OSC Whistleblower Comments

June 2014

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

Dear Ms. Lerner:

Below is my third set of comments, as a whistleblower, regarding the most recent VA response to my OSC whistleblower complaint about Primary Care issues at the G.V. (Sonny) Montgomery VA Medical Center in Jackson, Mississippi. These comments pertain to the second supplementary report from the VA agency.

"It makes you feel kinda homeless."

That is what a Veteran recently said to me in an exam room at the G.V. (Sonny) Montgomery VA Medical Center in Jackson, MS. He was referring to how hard it was to be seen in the Primary Care clinics, never mind feeling he was being well-treated, or listened to, when he finally got an appointment; or getting his prescriptions filled; or being seen more often than once a year even when acute issues arose. Or being able to be assigned to a doctor—when he finally found out he wasn't seeing a physician all this time, but a nurse practitioner who may or may not have been supervised.

And Primary Care clinics at VA Medical Centers are touted as a Veteran's "Medical Home".

As the ongoing egregious VA revelations in the media show, the façade of caring that the VA has presented to the country is a bogus structure. The G.V. (Sonny) Montgomery VA Medical Center is no exception to this; and like most of its confreres it will continue to "audit" itself and then proclaim that all is well once again.

The response to Recommendation # 1 states that the Medical Center will "continually update and maintain an in-depth spreadsheet to track NP-specific information including state of licensure, individual DEA certificate, certifications, LIP or non-LIP status, and physician collaborator as well as scope of practice information for non-LIPs". And *who* will *verify* that the Medical Center is actually doing these things? It is critical to identify the staff members assigned to maintaining this spreadsheet, and to monitor that these employees are actually doing their jobs. The same Center Director, Joe Battle, and the same Chief of Medicine, Jessie Spencer MD, who violated Federal and individual state laws and

VHA regulations, are still in charge. If the law and policies meant nothing to this medical center's leadership before, why should new integrity suddenly make an appearance? As I think we all know from testimony before the House Veterans Affairs Committee, the VA's own Office of Inspector General, and the GAO's Debra Draper—the VA's data and reports are suspect.

Each of the reports from the VA back to OSC regarding my whistleblower complaint has been a model of clever phrasing and nonresponsiveness. Regarding what states require collaborative agreements for nurse practitioners this report is silent on the "Iowa question". Many of the nurse practitioners currently working at the Jackson VA suddenly obtained Iowa licenses, in order to avoid needing collaborators; but the facility and these NPs have also sidelined the Iowa nursing board's regulation that the NP must follow the law in whatever state he or she practices in. Whoever is going to monitor this medical center for future compliance on all my whistleblower issues also needs to have in writing the legal opinion regarding the "Iowa question"—as Mississippi requires NP to have collaborators. Obviously, this issue will apply to any other states that have regulations similar to Iowa's for the licensing of NPs.

Any time the Jackson VA can ignore or skirt the law and/or regulations, it will. Recommendation # 4 requires that the NP's state licensing board approve the NP's collaborative agreement. But the Jackson VA just announces it is "not required to forward collaborative agreements to the state for approval". Apparently this is being done by fiat. But why not just follow the recommendation and respect the seriousness of professional licensing? What is there to hide?

Regarding Recommendation # 5, it is crucial to verify that no physician has more than four NP collaborative agreements. This is especially vital in reference to Jessie Spencer, MD who has often flouted the regulations on numbers of agreements. In addition, from my work reviewing charts in Compensation & Pension I have seen that Dr. Spencer is just cosigning an NP's note—and *not* noting at all the abnormal diabetic labs that need action. This is not what the NP licensing law requires, and is once again indicative of the contempt for proper regulations and lack of professionalism that has been rampant at the Jackson VA Medical Center.

Recommendation # 8 states that "The Medical Center leadership must immediately implement a process to ensure that appropriate monitoring of NP practice by physician collaborators occurs and is documented in accordance with state licensure requirements." This supplemental report promises that "clinical service chiefs monitor physician collaborator requirements, and report compliance to leadership". Dr. Spencer *is* a clinical service chief—she is Chief of Medicine. Are we to believe that any of the required documentation will routinely be checked, and any noncompliance ever reported—or that Dr. Spencer should be allowed to monitor *herself?* This is the woman who assigned residents-in-training to write narcotic prescriptions in the evening for NP patients they would never see. Her attitude (as well as that of the Chief of Staff at the time, Dr. Kent Kirchner, and the Chief of Primary Care, Dr. James Lockyer, and with the full agreement of Joe Battle) certainly seems to be "DEA law be damned".

Under Recommendation # 12 the Medical Center "anticipates the need for overbooked appointments will decline." Why continue the overbooking at all?

How many times does the Jackson VA leadership—medical and administrative—have to have explained to them that under our current laws of physics only one patient at a time can be cared for in the proper way? Or do they live in a parallel "string-theory" universe with different principles?

Recommendations # 14 refers to the need for clinical review of NPs' charts for the quality of medical work, but the report does not state just who did these reviews. I know that *other NPs,* including some who work at the Jackson VA, reviewed NP charts. This certainly shows disdain for the clear intent of the recommendation; and I can tell you that the NPs chosen at Jackson to review charts would be loathe to find any fault in their comrades. There is a militancy among many NPs at Jackson centered on their assertion that they are "the same as physicians". I would ascertain who did the clinical reviews, and also check on what the self-designed "review tool" was.

Recommendation # 20 was *not* supposed to mean reviewing narcotic prescribing by NPs in the same charts as for #14, but per the supplemental report that is how the Jackson VA circumvented a more extended assessment of the work of NPs. It states the "VISN reviewed NP prescriptions" for clinical appropriateness. *Who* at the VISN performed this? And *what* were the credentials of the reviewers? Were there any physicians, including outside physicians?

Recommendation # 22 notes the Medical Center should review all cases "identified by Lumetra as having moderate to high assessed impact including all relevant medical records and appropriate subspecialty consultation to determine the degree of harm, if any, and to conduct appropriate disclosures to patients and/or their families in accordance with VHA policy concerning institutional disclosure."

The supplemental report states that “Following completion of the review, the Medical Center conducted the appropriate disclosures to patients and families and forwarded its findings to the VISN.” There is a lot of “squishy” wording in this response, and one can guess that the definition of “appropriate disclosures” might differ in the VA-world from that of the non-VA medical community. And as we have seen repeatedly, from Pittsburgh to Phoenix to the radiology cover-up noted in another Jackson whistleblower’s complaint, VHA has not distinguished itself with the beauty of its transparency. And finally—why just report its “findings” to the VISN? Why not to the VA Central Office—shouldn’t the leaders there *want* to know whether there is decent quality of care for the Veterans? And who and what is “Lumetra”?

And let us never forget that while poor or no care leading to *mortality* is defenseless and obscene, it is the daily and hidden *morbidity*— the “being sick”, the myriad symptoms and hurt associated with the grip of chronic illness—that steals the remaining joys of life from the days of a Veteran, and his or her family. This often avoidable and undeserved suffering is coursing relentlessly through the Jackson VAMC ether like a river of eels.

The proposed VHA Nursing Handbook change to make all NPs who work in the VA system “fully independent” practitioners, disregarding whatever the NP’s individual state licensing law requires, is another conduit to lowering the *quality* of care for the Veterans. There is no debate about the tens of thousands of hours “differential” in the education and training of doctors compared to NPs, as well as the marked gap in continuing education hours required each year for a physician in contrast to an NP—and the fact that *only* physicians must complete a standard medical education curriculum, are taught by doctors, and must take board certification and ongoing recertification exams. If NPs insist that they are "equivalent providers" of healthcare who need no surveillance, then at the very least they should take—and pass—the same medical specialty board exams.

The current chief of staff at the Jackson VAMC, Dr. David Walker, has announced that it is "now" possible to look at the narcotic prescribing habits of each legal "prescriber" at the Medical Center. Let it begin by checking the past and present records for *all* NPs—and look at individual charts to see if medical exams have been done on a regular basis, how many narcotics are prescribed at a time, and if other and better evidence-based modalities for the treatment of chronic pain are being utilized.

The June 11th and 12th National Association of VA Physicians and Dentists Summit meeting in Washington, DC brought out how *marginalized* physicians have been made to feel in the VA healthcare system. Physicians agreed on how fearful many are of retaliation, and how even when an experienced doctor comes to work at the VA any successful strategy that he or she offers to improve care is unwelcome, at the very least. Physicians also agreed that *all* medical center directors should be doctors—as an aide to one US Congressman, and then a newspaper reporter asked me, "Why would you *ever* have a non-physician in charge of a medical center?" Indeed. As Representative Jeff Miller, Chairman of the House Veterans Affairs Committee pointed out at one of his hearings, looking at the VA organizational chart it appears that nurses have more input to leadership than doctors do. But the Veterans deserve doctors. And it is the doctors who are coming forward as whistleblowers; the calling to be a physician means you understand the absolute creed of stewardship to patients.

At Jackson, we are now losing three psychiatrists, and another one is still not doing clinical care as he remains on “administrative leave”. This type of leave is what physicians at the VA Summit described as “sham peer review”—a vague clinical issue is brought up, and then the accused is left sitting under the sword of Damacles while the investigation drags on. Leadership’s purpose in this seems to be to keep silent those who dare speak up; or hopefully, to get them to quit. But this method of retribution, along with other administrative “messages” that undermine the psychiatrists at Jackson, means that we will have fewer committed caretakers for the Veterans in the midst of a searing need for the best mental healthcare in the world. Mr. Battle has used Dr. Walker to push the psychiatrists to the curb, and has installed a psychologist as the chief of the department.

After all the cover-ups recently uncovered by the media and fellow whistleblowers in the VA, especially regarding fraudulent numbers for the 14-day metric access, I have a copy of the memo from the current Chief of Primary Care at Jackson (Dr. Andre Burnett) stating that primary care is not meeting the “performance measure for 7 day access for appointments”. *Why would this institution come up with this scheme, when they had to lie to “meet” their prior metric?* This is where reason departs from reality—at the G.V. (Sonny) Montgomery VA Medical Center in Jackson, Mississippi.

And it’s certainly no place like “home” for the Veterans.