



THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

October 16, 2009

Mr. William E. Reukauf
Acting Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW, Suite 300
Washington, DC 20036-4505

Re: OSC File No. DI – 09-0267

Dear Mr. Reukauf:

This is in response to OSC File No. DI – 09-0267 regarding allegations that supervisors at the Department of Veterans Affairs Medical Center (VAMC) in Canandaigua, New York, engaged in conduct which violated a VA rule by authorizing VA trainee police officers to perform the duties of fully trained police officers. The disclosure raised concerns about the management of VA police and safety of VAMC Canandaigua patients, staff and visitors when using newer officers in a full capacity, prior to those officers meeting all of their training requirements.

VA's Office of Security and Law Enforcement (OSLE) conducted an investigation and concluded that VAMC Canandaigua police supervisors followed an appropriate course of action by notifying OSLE and requesting an exemption from VA's policy that requires that there be at least two fully trained VA police officers on duty at all times. After a careful review of the matter, OSLE granted Canandaigua police service a temporary exemption with restrictions, defining roles and responsibilities for the trainee officers. Therefore, based on the evidence gathered, VAMC Canandaigua police management did not violate any law, rule or regulation. As a result, no corrective action is recommended. I have attached the investigation findings for your review.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric K. Shinseki".

Eric K. Shinseki

Enclosure

OFFICE OF SECURITY AND LAW ENFORCEMENT

Investigation Report of Findings: OSC file No. DI-09-0267

Scope: To conduct an investigation, as required by the Office of Special Counsel (OSC) into the facts and circumstances surrounding concerns that the VA police at the Department of Veterans Affairs Medical Center (VAMC) in Canandaigua, New York, have been managed improperly regarding scheduling and the use of trained police officers in that service.

Background: On October 10, 2008, Officer Donald P. Woodworth, a Canandaigua VAMC police officer, disclosed that Assistant Chief of Police John M. Feness sent an email that directed VA trainee police officers at the Canandaigua VAMC to assume the duties of full police officers subject to certain restrictions.¹ The email directed the trainees to act as second officers while on duty, and in pairs with fully armed officers as their partners. As trainees, the officers had not completed VA police officer basic training, were not authorized to carry weapons, and were not considered VA police officers. Thus, under Assistant Chief Feness' instruction, only one fully trained and qualified police officer was on duty at any time with the trainee that was scheduled to be on duty.

Findings: In October 2008, Canandaigua VAMC Chief of Police Lawrence H. Shuermann, Jr. requested an exemption to VA's policy involving the number of VA police officials on duty at all times from Kevin Doyle, Director of VA's Police Service in the Office of Security and Law Enforcement (OSLE). The policy, in VA Handbook 0730, *Security & Law Enforcement*, Chapter 2 9(2) provides, "for safety purposes, there should be at least two VA police officers on duty at all times." Police Chief Shuermann made this request to alleviate burdens placed on the police service due to manpower shortages. Consequently, Chief Shuermann was concerned about potential staff "burn out." Also, six Canandaigua trainees were waiting for school slots to attend the Law Enforcement Training Center (LETC). The delays were anticipated to exceed 90 days, which would further increase the burden on staff. Based on the circumstances surrounding Chief Shuermann's request, Mr. Doyle granted the Canandaigua VAMC Police Service a temporary exemption of VA policy until the staffing issue was resolved.

On March 25, 2009, Chief Schuermann advised OSLE that on January 24, 2009, the service discontinued using new hires as the second patrol officer when the last two of trainees finished at the LETC. Upon their return, the facility was at full strength for police staffing. Chief Schuermann reported that there were no negative incidents which resulted from the staffing configuration during the exemption period. Chief Schuermann reported that all of the new hires had previous law enforcement experience from other

¹ The trainees would operate in a back up role only, within their trained capabilities, and would not exercise arrest authority or issue citations. The trainees also should have completed the initial entry training requirements in accordance with VA Handbook 0730 Chapter 4 (b), which includes certification in the PR-24 Side Handle Baton and Chemical Agent Oleoresin Capsicum (OC) intermediate weapons.

resulted from the staffing configuration during the exemption period. Chief Schuermann reported that all of the new hires had previous law enforcement experience from other departments and/or from the military police. He reaffirmed the main reason for the request was to relieve the burden placed on overworked officers (a potential safety issue) by including the new hires in the rotation until they could attend the LETC.

From April 6 through April 20, 2009, an OS&LE investigator made several attempts to schedule a telephonic interview with Officer Woodward. These attempts were unsuccessful due to apparent scheduling conflicts with Mr. Woodward's attorney. Because OS&LE already knew about the information contained in the complaint, and OS&LE had previously granted an exemption to Canandaigua police service to operate with less than a fully-staffed patrol, OS&LE determined that additional delays and attempts to interview Mr. Woodward would not likely provide additional insight into the matter.

Conclusions:

All new entry level VA Police officers are employed under the General Schedule 083 police series and are police officers with certain restrictions until all applicable requirements are met, including attendance at a law enforcement training center. The restrictions include the prohibition to effect arrest and/or issue citations.

Title 38 U.S.C § 901 provides that the Secretary of Veteran Affairs is responsible for the protection of patients, visitors, and employees at VA medical facilities; the protection of property under the charge and control of VA; and the maintenance of law and order on property under the charge and control of VA. In accordance with VA Directive 0730 39(a)(b), the implementation and operation of this program is through the Office of Security and Law Enforcement, which ensures the development and dissemination of policy and procedures related to VA field facility security and law enforcement operations.

OS&LE received a request for an exemption for patrol officer staffing at the VAMC Canandaigua police service and granted a temporary exemption based on the justification provided by the chief of the service. This type of exemption has been granted in the past after careful consideration of the impact and potential risks involved and assurance that staffing issues could not be readily resolved. One large scale example of this occurred during VA's response to the Gulf Coast relief efforts for hurricanes Katrina and Rita in 2005. Staffing at the gulf coast facilities was devastated by the storms, which resulted in shortages at certain facilities and warranted a wide but temporary exemption. Exemptions have also been granted when facilities have experienced critical staffing shortages that could not be remedied by other means.

Chief Schuermann followed the appropriate procedure to request an exemption of VA policy by notifying the VA's program office (OS&LE) and requesting an exemption for scheduling. This change in scheduling ceased and went back to standard practice once the staffing situation became more tenable.