DEPARTMENT OF VETERANS AFFAIRS
WASHINGTON DC 20420

SEP 25 2014

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-14-1666

Dear Ms. Lerner:

I am responding to your letter regarding allegations made by a whistleblower at the Southern Arizona Veterans Affairs (VA) Health Care System, (hereafter, the Medical Center) in Tucson, Arizona. The whistleblower alleged that employees at the Medical Center improperly and repeatedly accessed his electronic health record (EHR) without cause, and that this may constitute a violation of law, rule, or regulation. The Secretary has delegated to me the authority to sign the enclosed report and take any actions deemed necessary as referenced in 5 United States Code § 1213(d)(5).

Former Acting Secretary Gibson referred the whistleblower's allegations to the Veterans Health Administration's (VHA) Office of the Medical Inspector (OMI), which conducted a site visit to the Medical Center on April 14–16, 2014. OMI reviewed the Medical Center's EHR tracking log on all 24 instances of access cited in the whistleblower's complaint. OMI determined that in all instances of access to the whistleblower's records, Medical Center employees did so for valid reasons. While we do not substantiate the whistleblower's allegations, we have made a recommendation that VHA evaluate its document scanning policy.

VA has put new processes in place to increase oversight of Office of Special Counsel investigations, ensuring a fair hearing for whistleblowers throughout the Department. Following first-line review by VA's investigative authorities, the newly established Office of Accountability Review independently assesses findings, develops recommendations, and assigns appropriate accountability.

Findings from this investigation are contained in the enclosed report, which I am submitting for your review.

Thank you for the opportunity to respond.

Sincerely,

Jose D. Riojas
Chief of Staff

Enclosure

DEPARTMENT OF VETERANS AFFAIRS

Report to the
Office of Special Counsel
OSC File No. DI-14-1666

Department of Veterans Affairs
Southern Arizona VA Health Care System
Tucson, Arizona

Veterans Health Administration
Washington, DC

Report Date: September 9, 2014
TRIM 2014-D-1220

Executive Summary

Summary of Allegations

Former Acting Secretary Sloan D. Gibson directed the Office of the Medical Inspector (OMI) to investigate complaints lodged with the Office of Special Counsel (OSC) by Mr. (b) (6) (hereafter, the whistleblower) at the Southern Arizona Veterans Affairs (VA) Health Care System (SAVAHCS), in Tucson, Arizona (hereafter, the Medical Center). The whistleblower alleged that employees at the Medical Center improperly and repeatedly accessed his electronic health record (EHR) without cause, and that this may constitute a violation of law, rule, or regulation. OMI conducted a site visit to the Medical Center on April 14–16, 2014.

Specific Allegations of the Whistleblower

- Beginning in April 2012, SAVAHCS employees repeatedly accessed his medical records for unknown reasons and without cause; and
- This improper accessing of his medical records constitutes an impermissible intrusion into his privacy and is a violation of law and agency policy.

After careful review of OMI's findings, VA makes the following conclusions and recommendation.

Conclusions

VA either **substantiated** allegations when the facts and findings supported that the alleged events or actions took place or **did not substantiate** allegations when the facts showed the allegations were unfounded.

Regarding allegation #1, VA **did not substantiate** the allegation that Medical Center employees repeatedly accessed the whistleblower's medical records for unknown reasons and without cause. We found that of the 24 instances of access to the whistleblower's EHR between January 2011 and September 2013, all were proper. While we do not substantiate the allegation, the Veterans Health Administration (VHA) should take this opportunity to evaluate its document scanning policy and to examine the current environment at the Medical Center that contributed to employees' incomplete understanding of local policy.

Regarding allegation #2, VA **did not substantiate** the allegation that employee access to the whistleblower's medical records constituted an impermissible intrusion into his privacy. We found no violations under the Privacy Act of 1974, the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, or the HIPAA Breach Notification Rule.

Recommendation

VHA's Health Information Management (HIM) Program Office should evaluate the existing documentation scanning policy to determine the appropriateness and feasibility of revising processes to limit the scanning of an employee's health information, when the employee is a Veteran, to either the scanning lead or the supervisor.

Summary Statement

VA's investigation did not reveal any instances where employee access to the whistleblower's EHR was a violation of the Privacy Act of 1974 or HIPAA Privacy Rule. We noted that employees have legal authority to access medical records and health information for the purposes of payment and health care operations in addition to treatment as outlined in the HIPAA Privacy Rule, 45 Code of Federal Regulations (CFR) Parts 160 and 164.

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I. Introduction

Former Acting Secretary Sloan D. Gibson directed OMI to investigate complaints lodged with OSC by Mr. (b) (6) (hereafter, the whistleblower) at SAVAHCS, in Tucson, Arizona (hereafter, the Medical Center). The whistleblower alleged that employees at the Medical Center improperly and repeatedly accessed his EHR without cause, and that this may constitute a violation of law, rule, or regulation. OMI conducted a site visit to the Medical Center on April 14–16, 2014.

II. Specific Allegations of the Whistleblower

- Beginning in April 2012, SAVAHCS employees repeatedly accessed his medical records for unknown reasons and without cause; and
- This improper accessing of his medical records constitutes an impermissible intrusion into his privacy and is a violation of law and agency policy.

III. Facility Profile

The Medical Center serves over 170,000 Veterans across eight counties in southern Arizona and one county in western New Mexico. The Medical Center operates 285 beds and provides training, primary care, and subspecialty health care in numerous medical areas. It has affiliations with over 70 academic institutions and plays a vital role in Arizona health care education, as the principal affiliate with the University of Arizona's Colleges of Medicine, Nursing, and Pharmacy. The Medical Center has specialized treatment programs, such as the Southwestern Blind Rehabilitation Center and the Community Living Center, which provides rehabilitation, geropsychiatric, interim, long-term, hospice/palliative, and respite care. Employing over 2,100 health care professionals and support staff, the Medical Center annually trains almost 700 physicians, nurses, and other health care professionals from educational institutions across the country. Approximately 54,000 unique patients are seen annually, with nearly 8,000 inpatient admissions and more than 684,000 outpatient visits.

IV. Conduct of Investigation

The OMI investigative team consisted of (b) (6), M.D., Deputy Medical Inspector for National Assessments; (b) (6), Special Assistant to the Medical Inspector; (b) (6) RN, MSN, Clinical Program Manager; (b) (6) Ph.D., MPH, Epidemiologist; and subject matter expert (b) (6), RHIA, CHPS, CIPP/G, CHPC, Privacy Specialist, VHA Privacy Office. OMI reviewed the whistleblower's relevant health records and the Medical Center's policies, procedures, reports, memoranda, and other documents; a full list is provided in Attachment A.

On April 3, 2014, OMI interviewed the whistleblower by telephone. After this interview, the whistleblower faxed a separate list of employees who allegedly improperly accessed his medical record; this list was identical to the list first identified in his OSC complaint.

From April 14 to April 16, 2014, OMI conducted a site visit, holding an entrance briefing with the Medical Center's Associate Director, Chief of Staff, Assistant Director, Nurse Executive, Deputy Chief of Staff, Administrative Assistant to the Chief of Staff, Clinical Director for Performance Measurement, Special Assistant to the Director, Executive Assistant to the Director, and Administrative Officer to the Deputy Chief of Staff.

On April 14, OMI interviewed the whistleblower and, during the course of the site visit, interviewed 12 Medical Center employees who are identified in Attachment B.

On April 16, OMI held an exit briefing with the Medical Center Director, Associate Director, Assistant Director, Nurse Executive, and the Assistant Chief of Staff.

On April 23, OMI conducted a telephone interview with a supervisory medical records administrator, HIM office.

The Office of the General Counsel reviewed investigative findings to determine whether there were any violations of law, rule, or regulation.

V. Background

The Privacy Act of 1974, 5 United States Code (U.S.C.) § 552a, prohibits agencies from disclosing any record contained in a system of records except with prior written consent of the individual to whom the record pertains, unless permitted under a statutory exception. In particular, 5 U.S.C. § 552a(b)(1) allows for disclosure to officers and employees of the agency maintaining the record in performance of their duties.

HIPAA Privacy Rule, 45 CFR Parts 160 and 164, requires that covered entities, including VHA, "ensure the confidentiality of all electronic protected health information the covered entity ... maintains." The Breach Notification Rule requires patient notification for certain incidents involving access to or disclosure of protected health information (PHI) in a manner not permitted under the HIPAA Privacy Rule.

As with any PHI, a covered entity may not use or disclose PHI of an employee without a HIPAA Privacy Rule exception or a signed, written authorization. The HIPAA Privacy Rule permits a covered entity, including its employees, to use or disclose PHI for treatment, payment, or health care operations. [Ref. 45 CFR 164.506(a)] For example, a supervisor's access of an employee's medical records is permissible if the purpose of the access is for treatment, health care operations, or payment rather than for employment purposes. Similarly, an employee's access of a coworker's medical records would be permissible if the purpose of the access is for treatment, health care operations, or payment rather than for employment purposes. The definitions of treatment, payment, and health care operations in the HIPAA Privacy Rule encompass various activities that support medical care, including but not limited to, the filing or scanning of paper documentation into the medical record, coding of the episode of care or visit, billing of the visit for reimbursement of services, transcribing dictated notes and conducting quality assurance reviews. While none of these activities are considered

medical care they are supportive of and critical to the covered entity's operations and are authorized by the HIPAA Privacy Rule.

VHA Handbook 1605.02, *Minimum Necessary Standard for Protected Health Information,* provides mandatory guidelines for the use and disclosure of patients' individually identifiable health information. It explains that VHA constitutes a covered entity, and as such, is required to implement the "minimum necessary standard." This standard requires covered entities to establish policies to limit the use or disclosure of PHI to the minimum amount necessary. To accomplish the goal of limiting the use of PHI, the Handbook divides employees into functional categories, each with an appropriate level of minimum access. Individuals in certain administrative support positions, as outlined in Appendix B of the Handbook, have limited health record, which is a subset of the entire health record, access when necessary to complete an assignment. When a functional category has only limited health record access the specific Privacy Act system of records which may be accessed are listed in Column 3 of Appendix B of the Handbook. However, individuals in health information administrative positions fall under the functional category, "Health Information Support Staff" and have entire health record access, which is to all information contained in any VHA system of records. The positions in this functional category include ones in the HIM Program Office that perform coding, scanning, transcription, filing and release of information. Even when entire health record access is permitted, paragraph 6 of the VHA Handbook specifically states that all VHA personnel must use no more PHI than is necessary to perform their specific job function and must not access information that exceeds the limits of their functional category. Paragraph 6 further notes that, even if an employee's position allows for greater access, the employee should access only the information necessary to perform an official function.

To maintain each Veteran's EHR, VHA relies on two information systems: the Computerized Patient Record System (CPRS) and the Veterans Health Information Systems and Technology Architecture (VistA). CPRS allows the user to enter, review, and update patient information. It also supports a practitioner's analysis of patient data to permit clinical decision making. VistA, which is built around CPRS, is a VA-wide system that provides a graphic user interface for support of all clinical and administrative functions, allowing clinicians, support staff, and others access to the Veteran's EHR. The two information systems that comprise the Veteran's EHR are covered by the Privacy Act systems of records, 79VA10P2 and 24VA10P2.

Access to VistA is restricted according to the user's official information requirement. Although most information in a Veteran's EHR is entered electronically, some medical documentation – including that submitted by contracted private care providers – continues to be collected on handwritten forms, which are then scanned and loaded into the EHR. All VHA facilities enter these paper documents into the EHR by scanning them into an electronic file and loading that file into the EHR. Often, HIM employees are responsible for performing these tasks.

VI. Methodology

OMI assessed each employee's access to the whistleblower's EHR and determined whether it was proper or improper. **Proper** access was defined as either (a) access documented by an electronic signature or logged electronically, the date and name of the accessor; (b) access that produced evidence in the whistleblower's EHR of an action taken by an employee for which OMI could find no evidence that any other employee had entered the EHR at that time; or (c) access where the user provided a plausible explanation based on their job duties despite no documentation or evidence in the EHR. An example of proper access was a signed provider note corroborated by an electronic signature. Another example is after paper medical records have been scanned and loaded into a Veteran's EHR, a HIM employee conducts a quality control check to ensure that the scanned documents have been properly entered. These checks are not documented by date of review or by signature of the person performing the review. In the absence of additional accesses by other HIM supervisory personnel, OMI concluded it was more likely than not that the access was to perform these quality checks. Another example is where the staff is appropriately answering a question or inquiry from the employee about the employee's record, and there is no evidence in the record supporting this action.

Improper access was defined as follows:

- **Access for no apparent reason:** OMI was unable to find any documentation in the EHR or reason based on job duties supporting the need for access. Without evidence of an official reason for access, we concluded that the minimum necessary standard was not met, and access was improper.

- **Access for an unauthorized reason:** OMI determined that access was not permitted under the Privacy Act and/or the HIPAA Privacy Rule, and therefore was improper.

The Sensitive Patient Access Report (SPAR) documents users' access to the EHR of a patient or employee whose record is defined as sensitive. Prior to entry into a sensitive record, the user encounters a warning that the record is sensitive, access to the record is tracked, and the user is required to prove a need to know. The user must acknowledge this warning before access to the sensitive record is allowed. SPAR provides a list of those users who have accessed a sensitive record, and the software path followed. The Medical Center provided OMI with the definition of each type of access identified in the whistleblower's SPAR (see Attachment C).

Using the list provided by OSC, OMI obtained the following information on each employee who allegedly had improper access to the whistleblower's record, and instances of this access, to make a determination as to whether each access was proper or improper (see Attachment D):

- Name;

- Title at the time of the alleged instance of improper access;
- Name and title of supervisor;
- Date and time of alleged improper access;
- Main job responsibilities around the time of alleged improper access (provides rationale for why employee would be in any EHR);
- Date the Medical Center granted access to the EHR (date the supervising organization authorized employee to enter any EHR); and
- Reason employee entered the whistleblower's EHR (provides rationale for why employee entered whistleblower's record on specific date and time indicated in the SPAR)

VII. Allegation 1

Beginning in April 2012, SAVAHCS employees repeatedly accessed his medical records for unknown reasons and without cause.

Findings

OMI evaluated a total of 24 instances of access between January 2011 and September 2013 (described in Attachment D), and determined that all were proper. Of the 24 accesses:

- 14 were documented in Vista by an electronic signature or logged electronically including the date and name of the accessor.

- 10 occurred in proximity to an entry into the whistleblower's EHR for which OMI could find no evidence that any other employee had entered the EHR at that time. We concluded that it was more likely than not that these accesses were in the performance of employees' official duties.

Accesses by HIM Employees:

The HIM office is responsible for scanning paper medical records and loading them into the EHR, in addition to monitoring and analyzing EHRs for accuracy, timeliness, and completeness. The whistleblower was a (b) (6) at the time of the alleged improper accesses to his EHR and a Veteran who received care at the Medical Center. Of the 24 accesses into the whistleblower's EHR, 20 were made by 7 HIM employees in the performance of their official duties related to health care operations purpose of scanning medical records.

To scan and load a paper document, the scanning technician enters the CPRS CHART Version1 module of the EHR to validate that the technician is in the right patient's record and to find or create a note to which the scanned image could be attached. If the care or procedure documented in the scanned document was referenced by an existing note, the technician finds the note and prepares to load the scanned document to that note. If

there is no such note, the technician creates a note which he or she signs. Simultaneously, the scanning technician enters the ALL MAG* RPC module of VistA-Imaging to review the record for possible duplication of the scanned document. In cases where a duplicate image is identified, scanning is aborted. If no duplicates are identified, the scanning technician then scans the paper document and loads it into the Veteran's EHR. Finally, the scanning technician returns to CPRS CHART Version1 to sign the note and verify the completed scanned process. With paper documents for which a note is known to exist, the scanning technician may scan these documents into the VistA option (ALL MAG* RPC) to attach them to the existing note.

As part of the quality control process, scanned images and other electronic health documents may undergo one or more quality reviews by one or more scanning leads or scanning supervisors. While records that undergo a quality review are flagged, they do not indicate the name of the person who performed the review or when that review was performed. VHA Handbook 1907.01, Health Information Management and Health Record, Paragraph 25 outlines the policies and processes for documentation scanning including the requirement for quality reviews.

Accesses by the Information Security Officer (ISO):

Of the 24 accesses to the whistleblower's EHR, 4 were made by the Medical Center's ISO in the performance of official duties related to the health care operations purpose of security.

The ISO conducts a weekly review of accesses into sensitive patient records. To conduct this review, the ISO generates a list that identifies every access by an employee with the same last name as the Veteran or employee whose EHR was accessed. This list is intended to uncover unauthorized accesses by individuals related to the Veteran or employee. The ISO reviews the EHR of the Veteran or employee to determine if the access appears authorized. Questionable accesses may be referred to the supervisors of the accessing employees for further investigation.

Conclusions

VA has carefully reviewed OMI's findings and concludes that in 24 instances of access to the whistleblower's EHR, all 24 were proper. Therefore, we **do not substantiate** the allegation that Medical Center employees repeatedly accessed the whistleblower's medical records for unknown reasons and without cause. While we do not substantiate the allegation, VHA should take this opportunity to evaluate its document scanning policy and examine the current environment at the Medical Center that contributed to employees' incomplete understanding of local policy.

Recommendation

The VHA HIM Program Office should evaluate existing documentation scanning policy to determine the appropriateness and feasibility of revising processes to limit the

scanning of information, when employee is a Veteran, to either the scanning lead or the supervisor.

VIII. Allegation 2

This improper accessing of his medical records constitutes an impermissible intrusion into the whistleblower's privacy and is a violation of law and agency policy.

Findings

According to the definitions outlined in this report, OMI found 24 instances of proper accesses. With regard to the Privacy Act, OMI could find no evidence that employees accessed the whistleblower's EHR outside of their official duties or without a need to know. With regard to the HIPAA Privacy Rule, OMI found that all 24 accesses were proper because both HIM employees and the ISO were permitted into the whistleblower's EHR in support of health care operations. With regard to the HIPAA Breach Notification Rule, OMI found that since all 24 instances of access were proper, none would warrant any disclosure of information.

Conclusions

After careful review of OMI's findings, VA **does not substantiate** the allegation that there were improper intrusions into the whistleblower's privacy that constituted a violation of law and agency policy. We found no violations under the Privacy Act of 1974, the HIPAA Privacy Rule, or the HIPAA Breach Notification Rule.

Recommendation

None.

ATTACHMENT A

Documents Reviewed by OMI

1. VHA Directive 1605, April 11, 2012: *VHA Privacy Program.*
2. VHA Handbook 1605.01, May 17, 2006*: Privacy and Release of Information.*
3. VHA Handbook 1605.02, January 23, 2013: *Minimum Necessary Standard for Protected Health Information.*
4. VHA Handbook 1605.03, April 13, 2009: *Privacy Compliance Assurance Program and Privacy Compliance Monitoring.*
5. Field Security Service Standard Operating Procedure Veterans Health Information Systems and Technology Architecture (VistA) Audits, V3.1, March 2012.

ATTACHMENT B

INDIVIDUALS INTERVIEWED BY OMI

Individuals interviewed by phone on April 3, 2014

1. (b) (6) – Whistleblower

Individuals interviewed in person on April 14, 2014

1. (b) (6) – Whistleblower

Individuals interviewed in person on April 15, 2014

1. (b) (6) – File Room Supervisor, HIM
2. (b) (6) – Scanning Technician, HIM
3. (b) (6) – Chief, HIM
4. (b) (6) – Scanning Technician, HIM
5. (b) (6) – Scanning Technician, HIM
6. (b) (6) – Lead Scanning Technician, HIM
7. (b) (6) – ISO

Individuals interviewed in person on April 16, 2014

1. (b) (6) – Associate Director
2. (b) (6) – Chief HIM
3. (b) (6) – Assistant Chief of Business Service Line
4. (b) (6) – ISO

Individuals interviewed by phone on April 23, 2014

1. (b) (6) – Supervisory Medical Records Administrator, HIM

ATTACHMENT C

SPAR Access Type Definitions

SPAR identifies which software pathway is used by the person to access the record. The possible accessing options are defined below as provided by the Medical Center:

1. ***ALL MAG* RPC*** – This menu option allows access to various components of VistA Imaging where scanned documents such as clinical images and other paper medical records are saved. Employees who scan and load paper records into the electronic health record do so using this pathway.

2. ***Browse*** – This menu option allows read-only access to CPRS. Employees or supervisors who use this menu do so to verify reports.

3. ***CPRSChart version1*** – This menu option documents entry into the portion of the EHR that contains clinical information like progress notes, laboratory, and radiology results.

4. ***Trace History movement*** – This menu option is an audit trail. Employees use this menu option to track the movement of paper medical charts within the Medical Center.

ATTACHMENT D

Employees Identified to OMI by OSC and Instances of Access to the Whistleblower's EHR

1. **Name:** (b) (6) File Room Supervisor

Title: File Room Supervisor, HIM

Name and title of supervisor: (b) (6), Assistant Chief of HIM

Dates and times of alleged improper accesses into whistleblower's record:

ACCESS DATE	ACCESS TIME	MODULE ACCESSED
Friday, April 13, 2012	9:05 a.m.	Trace History Movement
Friday, April 13, 2012	3:24 p.m.	CPRS CHART Version1
Friday, April 13, 2012	3:32 p.m.	All MAG* RPC
Monday, April 29, 2013	3:53 p.m.	CPRS CHART Version1
Monday, September 09, 2013	1:08 p.m.	CPRS CHART Version1
Monday, September 09, 2013	1:19 p.m.	All MAG* RPC

Main job responsibilities around times of access: As part of his job responsibilities, (b) (6) File Room Supervisor scans documents into Veterans' EHRs and conducts frequent quality inspections of scanned documents of all staff. He is also responsible for tracking the location of paper medical records. The location of paper medical records has to be annotated in the Veteran's EHR for the purposes of retrieval. He supervises all scanners including (b) (6).

Date access granted to the EHR: January 15, 2008

Reasons for entering whistleblower's EHR:

Friday, April 13, 2012, at 9:05 a.m.: In order to be sure existing paper records on a Veteran are accessible, the Veteran's EHR is annotated with the location of those records. The location of these paper medical records is tracked through the Trace History Movement module of VistA. If changes are made to the location of the medical records, the date and the person making the changes are updated. If the location is confirmed as unchanged, date and person are not recorded. Between April and June 2012, the Medical Center was moving paper records from the 2nd floor of building 50 to the basement of building 38, requiring annotation of this movement in the EHRs of the affected Veterans. (b) (6) File Room Supervisor accessed the sensitive records of two Veterans through Trace History Movement on Friday, April 13, 2013. One of these EHRs was the whistleblower's. (b) (6) File Room Supervisor reported that he accessed many more records, but, because these EHRs were not classified as sensitive, there

is no record of those accesses. The whistleblower's paper records have not been relocated since 2005, so if [redacted] enters the whistleblower's EHR to confirm the location of the paper medical records, no electronic trail would track that access. Since [redacted] accessed at least one other Veteran's EHR through Trace history Movement at the time he accessed the whistleblower's EHR, OMI believes it is more likely than not that this access was in performance of his job duties to confirm the location of the whistleblower's paper records.

Friday, April 13, 2012, at 3:24 p.m. and 3:32 p.m.: On this date, [redacted] entered CPRS Chart Version1 to validate that he was in the whistleblower's EHR. He also signed a note saying that he attached a scanned document. [redacted] then entered All MAG* RPC to scan and attach the document to his note at 3:32 p.m., as evidenced by the index of the documents in VistA imaging.

Monday, April 29, 2013, at 3:53 p.m.: On this date between 10:46 and 11:01 a.m., [redacted] scanned a document dated [redacted], 2013, into the whistleblower's EHR. This record shows that the document underwent a quality check by a supervisory scanning technician, although the time of the check and identity of the technician are not annotated. OMI can find no other supervisory scanning technician entries other than those of [redacted] on April 29 into the whistleblower's EHR after [redacted] that could account for the quality check. OMI believes that it is more likely than not that [redacted] entry into the whistleblower's record was to perform this quality check.

Monday, September 9, 2013, at 1:08 p.m. and 1:19 p.m.: The whistleblower underwent an [redacted] procedure on [redacted] 2013. The [redacted] nursing care notes were documented in hard copy rather than directly into the EHR on [redacted], 2013, which record shows that [redacted] records were scanned in by [redacted] on September 9, 2013, at 1:28 p.m., as evidenced by the index of the documents in VistA imaging.

Conclusions:

Proper access on April 13, 2012, at 9:05 a.m.
Proper accesses on April 13, 2012, at 3:24 p.m. and 3:32 p.m.
Proper access on April 29, 2013, at 3:53 p.m.
Proper accesses on September 9, 2013, at 1:08 p.m. and 1:19 p.m.

2. **Name:** (b) (6) Scanning Tech 1

Title: Scanning technician, HIM

Name and title of supervisor: (b) (6) File Room Supervisor

Date and time of alleged improper access into whistleblower's record:

ACCESS DATE	ACCESS TIME	MODULE ACCESSED
Tuesday, September 10, 2013	1:19 p.m.	CPRS CHART Version1

Main job responsibilities around time of access: As part of his job responsibilities (b) (6) Scanning Tech 1 scans medical reports into Veterans' charts. During February 2012 through February 2014, (b) (6) Scanning Tech 1 also serves as a backup to the transcription unit, conducting weekly reviews of deficient and/or delinquent medical records.

Date access granted to the EHR: November 9, 2004

Reason for entering the whistleblower's EHR: On (b) (6) , 2013, the whistleblower underwent (b) (6) at the Medical Center for which an (b) (6) report was generated. Although the list of (b) (6) reports validated by HIM personnel were not maintained, the whistleblower's report had to be validated by some member of the HIM staff. OMI believes that it is more likely than not that (b) (6) Scanning Tech 1 accessed the whistleblower's electronic health record on Tuesday, September 10, 2013, to verify that the appropriate report had been properly completed, in performance of his job duties as backup to the transcription unit during that time period.

Conclusion:

Proper access on Tuesday, September 10, 2013, at 1:19 p.m.

3. **Name:** (b) (6) Chief HIM

Title: Chief, HIM

Name and title of supervisor: (b) (6), Assistant Chief for Care Coordination, Business Service Line

Date and time of alleged improper access into whistleblower's record:

ACCESS DATE	ACCESS TIME	MODULE ACCESSED
Monday, September 9, 2013	8:45 a.m.	Browse

Main job responsibilities around time of access: (b) (6) Chief HIM is the Chief of HIM. She has management authority and oversight of the following areas: scanning, medical records coding, release of information, and medical records. She supervises over 40 staff members of various educational and training backgrounds. As HIM manager, she is the subject matter expert for all issues regarding the electronic record. In this capacity, (b) (6) Chief HIM routinely accesses records to answer questions from health care professionals and HIM staff needing assistance with medical records documentation.

Date access granted to the EHR: December 30, 1986

Reasons for entering whistleblower's EHR: The whistleblower underwent an (b) (6) procedure on (b) (6) 2013. The (b) (6) summary dictated by the (b) (6) was transcribed by a contract transcription service. The Assistant Chief of HIM received an electronic notification that the transcription product was available for review on Friday, September 6, 2013, at 4:46 p.m., and recognized that this document reflected medical care for the whistleblower, an employee (b) (6). On Monday, September 9, 2013, she brought this document to the attention of (b) (6) Chief HIM who entered the whistleblower's EHR at 8:45 a.m. Based on interviews, OMI believes it is more likely than not that (b) (6) Chief HIM entered the whistleblower's EHR to validate the demographic information in the (b) (6) summary.

Conclusion:

Proper access on Monday, September 9, 2013, at 8:45 a.m.

4. **Name:** (b) (6) Lead File Clerk

Title: Lead file clerk, HIM

Name and title of supervisor: (b) (6), File Room Supervisor

Date and time of alleged improper access into whistleblower's record:

ACCESS DATE	ACCESS TIME	MODULE ACCESSED
Monday, September 9, 2013	10:21 a.m.	CPRS CHART Version1

Main job responsibilities around time of access: As part of his job responsibilities, (b) (6) Lead File Clerk performs quality assurance reviews of EHRs, including (b) (6) reports, to ensure accuracy, timeliness, and completeness.

Date access granted to the EHR: November 27, 2006

Reasons for entering whistleblower's EHR: On (b) (6), 2013, the whistleblower underwent (b) (6) at the Medical Center for which an (b) (6) report was generated. One of the quality checks performed on (b) (6) reports is to ensure the presence of the attending (b) (6) signature. Often at facilities with (b) (6) trainees, the (b) (6) report is dictated and signed by the trainee. However, the report is not considered complete until the (b) (6) of record, the attending (b) (6) also signs it. On Monday, September 9, 2013 (b) (6) Lead File Clerk reviewed all the (b) (6) reports between (b) (6) 2013, to ensure the presence of an attending's signatures. The Medical Center provided this list of reviewed reports to OMI; we found the (b) (6) report for the whistleblower's procedure in this batch of reports reviewed by (b) (6) Lead File Clerk Although there is no annotation in the whistleblower's EHR that (b) (6) Lead File Clerk accessed his EHR for this reason, OMI believes that it is more likely than not that (b) (6) Lead File Clerk entered the whistleblower's EHR to confirm the presence of an attending's signature.

Conclusion:

Proper access on Monday, September 9, 2013, at 10:21 a.m.

5. **Name:** (b) (6) Scanning Tech 2

Title: Scanning technician, HIM

Name and title of supervisor: (b) (6) File Room Supervisor

Date and time of alleged improper accesses into whistleblower's record:

ACCESS DATE	ACCESS TIME	MODULE ACCESSED
Wednesday, January 19, 2011	9:05 a.m.	All MAG* RPC
Wednesday, January 19, 2011	9:06 a.m.	All MAG* RPC
Wednesday, January 19, 2011	9:07 a.m.	CPRS CHART Version1

Main job responsibilities around time of access: As part of his job responsibilities (b) (6) Scanning Tech 2 scans medical records into Veterans' charts.

Date access granted to the EHR: November 19, 2009

Reasons for entering whistleblower's EHR: On (b) (6) 2010, the whistleblower underwent a (b) (6) at the Medical Center. On Wednesday, January 19, 2011 (b) (6) Scanning Tech 2 entered the whistleblower's EHR to scan the referenced note as evidenced by the index of the documents in VistA imaging.

Conclusion:

Proper access on Wednesday, January 19, 2011, at 9:05 a.m., 9:06 a.m., and 9:07 a.m.

6. **Name:** (b) (6) Scanning Tech 3

Title: Scanning technician, HIM

Name and title of supervisor: (b) (6) File Room Supervisor

Date and time of alleged improper access into whistleblower's record:

ACCESS DATE	ACCESS TIME	MODULE ACCESSED
Thursday, May 19, 2011	9:40 a.m.	All MAG* RPC
Monday, April 15, 2013	2:33 p.m.	CPRS CHART Version1
Monday, April 15, 2013	2:36 p.m.	All MAG* RPC

Main job responsibilities around time of access: As part of his job responsibilities (b) (6) Scanning Tech 3 scans medical records into Veterans' charts.

Date access granted to the EHR: September 13, 2004

Reasons for entering whistleblower's EHR:

Thursday, May 19, 2011, at 9:40 a.m.: A (b) (6) procedure report was completed on (b) (6), 2011, in preparation for the whistleblower's procedure. The report was documented in hard copy rather than directly into the EHR. On May 19, 2011, (b) (6) Scanning Tech 3 scanned the report into the whistleblower's EHR as evidenced by the index of the documents in VistA imaging.

Monday, April 15, 2013, at 2:33 and 2:36 p.m.: On (b) (6), 2013, the whistleblower underwent an (b) (6) procedure. The flow-sheet for this procedure was documented in hard copy rather than directly into the EHR. On April 15, 2013, (b) (6) Scanning Tech 3 scanned the report into the whistleblower's EHR as evidenced by the index of the documents in VistA imaging.

Conclusions:

Proper access on Thursday, May 19, 2011, at 9:40 a.m.
Proper access on Monday, April 15, 2013, at 2:33 p.m. and 2:36 p.m.

7. **Name:** (b) (6) Lead Scanning Tech

Title: Lead scanning technician, HIM

Name and title of supervisor: (b) (6) File Room Supervisor

Date and time of alleged improper access into whistleblower's record:

ACCESS DATE	ACCESS TIME	MODULE ACCESSED
Monday, April 29, 2013	10:46 a.m.	CPRS CHART Version1
Monday, April 29, 2013	10:56 a.m.	All MAG* RPC
Monday, April 29, 2013	10:59 a.m.	All MAG* RPC
Monday, April 29, 2013	11:01 a.m.	All MAG* RPC
Thursday, September 26, 2013	12:53 p.m.	All MAG* RPC

Main job responsibilities around time of access: As part of her job responsibilities, (b) (6) Lead Scanning Tech scans documents into Veterans' EHRs and conducts frequent quality inspections of scanned documents of all staff, including those of her supervisor.

Date access granted to the EHR: December 30, 2008

Reasons for entering whistleblower's EHR:

Monday, April 29, 2013, at 10:46, 10:56, and 10:59 a.m.: An (b) (6) information form was completed on (b) (6), 2013, in preparation for the whistleblower's procedure. A second (b) (6) information form was completed on (b) (6). The forms were documented in hard copy rather than directly into the EHR. On Monday, April 29, 2013, at 10:46 a.m., 10:56 a.m., and 10:59 a.m., (b) (6) Lead Scanning Tech scanned the two forms into the whistleblower's EHR as evidenced by the index of the documents in VistA imaging.

Thursday, September 26, 2013, at 12:53 p.m.: The whistleblower's EHR shows that (b) (6) records were scanned in by (b) (6) File Room Supervisor on September 9, 2013, as evidenced by the index of the documents in VistA imaging. The EHR also shows that these records underwent a quality check by a supervisory scanning technician on September 26, 2013. The quality check is logged electronically but is unsigned and undated. OMI can find no other supervisory scanning technician entries into the whistleblower's EHR that could account for the quality check, other than (b) (6) Lead Scanning Tech access. OMI believes that it is more likely than not that (b) (6) Lead Scanning Tech entry into the whistleblower's record was to perform this quality check.

Conclusions:

Proper access on Monday, April 29, 2013, at 10:46 a.m., 10:56 a.m., 10:59 a.m., and 11:01 a.m.
Proper access on Thursday, September 26, 2013, at 12:53 p.m.

8. **Name:** (b) (6) ISO [redacted]

Title: ISO

Name and title of supervisor: (b) (6) [redacted], Network 18 ISO

Date and time of alleged improper accesses into whistleblower's record:

ACCESS DATE	ACCESS TIME	MODULE ACCESSED
Wednesday, August 1, 2012	3:24 p.m.	CPRS CHART Version1
Thursday, September 12, 2012	3:03 p.m.	CPRS CHART Version1
Tuesday, April 2, 2013	12:37 p.m.	CPRS CHART Version1
Monday, December 16, 2013	9:35 a.m.	CPRS CHART Version1

Main job responsibilities around time of access: As part of his job responsibilities (b) (6) ISO [redacted] performs weekly audits of accesses to sensitive patient EHRs. His process is to flag isolated accesses and accesses by employees with matching last names.

Date access granted to the EHR: December 12, 2001

Reasons for entering whistleblower's EHR:

Wednesday, August 1, 2012, at 3:24 p.m.: The whistleblower's SPAR shows an access on June 24, 2012, by an employee who shared the same last name as the whistleblower. As part of his weekly audit, (b) (6) ISO [redacted] accessed the whistleblower's EHR on August 1, 2012, to ascertain if this employee was related to the whistleblower; there was no relationship, thus the access was proper.

Thursday, September 12, 2012, at 3:03 p.m.: The whistleblower's SPAR shows an access on August 1, 2012, by an employee who shared the same last name as the whistleblower. As part of his weekly audit, (b) (6) ISO [redacted] accessed the whistleblower's EHR on September 12, 2012, to ascertain if this employee was related to the whistleblower; there was no relationship, thus the access was proper.

Tuesday, April 2, 2013, at 12:37 p.m.: The whistleblower's SPAR shows an access on March 14, 2013, by an employee who shared the same last name as the whistleblower. As part of his weekly audit, (b) (6) ISO [redacted] accessed the whistleblower's EHR on April 2, 2013, to ascertain if this employee was related to the whistleblower; there was no relationship, thus the access was proper.

Monday, December 16, 2013, at 1:41p.m.: The whistleblower's SPAR shows an access on December 16, 2013, by an employee who shared the same last name as the whistleblower. In this instance, (b) (6) ISO [redacted] audit was delayed until

April 2, 2014, at which time he verified that the employee was not related to the whistleblower, and thus the access was proper.

Conclusions:

Proper access on Wednesday, August 1, 2012, at 3:24 p.m.
Proper access on Thursday, September 12, 2012, at 3:03 p.m.
Proper access on Tuesday, April 2, 2013, at 12:37 p.m.
Proper access on Monday, December 16, 2013, at 1:41p.m.