



DEPARTMENT OF VETERANS AFFAIRS  
Office of the General Counsel  
Washington DC 20420

OCT 5 2012

The Honorable Carolyn Lerner  
Special Counsel  
U.S. Office of Special Counsel  
1730 M Street, NW, Suite 300  
Washington, DC 20036

In Reply Refer To:

RE: OSC File No. DI-12-1098

Dear Ms. Lerner:

This letter responds to your inquiry regarding alleged violations at the Department of Veterans Affairs (VA), Boston Healthcare System. Per your recent discussion with VA's General Counsel, we are providing you with a supplemental addendum for the original report, which contains the names and titles of the witnesses interviewed and identified in the report.

Additionally, we have enclosed a letter from VA's Undersecretary for Health responding to a request for supplemental information on the original report.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Walter A. Hall".

Walter A. Hall  
Assistant General Counsel

Enclosures

## APPENDIX 1: INDIVIDUALS INTERVIEWED

### I. ENTRANCE BRIEFING

#### A. Members of VABHS Management:

(b)(6)	Medical Center Director (MCD) (via Teleconference)
	Chief of Staff (COS) (via Teleconference)
	Associate Chief of Staff for Research and Development (ACOS/R)
	Administrative Officer for Research and Development (AO/R)

#### B. Members of ORO Review Team:

(b)(6)	Deputy Chief Officer, ORO Central Office (CO)
	Associate Director, Research Information Security & Privacy (AD/RISP)
	Assistant Director, ORO CO Health Science Specialist (HHS), ORO Northeastern Regional Office (NERO)

### II. INDIVIDUAL INTERVIEWS

(b)(6)	Associate Chief of Staff for Research and Development (ACOS/R)
	Administrative Officer for Research and Development (AO/R)
	Research Pharmacist
	Local Site Investigator (LSI)/Principal Investigator (PI) for CSP #562
	Study Coordinator for CSP #562
	Chief of Medicine
	Informant (Whistleblower)



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UNDER SECRETARY FOR HEALTH  
WASHINGTON DC 20420

OCT 3 2012

The Honorable Carolyn N. Lerner  
Special Counsel  
U.S. Office of Special Counsel  
1730 M Street, NW, Suite 300  
Washington, DC 20036

RE: OSC File No. DI-12-1098 Supplemental Report

Dear Ms. Lerner:

In an e-mail dated September 12, 2012, the Office of Special Counsel (OSC) requested additional information on the Department of Veterans Affairs (VA) Boston Healthcare System Final Report, which was submitted on August 7, 2012. VA provides the following responses to address OSC's requests for supplemental information.

**OSC Request for Supplemental Information #1-** ORO found that VA employees failed to comply with requirements set forth in the Veterans Health Administration's (VHA) Handbooks 1200.05 and 1108.04, yet concluded there was no violation of law, rule or regulation. OSC considers any formally established and published agency-wide policy, such as those set forth in a VHA Handbook, to be a law, rule or regulation. This matter was referred to VA based on OSC's determination that there was a substantial likelihood of a violation of such a law, rule or regulation. Thus, OSC does not agree with the conclusion of ORO that there was no violation of law, rule or regulation, and seeks clarification regarding the basis for that conclusion.

**Response** - The investigation found no violation of any statutory law and no violation of rules or regulations as set forth in the Code of Federal Regulations. However, we did find violations of VHA's policies found in VHA Handbook 1200.05 and VHA Handbook 1108.04. These violations are discussed on pages 17 through 19 of the report. Therefore, according to OSC's definitions of the statutory phrase "law, rule or regulation," such a violation was identified.

**OSC Request for Supplemental Information #2-** ORO failed to reach a conclusion regarding a specific allegation of the whistleblower, namely, whether the subject in this matter falsified data by recording that she, rather than the whistleblower, conducted research skin examinations. In the report, there is a discussion of three patients whose records initially indicated the whistleblower conducted research skin examinations, but each were modified by an addendum added at a later date that states the subject

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conducted the exams. The report does not reflect a determination by ORO whether these addenda were deemed reliable and accurate. Rather, there is a suggestion that the addenda may have been inaccurate based on other information available to ORO, such as the subject's time and attendance records. Therefore, OSC requests a determination by ORO whether the subject falsified data by inaccurately recording that she conducted research skin examinations.

**Response-** While the investigators found the accuracy of the relevant records regarding the timing and source of the skin examinations to be questionable, they could not establish by a preponderance of the evidence that the investigator engaged in intentional falsification of the data. Therefore, we are unable to make a determination on whether the subject falsified data.

Thank you for the opportunity to respond to these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Petzel". The signature is stylized and somewhat cursive.

Robert A. Petzel, M.D.