



**U.S. OFFICE OF SPECIAL COUNSEL**  
**1730 M Street, N.W., Suite 300**  
**Washington, D.C. 20036-4505**

**The Special Counsel**

December 19, 2023

The Honorable Denis McDonough  
Secretary  
Department of Veterans Affairs  
810 Vermont Avenue, N.W.  
Washington, D.C. 20420

Re: OSC File No. DI-24-000195  
Referral for Investigation – 5 U.S.C. § 1213(c)

Dear Secretary McDonough:

I am referring to you for investigation a whistleblower disclosure that employees at the Department of Veterans Affairs (VA), Perry Point VA Medical Center (Perry Point VAMC), Perry Point, Maryland, engaged in conduct that may constitute a violation of law, rule, or regulation, and a substantial and specific danger to public health. A report of your investigation of these allegations and any related matters is due to the Office of Special Counsel (OSC) by February 19, 2024.

The whistleblower, [REDACTED], who consented to the release of his name, is [REDACTED] Perry Point VAMC's Mental Health Residential Rehabilitation and Treatment Programs (MH RRTPs).<sup>1</sup> [REDACTED] disclosed that patients discharged from the MH RRTPs have not received timely outpatient follow-up appointments as required by Veterans Health Administration (VHA) directives because the outpatient mental health clinic is understaffed. Although [REDACTED] brought these issues to management's attention, they remain unresolved. The allegations to be investigated include:

---

<sup>1</sup> MH RRTP provides care to veterans with complex mental health and substance use disorders that co-occur with medical concerns and psychosocial needs and includes the following programs: the Psychosocial Residential Rehabilitation Treatment Program, the Domiciliary, and the Compensated Work Therapy-Transitional Residence. See VHA Directive 1162.02, *Mental Health Residential Rehabilitation Treatment Program* (2019) (VHA Directive 1162.02).

- In 2022 and 2023, approximately 400 patients discharged from the MH RRTPs did not receive a follow up appointment within seven days of discharge in violation of VHA directives;<sup>2</sup>
- The outpatient mental health clinic is not sufficiently staffed to provide patients discharged from the MH RRTPs their first follow-up appointment within seven days of discharge or a face-to-face evaluation within fourteen days of discharge as required by VHA directives;<sup>3</sup> and
- Any additional, related allegations of wrongdoing discovered during the investigation of the foregoing allegation.

██████ asserted that during 2022 and 2023, approximately 400 patients were discharged from the MH RRTPs and that all have waited over 30 days to receive a follow-up appointment. ██████ alleged that discharged patients have waited an average of 90 days for a follow-up appointment and that the longest wait time was roughly five months.

██████ asserted that since 2022, six psychiatrists, who provided medication management, left the VAMC's outpatient mental health clinic, meaning the clinic currently has only one psychiatrist and one nurse practitioner to provide care to the clinic's estimated 2,000 patients. ██████ explained that the follow-up appointment is needed to monitor or adjust patients' medication and prescriptions. He also explained that if patients are stable, they are seen approximately once a month for continued medication management, and if unstable, they are seen more often. However, ██████ asserted that patients are neither being seen nor are their medications being monitored as required due to the staffing shortage in the outpatient mental health clinic and large patient population.

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, 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

---

<sup>2</sup> VHA Directive 1162.02 requires facilities provide patients discharged from MH RRTPs a follow-up appointment within seven-calendar days of discharge, which must be scheduled for and communicated to the patient before being discharged. *Id.* at App. A § 7 *Discharge and Transition Planning*.

<sup>3</sup> VHA Handbook 1160.01, *Uniform Mental Health Services in VAMCs and Clinics* § 14 *Care Transitions* (2008) requires facilities to provide patients discharged from inpatient or residential care settings a follow-up appointment one week after discharge and see discharged patients in a face-to-face evaluation two weeks after discharge. VHA Directive 1161, *Productivity and Staffing in Clinical Encounters for Mental Health Providers* (2020) at Appx. A § 2 *Outpatient Mental Health Staffing*, states that "to ensure treatment is available to provide timely access to care, high-quality mental health services, and patient and employee satisfaction, facilities should make available a minimum of 7.72 outpatient clinical FTE [full time equivalent] per 1,000 Veterans receiving mental health care" and recommends "a minimum of 1.22 psychiatrist FTE assigned to clinical duties per 1,000 Veterans receiving outpatient mental health." See also VHA Directive 1162.02 § 7 (making facility staff responsible for reducing or eliminating access barriers to continuing outpatient care).

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 be accessed at <https://osc.gov/Services/Pages/DU-Resources.aspx>. If your investigators have questions regarding the statutory process or the report required under 5 U.S.C. § 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 dark ink, appearing to read "Karen Gorman", with a long horizontal flourish extending to the right.

Karen Gorman  
*Acting 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/Pages/Resources-PublicFiles.aspx>. 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).