Thomas Tomasco, MD

July 5, 2013

Karen Gorman
US Office of Special Counsel
1730 M Street, NW, Suite 218
Washington, DC 20036-4505

Ms Gorman,

I have received the agency report regarding OSC file number: DI-13-0416 and have reviewed it thoroughly. I do wish to make some comments regarding the results.

I am not surprised that when the VA was asked to review itself it found itself to have committed no wrong. Not surprising. I wish to point out that at the face to face meeting I was subjected to a hostile interrogation by Drs. Pierce and Maniscalco-Theberge. I was identified by the two as the "whistle blower" at the beginning of the interrogation and then subsequently was lambasted and ridiculed by the two physicians and finally asked why "I just didn't quit if I did not like it here." This was witnessed by my representative Mr. Mazzarella and Ms Homes. On at least one occasion Ms Homes had to stop Dr. Pierce and correct him for inappropriately commenting that "the VA does not have to follow EMTALA."

My report of the situation with on call physicians would never have been made if I wasn't advised by Mr. Marcus Graham (OGC) and Dr. Richard Howard (chief of surgery Albany Stratton VAMC) and Dr. William Lloyd (Stratton VAMC) that the issues I was relating were a violation of VA policy and were possibly placing patients/veterans lives in jeopardy and may be construed as "dereliction of duty" as per VA policies. Specifically when I happened to discuss the situation regarding the orthopedic case with Mr. Graham he made it very clear that the events documented were inappropriate and a violation of VA policy. He requested that I immediately provide him the names of both orthopedic physicians involved as well as the name of the chief of surgery and chief of medicine. Mr. Graham informed me at that time that he would report this inappropriate behavior to his superiors and make the Director, Ms Kaplan, aware of the breach in VA policy immediately. He also then directed me to notify him immediately if this type of problem occurs again in the future. When I happened to discuss the nature of the surgical cases mentioned in the report to the above physicians from the Stratton VAMC Albany they replied that the CT scan with "bowel obstruction" and "a transition zone" as reported by the radiologist is a "surgical emergency" and requires immediate surgical evaluation. I did not make these reports on my own and never did so lightly. I had nothing to gain from this reporting and in fact was made the object of ridicule and harassment since these reports came to light. The issue with surgeons and specialists not presenting when called during "off duty" hours was rampant at VAMC Wilkes Barre and was the subject of many discussions with Dr. Mark Scinico, my immediate supervisor. It was a frequent and known problem.

Dr. Pierce's comment that VAMC was not obliged to follow EMTALA was not correct and flies against all reason as this is a national law to which every other hospital in the USA is subjected. Is it true that everyone else in the entire country is expected to follow this law and standard of care however the VA does not? Is this a case of the VA being "above the law"?

Thomas Tomasco, MD

With regard to the orthopedic patient and the orthopedic surgeons on call I wish to point out a few issues. The orthopedic surgeon being able to take "phone call" is contrary to the standards of care in the USA and flies against any logic for having a surgeon "on call". The reason why Dr. Lease is on "phone call" at night is because he is unable to respond to the hospital at night because he is blind and unable to drive. If this orthopedic surgeon is so disabled due to poor vision he can no longer drive how can he be permitted to continue to operate on VA patients safely. If surgeons/specialists are not expected to present and examine patients during off duty hours why does the VAMC Wilkes Barre even have an on call schedule? Why publish a schedule in the first place? Are not these physicians on this call schedule obligated in any way to provide emergency care? Also medical ethics and plain logic dictate that a person on the phone is not callable of properly diagnosing and sick patient properly. Even CMS has decided that only in person evaluations are appropriate and reimbursable. If every private physician in the country is held to this standard why aren't the VA physicians held to the same standard. Are not our veterans to expect the same level of care? Should a veteran be subject to a lower standard of care if they choose to present to a VAMC?

With regard to the patient with the incarcerated bowel and abdominal pain I wish to point out that I was the only physician available at 0200 hrs that day examining the patient. The nurses called me due to the patient developing acute severe abdominal pain and upon my examination he had severe abdominal tenderness that was not present earlier in the day. IV morphine was not even able to control this patient's acute pain and discomfort. When I ordered the repeat CT of the abdomen and compared it to the one done earlier that day the only difference was the loop of incarcerated bowel in the ventral hernia. This patient has severe exquisite abdominal tenderness that could be related to nothing other than this incarcerated bowel. Immediate surgical consultation was requested due to this surgical emergency and acute change in the patient's status. The surgeon refused to come in and examine this patient. The radiologist missed the finding of the incarcerated ventral hernia and the patient was in extreme excruciating pain which qualifies as an EMTALA emergency. It needs to be noted that when I was told to transfer the patient by the VA surgeon by telephone he felt it was significant enough to have the patient transferred. Also I discussed the case with the intensivist as well as the general surgeon from Geisinger Wyoming Valley Hospital. When I explained the physical and laboratory examination along with the new CT findings the GWV surgeon remarked that appeared obvious that the patient may require emergency surgery and did indeed require immediate transfer. My question is that if the VA surgeon had responded and seen the patient as requested could he have reduced the hernia without surgery thereby avoiding the transfer, reducing the risk to the patient and saving the VA thousands of dollars?

I have never had anything personal to gain by bringing these issues to light. In fact my life at the VAMC Wilkes Barre was made a virtual Hell by the Director and Dr. Mian since I made these reports. I was berated by the investigators after being identified as a whistleblower and was made to quit my position under duress. Having been chairman of medicine at a hospital previously I am very familiar with these same issues at public/private hospitals in this country and cannot for the life of me see why the VA policies are much more lax than the standards of care for the rest of this country.

If surgeons/specialists are not required to see and examine patient on an emergency basis during off duty hours why publish a call schedule in the first place? Why does the facility have a policy that on call physicians must present within 60 minutes if called? Also how can any patient that is critically ill be evaluated properly by telephone by anyone ever? I am not surprised the VA has found itself to be cleared of all allegations and no further action is required. This appears to be the case with all of the recent episodes of corruption and substandard actions by our government agencies in the past years. Our government

agencies provide poor or inappropriate services and no one is held accountable to the taxpayers. I no longer work for the VA and have no stake in these matters except for the fact that this poor care provided to our veterans is beneath the standard to which all other physicians and hospitals are held. I am not surprised that no action is deemed needed as that would imply an error on the facilities part and would require VA physicians in Wilkes Barre to actually be held responsible to do something. How could the standard of care at Stratton VAMC for surgeons be so much better than that of Wilkes Barre? Should not all VAMC facilities be held to the same standards. Also how can the chair of medicine, Dr. Mian be permitted to dictate that specialists at the facility are not required to present and examine patients that are deemed emergently or acutely ill by the hospitalists? If a physician "on site" feels that emergent evaluation by a specialist is required how can someone properly evaluate a patient by phone and then decide that they will not come in to see the patient when the attending physician that has seen and examined the patient feels the immediate higher level of care is required? Also patients are being transferred out of VAMC Wilkes Barre at a very high rate due to not being able to be cared for at the facility or due to convenience. If patients cannot be adequately cared for at this facility should there be a consideration of closing this facility?

I should add the fact that while I did resign my position at the VAMC Wilkes Barre, it was under extreme duress and you have filed appeals to the U.S. Merit Systems Protection Board (MSPB) as well as to the U.S. Equal Employment Opportunity Commission (EEOC) thru VA's Office of Resolution Management (ORM) procedures on this situation. These appeals are being processed.

My attempts to improve patient safety and care at the Wilkes-Barre, VAMC were sincere and well intended, my revelations should not have been met with threats and harassment and groundless major adverse actions culminating in my "forced resignation". These actions by VA are illegal and in violation of Federal Personnel regulations and intended to have a "chilling effect" on others who report serious patient safety and care deficiencies.

It has to be more than just coincidence that at least 3 others physicians have filed actions against these same Wilkes-Barre VAMC management officials. This would probably be twice that number if others had not been discouraged by management's reprisal against those who would speak out.

My representative, Mr. Raymond A. Mazzarella, has 34 years of experience in mid and upper level management experience in VA. He spent 25 of those years as the HR Director at Wilkes-Barre and 6 years in VA's Washington D.C. Central Office as a Division Chief in the Office of Personnel and Labor Relations. He has, in his own words, never experienced such out of control management in all of his VA experience. He is now representing and has represented over two dozen Wilkes-Barre employees who have run afoul of this management in the past 5 or 6 years.

He has been successful in proving to EEOC and MSPB that the medical center and its management have been guilty of illegal discrimination, reprisal and creating a hostile and threatening work environment over the past several years. My situation is just the latest in this sad history of attempting to silence any dissent.

The government can do as it wishes, as it always does anyway. I only did what I was instructed to do by your own OGC lawyer and other VAMC surgeons and for this I was ridiculed, belittled and made to quit my position at the VAMC so I would not be an irritant to the facility. There was no benefit to me to make these reports, I had nothing to gain and had much to lose. The veterans are the ones who ultimately suffer. I ask you if your family member were subjected to this type of care would you be happy or satisfied? Is this really

how we wish for our veterans to be cared? Is this how we reward those who sacrificed and protected us? If this information was revealed to the public via the press how do you think the American public would feel?

Thomas Tomasco, MD

Wilkes-Barre General Hospital

An affiliate of Commonwealth Health

MEDICAL AFFAIRS

IMPORTANT

To: Members of the Medical Staff

From: Ragupathy Veluswamy, MD, MMM, FACPE, CPE
Vice President & Chief Medical Officer

Date: July 22, 2013

Re: On-Call Emergency Room Obligations

It has been brought to my attention that there have been several instances of physicians reluctant to respond to the Emergency Room when called upon by the Emergency Room physicians.
I would like to remind all physicians of Medical Staff Bylaw Section 6.2 (d) in which it specifically states:

" ...A physician who has been called from the rotation list may **not** refuse to respond. The Emergency Department physician's determination **shall control** whether the on-call physician is **required** to come in to personally assess the patient..."

Please note CMS refers cases it has investigated to the Office of Inspector General when CMS finds violations that appear to fall within their EMTALA jurisdiction.

Section 1395dd(d)(1)(C) of EMTALA " imposes a penalty on a physician who fails to respond to an emergency situation when he is assigned as the on-call physician. This is the only obligation placed on physicians governing the obligation to respond to an emergency situation." EMTALA regulations state specifically:

"On-call physicians or other qualified medical personnel **MUST** respond to the hospital when requested to attend to patients in a timely manner..."

Section 1867(d)(1)(c) of the EMTALA specifically provides for penalties against both a hospital and the physician when a physician who is on-call either fails to appear or refuses to appear within a reasonable period of time. These sanctions include:
- Termination of the hospital and/or physician Medicare provider agreement.
- Imposition of civil monetary penalties against the hospital with 100 or more beds of $50,000 per violation. The fine per violation for hospitals with less than 100 beds cannot exceed $25,000.
- Civil monetary penalties for physicians can be up to $50,000 per violation.
- On-call physicians responsible for examination, treatment, or transfer of an individual are subject to potential civil fines of up to $50,000 per violation for failing to come to the hospital, and may be excluded from Medicare.

Thank you for your cooperation to improve quality of care to our patients.