



**U.S. Customs and
Border Protection**

December 19, 2024

The Honorable Hampton Dellinger
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW, Suite 300
Washington, D.C. 20036

Re: OSC Files No. DI-24-000591 and DI-24-001051

Dear Mr. Dellinger:

The attached report is a supplemental response to the July 12, 2024, referral of the above-captioned disclosures received by your office regarding allegations that U.S. Customs and Border Protection's Acting Chief Medical Officer (ACMO), may have engaged in actions that constituted a violation of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety. I am the designated official authorized by the Secretary to oversee the investigation, take any appropriate action determined to be necessary in accordance with the statute, and sign and transmit the resulting investigation report.¹

The Department's findings were included in Case Closing Reports (CCR) sent to your Disclosure Unit on September 25, 2024, and October 15, 2024. On November 15, Tracy Biggs, the Deputy Chief of the Disclosure Unit, sought additional information and clarification as noted below. This supplemental redacted CCR and redaction key are attached.

Based on OSC's referral letter and additional statements from the whistleblowers, CBP investigated the following:

1. Allegation 1: ACMO's improper efforts to replace OCMO's Electronic Medical Records system (EMR).
2. Allegation 2: ACMO's improper creation of an agency-wide narcotics policy to personally procure Fentanyl.
3. Allegation 3: ACMO's repeated consumption of alcohol while in possession of a CBP-issued firearm; and.

¹ The Secretary may delegate his "functions to any officer, employee, or organizational unit of the Department" unless delegation is specifically restricted by law. The statutory authority for the Secretary's function of approving and signing reports of investigation to respond to referrals by OSC does not restrict the Secretary's authority to delegate that function. As such, the Secretary referred this inquiry to CBP for an investigation and response, and the Secretary's authority to approve this report has been delegated to the Commissioner, CBP.

4. Allegation 4: Any additional or related allegations of wrongdoing discovered during the investigation of the foregoing allegations.

CBP's Office of Professional Responsibility (OPR) investigated each allegation and completed its findings. Investigation of Allegation #3, to include interviewing the named whistleblowers, submitting requests for information from the confidential whistleblowers through OSC, and interviewing other relevant witnesses, was previously completed and provided to you on September 25. The 5 U.S.C. §1213(d) response and the anonymized version of the CCR for Allegations #1, #2, and #4, along with a redaction key, was sent on October 15.

As described previously, CBP OPR investigators did not sustain Allegation #1, finding insufficient evidence that ACOMO's efforts with respect to the EMR constituted a violation of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety. For Allegation #2, CBP OPR found that the evidence supported the allegations that ACOMO engaged in actions that constituted a violation of policy as he did not have delegated authority to draft and implement a controlled substances policy. For Allegation #3, ACOMO was found to have violated policy at least one time by drinking alcohol while armed in Tucson, Arizona. As noted below, this violation was also a violation of Arizona law. OPR did not explicitly sustain allegations that this occurred elsewhere. With respect to Allegation #4, no other misconduct was identified.

This report supplements those prior 5 U.S.C. §1213(d) responses based on the request for additional information or clarification sent by Ms. Biggs on November 15, asking that we address the following:

1. Page 6 of the agency report states ACOMO communicated to DHS CMO that the incidents related to his consumption of alcohol while armed were minor. Could you please ask DHS ACOMO to elaborate on what incident(s) he was referring to besides the one at the SpringHill Suites Hotel in Tucson, Arizona on January 30, 2024?

Response: In OPR's supplemental CCR, they have advised that "the use of the word "incidents" [plural] was a typographical error and not indicative of multiple instances of the consumption of alcohol by ACOMO reported to DHS CMO." The DHS CMO has similarly advised that "ACMO never identified the location(s) or specifics of the alcohol consumption allegations. Rather, ACOMO focused on assuring DHS CMO that he had only consumed a few sips of alcohol."

2. The whistleblowers allege that two interview/statement summaries relevant to this investigation were omitted from the report, despite the agency providing summaries of all other witness interviews. Could you provide summaries of the information collected from the two below interviews/statements, or otherwise account for their absences?

- a. [REDACTED] reported that he was interviewed by OPR in connection with this investigation on June 28, 2024, but this interview summary was not included in the report.

Response: The additional summary of the June 28, 2024, statement has been added to the attached supplemental CCR.

- b. The whistleblowers allege that in the course of this investigation, OPR received a witness statement containing material information which was omitted from the report. The whistleblowers reported that this witness's statement included the following information:
 - i. "While on official travel, ACOMO asked the witness, who, like ACOMO, carries an agency-issued firearm, if the witness planned to consume alcohol at a team dinner following the workday, and if so, what that individual planned to do with their gun. The witness responded that they would likely drink alcohol at dinner and would therefore first secure their firearm in their hotel room. ACOMO responded, 'how do you go out in public without a gun?' ACOMO later told the witness he had been reported for drinking while carrying an agency-issued firearm and that he did not know that drinking while armed violated CBP policy, claiming that it had been permitted at the Dallas Police Department, and further stating that he always carried his firearm."

Response: A summary of the statement of witness (SCBPO) has been added to the attached supplemental CCR.

3. Please provide a response to the allegation that ACOMO's policy violation also violated Arizona law.

Response: As noted in the attached CCR, Arizona law prohibits the consumption of alcohol on a licensed premises while armed except for undercover peace officers on assignment to investigate the licensed establishment (Arizona Revised Statute (ARS) § 4-244(31)). As ACOMO did not meet this exception to the general prohibition, his conduct violated ARS § 4-244(31).

4. The agency noted in the cover letter that the report would be forwarded to DHS for review and appropriate action. Could you please provide an update on any responsive action taken or planned?

Response: Effective December 18, 2024, DHS has terminated the ACOMO detail. I have been advised that the DHS CMO has reviewed the reports substantiating the allegation of the consumption of alcohol while armed and other additional allegations. This supplemental report will also be forwarded for his review and consideration of appropriate action. The DHS CMO will evaluate all reported conduct and related findings and reserves management discretion to propose appropriate action based upon the totality of the circumstances.

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If you require further information regarding this matter, please contact Deputy Associate Chief
Counsel [REDACTED] or [REDACTED]
Senior Attorney, [REDACTED]

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'T' followed by a series of loops and a long horizontal stroke extending to the right.

Troy Miller
Senior Official Performing the Duties of the Commissioner



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CASE CLOSING REPORT

CASE NUMBER:	TBD	FIELD OFFICE:	Washington Field Office
CASE AGENT:	Special Agent		
CASE TITLE:	Office of the Special Counsel Directed Investigation		
SUBJECT NAME AND TITLE:	(Acting) Chief Medical Officer (ACMO) Office of the Chief Medical Officer, Office of Operations Support, CBP		
DATE OF ALLEGED ACTIVITY:	June 20, 2030 - Present		
SECURITY CLEARANCE:	TS/SCI		

ALLEGATION

On June 12, 2024, the U.S. Customs and Border Protection (CBP) Office of Professional Responsibility (OPR) Investigative Operations Directorate (IOD) received a referral to investigate allegations made to Mr. Hampton Dellinger, Special Counsel, Office of the Special Counsel (OSC), Washington, DC.

Mr. Dellinger provided whistleblower disclosures that Department of Homeland Security, Customs and Border Protection (CPB), Office of the Chief Medical Officer (OCMO), Office of Operations Support (OS), Washington, D.C., engaged in conduct that may constitute a violation of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, and a substantial and specific danger to public health and safety.

Whistleblowers, [REDACTED], [REDACTED], OCMO, and two whistleblowers who wished to remain confidential (Confidential Whistleblower 1 and Confidential Whistleblower 2), alleged ACMO engaged in wrongdoing. The allegations were as follows:

- ACMO's improper efforts to replace OCMO's Electronic Medical Records system (EMR).
- ACMO's improper creation of an agency-wide narcotics policy in order to personally procure Fentanyl.
- ACMO's repeated consumption of alcohol while in possession of a CBP-issued firearm; and
- Any additional or related allegations of wrongdoing discovered during the investigation

On June 12, 2024, CBP OPR initiated this investigation, and the case was assigned to Special Agent

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(SA), Washington, DC Field Office (WFO).

On November 15, 2024, CBP OPR was directed to provide additional information related to the allegations against ACMO for repeatedly consuming alcohol while in possession of a CBP-issued firearm. This report will address the Whistleblower's desire for additional information concerning the statement of Chief Medical Officer (CMO) of the Department of Homeland Security (DHS) Office of Health Security (OHS) (the "DHS CMO") and provide summaries of statements provided by [REDACTED] and Supervisory Customs and Border Patrol Officer (SCBPO).

I affirm that my statements in this report are true and correct to the best of my knowledge and belief.

Prepared by:		Report Date:	
Reviewed by:		Reviewed Date:	
Approved by:		Approved Date	

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POTENTIAL VIOLATIONS AND INVESTIGATIVE FINDINGS

Potential Violation(s) of Law	Investigative Findings
Arizona Revised Statutes 4-244(31) - Unlawful acts	Founded

PROSECUTORIAL ACTION(s) (when applicable)

No prosecutorial action as the allegations against ACMO were violations of CBP regulation or policy.

Potential Violation(s) of Policy, Rule, or Regulation	Investigative Findings
Table of Penalties – E06 (Use of position or authority for other than official purposes.)	Unfounded
Table of Penalties - F02 (Willful and intentional refusal to obey a proper order of a superior, a regulation, policy, rule, or procedure.)	Unfounded
Table of Penalties – I02 (Failure to follow applicable laws, rules, regulations, or policies in the performance of duties.)	Founded

ADMINISTRATIVE ACTION(s) (when applicable)

No administrative actions were taken against ACMO during OPR's investigation.

EXECUTIVE SUMMARY

██████████ and Confidential Whistleblower 1 alleged, even before ACMO's assignment as Acting Chief Medical Officer in late June 2023, ACMO desired to replace OCMO's Electronic Medical Records system (EMR); specifically, ACMO expressed a desire to replace the current EMR with a "commercial off the shelf" (COTS) product, such as those used in hospital settings.

According to ██████████, one of the original EMR programmers and a member of the advisory team charged with evaluating and reviewing the EMR, an EHR was considered, but ultimately rejected due to CBP and DHS system compatibility and interoperability issues. Additionally, the purchase and implementation of a new system would cost millions of dollars more than maintaining and updating the current EMR.

██████████ said ACMO directed his staff to conduct multiple reviews of the EMR and COTS systems with varying evaluation criteria. ██████████ stated this was done to massage the results of the review to justify the purchase of a COTS system. ██████████ assessed ACMO's push to replace the EMR as a waste of countless hours of federal employees' time that yielded no positive or tangible results.

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█████ and █████ further disclosed, in September 2023, ACOMO directed his staff members to assist him in procuring Fentanyl, a Drug Schedule II narcotic, for use at a meeting of the U.N. General Assembly in New York City, NY. █████ and █████ stated ACOMO allegedly claimed his possession of Fentanyl at the U.N. General Assembly was necessary in case a CBP operator was injured. OCMO staff members advised ACOMO that OCMO had no policy governing the procurement, storage, and disposal of Drug Schedule II narcotics. ACOMO directed a policy be created for such, using an unapproved, draft, DHS Office of Countering Weapons of Mass Destruction (CWMD) operational medicine policy as a template. Ultimately, the agency did not procure the Fentanyl requested by ACOMO, due to a vendor shortage. On February 21, 2024, DHS, CBP, Office of Operations Support (OS) Executive Assistant Commissioner (EAC) conducted a review of the OCMO Operational Medicine Policy created by and signed by ACOMO, which resulted in the policy being rescinded by EAC. The interviews of DHS CMO, Chief Medical Officer (CMO), Office of Health Security (OHS), Department of Homeland Security (DHS), and Chief of Staff (CoS2), OHS, DHS, revealed ACOMO was in receipt of and responsible for adhering to Delegation Number 26000, Delegation to the Chief Medical Officer/Director of the Office of Health Security, which outlines the responsibilities of ACOMO's role to include, but not limited to, the procurement of, and proper handling and use of, controlled substances and prescription drugs. According to CoS2, ACOMO's proposed CBP OCMO policy would have been in violation of OHS DHS Delegation Number 26000.

DETAILS OF INVESTIGATION

In his June 28, 2024, interview, █████ shared concerns about an alternative analysis being conducted on the Electronic Medical Record (EMR) system used by CBP. █████ stated, during a November 2023 trip to the Rio Grande Valley, TX, the alternative analysis EHR team toured CBP facilities and spoke with end users of the EMR.

█████ recounted how when listening in on a teleconference about the EMR survey with SCBPO, he heard ACOMO say he (ACMO) felt that █████ and SCBPO cooked the books and manipulated the survey results to make the EMR look better than it was. According to █████, ACOMO said, to receive funding for a new system, the survey data needs to reflect the shortcomings of the current EMR.

█████ emphasized he, along with SCBPO, had been involved in the EMR's development since 2020. █████ stated he and SCBPO organized a survey for end- users, a group which ACOMO later insisted include administrative staff, resulting in negligible changes to the findings. Additionally, █████ spoke of the review team's worry ACOMO attempted to manipulate the survey results data for some reason, which he speculated to be personal gain.

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█████ felt ACMO's push for a new EMR system, following the death of ARAz in May 2023, was unnecessary. █████ opined that since the May 2023 death, sufficient updates had been made to the EMR with continuous improvements and integrations of various systems. The biggest gap in the EMR, according to █████, remained clinical decision-making; a gap that existed due to contractual obligations limiting the developers' capacities to change that aspect.

Furthermore, █████ explained the current struggles within the system, mentioning some contractors prefer paper notes over the EMR, led to unrecorded patient encounters and privacy issues. He also reiterated the need for a backup paper system to address potential technology failures. █████ concluded ACMO was primarily responsible for the undue expenses and efforts being utilized to replace an existing approved system, based on misleading claims about its effectiveness. He called out ACMO and others for pushing this narrative and believed it demonstrated a mismanagement of time and resources, which he felt could be considered fraudulent.

Additionally, █████'s June 28, 2024, statement included additional information concerning ACMO's attempted acquisition of Schedule II Narcotics to have available during an upcoming mission to provide medical evacuation support to the United Nations General Assembly (UNGA) event in New York City in September 2023.

In September 2023, █████ and BP Agent █████ BPA2, OCMO, OS, CBP, received an email from ACMO requesting the procurement of narcotics for a United Nations mission. They were unable to use their equipment contract funds for this purpose. █████ forwarded the request to Lead Budget Analyst (LBA), OCMO, OS, CBP, who questioned the need for OCMO's involvement in the mission. A policy draft was eventually sent to █████, which █████ stated lacked DEA diversion rules. █████ stated CBP Office of Operations Support (OS) Deputy Executive Assistant Commissioner (DEAC), advised adding these rules, which ACMO later removed from the policy before signing it. █████ shared his concerns with DEAC via Microsoft Teams. DEAC expressed to █████ that policies should be vetted and authorized by higher leadership. █████ stated OS leadership was aware of ACMO's improper procurement attempt before the whistleblower article. █████ stated, while ACMO's methods were questionable, he does not believe his intent was to personally use the narcotics. █████ reiterated ACMO did not follow proper procedures and rushed the process without proper oversight.

█████ and SCBPO provided separate statements regarding the allegation ACMO consumed alcohol, while armed, at a hotel in Tucson, AZ in January 2024.

In his June 28, 2024, statement to OPR, █████ recounted how, on January 30, 2024, in Tucson, AZ, he observed ACMO drinking alcohol at a hotel bar while carrying his CBP-issued firearm, which is a violation of CBP policy. █████ reported this violation to his supervisor, SCBPO. █████ noted he arrived at the bar late after dropping off a contractor and found ACMO already drinking. During a brief hug goodbye, █████ felt ACMO's firearm and holster. He immediately texted SCBPO, his supervisor, about ACMO's behavior while armed.

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█████ stated ACMO later admitted to SCBPO he was carrying his firearm while drinking that night. According to SCBPO, ACMO claimed to have only had a few sips of beer but was seen drinking more than once. █████ stated he reported the incident to the Office of Professional Responsibility (OPR) and sent an email detailing the violation, which somehow reached the attention of ACMO, which led to what █████ regarding as “retaliation” against █████. This included being excluded from work-related social interactions and greetings by ACMO.

█████ noted, when he sent the email to OPR, he inadvertently sent it to an OCMO contractor with a name like its intended OPR representative recipient and attempted to recall the email.

Despite feeling threatened by ACMO's behavior, █████ stated he did not file a retaliation claim but informed his lawyers about the issue. █████ mentioned, during an earlier trip, ACMO questioned █████'s attire while he was on light duty, even though he was within policy. █████ clarified he reported ACMO's alcohol violation out of duty and not in retaliation for the complaints about his uniform.

In a September 22, 2024, memorandum to OPR, SCBPO stated, on or about April 11, 2024, she traveled in official capacity to McAllen, Texas, with ACMO, to meet the Flores Settlement Monitor. SCBPO stated, after a long day while she and ACMO worked from a table in the lobby of the Fairfield Inn, ACMO asked if SCBPO planned to have a drink at dinner. SCBPO said she likely would. SCBPO stated ACMO then questioned how she went out in public without a gun, to which SCBPO replied she locked the weapon in her room or chose not to drink. Later, ACMO shared with SCBPO he [ACMO] had been reported for drinking while carrying his gun and mentioned he only had a beer in the hotel bar. SCBPO told ACMO it was against policy, wherein, according to SCBPO, ACMO seemed unaware of the rule, and stated it was allowed in the Dallas Police Department. SCBPO stated she and ACMO went to dinner later that evening, but SCBPO did not observe if ACMO was armed.

A September 22, 2024, review of Arizona law related to the consumption of alcohol while armed showed a prohibition against the consumption of alcohol on a licensed premises while armed except for undercover peace officers on assignment to investigate the licensed establishment (Arizona Revised Statute (ARS) § 4-244(31)). ACMO was not a peace officer on undercover assignment. The consumption of alcohol while armed is not addressed in Arizona's broader weapons-related criminal statutes (ARS § 13-3102, Misconduct involving weapons).

CBP OPR was asked to provide OSC with additional information regarding the use of the word “incidents” in the October 9, 2024, report to OSC. The use of the word “incidents” was a typographical error and not indicative of multiple instances of the consumption of alcohol by ACMO reported to DHS CMO.

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