

October 17, 2012

Lynn Alexander
Attorney, Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, NW, Suite 218
Washington, D.C. 20036-4505

Re: OSC File Nos.: DI0-12-1562, DI-12-1564, DI-12-1578, DI-12-1580

To the Attention of Ms. Alexander;

Rebuttal response: 024V

Upon reception of the cover letter and accompanying Summary Report, we have generated additional comments that we feel are relative to this investigation. We were relieved and grateful to read that our allegations were substantiated. The quality of attention that was put into this investigation was substantial considering the amount of data to be researched and physically handled. However we do feel that there is additional information that involves misconduct from senior management that supports their role in regards to this investigation.

Although all our allegations have been substantiated by the VHA investigative team, we do feel it imperative to note that it was our full intention to stay within the VISN2 region. Our actions were to correct the issues and to have senior management recognize the mismanagement within our medical records department. While the report states allegations were not intentional, it does not report a pattern of disregard and a failure to act when it comes to matters regarding the HIMS Department. This information is important because it provides a foundation regarding senior management and leadership. There was no effort to give a full and fair consideration regarding our allegations. When it comes to the integrity of the VA, the public interest requires high maintenance of high standards of employee integrity, conduct, effectiveness, and service to the public. When such standards are not met, prompt and appropriate disciplinary or other corrective action should be taken. The policy of the VA is to maintain standards of conduct and efficiency that will promote the best interests of service.

There are two issues that we would like to comment on.

- 1. History of retirement project and privacy act violations.**
- 2. Standards of conduct unethical in a senior official in the performance of his duties.**

1. Retirement Project Grievance

Our facility was under violations of the Privacy Act of 1974, 552a, the right to access. Veterans and their families were submitting claims for their military service regarding exposure to Agent Orange, for claims regarding Bethlehem Steel for the Energy Employees Occupational Illness Compensation Program Act, for veterans entitled to military funeral and burial recognition, and for veterans filing claims for PTSD. The Associate Director, Medical Records Manager/HIMS Chief, and our Supervisor were aware of these records in Canandaigua and the records in Batavia. The Medical Records Manager/HIMS Chief and our Supervisor were aware that we were receiving an influx of requests for these types of perpetual files from veterans and from their families.

THE PRIVACY ACT OF 1974

Amended

5 U.S.C. § 552a

Right to Request Access to Protected Health Information

(d) Access to records

Each agency that maintains a system of records shall--

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(g)(1) Civil remedies

Whenever any agency

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual, the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

With this knowledge of possible privacy act violations against our agency, we filed a grievance to have these records retrieved. Although our grievance was honored, this second retirement was incorrectly budgeted, time studies were inaccurate, quality assurance measures were not fulfilled, and the assignment given did not correct the errors from the first retirement. This could have qualified as a significant opportunity for our department. We could have had the challenge of correcting the errors from the first retirement and the opportunity for all staff to be trained in retirement proceedings. However, the **tone** of best practices to which the Medical Records Manager brought to this project was overheard on several occasions; "**nobody wants this stuff anyway**". Her admission to this was confirmed by the Associate Director, two Union representatives, and us. This statement alone provides proof of the integrity and the compliance assurance associated to this project from our Supervisor and the Records Manager.

3. Standards of conduct unethical in a senior official in the performance of his duties.

The Associate Director did not meet his obligation as a Senior Official. His lack of action in matters regarding our inquiries of the Medical Records Manager initiated us to file a whistleblower act disclosure to the Office of Special Council. He had completed a report regarding our allegations solely on information gathered from her. He then submitted this report as final and true to the VISN2 Director. His report stated that our allegations had not been substantiated and that no Federal Laws or VISN2 policies or procedures had been violated. There was no information sought or gathered from either one of us. This upholds our decision that we had no other recourse but to file for protection under the whistleblower act due to his lack of bias and leadership.

VA Directive 0700:

2. Policy

a. Administrative Investigations in VA.

- (1) It is VA policy that significant incidents occurring and issues arising within VA facilities or staff offices, or as a result of VA activities, shall be reported and investigated as necessary to meet the informational and decision-making needs of VA. Primary responsibility in this regard rests with the chief executive of the facility or the staff office involved, and with their seniors in the VA and its administrations.**
- (2) Determining the facts and the appropriate response to matters within their areas of responsibility is an inherent duty of VA executive leadership. A commitment to reliably determining, reporting, and acting on the facts promotes effective decision-making, fairness, confidence in VA, and support for its actions among employees, veterans, and the public.**
- (3) the decision whether to convene an investigation should not be made by an official whose own actions (or failure to act) are likely to be subject of the investigation, or who appears to have personal bias in the matter to be investigated.**

In Conclusion:

Although the Associate Director did not conduct an Administrative Investigation regarding our allegations; he should have maintained a high level of ethical behavior to provide a sound report. It seems that a pattern to misrepresent the facts in this investigation was given by the recollections of the Records Manager. How can anything seem credible by either one of these Senior Officials due to this conflict? It is the policy of the VA that all individuals involved whether employees, employee representatives, or members of management are expected to be candid and to act in good faith in observing the underlying spirit and intent in attempting to resolve dissatisfactions. Although these standards are demanded of all employees, it would seem it should be expected of its senior officials as well. One has to doubt that employees, veterans, and public opinion would approve of the actions regarding Senior Management throughout these proceedings if they had the ability to examine. This would seem to be a significant issue that should be addressed.

We would like to thank all those that were committed to resolving these issues. We will continue to promote good practices, ethical standards, and integrity for our facility, for our Veterans and for their families. We are grateful for your determination and high standards to this situation. We look forward to the improvements provided under your direction.

Cathleen A. Manna, CPC-A

Leon Davis

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