



THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

April 4, 2022

The Honorable Henry Kerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW, Suite 300
Washington, DC 20036

Re: Office of Special Counsel File No. DI-21-000725

Dear Mr. Kerner:

I am responding to your August 16, 2021, letter to the Department of Veterans Affairs (VA) regarding whistleblower allegations that officials at the Sonny Montgomery VA Medical Center (hereafter, Jackson) in Jackson, Mississippi, engaged in violation of law, rule or regulation, gross mismanagement and a substantial and specific danger to public health.

The Deputy Under Secretary for Health, Performing the Delegable Duties of the Under Secretary for Health, directed the Office of the Medical Inspector to assemble and lead a VA team to conduct an investigation. We conducted a virtual investigation on this matter November 2-4, 2021.

Of the four whistleblower allegations, we substantiate one and do not substantiate three. We make no recommendations to Jackson. The signed report will be sent to the respective offices with a request for an action plan.

Thank you for the opportunity to respond.

Sincerely,

A handwritten signature in black ink, appearing to read "DMcDonough".

Denis McDonough

Enclosure

DEPARTMENT OF VETERANS AFFAIRS

Washington, DC

**Report to the
Office of Special Counsel
File Number DI-21-000725**

**G. V. (Sonny) Montgomery VA Medical Center
Jackson, Mississippi**



Report Date: March 14, 2022

TRIM 2021-C-39

Executive Summary

The Deputy Under Secretary for Health, Performing the Delegable Duties of the Under Secretary for Health, directed the Office of the Medical Inspector (OMI) to assemble and lead a Department of Veterans Affairs (VA) team to investigate allegations submitted to the Office of Special Counsel (OSC) concerning the Sonny Montgomery VA Medical Center (VAMC) (hereafter Jackson) located in Jackson, Mississippi. Although referred to as "Montgomery VAMC" by the whistleblower, this facility will be referred to as "Jackson" to avoid possible confusion with the Montgomery VAMC located in Montgomery, Alabama. A known whistleblower alleged that Jackson engaged in a violation of law, rule or regulation, gross mismanagement and a substantial and specific danger to public health. We conducted a virtual investigation at Jackson November 2-4, 2021.

Specific Allegations of the Whistleblower

1. *Montgomery VAMC leadership imposed revised medical staff bylaws without allowing a discussion or vote on these rules, in violation of Joint Commission VHA hospital accreditation standards;*
2. *The revised bylaws eliminate medical staff self-governance, in violation of Joint Commission requirements, by appointing the Chief of Staff as the permanent president of the medical staff;*
3. *Appointing the Chief of Staff as the permanent president of the medical staff could potentially compromise the safety of patients and employees; and*
4. *Due to these improper changes in medical staff bylaws, Montgomery VAMC is at risk of losing its Joint Commission accreditation, thereby violating the requirements of VHA Directive 1100.16.*

We **substantiated** allegations when the facts and findings supported that the alleged events or actions took place and **did not substantiate** allegations when the facts and findings showed the allegations were unfounded. We were **unable to substantiate** allegations when the available evidence was insufficient to support conclusions with reasonable certainty about whether the alleged event or action took place.

After a careful review of the evidence, we make the following conclusions and recommendations:

Conclusions for Allegation 1

- Although we **substantiate** that the Jackson leadership imposed revised medical staff bylaws without a discussion or vote on these rules, this was not in violation of The Joint Commission hospital accreditation standards. The medical staff bylaws were appropriately amended in 2020 and 2021 to bring Jackson into compliance with Veterans Health Administration (VHA) Controlled National Policy (CNP) and leadership guidance.

- No vote is required to implement a VHA CNP or instruction from VHA leadership.
- No deficiencies with the bylaws template were identified by the Joint Commission Resources Consultant in 2011 and 2016.
- Although The Joint Commission was contacted with a report of an incident related to the 2020 revision of the bylaws, The Joint Commission did not find a need for the facility to take action.
- There was no violation of The Joint Commission standards related to the amendment of the bylaws.

Recommendations to Jackson

None

Conclusions for Allegation 2

- We **do not substantiate** that the revised bylaws eliminate medical staff self-governance in violation of The Joint Commission requirements by appointing the Chief of Staff (COS) as the permanent president of the medical staff.
- The Jackson Medical Staff Bylaws, adopted on March 30, 2021, appropriately appointed the COS as the permanent president of the medical staff, in accordance with the VHA Bylaws Template and VHA Privileging Directive 1100.21: Standard Operating Procedure (SOP) – P1, Medical Staff Leadership Structure, November 16, 2020.
- There is no evidence that appointing the COS as the president of the medical staff eliminates medical staff self-governance.
- The VHA Bylaws Template, which established medical staff leadership structure and the COS as the president of the medical staff, was reviewed by The Joint Commission. The Joint Commission found no evidence of non-compliance with their standards.

Recommendations to Jackson

None

Conclusion for Allegation 3

- We **do not substantiate** that appointing the COS as the permanent president of the medical staff could potentially compromise the safety of patients and employees.

Recommendations to Jackson

None

Conclusions for Allegation 4

- We **do not substantiate** that there were improper changes in medical staff bylaws at Jackson, or that Jackson is at risk of losing its Joint Commission accreditation, thereby violating the requirements of VHA Directive 1100.16, Accreditation of Medical Facility and Ambulatory Programs, May 9, 2017. Further, by making these changes Jackson is now in compliance with VHA directives and leadership guidance.
- Within VHA, making changes in the medical staff bylaws, in accordance with national policy, is not improper and does not put VAMCs at risk of losing their Joint Commission accreditation.

Recommendations to Jackson

None

Summary Statement

We developed this report, in consultation with other VHA and VA offices, to address OSC's concerns that Jackson may have engaged in a violation of law, rule or regulation, gross mismanagement and a substantial and specific danger to public health through the improper revision of medical staff bylaws and appointing the Chief of Staff as president of the medical staff. We reviewed the allegations and determined the merits of each, and the National Center for Ethics in Health Care has provided a health care ethics review. We found that Jackson appropriately revised the medical staff bylaws in accordance with VHA directives, the VHA Bylaws Template and leadership guidance.

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I. Introduction

The Deputy Under Secretary for Health, Performing the Delegable Duties of the Under Secretary for Health directed the Office of the Medical Inspector (OMI) to assemble and lead a Department of Veterans Affairs (VA) team to investigate allegations submitted to the Office of Special Counsel (OSC) concerning the Sonny Montgomery VA Medical Center (VAMC) (hereafter, Jackson) located in Jackson, Mississippi. Although referred to as "Montgomery VAMC" by the whistleblower, this facility will be referred to as "Jackson" to avoid possible confusion with the Montgomery VAMC located in Montgomery, Alabama. A known whistleblower alleged that Jackson engaged in a violation of law, rule or regulation, gross mismanagement and a substantial and specific danger to public health. We conducted a virtual investigation at Jackson November 2-4, 2021.

II. Facility Profile

Jackson is a Joint Commission accredited VAMC providing primary, second and tertiary medical, neurological and mental health inpatient care. Primary care and specialized outpatient services are available, including ambulatory surgery, spinal cord injury clinic, neurology, infectious disease, substance abuse, posttraumatic stress disorder, readjustment counseling and mental health diagnostic and treatment programs. A 46-bed Community Living Center (including a palliative care unit); community nursing homes; 3, 150-bed State Veterans Nursing Homes; VA community clinics; and a variety of outpatient programs are available to support the needs of aging Veterans. In addition to the medical center in Jackson, there are seven community-based outpatient clinics located in Columbus, Greenville, Hattiesburg, Kosciusko, McComb, Meridian and Natchez.

III. Specific Allegations of the Whistleblower

- 1. Montgomery VAMC leadership imposed revised medical staff bylaws without allowing a discussion or vote on these rules, in violation of Joint Commission VHA hospital accreditation standards;*
- 2. The revised bylaws eliminate medical staff self-governance, in violation of Joint Commission requirements, by appointing the Chief of Staff as the permanent president of the medical staff;*
- 3. Appointing the Chief of Staff as the permanent president of the medical staff could potentially compromise the safety of patients and employees; and*
- 4. Due to these improper changes in medical staff bylaws, Montgomery VAMC is at risk of losing its Joint Commission accreditation, thereby violating the requirements of VHA Directive 1100.16.*

IV. Conduct of Investigation

The VA team conducting the virtual investigation consisted of a Senior Medical Investigator and a Clinical Program Manager, both from OMI; two subject matter experts (SME); the Deputy Director, Medical Staff Affairs; and an investigator from the Office of Accountability and Whistleblower Protection (OAWP). We reviewed relevant policies, procedures, reports, memorandums and other documents listed in Attachment A.

We interviewed the whistleblower via teleconference on September 29, 2021. We also interviewed the following staff:

- Medical Center Director
- Acting Associate Medical Center Director
- Acting Chief of Staff
- Acting Associate Director, Patient Care Services
- Assistant Director
- Veterans Integrated Service Network (VISN) 16 Chief Medical Officer
- VISN 16 Network Director
- Former Medical Center Director
- Former Assistant Chief, Quality Management
- Former Chief of Staff
- Quality Management Peer Review Specialist
- Patient Safety Manager
- Veterans Health Administration (VHA) Assistant Under Secretary for Health for Quality and Patient Safety
- VHA Assistant Under Secretary for Health for Operations
- Chief, Medicine Services
- Five Physicians
- Four Advanced Practiced Registered Nurses (APRN)
- Director, VHA Medical Staff Affairs
- Director, VHA Office of External Accreditation

V. Background, Findings, Conclusions and Recommendations

Allegation 1

Montgomery VAMC [Jackson] leadership imposed revised medical staff bylaws without allowing a discussion or vote on these rules, in violation of Joint Commission VHA hospital accreditation standards.

Background

Medical Staff Bylaws

VHA Directive 1100.20, Credentialing of Health Care Providers, September 15, 2021, defines Medical Staff Bylaws as a governance framework that

establishes the roles and responsibilities of a body and its members.¹ The Organized Medical Staff at a VA medical facility creates a written set of documents that describes its organizational structure and the rules for its self-governance. These documents create a system of rights, responsibilities and accountabilities between the Organized Medical Staff and the VA medical facility Director as the governing body, and between the Organized Medical Staff and its members. VHA Directive 1100.20 requires that the Bylaws Template, published by VA Central Office, must be used by VA medical facilities, utilizing all mandatory content.²

The VA Office of Quality, Safety and Value, Office of Safety and Risk Awareness (OQSV/OSRA) first created the Bylaws Template for use by VA medical facilities in 2010.³ The template was developed with input from representatives of VA medical facilities and in consultation with legal and human resource management staff and was prepared using VA regulations and policies and The Joint Commission Accreditation Manual as guidance.⁴ The Template is a guide for VA medical facility staff to use in the development of local facility bylaws, Rules and Regulations, and assists the medical staff to comply with VA, VHA, The Joint Commission and facility expectations. Per the Bylaws Template, nothing in the VA medical facility Bylaws, Rules and Regulations can have any effect inconsistent with, or otherwise be inconsistent with, law or VA regulations. The staff of OQSV/OSRA created the template to be a "living" document and when VA regulations or policies change, the Bylaws Template is updated accordingly. The template was amended in 2014, 2015 and 2017 and was reviewed by a Joint Commission Resources Consultant in 2011 and 2016, who found no significant deficiencies.⁵ The Bylaws Template is located on the Medical Staff Affairs intranet site, which is an internal VA website not available to the public.

The Bylaws Template outlines the organization of the Medical Staff. The bylaws designate the COS as the president of the medical staff and describes the COS as the assistant to the facility Director. The Director is appointed by the Governing Body to act as its agent in the overall management of the facility. Per the Bylaws Template, the Governing Body refers to the Under Secretary for Health, the individual to whom the Secretary for Veterans Affairs has delegated authority for administration of VHA, and for purposes of local facility management and planning, it refers to the Facility Director.⁶

The initial Bylaws Template, developed in 2010, defined the COS as the President of the Medical Staff. In 2017, the revisions to the Bylaws Template clarified that the Organized Medical Staff does not elect Medical Staff Officers. The Organized Medical Staff through its committees and Service Chiefs, provides counsel and assistance to the COS and Director.⁷

¹ VHA Directive 1100.20, Credentialing of Health Care Providers, September 15, 2021.

² Ibid.

³ Bylaws Template <https://vaww.qps.med.va.gov/divisions/qm/msa/Privileging/msaMSPReferences.aspx>.

⁴ The Joint Commission E-dition Accreditation Manual

<https://vaww.qps.med.va.gov/divisions/qm/ea/jointcommission.aspx>.

⁵ Bylaws Template <https://vaww.qps.med.va.gov/divisions/qm/msa/Privileging/msaMSPReferences.aspx>.

⁶ Ibid.

⁷ Ibid.

In addition to the Bylaws Template, the leadership structure of the Medical Staff is described in VHA Standard Operating Procedure (SOP) – P1, Medical Staff Leadership Structure.⁸ A VA Memorandum, Standards of Practice, published on the Medical Staff Affairs Intranet Site, dated December 8, 2020, provides notification of the new SOP, VHA Privileging Directive 1100.21: SOP – P1.⁹ The memorandum states that “SOPs that are posted on the VHA Medical Staff Affairs Program Office intranet site are mandatory for use enterprise-wide for credentialing, privileging, and Medical Staff practice.”¹⁰ SOP - P1 specifically states that “The Chief of Staff at the VA Medical Center is the President of the Medical Staff and Chairperson of the Executive Committee of the Medical Staff (ECMS). There are no exceptions and there is no vote by the medical staff to modify this mandate.”¹¹ Since publication of the memorandum, SOP-P1 has been codified in VHA Directive 1100.20 which mandates use of the Bylaws Template.¹²

The Standards

VHA Directive 1100.16 establishes policy and responsibilities in obtaining and retaining The Joint Commission accreditation and continual readiness with The Joint Commission standards at all VA medical facilities, ambulatory care programs and Consolidated Mail Out Pharmacies.¹³ Per VHA Directive 1100.16, it is policy that health care facilities providing care to our Nation's Veterans maintain ongoing compliance with regulatory standards that demonstrate the provision of safe advanced standard quality-oriented health care delivery. To achieve The Joint Commission accreditation, VA medical facilities must focus on numerous accreditation requirements from The Joint Commission accreditation standards, including standards related to Leadership (LD) and Medical Staff (MS).

The Joint Commission leadership standard LD.01.02.01 requires the hospital to identify the responsibilities of its leaders.¹⁴ The VHA Bylaws Template and SOP-P1 meet this accreditation standard by defining the COS as the President of the Medical Staff.

The Joint Commission Accreditation Requirements for Medical Staff describe the structure of the Organized Medical Staff and responsibilities. Medical Staff standard, MS.01.01.01 states that “Medical staff bylaws address self-governance and accountability to the governing body.” The associated Element of Performance (EP) for this standard, EP 4, requires that the medical staff bylaws, rules, regulations and policies; the governing body bylaws; and the hospital policies are compatible with each other and are compliant with law and regulation.¹⁵ The VHA Bylaws Template, as

⁸ VHA Privileging Directive 1100.21: Standard Operating Procedure – P1, Medical Staff Leadership Structure, November 16, 2020.

⁹ VA Memorandum, Standards of Practice, Published on Medical Staff Affairs Intranet Site, December 8, 2020.

¹⁰ Ibid.

¹¹ VHA Privileging Directive 1100.21: Standard Operating Procedure – P1, Medical Staff Leadership Structure, November 16, 2020.

¹² VHA Directive 1100.20, Credentialing of Health Care Providers, September 15, 2021.

¹³ VHA Directive 1100.16, Accreditation of Medical Facility and Ambulatory Programs, May 9, 2017.

¹⁴ The Joint Commission E-dition Accreditation Manual

<https://www.qps.med.va.gov/divisions/qm/ea/jointcommission.aspx>.

¹⁵ Ibid.

reviewed by The Joint Commission Resource Consultant, meets this accreditation standard.

Full Practice Authority (FPA)

On December 14, 2016, the Federal Register, the Daily Journal of the United States Government, published a Final Rule which announced that VA was amending its medical regulations to permit FPA for three roles of VA APRNs: Certified Nurse Practitioner, Clinical Nurse Specialist and Certified Nurse-Midwife.¹⁶ FPA was granted to these APRN groups when the Final Rule was enacted on January 13, 2017. FPA provides the ability for APRNs to practice to the full extent of their education, training and certification without supervision of a physician when that APRN is working within the scope of their VA employment. VA grants FPA upon demonstrating that the advanced educational, testing and licensing requirement established in the rulemaking are met and upon recommendation and approval of the medical executive committee, when the provider is credentialed and privileged.

VHA Directive 1350, Advanced Practice Registered Nurse Full Practice Authority, September 13, 2017, establishes the policy and responsibilities related to permitting FPA.¹⁷ To implement FPA, the three roles of APRNs are recognized as licensed independent practitioners and are to be clinically privileged in accordance with VA's clinical privileging process at the VA medical facility. According to VHA Directive 1350, "The VA medical facility's Organized Medical Staff must ensure their medical staff bylaws are in accordance with this directive." It also requires the VA medical facility Director to ensure compliance with the directive, including ensuring that medical staff bylaws recognize APRNs as licensed independent practitioners and that APRNs are privileged in accordance with VHA Handbook 1100.19, *Credentialing and Privileging*, October 15, 2012.¹⁸ The directive further states that the facility COS is responsible for ensuring that an APRN is eligible to be appointed as a member of the Executive Committee of the Medical Staff.¹⁹

Findings

Bylaws changes March 2020

We reviewed the medical staff bylaws at Jackson for 2018, 2020 and 2021, and found that the changes in the bylaws in 2020 and 2021 were significant. Amendments to the Jackson Bylaws in March 2020 were made to bring the medical staff bylaws at Jackson into compliance with VHA Directive 1350.²⁰

¹⁶ Federal Register. Full Practice Authority. A Rule by the Veterans Affairs Department on December 14, 2016. RIN 2900-AP44-Advanced Practice Registered Nurses.

¹⁷ VHA Directive 1350, Advanced Practice Registered Nurse Full Practice Authority, September 13, 2017.

¹⁸ VHA Handbook 1100.19 Credentialing and Privileging, October 15, 2012, has been superseded by VHA Directive 1100.20, Credentialing of Health Care Providers, September 15, 2021.

¹⁹ VHA Directive 1350, Advanced Practice Registered Nurse Full Practice Authority, September 13, 2017.

²⁰ Ibid.

We found that Jackson was one of the last VAMCs to adopt FPA for APRNs. We reviewed a memorandum the Deputy Under Secretary for Health for Operations and Management, sent to VISN Directors on October 31, 2019, that specifically states that "VHA Directive 1350 is authorized by 38 C.F.R. § 17.415, which has been in place since 2016. VHA had adequate time to implement this authority, and nearly all VA medical facilities have done so."²¹ The memorandum further states that "on October 23, 2019, the VHA Governing Board voted unanimously to require all VA medical facilities to fully implement VHA Directive 1350. As such, this memorandum requires full implementation of VHA Directive 1350, by September 30, 2020."

The medical staff bylaws at Jackson were amended, without discussion or vote, to follow the instructions provided by VHA leadership, to become compliant with VHA Directive 1350.²² The amended bylaws were adopted on March 23, 2020. A vote is not required for the facility leadership to follow instruction from the VHA Governing Board or to implement a VHA Directive.

Following the 2020 change to the bylaws to implement FPA, a Jackson employee contacted The Joint Commission and reported an incident stating, "The medical staff bylaws, rules, and regulations were unilaterally amended. Medical staff were unaware; hence, a vote was not conducted." We reviewed Jackson's response to The Joint Commission which stated that Jackson was directed by VA Central Office leadership to bring the facility into compliance with VHA Directive 1350.²³ On July 13, 2020, a follow-up letter was sent from The Joint Commission to the medical facility Director stating that, based on the review of the information, The Joint Commission would take no further action.

Bylaws changes March 2021

Although, amendments to the Jackson Bylaws in 2020 adopted FPA for APRNs, Jackson continued to use a template developed at the facility instead of the VHA Bylaws Template previously described. Contrary to language in the Bylaws Template, the March 2020 changes to the Jackson Bylaws did not make APRNs members of the medical staff, nor did they appropriately establish organization of the medical staff and leadership. The 2020 version of Jackson's bylaws inappropriately designated APRNs as *affiliate* members of the medical staff and continued to allow the medical staff to elect leadership consisting of an elected President, Vice President and Secretary. The VHA Bylaws Template states that "the Organized Medical Staff does not elect medical staff officers".²⁴

VA Memorandum, Standards of Practice, provides notification of SOP – P1, Medical Staff Leadership Structure.²⁵ SOP - P1 specifically states that "The Chief of Staff at the

²¹ VA Memorandum from the Deputy Under Secretary for Health for Operations and Management, Implementation Guidance for Veterans Health Administration (VHA) Directive 1350, Advanced Practice Registered Nurse Full Practice Authority. October 31, 2019.

²² VHA Directive 1350, Advanced Practice Registered Nurse Full Practice Authority, September 13, 2017.

²³ Ibid.

²⁴ Bylaws Template <https://vawww.qps.med.va.gov/divisions/qm/msa/Privileging/msaMSPReferences.aspx>.

²⁵ VA Memorandum, *Standards of Practice* Published on Medical Staff Affairs Intranet Site, December 8, 2020.

VA Medical Center is the President of the Medical Staff and Chairperson of the Executive Committee of the Medical Staff (ECMS). There are no exceptions and there is no vote by the medical staff to modify this mandate.”²⁶

We found evidence that on December 14, 2020, to comply with VHA leadership guidance and in accordance with the VA Memorandum, Standards of Practice, and SOP – P1, Medical Staff Leadership Structure, the Jackson COS sent an email to the medical staff informing them that to bring Jackson into compliance with VHA policy, “the COS will assume the role of the President of the Medical Staff effective immediately and will continue as the Chairperson of the Clinical Executive Board (CEB).”²⁷ We found evidence that in response to this email message from the COS, a workgroup composed of Medical Staff Members convened to begin the process of revising the Jackson Bylaws to conform to the VHA Medical Staff Bylaws Template. We found that the committee included four physicians, one nurse practitioner and one Ph.D. psychologist.

Revisions to the Jackson Bylaws were adopted on March 30, 2021. An email was sent to Jackson Medical Staff on March 30, 2021, describing the process of making the changes and included an attached copy of the updated Bylaws. The 2021 Bylaws follow the VHA template and appoint the COS as the President of the Medical Staff. The changes also include language identifying all Licensed Independent Practitioners as voting members of the Medical Staff. The updated Bylaws eliminate elected members of the Medical Staff and establish that volunteer Medical Staff Representatives represent the body of the Medical Staff on all governing boards of the facility. The volunteers are to serve for 1 year and are coordinated by the COS office. Any voting member of the Medical Staff may volunteer.

The COS held a quarterly mandatory Medical Staff meeting on April 21, 2021, during which the COS welcomed all attendees to a “new professional organization of the medical staff” and thanked the majority of attendees for professionalism and support in the adoption of the new bylaws. At the beginning of the meeting the COS stated that, in accordance with VHA policy, “The recent modernization of the bylaws to conform with VA Directive is not presently up for debate or vote.” We were told that more than 300 medical staff members attended the meeting and that this was the first meeting that APRNs were invited to attend as members of the Medical Staff.

The Joint Commission Accreditation Standards

The Office of External Accreditation functions as the liaison between VHA and The Joint Commission, regarding interpretation of accreditation standards. We reviewed The Joint Commission standards and interviewed expert witnesses on the interpretation of The Joint Commission standards, to determine if either of the revisions to the medical staff

²⁶ VHA Privileging Directive 1100.21: Standard Operating Procedure – P1, Medical Staff Leadership Structure, November 16, 2020.

²⁷ Clinical Executive Board (CEB): This committee may also be referred to by other names such as the Medical Staff Executive Committee or Medical Executive Committee, as defined in the VA medical facility-specific medical staff bylaws and meeting the requirements outlined in the Joint Commission Medical Staff Chapter.

bylaws, both of which occurred without a vote by the medical staff, was in violation of The Joint Commission standards.

The structure of the Organized Medical Staff and responsibilities are described in The Joint Commission Accreditation Requirements for MS:

- MS.01.01.01 states, "Medical staff bylaws address self-governance and accountability to the governing body." The associated Element of Performance (EP) 4 requires that the medical staff bylaws, rules and regulation and policies, the governing body bylaws and the hospital policies are compatible with each other and are compliant with law and regulation.²⁸
- MS.01.01.03 states, "Neither the Organized Medical Staff nor the governing body may unilaterally amend the medical staff bylaws or rules and regulations." The associated EP 1 states, "the medical staff bylaws, rules, and regulations are not unilaterally amended" and references MS.01.01.01, EP 4.²⁹

We requested an interpretation of MS.01.01.03 EP 1 and the meaning of "unilaterally amended" from the SME in the Office of External Accreditation. Facility bylaws cannot conflict with national policy. Neither the governance nor the medical staff can vote or amend bylaws to conflict with VHA policy or hold the facility to a lesser standard. We further discussed the meaning of the term "unilaterally amended" as used to describe the actions taken by Jackson leadership to bring the Jackson Bylaws into alignment with VHA policies. We were informed that it applies to the process of changing bylaws that are facility-specific and are not covered or in conflict with VHA directives and policies. To interpret "unilaterally amended" to apply to a required national policy is a misinterpretation of the accreditation standard language, process and the intent of the standard.

Conclusions for Allegation 1

- Although we **substantiate** that the Jackson leadership imposed revised medical staff bylaws without a discussion or vote on these rules, this was not in violation of The Joint Commission hospital accreditation standards. The medical staff bylaws were appropriately amended in 2020 and 2021 to bring Jackson into compliance with VHA Controlled National Policy (CNP) and leadership guidance.
- No vote is required to implement VHA CNP or instruction from VHA leadership.
- No deficiencies with the Bylaws Template were identified by the Joint Commission Resources Consultant in 2011 and 2016.

²⁸ The Joint Commission Edition Accreditation Manual
<https://vaww.qps.med.va.gov/divisions/qm/ea/jointcommission.aspx>.

²⁹ Ibid.

- Although The Joint Commission was contacted with a report of an incident related to the 2020 revision of the bylaws, The Joint Commission did not find a need for the facility to take action.
- There was no violation of The Joint Commission standards related to the amendment of the bylaws.

Recommendations to Jackson

None

Allegation 2

The revised bylaws eliminate medical staff self-governance, in violation of Joint Commission requirements, by appointing the Chief of Staff as the permanent president of the medical staff.

Background

VHA Directive 1100.20 defines Medical Staff Bylaws as a governance framework that establishes the roles and responsibilities of a body and its members.³⁰ This directive requires that the Bylaws Template, published by VA Central Office, must be used by VA medical facilities utilizing all mandatory content.³¹ The Bylaws Template establishes the structure for the Medical Staff and mandates the COS as President of the Medical Staff. The Template also states that “the Organized Medical Staff does not elect medical staff officers.” The Template was first established for use by VA medical facilities in 2010 and was amended in 2014, 2015 and 2017. The Template was reviewed by a Joint Commission Resources Consultant in 2011 and 2016, who found no significant deficiencies.³²

Prior to publication of VHA Directive 1100.20, VA established policy requiring the COS to be the President of the Medical Staff. This requirement was established by publication of VHA Privileging Directive 1100.21: SOP P1, *Medical Staff Leadership Structure*, which states that “The Chief of Staff at the VA Medical Center is the President of the Medical Staff and Chairperson of the Executive Committee of the Medical Staff (ECMS). There are no exceptions and there is no vote by the medical staff to modify this mandate.”³³

Findings

The VHA Bylaws Template established the COS as the President of the Medical Staff in 2010. When we reviewed the Jackson Bylaws for 2018, 2020 and 2021 we found that

³⁰ VHA Directive 1100.20, Credentialing of Health Care Providers, September 15, 2021.

³¹ Ibid.

³² Bylaws Template <https://vaww.gps.med.va.gov/divisions/gm/msa/Privileging/msaMSPReferences.aspx>.

³³ VHA Privileging Directive 1100.21: Standard Operating Procedure – P1, Medical Staff Leadership Structure, November 16, 2020.

prior to the 2021 revision of the Jackson Medical Staff Bylaws, Jackson was not using the VHA Bylaws Template.

The Jackson Medical Staff Bylaws for 2018 and 2020 allowed Jackson Medical Staff to elect their own medical staff leadership, including a president, and did not allow the COS to be a voting member of their CEB. By establishing their own medical staff leadership structure, Jackson was in violation of the VHA approved Bylaws Template which states that "nothing in VA medical facility Bylaws, Rules and Regulations can have an effect inconsistent with, or otherwise be inconsistent with, law or VA regulations."

We requested that the VA Office of External Accreditation conduct a review of all Joint Commission findings for all VA medical facilities, for the past 3 years, to determine if there were any findings related to the COS as the president of the medical staff and to determine if this leadership structure created a violation of any of The Joint Commission standards. We found no violations of The Joint Commission standards, related to the medical staff leadership structure in the VHA Bylaws Template, nor were there any findings related to the appointment of the COS as president of the medical staff. We were informed by the VA Office of External Accreditation that appointing the COS as president of the medical staff does not equate to the elimination of medical staff self-governance.

We found at Jackson that medical staff are well represented in governance; are involved in many committees at the VAMC; and have the opportunity to provide input. We found evidence that the medical staff participates in self-governance and established a workgroup to amend the medical facility bylaws in 2021. Medical staff meetings are held quarterly and in accordance with the recent bylaw changes and the meetings are more inclusive by allowing APRNs to attend as members of the medical staff.

Conclusions for Allegation 2

- We **do not substantiate** that the revised bylaws eliminate medical staff self-governance in violation of The Joint Commission requirements by appointing the COS as the permanent president of the medical staff.
- The Jackson Medical Staff Bylaws, adopted on March 30, 2021, appropriately appointed the COS as the permanent president of the medical staff, in accordance with the VHA Bylaws Template and VHA Privileging Directive 1100.21: SOP – P1, *Medical Staff Leadership Structure*, November 16, 2020.
- There is no evidence that appointing the COS as the president of the medical staff eliminates medical staff self-governance.
- The VHA Bylaws Template, which established medical staff leadership structure and the COS as the president of the medical staff, was reviewed by The Joint

Commission. The Joint Commission found no evidence of non-compliance with their standards.

Recommendations to Jackson

None

Allegation 3

Appointing the Chief of Staff as the permanent president of the medical staff could potentially compromise the safety of patients and employees.

Findings

VHA Directive 1100.20 defines Medical Staff Bylaws as a governance framework that establishes the roles and responsibilities of a body and its members. The VA medical facility Credentialing and Privileging program is aligned under the VA medical facility COS.³⁴ The COS provides oversight of the VA facility Credentialing and Privileging Manager to ensure adherence to the requirements of VHA Directive 1100.20 and to ensure that health care providers meet the clinical qualifications required to provide quality care. Also, per VHA Directive 1100.20, the COS acts as the assistant to the Director, in the efficient management of clinical and medical services, to ensure that the VA medical facility has appropriate staffing resources to meet the credentialing needs and workload of the VA medical facility. These responsibilities support a culture of safety.

We requested all patient safety reports from fiscal year 2019, through the time of the investigation, including any reports related to improper physician credentialing or privileging. We found no patient safety events related to appointing the COS as the president of the medical staff. No Jackson employees interviewed identified patient or employee safety concerns related to the COS as president of the medical staff.

Conclusion for Allegation 3

- We **do not substantiate** that appointing the COS as the permanent president of the medical staff could potentially compromise the safety of patients and employees.

Recommendations to Jackson

None

³⁴ VHA Directive 1100.20, Credentialing of Health Care Providers, September 15, 2021.

Allegation 4

Due to these improper changes in medical staff bylaws, Montgomery VAMC [Jackson] is at risk of losing its Joint Commission accreditation, thereby violating the requirements of VHA Directive 1100.16.

Background

VHA Directive 1100.16 defines the scope of VHA's relationship to The Joint Commission in accrediting VA medical facility and ambulatory programs and establishes policy and responsibilities in obtaining and retaining The Joint Commission accreditation and continual readiness with The Joint Commission standards at all VA medical facilities.³⁵ Per the VHA Directive, it is policy that health care facilities providing care to our Nation's Veterans maintain ongoing compliance with regulatory standards that demonstrate the provision of safe advanced standard quality-oriented health care delivery. VHA Directive 1100.16 provides the following definition of medical staff bylaws: "Medical staff bylaws are regulations and rules adopted by the organized medical staff and the governing body of an organization for internal governance, defining rights and obligations of various officers, persons, or groups within the organized medical staff's structure."³⁶

The Bylaws Template for use by VA medical facilities, originally published in 2010, has been updated in accordance with required changes, due to regulations or The Joint Commission accreditation standards. The template was prepared using VA regulations and policies and The Joint Commission Accreditation Manual for Hospitals as guidance. It was reviewed by The Joint Commission Resources Consultant in December 2011 and in September 2016. The Joint Commission Resources Consultant found no deficiencies in the VHA Bylaws Template.

Findings

As previously discussed in this report, in March 2020 and again in March 2021, Jackson appropriately amended the Medical Staff Bylaws to comply with VHA Directives and leadership guidance.

To determine if any of the changes to the Jackson Medical Staff Bylaws could potentially cause Jackson to lose their Joint Commission accreditation, thereby violating VHA Directive 1100.16, we requested that the Office of External Accreditation review past findings from all VA medical facility Joint Commission survey activities, since October 2019. We requested a review of all findings specific to the allegations of the whistleblower, including changes in the medical staff bylaws to allow APRNs FPA; changes in the medical staff bylaws to establish the COS as the president of the Medical Staff; and amendments to the medical staff bylaws. The Office of External

³⁵ VHA Directive 1100.16, Accreditation of Medical Facility and Ambulatory Programs, May 9, 2017.

³⁶ Ibid.

Accreditation reported no Joint Commission findings at any VA medical facility related to any of the allegations.

The most recent Joint Commission accreditation site visit at Jackson was completed on February 21, 2020. The facility is fully accredited. There were no findings at Jackson related to FPA, the COS as the President of the Medical Staff or amendments made to the bylaws.

Conclusions for Allegation 4

- We **do not substantiate** that there were improper changes in medical staff bylaws at Jackson, or that Jackson is at risk of losing its Joint Commission accreditation, thereby violating the requirements of VHA Directive 1100.16, *Accreditation of Medical Facility and Ambulatory Programs*, dated May 9, 2017. Further, by making these changes Jackson is now in compliance with VHA directives and leadership guidance.
- Within VHA, making changes in the medical staff bylaws, in accordance with national policy, is not improper and does not put VAMCs at risk of losing their Joint Commission accreditation.

Recommendations to Jackson

None

VI. Summary Statement

We developed this report, in consultation with other VHA and VA offices, to address OSC's concerns that Jackson may have engaged in a violation of law, rule or regulation, gross mismanagement and a substantial and specific danger to public health through the improper revision of medical staff bylaws and appointing the Chief of Staff as president of the medical staff. We reviewed the allegations and determined the merits of each, and the National Center for Ethics in Health Care has provided a health care ethics review. We found that Jackson appropriately revised the medical staff bylaws in accordance with VHA directives, the VHA Bylaws Template and leadership guidance.

Attachment A

Bylaws Template [Medical Staff Process References \(va.gov\)](#).

The Joint Commission E-dition Accreditation Manual [The Joint Commission \(TJC\) \(va.gov\)](#).

VA Memorandum, *Standards of Practice Published on Medical Staff Affairs Intranet Site*, December 8, 2020.

VHA Privileging Directive 1100.21: Standard Operating Procedure – P1, *Medical Staff Leadership Structure*, November 16, 2020.

VHA Directive 1100.20, *Credentialing of Health Care Providers*, September 15, 2021.

VHA Directive 1100.16, *Accreditation of Medical Facility and Ambulatory Programs*, May 9, 2017.

Federal Register. Full Practice Authority. A Rule by the Veterans Affairs Department on December 14, 2016. RIN 2900-AP44-Advanced Practice Registered Nurses.

VHA Directive 1350, *Advanced Practice Registered Nurse Full Practice Authority*, September 13, 2017.

VA Memorandum from the Deputy Under Secretary for Health for Operations and Management, Implementation Guidance for Veterans Health Administration (VHA) Directive 1350, *Advanced Practice Registered Nurse Full Practice Authority*, October 31, 2019.

Key to Investigative Team Members

- [REDACTED] Senior Medical Investigator
- [REDACTED] Clinical Program Manager
- [REDACTED] Deputy Director, Medical Staff Affairs
- [REDACTED] Administrative Investigator, OAWP

Key to Interviewees

- [REDACTED] Medical Center Director
- [REDACTED] Acting Associate Medical Center Director
- [REDACTED] Acting COS
- [REDACTED] Acting Associate Director, Patient Care Services
- [REDACTED] Assistant Director
- [REDACTED] VISN 16 Chief Medical Officer
- [REDACTED] VISN 16 Network Director
- [REDACTED] Former Medical Center Director
- [REDACTED] Former Assistant Chief, Quality Management
- [REDACTED] Former COS
- [REDACTED] Quality Management Peer Review Specialist
- [REDACTED] Patient Safety Manager
- [REDACTED] VHA Assistant Under Secretary for Health for Quality and Patient Safety
- [REDACTED] VHA Assistant Under Secretary for Health for Operations
- [REDACTED] M.D., Chief, Medicine Services
- [REDACTED] DO
- [REDACTED] M.D.
- [REDACTED] M.D.
- [REDACTED] M.D.
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