



THE SECRETARY OF VETERANS AFFAIRS  
WASHINGTON

July 17, 2020

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

Re: OSC File No. DI-19-4018

Dear Mr. Kerner:

I am responding to your August 2, 2019, letter to the Department of Veterans Affairs (VA) regarding anonymous whistleblower allegations that Sleep Medicine Care, a department at the VA Southern Nevada Healthcare System in Las Vegas, Nevada, has a significant backlog of patient consults that has resulted in a delay of care to patients suffering from sleep disorders and other related conditions.

The Executive in Charge, Office 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 investigated this matter from October 15-17, 2019. We substantiate two of the whistleblower's allegations and do not substantiate one of the whistleblower's allegations. We make 10 recommendations to the VA Southern Nevada Healthcare System in Las Vegas, Nevada. The recommendations within the report will not be acted upon until the report is signed and dispatched to the respective office with a request for a corrective action plan.

Thank you for the opportunity to respond.

Sincerely,

A handwritten signature in blue ink that reads "Robert L. Wilkie".

Robert L. Wilkie

Enclosure

**DEPARTMENT OF VETERANS AFFAIRS**

**Washington, DC**

**Report to the**

**Office of Special Counsel**

**OSC File Number DI-19-4018**

**VA Southern Nevada Healthcare System**

**Las Vegas, Nevada**



**Report Date: June 30, 2020**

**TRIM 2019-C-30**

## Executive Summary

The Executive in Charge, Office 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 VA Southern Nevada Healthcare System (hereafter, Las Vegas) located in Las Vegas, Nevada. An anonymous whistleblower alleged that Sleep Medicine Care, a department at Las Vegas, which offers evaluation and treatment for all aspects of sleep disorders and related conditions, has a significant backlog of patient consults that has resulted in a delay of care to patients suffering from sleep disorders and other related conditions. We conducted a site visit to Las Vegas on October 15–17, 2019.

### Specific Allegations of the Whistleblower

1. *Sleep Medicine Care has a backlog of approximately 600 patients consults that have not been addressed;*
2. *[REDACTED], Patient Access Advisor and Consult Management Lead, improperly placed patient consults in “received” status and then failed to provide follow-up care; and*
3. *Agency officials have failed to adequately staff Sleep Medicine Care, which has negatively impacted the Southern Nevada HCS’s ability to provide timely patient care.*

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 careful review of the findings, we make the following conclusions and recommendations:

### Conclusion(s) for Allegation 1

- We **substantiate** that Sleep Medicine Care had a backlog of 201 consults on October 18, 2019. Other than verbal reports, we found no other evidence that this backlog reached 600 in the past.
- Of these consults, 132 (66%) were in Pending status; 39 (19%) were in Active status; and 30 (15%) were in Scheduled status.
- As of March 29, 2020, the number of Pending consults has decreased. Currently, there are five consults in Pending status.

- Las Vegas Medical Center Memorandum (MCM) 11-16-29, *Consult Management*, is overdue for recertification and is not in compliance with national policy.

### **Recommendation(s) to Las Vegas**

1. Provide education on the consult management process and policy to Sleep Medicine Care staff and administrators.
2. Ensure consults are acted upon according to Veterans Health Administration (VHA) Directive 1232(2), *Consult Processes and Procedures*, and Deputy Under Secretary for Health for Operations and Management Memorandum, *Scheduling and Consult Policy Updates*, published June 5, 2017. Monitor for compliance and address deficiencies and non-compliance, as indicated.
3. Review, update and align Las Vegas MCM 11-16-29 with the national directive.
4. Charter a Process Improvement Team to include Systems Redesign and an assigned National Transformational Coach Captain to develop a sustainable process for consult management for Sleep Medicine Care.
5. Develop and implement a facility contingency plan to adapt and adjust for increasing demand.
6. Ensure the new Sleep Medicine Physician is properly oriented to the electronic health record and clinical operations, ensuring the physician is fully aware of all aspects, goals and mission of Sleep Medicine Care.

### **Conclusion(s) for Allegation 2**

- We **do not substantiate** that the Patient Access Advisor and Consult Management Lead improperly placed patient consults in received status and then failed to provide follow-up care. Only 1.3% of all consults received between fiscal years 2016-2019 were placed in received/active status during this timeframe.
- We reviewed the charts of six Veterans who died while their Sleep Medicine consult was still pending (no appointment had been scheduled). One Veteran's death was due to respiratory disease, specifically chronic obstructive pulmonary disease (COPD). While the untreated obstructive sleep apnea may have contributed to nocturnal hypoxemia, treatment would not have changed the course of the underlying COPD or the patient's outcome.

### **Recommendation(s) to Las Vegas**

None.

### **Conclusion(s) for Allegation 3**

- We **substantiate** that Agency officials have failed to adequately staff Sleep Medicine Care.
- Sleep Medicine Care has 87 home sleep study units that are not being utilized.
- Telesleep Medicine requires increased resources and support from the Biomedical and Informational Technology Departments.
- The Las Vegas in-house sleep clinic is not being utilized. As a result, Veterans are being referred to community clinics at a significant cost. Both cost and time to complete assessments would be decreased if the in-house sleep clinic was properly staffed and utilized.

### **Recommendation(s) to Las Vegas**

7. Review operational guidelines for Sleep Medicine Care and develop a staffing plan to conform to the guidelines.
8. Ensure vacancies within Sleep Medicine Care staffing plan are prioritized and ensure adherence to timelines for job announcements.
9. Develop operational guidelines and a staffing plan that includes utilization of the in-house sleep lab. Enhance and increase program resources to the Telesleep program.
10. Contact the National Pulmonary/Critical Care/Sleep Medicine Program Office for a consultative site visit.

### **Summary Statement**

We have developed this report in consultation with other VHA and VA offices to address OSC's concerns related to clinical care and staffing practices at Las Vegas, which may have violated a law, rule or regulation; involved gross mismanagement and abuse of authority; or created a substantial and specific danger to public health and safety. VHA Human Resources has examined personnel issues to establish accountability, and the National Center for Ethics in Health Care has provided a health care ethics review. We found no danger to public health and safety but found local consult policy that is not in compliance with national consult policy, understaffing and inadequate resource utilization.

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## **I. Introduction**

The Executive in Charge, Office 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 VA Southern Nevada Healthcare System (hereafter, Las Vegas) located in Las Vegas, Nevada. An anonymous whistleblower alleged that Sleep Medicine Care, a department at Las Vegas, which offers evaluation and treatment for all aspects of sleep disorders and related conditions, has a significant backlog of patient consults that has resulted in a delay of care to patients suffering from sleep disorders and other related conditions. We conducted a site visit to Las Vegas on October 15–17, 2019.

## **II. Facility Profile**

As part of Veterans Integrated Service Network (VISN) 21, Las Vegas provides inpatient and outpatient medical services to Veterans residing in Southern Nevada, with an official catchment area of Clark, Lincoln and Nye Counties. Las Vegas also serves Veterans from Arizona, Utah and California. VA Southern Nevada Healthcare System facilities are located in Las Vegas, North Las Vegas, Henderson, Pahrump and Laughlin. Las Vegas had 65,798 Veteran enrollees and 909,116 outpatient visits in fiscal year (FY) 2019.

## **III. Specific Allegations of the Whistleblower**

1. *Sleep Medicine Care has a backlog of approximately 600 patients consults that have not been addressed;*
2. *[REDACTED], Patient Access Advisor and Consult Management Lead, improperly placed patient consults in “received” status and then failed to provide follow-up care; and*
3. *Agency officials have failed to adequately staff Sleep Medicine Care, which has negatively impacted the Southern Nevada HCS’s ability to provide timely patient care.*

## **IV. Conduct of Investigation**

The VA team conducting the investigation consisted of a Senior Medical Investigator, and a Clinical Program Manager, both from OMI; a Health Systems Specialist, Office of Veterans Access to Care; National Program Director, Pulmonary/Critical Care/Sleep Medicine; and a Supervisory Human Resources (HR)/Employee Relations Specialist. We reviewed relevant policies, procedures, reports, memoranda and other documents listed in Attachment A. We toured the Sleep Medicine facilities at Las Vegas. We conducted a site visit to Las Vegas on October 15–17, 2019. We held an entrance briefing with Las Vegas and VISN 21 leadership, including the following individuals:

## VISN 21

- Associate Quality Management Officer (QMO)

## Las Vegas

- Acting Medical Center Director (MCD)/Chief of Staff (CoS)
- Deputy CoS
- Acting Associate Director
- Acting Assistant Director
- Acting Nurse Executive
- Acting Deputy Nurse Executive
- Health Systems Specialist (HSS) to the CoS

We interviewed the following Las Vegas employees:

- Acting MCD/CoS
- Deputy, CoS
- HSS to the CoS
- Patient Access Advisor and Consult Management Lead
- Associate Nurse Executive, Geriatrics and Extended Care/VA Community Care
- Acting Chief of Medicine
- Chief, Telehealth Services
- Group Practice Manager
- Administrative Officer, Medicine Service
- Clinical Applications Coordinator
- Clinical Program Analyst, Clinical Informatics
- Clinical informatics nurse
- Registered Respiratory Therapist
- Four Medical Instrument Technicians (MIT), Polysomnography
- Medical Support Assistant
- Nurse Practitioner, formerly in Sleep Medicine
- Chief, Quality, Safety, Value
- Risk Manager
- Patient Safety Officer
- Acting Human Resources Officer (HRO)
- Supervisory HR Specialist
- HR Specialist for Sleep Medicine Care

We held an exit briefing with Las Vegas and VISN 21 leadership, including the following individuals:



## VISN 21

- Associate QMO

### Las Vegas

- Acting MCD/CoS
- Deputy CoS
- Acting Associate Director
- Acting Assistant Director
- Acting Nurse Executive
- Acting Deputy Nurse Executive
- HSS to the CoS

On December 27, 2019, we received a letter via mail, dated December 2, 2019, from the attorney representing the previous Sleep Medicine Physician for Las Vegas. The letter included a statement from the physician and a request for a face-to-face interview with the physician. We conducted a face-to-face interview with the physician accompanied by their counsel on January 28, 2020.

## V. Findings, Conclusions and Recommendations

### Allegation 1

*Sleep Medicine Care has a backlog of approximately 600 patients consults that have not been addressed.*

### Background

Sleep disorders are any disorder that affects, disrupts or involves sleep. These are conditions in which constant sleep is disturbed frequently or for a long duration of time. Sleep disorders include snoring (although it is usually not medically significant), insomnia, sleep apnea, restless leg syndrome and sleepwalking. Sleep Medicine is the medical subspecialty concerned with the diagnosis and treatment of sleep disorders.

A consult is a request for clinical services on behalf of a patient. In the Veterans Health Administration (VHA), consult requests are made through an electronic document in the Computerized Patient Record System (CPRS) communicating service requests and/or results. A clinical consult is a consult document in CPRS used as two-way communication on behalf of a patient. The consult process consists of a physician or provider (sender) request seeking an opinion, advice or expertise regarding the evaluation or management of a specific problem answered by a physician or other health care provider (receiver).<sup>1</sup> The CPRS consult package must be used for all clinical consults. Within CPRS, consult status includes:

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<sup>1</sup> VHA Directive 1232(2), *Consult Processes and Procedures*, August 24, 2016; Amended September 23, 2016.

- Active (a). This status occurs when a consult is received, and efforts are underway to fulfill a consult. A consult may also revert to active in other scenarios such as when an appointment is canceled or no showed.
- Pending (p). This status designates requests that have been sent, but not yet acted upon by the receiving service.
- Scheduled (s). This indicates that an appointment has been made and linked to the consult request. Scheduled status automatically sends an alert to the sending provider. The consult status should not be manually changed to “scheduled” in the consult package but should be linked to appointments so that the consult status changes when the appointment status is changed.
- Partial Result (pr). This status designates partial but not complete resolution of the consult request.
- Complete (c). This status designates completion of the requested service.
- Forward (f). This status is selected by the receiving service when the decision is made to forward the consult to another service. This is not used to forward to a specific provider. An alert is sent to the sending provider.
- Discontinue (dc). This status is used by the sending or receiving provider to discontinue a consult no longer wanted or needed. If the sender discontinues a consult, an alert may be sent to the receiving service. If a receiving provider discontinues a consult, an alert must be sent to the sending service.
- Cancel/Deny (x). This status is selected by the receiving service to return a consult request to the sender. Cancel/Deny is used if the ordering provider did not ask an appropriate consult question or provide sufficient information. This status may also be used to correct an obvious error in the consult order (e.g., Future Care Consult with the Clinically-Indicated Date of today). Selection of this status sends an alert to the sending provider. Canceled consults are never to be resubmitted if they are more than 90-calendar days old.<sup>2</sup>

## Findings

Between FYs 2013–2018, the use of VA Sleep Medicine services increased an average of 16% per year and the number of Veterans who received Sleep Medicine services exceeded 650,000 in 2018. Reasons for the increase in the number of Veterans requiring Sleep Medicine services include, but not limited to, aging of the population; increasing rates of obesity, hypertension, cardiovascular disease, diabetes, chronic obstructive pulmonary disease, chronic pain, depression and posttraumatic stress disorder; and increased utilization of VA health care, especially by younger and rural Veterans. In addition, poor sleep habits that developed during military service sometimes continue for Veterans into civilian life, necessitating Sleep Medicine care.<sup>3</sup>

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<sup>2</sup> VHA Directive 1232(2), *Consult Processes and Procedures*, August 23, 2016.

<sup>3</sup> Sarmiento KF, Folmer RL, Stepnowsky CJ, Whooley MA, Boudreau EA, Kuna ST, Atwood CW, Smith CJ, Yarbrough WC. *National Expansion of Sleep Telemedicine for Veterans: The Telesleep Program*. *J Clin Sleep Med*. 2019;15(9):1355–1364. <https://www.ncbi.nlm.nih.gov/pubmed/31538607>.

The Patient Access Advisor and Consult Management Lead, who works for the Deputy CoS and is focused on overall facility consult management, stated there have been three Sleep Medicine Physicians (SMP) assigned to Sleep Medicine since 2012. SMP #1 worked from July 1, 2012, to December 16, 2014; SMP #2 from September 20, 2015, to August 1, 2017; and SMP #3 from April 29, 2018, to June 26, 2019.

The Patient Access Advisor's current involvement with Sleep Medicine began in October 2017 after the abrupt resignation of SMP #2 in August 2017. The Patient Access Advisor stated, "At one time, there was a backlog of actually well over 700 consults in sleep medicine," some of which were from 2016. The Patient Access Advisor also stated they had inherited approximately 30,000 view alerts that had not been addressed by the SMP prior to their abrupt resignation and the Patient Access Advisor addressed these alerts.

In addition to working on the consult list, the Patient Access Advisor also had regularly assigned duties including consult management for the facility. In January 2018, the Patient Access Advisor requested assistance from the CoS to help manage the consults that Sleep Medicine was receiving at a rate of 15 to 20 per day. The CoS assigned an Occupational Health physician to assist with the consults, and all pending consults were cleared by the end of April 2018. However, the Occupational Health physician resigned shortly afterwards. At this point, the Patient Access Advisor stated the total consult list was "significantly reduced to approximately 300." Afterwards, the Patient Access Advisor went on extended leave for several weeks, and another backlog of consults occurred. In late April 2018, Las Vegas hired a new SMP.

Upon returning from leave, the Patient Access Advisor spent approximately 2 weeks working with the newly-hired SMP, orienting the SMP to CPRS, including how to process view alerts. During this time, the Patient Access Advisor accepted responsibility for the remaining 250-300 consults that were backlogged and requested the new SMP to process all new consults going forward.

The Patient Access Advisor stated that during this time, the new SMP insisted on printing hard copies of Veterans' records rather than working within CPRS. The Patient Access Advisor further stated that a month later, the SMP went to the Chief of Medicine, without the Patient Access Advisor, to discuss the Patient Access Advisor's role in Sleep Medicine. After the meeting, the Patient Access Advisor stated they received an email from the SMP stating the Patient Access Advisor's role in Sleep Medicine from that time forward would be to enter orders for the SMP. At this point, the Patient Access Advisor stopped working on all Sleep Medicine consults and let the SMP take responsibility for all aspects of Sleep Medicine consults.

A former Nurse Practitioner (NP), who worked in Sleep Medicine Care from March 2019 through June 2019, found consults in pending status since mid-2018. The NP further stated that there were significant delays in both scheduling sleep studies and informing patients of their results once the studies were completed. The NP also stated that SMP #3 attempted to have Primary Care providers initially screen and identify patients at high

risk for sleep apnea and order sleep studies themselves to reduce delays by Sleep Medicine Care. In interviews with Sleep Medicine Care staff, all acknowledged a consult backlog especially during the periods without an SMP. A lead polysomnography technician stated the Patient Access Advisor is again triaging and managing the Continuous Positive Airway Pressure (CPAP) consults, and the technician is managing the training consults during which time the technician provides patient education on the use of CPAP machines and other concerns.<sup>4, 5</sup> On October 16, 2019, while on site, we queried the VHA Support Service Center for the total number of open consults in Sleep Medicine and found 201 open consults.<sup>6</sup> Sleep Medicine consults fall into four categories at the facility:

- a. CPAP Outpatients: (Sleep Tech appointment) Veteran already has CPAP equipment and requires clinical follow-up.<sup>7</sup>
- b. CPAP/Automatic Positive Airway Pressure (APAP)/Bilevel Positive Airway Pressure (BiPAP) Setup and Training Outpatient: (Sleep Tech Appointment) Equipment is issued, and training is provided.<sup>8, 9</sup>
- c. E-CONSULT Sleep Disorder Outpatient: (electronic consult from primary care).<sup>10</sup>
- d. Sleep Medicine Outpatient: (new outpatient consult for SMP).

Per our request, Las Vegas also queried consults by the stop code for Sleep Medicine (found in CPRS) and as of October 18, 2019, found 201 open consults, with 132 in a pending status, as seen in Table 1.

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<sup>4</sup> Polysomnography technicians specialize in the diagnosis and treatment of patients suffering from sleep disorders. They are sometimes called sleep technicians. Technicians operate computerized polytomographs for recording continuous all-night physiological data including EEG, EOG, EKG and EMG and respiratory parameters. They assist with the generation of sleep reports and provide patient education on a variety of pulmonary/sleep topics, based on patient needs and patient age.  
[https://www1.cfnc.org/Plan/For\\_A\\_Career/Career\\_Profile/Career\\_Profile.aspx?id=XmvRzRY6AzfBXAP2BPAXcMp3n4Q2QXAP3DPAXXAP3DPAX](https://www1.cfnc.org/Plan/For_A_Career/Career_Profile/Career_Profile.aspx?id=XmvRzRY6AzfBXAP2BPAXcMp3n4Q2QXAP3DPAXXAP3DPAX).

<sup>5</sup> A training consult is a 60-minute face-to-face visit or a group clinic visit with a sleep technician for equipment setup and training.

<sup>6</sup> VSSC monitors key indicators of the quality, quantity and cost of VHA patient care, as well as compliance with clinical guidelines as part of VHA's ongoing examination of performance measures.

<sup>7</sup> Continuous Positive Airway Pressure (CPAP) is an effective treatment for moderate to severe obstructive sleep apnea. Patients with obstructive sleep apnea treated with CPAP wear a face mask during sleep which is connected to a pump (CPAP machine) that forces air into the nasal passages at pressures high enough to overcome obstructions in the airway and stimulate normal breathing. The airway pressure delivered into the upper airway is continuous during both inspiration and expiration.  
<https://www.medicinenet.com/script/main/art.asp?articlekey=31372>.

<sup>8</sup> Automatic Positive Airway Pressure (APAP) is a positive airway pressure therapy that automatically adjusts to meet each specific person's breathing needs, which changes throughout the nightly during different stages of sleep.  
<https://www.resmed.com/us/en/blog/diagnosis-and-treatment/what-is-apap-and-how-is-it-different-than-cpap.html?b>.

<sup>9</sup> Bilevel or two-level Positive Airway Pressure (BiPAP); Air is sent through a tube into a mask that fits over the nose delivering an inhale pressure and an exhale pressure. <https://www.sleepassociation.org/sleep-treatments/cpap-machines-masks/cpap-vs-bipap/>.

<sup>10</sup> An e-consult, a clinical consultation, is provided by a clinician who provides diagnostic and medical management of a specific patient in response to a request seeking opinion, advice or expertise.

**Table 1. Total Open Consults for February 2019 through October 2019**

(Total open consults are the sum of active, pending and scheduled.)

<b>Consult Name</b>	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct
<b>CPAP Outpatient</b>	3	1	5	6	7	37	64	60	60
Active (Actively attempting to schedule)	0	0	0	0	0	0	0	3	11
Pending (Awaiting review prior to scheduling)	0	0	0	0	0	0	0	16	27
Scheduled (Has scheduled appointment)	3	1	5	6	7	35	64	41	22
<b>CPAP/APAP/BIPAP SETUP AND TRAINING OUTPATIENT</b>	1	0	2	2	22	98	115	98	40
Active	1	0	1	1	14	11	16	61	25
Pending	1	0	0	0	0	0	0	0	7
Scheduled	0	0	1	1	8	87	98	37	8
<b>E-Consult Sleep Disorder Outpatient</b>	0	0	0	0	0	26	3	31	31
Active (Results, pending review)	0	0	0	0	0	25	3	9	3
Pending (Awaiting review, does not require an appointment)	0	0	0	0	0	0	0	22	27
<b>Sleep Medicine Outpatient</b>	0	0	0	0	0	0	0	77	71
Pending	0	0	0	0	0	0	0	77	71
<b>Monthly Total</b>	4	1	7	8	29	161	182	266	201

As seen in the last row under “Monthly Total,” there was an increase in the number of Open Consults after SMP #3 left in June 2019.

VHA Directive 1232(2), *Consult Processes and Procedures*, states consults must be acted upon within 7 days. The Deputy Under Secretary for Health for Operations and Management (DUSHOM) Memorandum, *Scheduling and Policy Update*, states “consults must be reviewed and scheduled (or first contact attempt made and recorded) within 2 business days of the consult creation” in an effort to improve Veteran access to

care.<sup>11</sup> However, according to the local Las Vegas Medical Center Memorandum (MCM) 11-16-29, *Consult Management*, “consult requests are to be reviewed and acted upon within 3 business days.”<sup>12</sup> In addition, the policy is currently overdue for recertification.

To follow up on the consults, we pulled data on March 29, 2020, and compared it to the data on October 18, 2019, as detailed below in Table 2.

**Table 2. Comparison of Consult Status**

<b>Comparison of Consult Status October 18, 2019 and March 29, 2020</b>			
	Status	10/18/2019	3/29/2020
CPAP OUTPATIENT	ACTIVE	11	51
CPAP OUTPATIENT	PENDING	27	1
CPAP OUTPATIENT	SCHEDULED	22	115
CPAP/APAP/BIPAP SETUP AND TRAINING OUTPATIENT	ACTIVE	25	60
CPAP/APAP/BIPAP SETUP AND TRAINING OUTPATIENT	Pending	7	0
CPAP/APAP/BIPAP SETUP AND TRAINING OUTPATIENT	SCHEDULED	8	122
E-CONSULT SLEEP DISORDER OUTPATIENT	ACTIVE	3	14
E-CONSULT SLEEP DISORDER OUTPATIENT	PENDING	27	2
SLEEP MEDICINE OUTPATIENT CONSULT	ACTIVE	0	6
SLEEP MEDICINE OUTPATIENT CONSULT	PENDING	71	2
	<i>Active totals:</i>	39	131
	<i>Pending totals:</i>	132	5
	<i>Scheduled totals:</i>	30	237

While the number of total Open Consults has increased from 201 to 373, the distribution of workload has moved from mostly pending in October 2019 to mostly active and scheduled in March 2020.

**Conclusion(s) for Allegation 1**

- We **substantiate** that Sleep Medicine Care had a backlog of 201 consults on October 18, 2019. Other than verbal reports, we found no other evidence that this backlog reached 600 in the past.
- Of these consults, 132 (66%) were in Pending status; 39 (19%) were in Active status; and 30 (15%) were in Scheduled status.
- As of March 29, 2020, the number of Pending consults has decreased. Currently, there are five consults in Pending status.

<sup>11</sup> Deputy Under Secretary for Health for Operations and Management (10N) Memorandum, *Scheduling and Consult Policy Updates*, June 5, 2017.

<sup>12</sup> Las Vegas MCM 11-16-29, *Consult Management*, October 2016.

- Las Vegas MCM 11-16-29 is overdue for recertification and is not in compliance with national policy.

### **Recommendation(s) to Las Vegas**

1. Provide education on the consult management process and policy to Sleep Medicine Care staff and administrators.
2. Ensure consults are acted upon according to VHA Directive 1232(2) and DUSHOM Memorandum, *Scheduling and Consult Policy Updates*. Monitor for compliance and address deficiencies and non-compliance, as indicated.
3. Review, update and align Las Vegas MCM 11-16-29 with the national directive.
4. Charter a Process Improvement Team to include Systems Redesign and an assigned National Transformational Coach Captain to develop a sustainable process for consult management for Sleep Medicine Care.
5. Develop and implement a facility contingency plan to adapt and adjust for increasing demand.
6. Ensure the new SMP is properly oriented to the electronic health record (EHR) and clinical operations, ensuring the physician is fully aware of all aspects, goals and mission of Sleep Medicine.

### **Allegation 2**

████████████████████, *Patient Access Advisor and Consult Management Lead*, improperly placed patient consults in “received” status and then failed to provide follow-up care.

### **Background**

VHA Directive 1232(2) changed the allowable time for consults to be in a pending status from 7 calendar days to 2 business days. This means the receiving service must update the status from pending no more than 2 business days after the consult is ordered. This change now aligns with the DUSHOM Memorandum, dated June 5, 2017.<sup>13</sup>

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<sup>13</sup> VHA Directive 1232(2), *Consult Processes and Procedures*, August 23, 2016; amended September 23, 2016.

## Findings

Table 3 displays the status of a consult after an action is performed on the consult.

**Table 3. Consult Actions and Status**

Consult Actions	Status After Action	CPRS Labeling
CPRS Released Order	PENDING	[p]
Discontinued	DISCONTINUED	[dc]
Incomplete Report	PARTIAL RESULTS	[pr]
Completed	COMPLETE	[c]
Edited/Resubmit	PENDING	[p]
Schedule	SCHEDULED	[s]
Forwarded	PENDING	[p]
Cancel (Deny)	CANCELLED	[x]
Added Comment	No change in status	
Received	ACTIVE	
Printed	No change in status	

The receiving service's acknowledgment of receipt of a consult, changes its status from pending to active. This indicates the receiving provider or clinic has assumed responsibility for completing the consult (see Attachment B). From January 1, 2016 — October 17, 2019, there were 12,269 consults to Sleep Medicine. Table 4 shows the breakdown by consult status.

**Table 4. Breakdown of Consults by Status**

Total	Active	Cancelled	Completed	Discontinued	Partial Result	Pending	Scheduled
12,269	162	131	7214	4157	1	195	409

As indicated in Table 4, of the 12,269 consults, 11,371 (92%) were completed or discontinued for any number of reasons, usually because the Veteran did not respond to scheduling attempts or the Veteran no-showed for a scheduled appointment. Only 162 of the consults (1.3%), were placed in a received/active status. In addition, there were numerous duplicate consults. Attachment C (Table 5) shows a synopsis of some of the comments we noted that staff members entered to explain the consult status.

### *EHR Review*

To evaluate the possibility of patient harm and death due to delays in Sleep Medicine Care, we reviewed a list of Veterans who, over the past 2 years, died while their Sleep



Medicine consult was in a pending status. We identified six Veterans who met this criterion.

1. Three of the six deaths were due to disease processes (cancer and heart disease) that were unrelated to obstructive sleep apnea (OSA).<sup>14</sup>
2. One death was due to a surgical complication. The patient was on appropriate CPAP therapy for OSA and was waiting for a new CPAP machine at the time of his death.
3. One Veteran's cause of death was not clear from the chart review since the Veteran was in hospice care with several significant co-morbidities.
4. Only one death was clearly due to respiratory disease. A 97-year-old Veteran expired from chronic obstructive pulmonary disease (COPD)/respiratory failure.<sup>15</sup> The untreated OSA may have contributed to nocturnal hypoxemia but was unlikely to contribute to patient's overall outcome.

### **Conclusion(s) for Allegation 2**

- We **do not substantiate** that the Patient Access Advisor and Consult Management Lead improperly placed patient consults in received status and then failed to provide follow-up care. Only 1.3% of all consults received between FYs 2016-2019 were placed in received/active status during the timeframe.
- We reviewed the charts of six Veterans who died while their Sleep Medicine consult was still pending (no appointment had been scheduled). One Veteran's death was due to respiratory disease, COPD. While the untreated OSA may have contributed to nocturnal hypoxemia, treatment would not have changed the course of the underlying COPD or the patient's outcome.

### **Recommendation(s) to Las Vegas**

None.

### **Allegation 3**

*Agency officials have failed to adequately staff Sleep Medicine Care, which has negatively impacted the Southern Nevada HCS's ability to provide timely patient care.*

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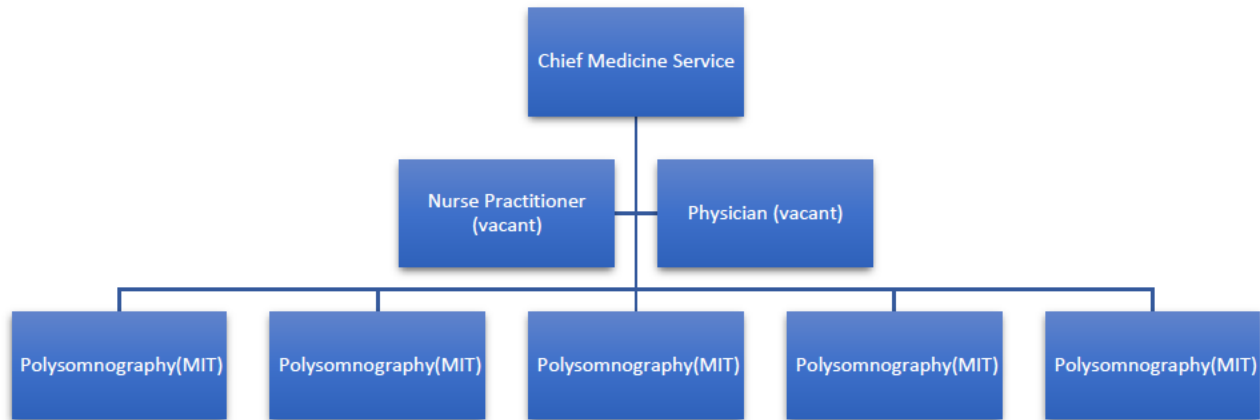
<sup>14</sup> Obstructive sleep apnea is a potentially serious sleep disorder. It causes breathing to repeatedly stop and start during sleep. <https://www.mayoclinic.org/diseases-conditions/obstructive-sleep-apnea/symptoms-causes/syc-20352090>.

<sup>15</sup> COPD is a chronic inflammatory lung disease that causes obstructed airflow from the lungs. Symptoms include breathing difficulty, cough, mucus (sputum) production and wheezing. It is caused by long-term exposure to irritating gases or particulate matter, most often from cigarette smoke. People with COPD are at increased risk of developing heart disease, lung cancer and a variety of other conditions. <https://www.mayoclinic.org/diseases-conditions/copd/symptoms-causes/syc-20353679>.

## Findings

According to the organizational charts from 2013 to present, Sleep Medicine Care should be staffed with one physician, one nurse practitioner and five MITs. Currently, the Patient Access Advisor is triaging new patient and e-consults for Sleep Medicine.

**Image 1. Organizational Chart for Sleep Medicine**



During interviews with staff, we were informed there is a 3 to 4-month wait for an appointment into a class with a polysomnography technician for patient education regarding CPAP use. In addition to the class sessions, the technician has individual clinic appointment slots for patient follow up and daily walk-ins. The same technician stated there is no backup while on leave. As a result, wait times for appointments increase, which adds to the backlog.

For the past year, Las Vegas has been utilizing Telesleep clinics at two of the Las Vegas VA outpatient clinics, operating through a telehealth service agreement with the Jesse Brown VA Medical Center (VAMC) in Chicago, Illinois, to perform at-home sleep studies.<sup>16</sup> The Las Vegas Chief of Telehealth Services has been trying to get the home sleep study program started but needs more support from the Biomedical and Informational Technology Departments before the program can be functional. Through VA's Remote Veterans Apnea Management Program (REVAMP), the Telehealth program has procured 40 home sleep units. This is in addition to the 47 home sleep units already on station that are not in use.<sup>17</sup> The Chief of Telehealth Services also briefed the CoS but is not aware of any action taken to address concerns.

<sup>16</sup> Telehealth Service Agreement between Las Vegas and the Jesse Brown VAMC, February 12, 2019.

<sup>17</sup> The Remote Veterans Apnea Management Platform (REVAMP) App consists of a Patient Platform and a Clinician Platform. With the REVAMP App for Clinicians, as a sleep clinician, you will be able to set up patient accounts, enter sleep testing results, review patient Positive Airway Pressure (PAP) machine data, assign questionnaires, schedule appointments, write Treatment notes, assign home sleep test (HST) monitors and correspond with patients. Additionally, if you are an authorized user, you also could create and manage educational material on sleep apnea and automated messages for patients. The REVAMP App pairs with your Positive Airway Pressure

Sleep Medicine Care has needed to utilize personnel from other services due to staffing issues. One example is a Respiratory Therapist previously detailed to Sleep Medicine Care, who stated that while working in Sleep Medicine Care, consult results and view alerts were addressed from the Telesleep clinic at Jesse Brown VAMC, the SMP who resigned and the Patient Access Advisor.

Las Vegas has a sleep lab located at the medical center, although it is not currently and never has been operational. The sleep lab has equipment and computers in place but has never been staffed for use. As a result, Las Vegas refers Veterans who need sleep studies to non-VA local community facilities at a significant cost. From FY 2016 through 2019, there were a total of 6,477 consults for sleep studies referred to the community for non-VA care. With the average cost of \$2,000 per sleep study, Las Vegas spent nearly \$13 million for sleep studies during this time period.<sup>18</sup> For an average salary range of \$52,883 to \$65,337 for a polysomnographic technician, a total of \$211,532 - \$261,348 a year for four technicians, Las Vegas would have had a cost savings of approximately \$11.9 million if these services had been offered in-house during FY 2016-2019.<sup>19, 20</sup>

We reviewed information from the Patient Advocate's office and found that from April 14, 2017, to August 22, 2019, there has been 1 gubernatorial inquiry, 12 Congressional inquiries and 22 White House hotline inquiries into Sleep Medicine Care at Las Vegas. Many of the inquiries were related to increased wait times for appointments, equipment and training and a lack of a full-time SMP.

We heard from staff that recruitment and retention of an SMP has been difficult over the last several years despite use of the Education Debt Reduction Program recruitment incentives.<sup>21</sup> Las Vegas has had three SMPs resign since 2014. The Administrative Officer for Sleep Medicine Care reached out to VA's Office of Workforce Management and Consulting on October 19, 2019, regarding the SMP position and as a result, a new SMP will be coming on board soon.

### Conclusion(s) for Allegation 3

- We **substantiate** that Agency officials have failed to adequately staff Sleep Medicine Care.

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(PAP) machine and enables you and your VA sleep care team to track your sleep data. You can use the app to obtain educational information and troubleshooting support about sleep apnea as well as complete questionnaires regarding your sleep health. Additionally, a built-in message system allows you and your VA sleep care team to exchange secure messages. <https://mobile.va.gov/app/revamp-veterans#AppDescription>.

18 What is an Overnight Sleep Study (Polysomnogram)? Medically reviewed by Richard N. Fogoros, M.D. on August 15, 2018; Updated by Brandon Peters, M.D., board-certified neurologist and sleep medicine specialist, November 9, 2019. <https://www.verywellhealth.com/what-to-expect-in-a-sleep-study-3015121>.

19 Salary.com. Salary Range for a Polysomnographic Technician in Las Vegas, Nevada. <https://www.salary.com/research/salary/benchmark/polysomnographic-technician-salary/las-vegas-nv>.

20 FEDweek, 2019 GS Pay Table – Las Vegas-Henderson, NV-AZ, published March 18, 2019. <https://www.fedweek.com/pay-tables/2019-gs-pay-table-las-vegas-henderson-nv-az/>.

21 Email from Supervisory Human Resources Specialist to Chief, Human Resources, OMI exit from Las Vegas on Sleep Medicine, October 18, 2019.

- Sleep Medicine Care has 87 home sleep study units that are not being utilized.
- Telesleep Medicine requires increased resources and support from the Biomedical and Informational Technology Departments.
- The Las Vegas in-house sleep clinic is not being utilized. As a result, Veterans are being referred to community clinics at a significant cost. Both cost and time to complete assessments would be decreased if the in-house sleep clinic was properly staffed and utilized.

### **Recommendation(s) to Las Vegas**

7. Review operational guidelines for Sleep Medicine Care and develop a staffing plan to conform to the guidelines.
8. Ensure vacancies within Sleep Medicine Care staffing plan are prioritized and ensure adherence to timelines for job announcements.
9. Develop operational guidelines and a staffing plan that includes utilization of the in-house sleep lab. Enhance and increase program resources to the Telesleep program.
10. Contact the National Pulmonary/Critical Care/Sleep Medicine Program Office for a consultative site visit.

### **VI. Summary Statement**

We have developed this report in consultation with other VHA and VA offices to address OSC's concerns related to clinical care and staffing practices at Las Vegas, which may have violated a law, rule or regulation; involved gross mismanagement and abuse of authority; or created a substantial and specific danger to public health and safety. VHA HR has examined personnel issues to establish accountability, and the National Center for Ethics in Health Care has provided a health care ethics review. We found no danger to public health and safety but found local consult policy that is not in compliance with national consult policy, understaffing and inadequate resource utilization.

## Attachment A

Documents reviewed, in addition to the electronic health records, include the following:

Kuna, S. T. (2019). The MISSION Act: Challenges to Sleep Medicine and Other Specialties in the Veterans Health Administration. *Am J Respir Crit Care Med*, 200(6), 663–664. doi: 10.1164/rccm.201906-1278ED.

Sarmiento KF, Folmer RL, Stepnowsky CJ, Whooley MA, Boudreau EA, Kuna ST, Atwood CW, Smith CJ, Yarbrough WC. National expansion of sleep telemedicine for veterans: The Telesleep Program. *J Clin Sleep Med*. 2019;15(9):1355–1364.

Announcement CBAQ-10558861-19-CA, Physician (Sleep Medicine), Open and Closing dates, July 24, 2019 – September 30, 2019, continuous.

Certificate of Eligibles, Physician (Sleep Medicine), 20190810-CBAQ-001, August 10, 2019.

Certificate of Eligibles, Physician (Sleep Medicine), 20190904-CBAQ-003, September 4, 2019.

Certificate of Eligibles, Physician (Sleep Medicine), 20191006-CBAQ-004, September 6, 2019.

Certificate of Eligibles, Medical instrument technician, polysomnography, 20190528-CBAQ-003, May 28, 2019.

Consults List Report, Stop Code 349 (VSSC), January 1, 2016 to October 17, 2019.

Consults – Stop Code by CPRS Status and Service Name December 9, 2019.

Email from Supervisory Human Resources Specialist to Chief, Human Resources, *OMI Exit from Las Vegas on Sleep Medicine*, October 18, 2019.

Email, VHA NRS Recruitment Support Requested – VA Southern Nevada HCS, Las Vegas NV, Medicine Service, *Physician Vacancy Needs*, October 10, 2019.

Memorandum from the Acting DUSHOM to Network Directors and MCDs, *Stop Codes Used for 20 Day Wait Time Access Standard*, May 8, 2019.

Memorandum from the Acting DUSHOM to Network Directors and MCDs, *Update to Workload Specifications for the Electronic Consult (E-Consult) Program*, January 10, 2014.

Memorandum from the DUSHOM to Network Directors, *FY 2020 National Consult Campaign and Stand Down*, June 5, 2017.

Memorandum from the DUSHOM to Network Directors, *Scheduling and Consult Policy Updates*, October 30, 2019.

Office of Community Care Clinical Integration Supervisors, *Community Care: MISSION Act*, PowerPoint presentation, July 2019.

USAJobs Announcement - Medical Instrument Technician (Polysomnography), *CBAQ-10162768-18-EJ*, April 4, 2018.

USAJobs Announcement - Physician (Sleep Medicine), *CBAQ-10558861-19-CAB*, September 20, 2019.

Las Vegas MCM 11-16-29, *Consult Management*, October 2016.

VHA Directive 1231(1), *Outpatient Clinic Practice Management*, October 18, 2019.

VHA Directive 1230(2), *Outpatient Scheduling Processes and Procedures*, July 15, 2016.

VHA Directive 1232(2), *Consult Processes and Procedures*, August 23, 2016.

Las Vegas Consults by Stop Code 349, October 18, 2019.

Las Vegas Organizational Chart, *Sleep Medicine*, October 13, 2019.

Las Vegas Consults with Date of Death, October 22, 2019.

## Attachment B

Package Reference

### Receive the Consult

Performing the Receive action on a consult changes its status from Pending to Active. This puts your clinic on record as accepting responsibility for completing the consult.

There are two ways to receive a consult:

From a consult tracking screen.

From a notification alert of a new consult. See page 130 for an example of this method.

In the following example, we receive a consult from a consult tracking screen:

```
CONSULT TRACKING          Oct 05, 2000 09:18:22          Page: 1 of 1
CPRSPATIENT,TWELVE 666-24-3779          1A/B-1          FEB 3,1923 (74) <CA>
                                          Wt.(lb): No Entry

   Requested St      No.   Consult/Procedure Request
1   05/06/97  p      226  PSYCHIATRY Cons

Enter ?? for more actions
SP Select Patient   FR Forward          CT Complete/Update  RT Results Display
CV Change View ... CX Cancel (Deny)    MA Make Addendum   PF Print Form 513
RC Receive         DC Discontinue     SF Sig Findings    RM Remove Med Rslt
SC Schedule       CM Add Comment     DD Detailed Display ER Edit/Resubmit
Select: Quit// RC  Receive Request

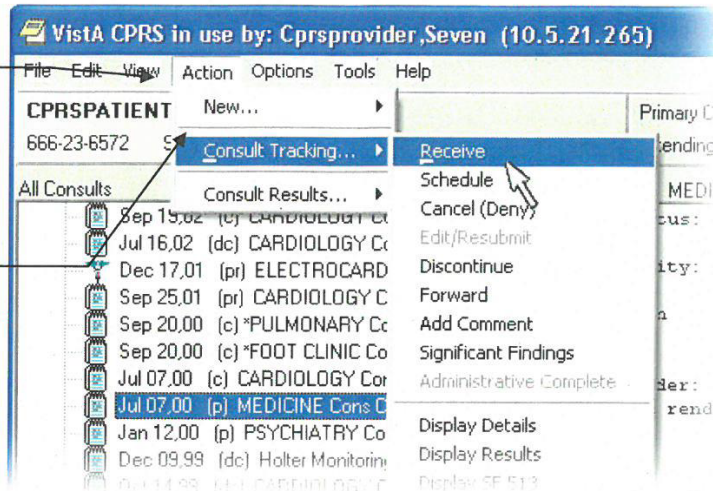
Who received it?: CPRSPROVIDER,SEVEN      CS
Date/Time Actually Received: NOW// <Enter> (NOV 01, 1997@09:05)
Enter COMMENT...
  1>Pt will be seen ASAP
  2> <Enter>
EDIT Option: <Enter>
```

## Receive Request

### 1. Select Receive:

a) Click on Action, then Consult Tracking, then Receive.

Or use the keyboard by pressing the underlined characters: Firs Alt and A (together), then C, and then R.

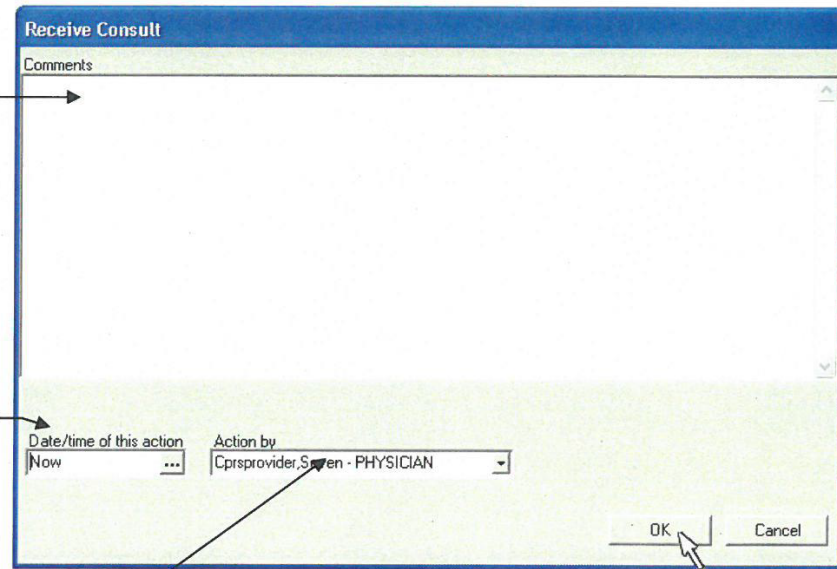


### 2. Click OK.

If there is anything unusual about this consult, document it by typing a comment here.

If you need some other time, click here.

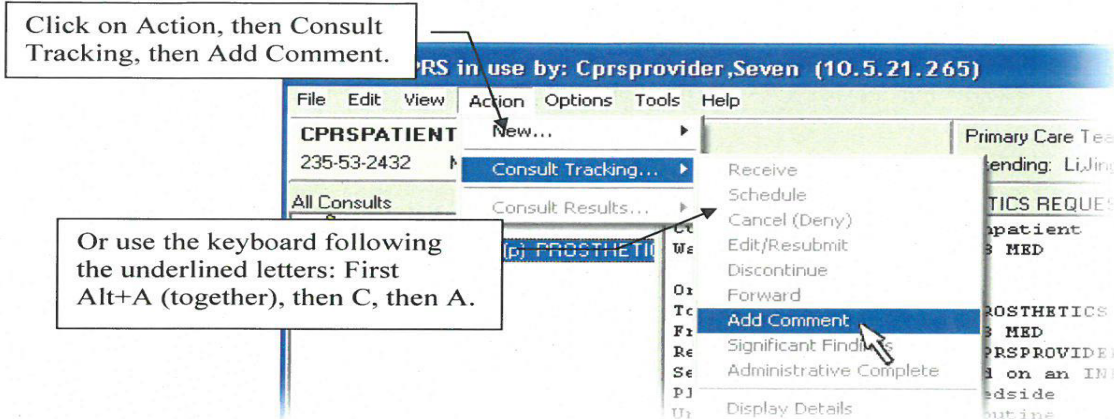
If the action should be by some other person, change this.



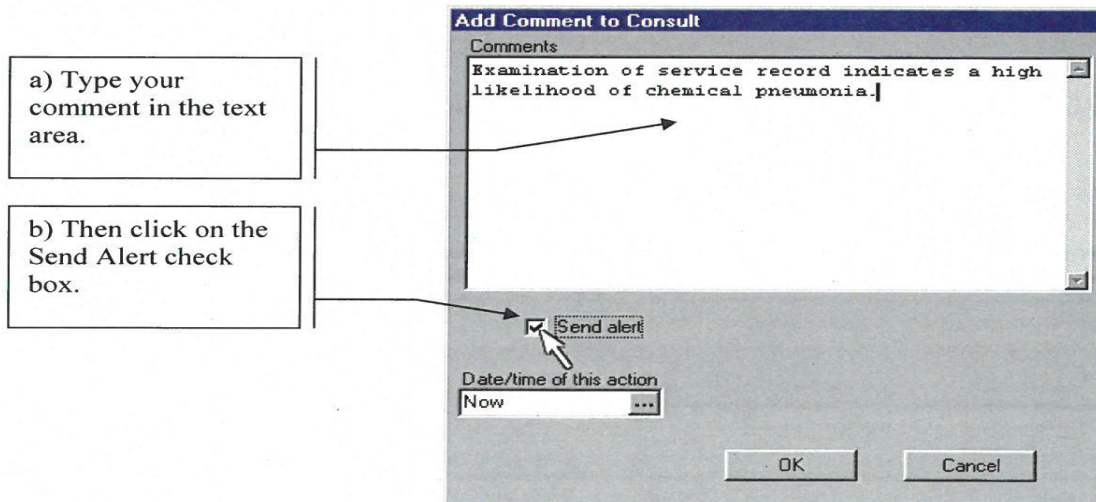


## Comment

### 1. Select Add Comment:



### 2. Fill in the Add Comment to Consult Dialog:



## Attachment C

**Table 5. Review**

Status	Comments
Canceled	<p>CPAP needs are addressed in CPAP Clinic where he already has an appropriate follow-up appointment in January 2020. He was issued a device in August 2019.</p> <p>Regarding Sleep Apnea Disability Benefits Questionnaire, please clarify whether this is for VA disability (needs to go to Compensation and Pension) or other type of disability benefit (if so, does it require completion by a BC Sleep Medicine physician).</p>
Complete/Update	<p>LAS SLEEP CPAP TECH I Consult Appt. on JUN 22, 2018@14:30 NEW CONS. PID 05/02/2018 #COO# INSTRUCTIONS GIVEN.</p>
	<p>LAS SLEEP CPAP GROUP 1 Consult Appt. on NOV 02, 2018@08:00 NEW PATIENT CPAP Patient Indicated Date 10/17/18</p>
	<p>Please schedule as per previous instructions-please note patient no showed x1 (30 Sept).</p>
Discontinued	<p>DUP-Duplicate Request</p>
	<p>Failed mandated scheduling effort (multiple missed/cancelled appts. or Veteran did not respond to mandated scheduling effort). Consult discontinued, per VA consult management policy. Please submit a new request if care is still desired and Veteran agrees to receiving care.</p>
	<p>Service-connection determinations are made through Comp and Pen and they refer patients to sleep studies themselves. Veteran needs to address with VBA or his VSO.</p>
	<p>ODC-Other discontinuation reason: Incorrect Service Explanation for Discontinuation: CPAP Outpatient</p>
Incomplete report	<p>LAS SLEEP CPAP TECH III Consult Appt. on 10/15/19 @ 14:00 new cons patient indicated date 1014 pd 1015; flyer also mailed out.</p>
Received	<p>Accept consult, see scheduling order for scheduling instructions. May discontinue if Veteran fails to respond to mandated scheduling effort. Please schedule in CPAP Group Clinic in 2-3 weeks or next available.</p>
Scheduled	<p>LAS SLEEP CPAP TECH II Consult Appt. on DEC 23, 2019@10:00 R/S PT CX X1, NEW CONSULT ORIG PID 8/22/19</p>
	<p>Sleep study has been scheduled.</p>
	<p>CPAP/APAP/BIPAP Setup and Training Outpatient Sleep study has been reviewed by Dr. XXXX, per Dr. XXXX Recommendation: DATE OF STUDY: Nov 26,2018 DATE TO BE SCHEDULED: Jan 16,2019 TYPE OF STUDY: SPLIT-NIGHT STUDY</p> <p>Modem for Remote Access to be placed at CPAP set up. Overnight Night Oximetry within 4-6 weeks AFTER CPAP/BIPAP set-up. Follow up with Dr. XXXX in 8-10 weeks AFTER device set-up.</p>

## Name Key

### VA Team Conducting the Investigation

- [REDACTED], M.D., Senior Medical Investigator
- [REDACTED], NP, Clinical Program Manager
- [REDACTED] M.D., National Program Director, Pulmonary/Critical Care/Sleep Medicine
- [REDACTED], VHA Office of Veterans Access to Care/Field Support
- [REDACTED], HR Supervisor, Employee/Labor Relations, Miami VAMC

### Entrance Briefing

#### VISN 21

- [REDACTED], Associate Quality Management Officer

#### Medical Center

- [REDACTED], M.D., Acting MCD/CoS
- [REDACTED], M.D., Deputy CoS
- [REDACTED], Acting Associate Director
- [REDACTED], Acting Assistant Director
- [REDACTED], Acting Nurse Executive
- [REDACTED], Acting Deputy Nurse Executive
- [REDACTED], HSS to the CoS

### Exit Briefing

#### VISN 21

- [REDACTED], Associate Quality Management Officer

#### Las Vegas

- [REDACTED], M.D., Acting MCD/CoS
- [REDACTED], M.D., Deputy CoS
- [REDACTED], Acting Associate Director
- [REDACTED], Acting Assistant Director
- [REDACTED], Acting Nurse Executive
- [REDACTED], Acting Deputy Nurse Executive
- [REDACTED], HSS to the CoS

### Interviewees

1. [REDACTED], M.D., Acting, MCD/CoS
2. [REDACTED], M.D., Deputy CoS
3. [REDACTED], HSS to the Chief of Staff
4. [REDACTED], M.D., Acting, Chief Medicine

5. [REDACTED], M.D., Patient Access Advisor and Consult Management Lead
6. [REDACTED], Associate Nurse Executive for Geriatrics and Extended Care/Chief, Community Care
7. [REDACTED], DNP, Chief Telehealth Services
8. [REDACTED], NP, Former NP in Sleep Medicine
9. [REDACTED], Administrative Officer
10. [REDACTED], Lead Medical Support Assistant
11. [REDACTED], MIT, Polysomnography
12. [REDACTED] MIT, Polysomnography
13. [REDACTED] MIT, Polysomnography
14. [REDACTED], MIT, Polysomnography
15. [REDACTED] Registered Respiratory Therapist
16. [REDACTED], Group Practice Manager
17. [REDACTED], Clinical Applications Coordinator
18. [REDACTED] Clinical Program Analyst, Clinical Informatics
19. [REDACTED], Clinical Informatics Nurse
20. [REDACTED], Acting HR Officer
21. [REDACTED], Supervisory HR Specialist
22. [REDACTED], HR Specialist assigned to Sleep Medicine
23. [REDACTED], Chief, Quality Management
24. [REDACTED], Risk Manager
25. [REDACTED], Patient Safety Officer