



U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

VA Needs to Improve Internal Accountability in Whistleblower Cases

FOR IMMEDIATE RELEASE

CONTACT: Nick Schwellenbach, (202) 254-3631; nschwellenbach@osc.gov

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In a [letter](#) to the White House and Congress today, the U.S. Office of Special Counsel (OSC) reported that the Department of Veterans Affairs (VA) failed to adequately discipline employees for endangering the health and safety of veterans and other wrongdoing.

“The failure to take appropriate disciplinary action, when presented with clear evidence of misconduct, can undermine accountability, impede progress, and discourage whistleblowers from coming forward,” Special Counsel Carolyn Lerner stated in the letter.

OSC’s letter closes the whistleblower disclosure case of Katherine Mitchell, a VA doctor who blew the whistle on numerous problems at the Carl T. Hayden VA Medical Center (VAMC) in Phoenix, Arizona. Among the problems highlighted by Dr. Mitchell, the VA [confirmed](#) that the Phoenix VAMC had no nurses in its Emergency Department appropriately trained in medical triage. Phoenix VAMC nursing supervisors required untrained nurses to triage Emergency Department patients, resulting in at least 110 cases where patients experienced dangerous delays in care. In one case, a patient with a history of strokes waited almost eight hours for treatment after arriving in the Phoenix VAMC’s Emergency Department with low blood pressure.

Dr. Mitchell raised these and other concerns with her superiors beginning in 2009 and recommended better training and more staff. However, it was not until 2014, after the VA’s Office of Medical Inspector (OMI) found that she was correct and that the lapses were “a significant risk to public health and safety” of veterans, that the Phoenix VAMC initiated a program to train its nurses and improve its emergency room staffing. Despite the confirmed threat to patient safety and the failure to act for five years, the VA has not taken disciplinary action against responsible officials.

Distinct from her disclosure case, Dr. Mitchell [settled](#) her whistleblower reprisal claim with the VA last year.

In addition, today, OSC also closed the [case](#) of Jonathan Wicks, a former clinical social worker at the Vet Center in Federal Way, Washington. Mr. Wicks disclosed that the manager of a VA clinic intentionally falsified government records, repeatedly overstating the amount of time she spent in face-to-face counseling sessions with veterans. The VA’s OMI [substantiated](#) Mr. Wicks’ disclosures. Before OMI’s investigation, regional leaders were aware of the manager’s misconduct due to earlier reviews, yet failed to take action to address it at the time. After OMI substantiated Mr. Wicks’ allegations, the manager and regional leaders received only a reprimand, the lowest form of discipline.

OSC’s [letter](#) also summarized the following cases where the VA failed to impose appropriate discipline:

- The director of a VA clinic in Maryland improperly monitored witness testimony through a video feed to a conference room during an OMI investigation of patient care problems. The director then asked a witness about his testimony to OMI. When interviewed by OMI about his actions, the director failed to provide credible testimony. The director’s actions could create a chilling effect on the willingness of employees to participate in investigations that promote better care for veterans. However, the director received only a written counseling.
- In Montgomery, Alabama, a staff pulmonologist copied and pasted prior provider notes for veterans, rather than taking current readings, which violated VA rules and resulted in inaccurate recordings of vital patient health information. An investigation confirmed that the pulmonologist copied and pasted health information in 1,241 separate patient records. Yet the physician received only a reprimand. While the VA

explained that managers attempted to issue a 30-day suspension, management apparently did not provide the appropriate information to Human Resources, which only approved a reprimand.

- Officials at the [Beckley, West Virginia VAMC](#) attempted to meet cost savings goals by substituting prescriptions for veterans, requiring mental health providers to prescribe older, cheaper, and less effective antipsychotic medications. These actions violated VA policies, undermined effective treatment of veterans, and placed their health and safety at risk. To date, no one has been disciplined.

“The lack of accountability in these cases stands in stark contrast to disciplinary actions taken against VA whistleblowers,” stated Special Counsel Lerner in the letter. “The VA has attempted to fire or suspend whistleblowers for minor indiscretions, and, often, for activity directly related to the employee’s whistleblowing. While OSC has worked with VA headquarters to rescind the disciplinary actions in these cases, the severity of the initial punishments chills other employees from stepping forward to report concerns.”

For instance, a VA [food services manager](#) who blew the whistle on VA sanitation and safety practices was reassigned to clean a morgue and was issued a proposed termination after being accused of eating four expired sandwiches worth a total of \$5 instead of throwing them away.

Recent OSC press releases on VA whistleblowers settling retaliation claims were published on [September 8, 2015](#); [July 22, 2015](#); [April 9, 2015](#); [January 20, 2015](#); and [September 29, 2014](#). Other recent releases on VA whistleblower disclosures related to health care were published on [July 29, 2015](#); [April 22, 2015](#); [December 3, 2014](#); [June 23, 2014](#). Special Counsel Carolyn Lerner last [testified](#) on the issue of VA whistleblowers on July 30, 2015. The Senate Homeland Security and Governmental Affairs Committee is holding a [hearing](#) on September 22, 2015.

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.