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OSC Presses VA to Report on HIV Testing Methods After Whistleblower Exposes Slow Implementation of Latest Generation Testing Directive in Miami

FOR IMMEDIATE RELEASE

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WASHINGTON, D.C./Feb. 28, 2018 – The U.S. Office of Special Counsel (OSC) today asked the Department of Veterans Affairs (VA) to report within 30 days on whether the VA has implemented the latest generation of HIV testing at veterans facilities nationwide. A whistleblower at the Miami VA Medical Center (VAMC) prompted OSC to seek a VA investigation of concerns that the Miami facility was slow to implement an agency-wide directive to use the latest generation testing.

The VA investigation in Miami led to outside testing for veterans who required more precise results than the Miami VAMC could offer at the time. The review identified eight veterans whose HIV test results in the outside tests were different from the in-house tests, a discrepancy described in the medical field as “discordant results.” In one of the eight cases, the patient was deemed by his provider to be “high-risk” and his sample was subjected to more precise testing. Ultimately, the testing determined he was HIV-infected, and he commenced treatment. In another case, the Miami VAMC repeatedly attempted to contact a veteran with discordant results. Eventually, the veteran returned for repeat testing, tested positive for HIV, and commenced treatment. The remaining six veterans with discordant results returned to the Miami VAMC for retesting and tested negative.

The VA found that the Miami VAMC was not slow to implement the new testing directive, as the whistleblower alleged. However, OSC determined that the VA’s findings do not appear reasonable. In a letter to President Trump, Special Counsel Henry J. Kerner wrote that the available information establishes that the Miami VAMC failed to respond to the whistleblower’s concerns until after the whistleblower, Roman A. Miguel, a testing lab supervisor there, filed his disclosure with OSC and hand-delivered his disclosure to the facility director. The nationwide VA directive, Directive 1113, required VA facilities to implement fourth-generation HIV testing within one year of its publication.

“I am incredulous that compliance with Directive 1113 and implementation of fourth generation HIV testing occurred only after Mr. Miguel’s disclosures and OSC’s intercession,” Kerner wrote. “Although the HIV testing issues affected a small percentage of those tested at the Miami VAMC and OSC has not been made aware of similar problems at other VA facilities, I strongly encourage the VA to take immediate action to ensure that every facility throughout the VA-network is in compliance with Directive 1113. To this end, I have asked Secretary Shulkin to query VA facilities nationwide regarding this extremely important patient and public health and safety concern and report back to me regarding the results within 30-days. I thank Mr. Miguel for bringing this matter to OSC’s attention and commend him for his dedication to the health and well-being of our veterans.”

Kerner sent copies of the [letter](#) to the President, the agency report, and the whistleblower's comments to the chairmen and ranking members of the Senate and House Committees on Veterans Affairs. A copy of the letter, the redacted agency [report](#), and the whistleblower's [comments](#) are available in OSC's public file, available at www.osc.gov.

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Our basic authorities come from four federal statutes: the Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services Employment & Reemployment Rights Act (USERRA). OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing, and to serve as a safe channel for allegations of wrongdoing. For more information, please visit our website at www.osc.gov.