Comments, and  
Comments of the Special Counsel**

**OSC File No. DI-05-1145**

**Summary**

Mark Zimmerman, M.D., a former Medical Officer at the Department of Health and Human Services (HHS), Indian Health Service (IHS), Acoma-Canoncito-Laguna (ACL) Service Unit, Albuquerque, New Mexico, disclosed to the Office of Special Counsel (OSC) that, from July 2004 until October 2004, Dr. Stephen Ryter, then-Clinical Director, routinely denied all requests for contract medical services. The ACL Service Unit relies upon contracts with other hospitals as a means of providing advanced medical services to its patients. Dr. Zimmerman alleged that Dr. Ryter's practice of denying all requests for contract services created a substantial and specific danger to the health of the hospital's patients because patients were not receiving proper medical care. According to the agency report, the HHS Office of the Inspector General (OIG) investigated Dr. Zimmerman's allegations and found them to be unsubstantiated.

**The Whistleblower's Disclosures**

Dr. Zimmerman, who has consented to the release of his name, has worked as a physician for 31 years. He was employed by IHS from October 9, 2003, until October 7, 2004, when he was terminated.

Dr. Zimmerman alleged that, from July 2004 until October 2004, Dr. Ryter routinely denied all requests for contract medical services. Dr. Zimmerman explained that the ACL Service Unit only has sufficient resources to provide basic medical care to its patients. For advanced medical services that are more specialized or sophisticated, such as certain surgical procedures and chemotherapy treatments, the ACL Service Unit relies upon contractual agreements it maintains with private hospitals.

Dr. Zimmerman advised that, before July 2004, Dr. Ryter granted all or most requests for contract services. He stated that, in June 2004, the hospital was re-accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), and shortly thereafter, Dr. Ryter's previous practice of approving contract services ended abruptly. Beginning in July 2004, Dr. Ryter began denying all requests for contract services submitted by Dr. Zimmerman and the other physicians at the hospital. Dr. Zimmerman explained that many of the patients who seek care from the ACL Service Unit are not able to pay for medical treatment out of their own pocket; therefore, when Dr. Ryter denied their requests for contract services, their medical conditions often went untreated.

Dr. Zimmerman provided specific information concerning eight patients he treated during the time period of July 2004 to October 2004, whose health suffered because they were denied contract services that were medically necessary. Dr. Zimmerman asserted that the contract services he requested for these patients, along with several other patients, were medically necessary and were in accordance with the ordinary standard of care for each patient's condition.

### **Department of Health and Human Services Investigation and Report**

The HHS OIG Dallas Regional Office, Albuquerque Field Office, investigated Dr. Zimmerman's allegations. The agency report states that the investigators interviewed Dr. Zimmerman, Dr. Ryter, and several agency officials, reviewed relevant documents, and researched applicable laws and regulations. The investigation did not substantiate Dr. Zimmerman's allegations.

According to the agency report, the IHS Contract Health Services program is governed by 42 CFR Part 136, Subpart C. These regulations state that IHS may authorize payment of contract health services to eligible patients "to the extent that resources permit" and "as medically indicated, when necessary health services by an Indian Health Service facility are not reasonably accessible or available." 42 CFR 136.23(a). When there are insufficient funds to cover all qualifying requests for contract health services, IHS officials should apply a priority system. 42 CFR 136.23(e).

William Thorne, Jr., Chief Executive Officer (CEO), ACL Service Unit, advised that the Clinical Director assigns priorities to requests for contract health services, in accordance with guidelines established by the Albuquerque, New Mexico Area Office. Patients deemed to be in a life-threatening condition are assigned Priority 1. Priority 1 cases are automatically funded, whereas cases assigned Priorities 2-4 are generally denied, unless funds remain at the end of the fiscal year.

According to Dr. Ryter, in July 2004, the ACL Service Unit was operating with a \$4-5 million deficit. Dr. Ryter, Joseph A. Moquino, then-Acting CEO, and Barbara Felipe, Administrative Officer, decided to reduce the number of cases categorized as Priority 1 in order to save money. Each patient whose case was not assigned Priority 1 received a denial letter notifying them of their appeal rights.

Mr. Thorne explained the process for appealing priority determinations. He stated that patients who believe that they should be given a higher priority can appeal the decision to the IHS Albuquerque, New Mexico Area Office. If they are also displeased with that decision, they can then appeal the Albuquerque Area Office's decision to the Rockville, Maryland Office.

During his interview, Dr. Zimmerman reiterated his belief that several of his patients were improperly categorized Priority 2, and, consequently, were unfairly denied IHS contract health services. He also stated, however, that these patients did not have any immediate life-threatening conditions. He confirmed that all patients who needed immediate emergency assistance received proper medical care.

According to the agency report, Mr. Thorne's staff reviewed the medical records of the eight patients specifically mentioned in Dr. Zimmerman's disclosure and, in each case, they provided an explanation for the ACL Service Unit's decision not to pay for further treatment. Based on the explanations provided by the ACL Service Unit, the agency concluded that "the patients received the proper care and the appeals process was used appropriately."

LeAnne Rodriguez, Chairman, ACL Health Board informed investigators that, on November 19, 2004, the ACL Health Board rendered a vote of "No Confidence" against Dr. Ryter. She stated that, on November 22, 2004, the Board sent a letter to Mr. Thorne recommending Dr. Ryter's termination. Mr. Thorne advised that Dr. Ryter was transferred to the Sante Fe, New Mexico, Indian Health Services Hospital in April 2005.

### **The Whistleblower's Comments**

Dr. Zimmerman commented on the agency report. He criticized the investigators for failing to interview the other physicians in the hospital and Susie Analla, the Contract Services Supervisor, whom he believes would have corroborated his position. He expressed the opinion that Dr. Ryter lacks the competence and medical expertise to make appropriate priority determinations, and noted that, for three of the eight patient cases he mentioned to OSC, Dr. Ryter's priority determination was overturned on appeal. Dr. Zimmerman also noted that Dr. Ryter received full clinical privileges based on a technicality, after the ACL Medical Staff voted to give him full privileges, with only four affirmative votes and five abstentions.

### **Conclusion**

Based on the representations made in the agency report and Dr. Zimmerman's comments, I have determined that the agency report contains all of the information required by statute and most of the findings appear to be reasonable. However, I question the agency's conclusion that Dr. Ryter is innocent of any wrongdoing. At a minimum, Dr. Ryter appears to have exercised poor judgment in assigning priorities for contract health services, as several of his priority decisions were overturned on appeal. Furthermore, the members of the ACL Health Board were evidently so displeased with Dr. Ryter's performance that they entered a vote of no confidence and asked Mr. Thorne to terminate him. Nevertheless, I have decided not to pursue the matter further, as the agency has already transferred and demoted Dr. Ryter in response to the Health Board's vote of no confidence.