



**U.S. OFFICE OF SPECIAL COUNSEL**  
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**Washington, D.C. 20036-4505**

**The Special Counsel**

November 5, 2020

The Honorable Robert L. Wilkie  
Secretary  
U.S. Department of Veterans Affairs  
810 Vermont Avenue, N.W.  
Washington, D.C. 20420

Re: OSC File No. DI-21-000009  
Request for Investigation—5 U.S.C. § 1213(c)

Dear Mr. Secretary:

I am referring to you for investigation a whistleblower disclosure concerning employees of the Department of Veterans Affairs (VA), North Florida/South Georgia Veterans Health Center (NF/SG VHC), Substance Abuse Treatment Team (SATT) Clinic, Jacksonville, Florida. [REDACTED], a social worker at the SATT Clinic, who consented to the release of his name, alleges that VA employees engaged in conduct that may constitute a violation of law, rule, or regulation, gross mismanagement, and a substantial and specific danger to public health. A report of your investigation on these allegations and any related matters is due to the Office of Special Counsel (OSC) by January 4, 2021.

[REDACTED] disclosed that SATT Clinic leadership has required that clinical providers maintain scheduling practices and caseloads that violate VA policy and endanger the health of veterans seeking substance abuse disorder (SUD) treatment. The allegations to be investigated include:

- Clinical providers have excessive caseload sizes, which negatively impact veterans' access to necessary mental health services;
- Numerous scheduling practices at the SATT Clinic violate VA policy, including blind scheduling, failure to use the electronic waitlist (EWL), and failure to meet the required minimum scheduling efforts; and
- [REDACTED] has reported these allegations to NF/SG VHC leadership, but there has been no action taken to address the possible delay of care for veterans at the SATT Clinic.

Veterans Health Administration (VHA) Handbook 1160.04 outlines the VA's continuum of care and services for SUD treatment. While VHA Handbook 1160.04 does not specifically identify a maximum "active panel size" per clinician, it does state that "more than 50 patients per case manager would likely limit effective efforts to retain or reengage patients in early

recovery.” Handbook 1160.04 § (9)(b)(3). [REDACTED] alleged that clinical providers at the SATT Clinic have been required to maintain patient caseloads that well exceed the recommended cap of 50. At one point, [REDACTED] caseload reached 92 patients, and he alleges the average daily caseload for all of the clinical providers fluctuates between 80 to 100 patients. [REDACTED] alleged that the excessive caseload size negatively impacts veterans’ access to necessary mental health services because providers are unable to schedule appointments with the sufficient regularity needed to positively engage and retain recovering veterans.

[REDACTED] also alleged numerous scheduling practices at the SATT Clinic that violate VA policy. VHA Directive 1230 establishes scheduling policies and procedures for outpatient VA clinic appointments. The Directive prescribes that in order to facilitate timely access to care, facilities are expected to have appointments scheduled by scheduling staff, and clinical staff should only perform scheduling duties on a limited basis. The VA uses the Veterans Health Information Systems and Technology Architecture (VistA) scheduling system to schedule clinical appointments and to collect related workload data for reporting purposes. Directive 1230 also mandates that individuals making, rescheduling, and cancelling appointments must successfully complete the required VistA training.

[REDACTED] disclosed that there is not a dedicated scheduling staff member at the SATT clinic. Clinical providers are responsible for all scheduling duties, in violation of Directive 1230. In addition, [REDACTED] alleged that clinical providers have not received the required training and are not using VistA for their scheduling activities. Rather, clinical providers are compiling a spreadsheet of appointments, no-shows, and cancellations. In addition, the SATT Clinic is not accurately recording data on the EWL or making required contact attempts to schedule appointments. [REDACTED] also alleged that nurses are scheduling follow-up appointments for veterans being discharged from inpatient detox programs without negotiating the date and time with the veteran. This procedure, known as blind scheduling, is specifically prohibited by VA Directive 1230.

Pursuant to my authority under 5 U.S.C. § 1213(c), I have concluded that there is a substantial likelihood that the information provided to OSC discloses a violation of law, rule, or regulation, gross mismanagement, and a substantial and specific danger to public health. Please note that specific allegations and references to specific violations of law, rule or regulation are not intended to be exclusive. If, in the course of your investigation, you discover additional violations, please include your findings on these additional matters in the report to OSC. As previously noted, your agency must conduct an investigation of these matters and produce a report, which must be reviewed and signed by you. Per statutory requirements, I will review the report for sufficiency and reasonableness before sending copies of the agency report along with the whistleblower’s comments and any comments or recommendations I may have, to the President and congressional oversight committees and making these documents publicly available.

Additional important requirements and guidance on the agency report are included in the attached Appendix, which can also be accessed at <https://osc.gov/Documents/Public%20Files/1213%20Appendix.pdf>. If your investigators have

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questions regarding the statutory process or the report required under section 1213, please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 804-7088 or [cmcmullen@osc.gov](mailto:cmcmullen@osc.gov) for assistance. I am also available for any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry J. Kerner". The signature is fluid and cursive, with a large initial "H" and a stylized "K".

Henry J. Kerner  
Special Counsel

Enclosure

cc: The Honorable Michael J. Missal, Inspector General

## **APPENDIX**

### **AGENCY REPORTS UNDER 5 U.S.C. § 1213**

#### **GUIDANCE ON 1213 REPORT**

- OSC requires that your investigators interview the whistleblower at the beginning of the agency investigation when the whistleblower consents to the disclosure of his or her name.
- Should the agency head delegate the authority to review and sign the report, the delegation must be specifically stated and include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5).
- OSC will consider extension requests in 60-day increments when an agency evidences that it is conducting a good faith investigation that will require more time to complete.
- Identify agency employees by position title in the report and attach a key identifying the employees by both name and position. The key identifying employees will be used by OSC in its review and evaluation of the report. OSC will place the report without the employee identification key in its public file.
- Do not include in the report personally identifiable information, such as social security numbers, home addresses and telephone numbers, personal e-mails, dates and places of birth, and personal financial information.
- Include information about actual or projected financial savings as a result of the investigation as well as any policy changes related to the financial savings.
- Reports previously provided to OSC may be reviewed through OSC's public file, which is available here: <https://osc.gov/PublicFiles>. Please refer to our file number in any correspondence on this matter.

#### **RETALIATION AGAINST WHISTLEBLOWERS**

In some cases, whistleblowers who have made disclosures to OSC that are referred for investigation pursuant to 5 U.S.C. § 1213 also allege retaliation for whistleblowing once the agency is on notice of their allegations. The Special Counsel strongly recommends the agency take all appropriate measures to protect individuals from retaliation and other prohibited personnel practices.

#### **EXCEPTIONS TO PUBLIC FILE REQUIREMENT**

OSC will place a copy of the agency report in its public file unless it is classified or prohibited from release by law or by Executive Order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs. 5 U.S.C. § 1219(a).

#### **EVIDENCE OF CRIMINAL CONDUCT**

If the agency discovers evidence of a criminal violation during the course of its investigation and refers the evidence to the Attorney General, the agency must notify the Office of Personnel Management and the Office of Management and Budget. 5 U.S.C. § 1213(f). In such cases, the agency must still submit its report to OSC, but OSC must not share the report with the whistleblower or make it publicly available. See 5 U.S.C. §§ 1213(f), 1219(a)(1).