



U.S. OFFICE OF SPECIAL COUNSEL

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The Special Counsel

June 5, 2013

The President  
The White House  
Washington, D.C. 20500

Re: OSC File No. DI-11-4168

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), enclosed please find an unredacted agency report based on disclosures received from a former Licensed Practical Nurse (LPN), at the Madigan Army Medical Center (MAMC), Allergy and Immunology Clinic (A/I Clinic), Joint Base Lewis-McChord, Washington. The whistleblower, Ronni J. Ruiz, alleged that A/I Clinic employees engaged in conduct that may constitute violations of law, rule, or regulation, gross mismanagement, an abuse of authority, and a substantial and specific danger to public health and safety. Ms. Ruiz consented to the disclosure of her name.

**The agency report did not substantiate Ms. Ruiz's specific allegations. The investigation determined that LTC Linda L. Brown, M.D., Chief of the A/I Clinic did not, as alleged by Ms. Ruiz, sleep in her office during patient care hours. Although Dr. Brown periodically rested in her office to temporarily relieve the effects of migraine headaches, her resting did not, according to the report, interfere with the performance of her duties or adversely affect patient care. Nevertheless, the agency issued a letter of counseling to Dr. Brown for failing to seek a medical profile and for failing to inform her supervisor of her medical condition.**

**The investigation found no basis for Ms. Ruiz's allegation that allergy shots and immunizations were administered at the A/I Clinic without requisite physician supervision. The investigation found that, in Dr. Brown's absence, physicians from an adjacent clinic provided surrogate coverage to ensure that the requisite physician oversight was provided during the administration of all allergy shots and immunizations. Based on my review of the original disclosure and the agency's report, I have determined that the report contains all of the information required by statute and that the findings appear to be reasonable.**

Ms. Ruiz's allegations were referred to the Honorable John McHugh, Secretary of the Army, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d) on December 21, 2011. The Secretary delegated authority to conduct an investigation and initiate any corrective action

The President

June 5, 2013

Page 2

deemed necessary to the Commander, U.S. Army Medical Command (MEDCOM) on January 11, 2012. On March 18, 2012, the Secretary delegated authority to review, sign, and submit a report based on the results of MEDCOM's investigation to Thomas R. Lamont, Assistant Secretary of the Army (Manpower and Reserve Affairs). A copy of the report was forwarded to Ms. Ruiz, who, despite repeated requests to respond to the agency report, did not comment. As required by 5 U.S.C. § 1213(e)(3), I am now transmitting the report to you.<sup>1</sup>

## **I. Ms. Ruiz's Disclosures**

Ms. Ruiz disclosed that on at least four occasions during the seven months she was employed at the Clinic, she observed LTC Linda L. Brown, M.D., Chief of Allergy/Immunology, asleep in her office. This conduct may constitute a violation of the Standards of Ethical Conduct for Employees of the Executive Branch which require employees to "put forth honest effort in the performance of their duties." 5 C.F.R. § 2635.101(b)(5). Ms. Ruiz indicated that on or about April 14, 2011, on either May 2 or 3, 2011, on May 16, 2011, and in early July, she personally witnessed Dr. Brown asleep in her office during patient care hours (7:30 a.m. to 4:00 p.m.). Ms. Ruiz saw Dr. Brown lying on her office couch, covered with a blanket and with her head on a pillow. Dr. Brown's office door was either completely shut or slightly ajar and her office lights were off.

In the early July 2011 incident, Ms. Ruiz approached and knocked loudly on Dr. Brown's office door to report that an HIV-positive patient had returned to the clinic because he was experiencing an anaphylactic reaction to a Hepatitis B vaccine he had received earlier that day. When she received no response to her knock, Ms. Ruiz entered Dr. Brown's office and found Dr. Brown asleep on her couch. Once awoken, Dr. Brown drowsily instructed Ms. Ruiz to give the patient Zyrtec. Ms. Ruiz learned, upon returning to the patient, that he had taken a dose of Zyrtec that morning to address his seasonal allergies. She returned to Dr. Brown's office to report this new development and found that Dr. Brown, rather than rising and reporting to the treatment room to supervise the care of this patient, had gone back to sleep. Ms. Ruiz was forced to rouse Dr. Brown again and estimates that approximately 15 minutes passed between the time that she initially attempted to awaken Dr. Brown and when Dr. Brown actually saw the patient.

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<sup>1</sup> The Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety. 5 U.S.C. § 1213(a) and (b). OSC does not have the authority to investigate a whistleblower's disclosure; rather, if the Special Counsel determines that there is a substantial likelihood that one of the aforementioned conditions exists, she is required to advise the appropriate agency head of her determination, and the agency head is required to conduct an investigation of the allegations and submit a written report. 5 U.S.C. § 1213(c) and (g).

Upon receipt, I review the agency report to determine whether it contains all of the information required by statute and that the findings of the head of the agency appear to be reasonable. 5 U.S.C. § 1213(e)(2). I will determine that the agency's investigative findings and conclusions appear reasonable if they are credible, consistent, and complete based upon the facts in the disclosure, the agency report, and the comments offered by the whistleblower under 5 U.S.C. § 1213(e)(1).

Ms. Ruiz also disclosed that Dr. Brown was frequently tardy for work in the morning and Clinic personnel proceeded with the administration of allergy shots and immunizations despite her absence. Ms. Ruiz and other nurses were directed by Head Nurse Erlinda Asuncion to proceed with the administration of allergy shots and immunizations prior to Dr. Brown's arrival. MAMC's Standard Operating Procedures (SOPs) specifically require that an allergist or designated surrogate allergist be present in the clinic or immediately available when immunotherapy injections are given. Ms. Ruiz stated that on at least 20 occasions during her tenure in the clinic, allergy shots and vaccines were administered prior to Dr. Brown's arrival and without designation of a surrogate allergist in violation of MAMC's SOPs.

## **II. The Agency's Investigation**

The agency report did not substantiate Ms. Ruiz's allegations. Although substantial evidence existed to support Ms. Ruiz's allegation that Dr. Brown had been observed lying down on the couch in her darkened office, the investigation found that Dr. Brown "rested" rather than "slept." The report further found that her rest periods occurred "during the duty day" rather than during "patient care hours." The report indicated that these periods of rest provided temporary relief to Dr. Brown from the effects of migraine headaches, which were exacerbated by personal issues at that particular time. The report repeatedly noted that there was no indication that Dr. Brown's periods of rest interfered with the performance of her duties or adversely affected the quality of patient care. Nevertheless, according to the report, Dr. Brown received written counseling for neglecting to seek a medical profile and for failing to inform her supervisory chain of command about her medical condition. Her failure to properly notify her supervisory chain of her condition, according to the report, gave rise to the perception among some of her subordinates that she was sleeping during duty hours and shirking her duty to care for patients.

With respect to Ms. Ruiz's allegation that allergy shots and immunizations were administered without proper physician oversight, the investigation acknowledged that Dr. Brown was occasionally tardy in reporting for duty to the A/I Clinic in the morning and that shots and immunizations were administered in her absence. The report found, however, that, in accordance with A/I Clinic Standard Operating Procedures, physicians from the adjacent Internal Medicine Clinic provided surrogate coverage in Dr. Brown's absence. This surrogate arrangement mandated that Internal Medicine Clinic physicians would respond to the A/I Clinic in the event of an anaphylactic reaction to an allergy shot or immunization. The testimony gathered during the course of the investigation indicated that it was standard practice for the A/I Clinic head nurse to notify the Internal Medicine Clinic physicians between 7:30 a.m. and 8:00 a.m. if there was a need for surrogate coverage that day. According to the report, this surrogate arrangement was effective in ensuring that the requisite physician oversight was provided at all times during the administration of allergy shots and immunizations.

The Special Counsel

The President

June 5, 2013

Page 4

### III. Findings

I have reviewed the original disclosure and the agency report. Based on that review, I have determined that the agency's report contains all of the information required by statute and that the findings are reasonable. Notwithstanding this determination, it should be noted that the agency's acceptance of Dr. Brown's explanation for her behavior is troubling, as it seems to suggest that a health care provider "resting" on the job during clinic hours is acceptable. Dr. Brown's actions potentially put her patients' care in jeopardy and the agency's findings ignore a fundamental precept of public service which is to "put forth honest effort in the performance of their duties." 5 C.F.R. § 2635.101(b)(5). The agency's acceptance of and token response to Dr. Brown's behavior, which consisted of only a letter of counseling for failure to seek a medical profile, did not address Dr. Brown's actual infraction of neglecting her patient care responsibilities and is inadequate.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of the unredacted agency report to the Chairmen and Ranking Members of the Senate and House Committees on Armed Services. I have also filed a copy of the redacted report in our public file, which is now available online at [www.osc.gov](http://www.osc.gov), and closed the matter.

Respectfully,



Carolyn N. Lerner

Enclosure