



U.S. OFFICE OF SPECIAL COUNSEL  
1730 M Street, N.W., Suite 300  
Washington, D.C. 20036-4505

The Special Counsel

October 7, 2015

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

Re: OSC File No. DI-14-0493

Dear Mr. President:

Pursuant to my duties as Special Counsel, enclosed please find the Department of Veterans Affairs' (VA) report based on disclosures of wrongdoing at the G.V. (Sonny) Montgomery VA Medical Center (Jackson VAMC), Jackson, Mississippi. The Office of Special Counsel (OSC) has reviewed the report and, in accordance with 5 U.S.C. § 1213(e), provides the following summary of the agency investigation and my findings.

The whistleblower, Charles W. Jenkins, who consented to the release of his name, disclosed that Jackson VAMC managers violated patient privacy by directing staff to create MyHealthVet (MHV) accounts for patients without their permission. He additionally disclosed that Jackson VAMC managers failed to notify patients of the improper creation of the MHV accounts or to take appropriate corrective action, and violated patient privacy by allowing the improper storage of patient billing information and other personally identifiable information (PII) at the Veterans Integrated Service Network (VISN) 16 Consolidated Fee Unit (CFU) in Pearl, Mississippi.

**The VA substantiated Mr. Jenkins's allegation that employees violated patients' privacy by directing staff to create MHV accounts for patients without their permission. The VA further substantiated that management failed to notify patients of the improper creation of MHV accounts, and allowed the improper storage of patient billing information. However, the agency was unable to conclude that paper records were improperly secured or that temporary storage practices at the CFU violated veterans' privacy. Following its investigation into Mr. Jenkins's allegations, the VA took significant corrective and disciplinary actions. I have reviewed the agency's report and determined that the report contains all the information required by statute and the findings appear reasonable.**

Mr. Jenkins's allegations were initially referred to then-Secretary Eric K. Shinseki to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d).<sup>1</sup> The matter was then

---

<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

The President  
October 7, 2015  
Page 2 of 5

referred to the Office of the Medical Inspector (OMI) to conduct the investigation. The Secretary delegated the authority to review and sign the agency's report to then-Chief of Staff Jose Riojas. The agency submitted its report on October 31, 2014. Pursuant to 5 U.S.C. § 1213(e)(1), Mr. Jenkins declined to comment on the agency's report. As required by 5 U.S.C. § 1213(e)(3), I am now transmitting the report to you.

**I. Mr. Jenkins's Disclosures and the Agency's Findings**

*A. Unauthorized Creation of MHV Accounts*

Mr. Jenkins has been an employee with the VA since 1995, and since 2001 has served as the President of the AFGE Local 589. Mr. Jenkins disclosed that in early 2013, AFGE Local 589 officials were notified by an anonymous employee that Fred A. Nichols, VISN 16 ICD 10 Implementation Manager, was directing staff to create MHV accounts for Jackson VAMC patients without their knowledge.

MHV is a personal health system created by the VA to aid veterans, active duty service members, their dependents, and caregivers. It provides tools that allow these individuals to make informed decisions and manage their health care services. Mr. Jenkins disclosed that there was an agency-wide initiative to educate veterans on MHV and employees were told regularly to encourage veterans to enroll in the program. According to Mr. Jenkins, an employee disclosed to AFGE Local 589 that the Jackson VAMC was below the national enrollment average for MHV.

Mr. Jenkins alleged that, in an effort to quickly increase the Jackson VAMC's enrollment numbers, Mr. Nichols directed Sonya Braddy, chief of health information management services, and Karen Leflore, medical administration service supervisor, to assign employees to create MHV accounts using patient information without the patients' knowledge. Management provided to employees usernames and passwords for the accounts. To create a MHV account, employees needed the patient's full name, Social Security number, gender, date of birth, and contact information such as an email address, home address, or phone number. After entering this information, employees entered the usernames and passwords that Ms. Braddy and Ms. Leflore provided to them. Notably, Mr. Jenkins disclosed that the passwords for each unauthorized MHV account were the same, posing a security risk. Mr. Jenkins further disclosed that a patient's medical appointments, lab test results, and provider's name can be found in a MHV account.

The investigation determined that, although there is no formal, written guidance that prohibits the practice of setting up accounts without veterans' authorization, the training provided to MHV coordinators set the expectation that staff were prohibited from creating

---

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). Upon receipt, the Special Counsel reviews 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). The Special Counsel 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).

The President  
October 7, 2015  
Page 3 of 5

MHV accounts for veterans without their permission. Significantly, the training instructed MHV coordinators that creation of MHV accounts for veterans without their permission would be considered an unauthorized access to protected health information (PHI), and could also constitute impersonation of a veteran.

The investigation found that 24,215 veterans were registered for MHV accounts by VA employees without their knowledge or consent. The agency determined that the creation of these accounts by staff constitutes an unauthorized access to PHI and is a violation of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule and the Privacy Act of 1974 (Privacy Act).

In response to Mr. Jenkins's disclosures and the OMI investigation, the Medical Center director agreed to take appropriate corrective and disciplinary actions. Specifically, 19 supervisors at Jackson VAMC completed Equal Employment Opportunity and Privacy Act training, and the Medical Center director took five separate disciplinary actions against responsible employees. These disciplinary actions include: (1) the proposed termination of Fred Nichols, former MAS chief, effective July 18, 2014<sup>2</sup>; (2) the termination of Sonya Braddy, former chief, Health Information Service, effective June 20, 2014; (3) the reassignment and 30-day suspension of Karen LeFlore, former MHV coordinator; (4) the proposed seven-day suspension of Randall Trammell, associate chief revenue operations<sup>3</sup>; and (5) the proposed 3-day suspension of Tiffany Lay-Welch, alternative privacy officer.<sup>4</sup>

*B. Failure to Notify Veterans of Improper Creation of MHV Accounts*

Mr. Jenkins disclosed that approximately 100 MHV accounts were created, and that most of these patients were not notified that an account was created in their name using their PHI. The agency substantiated Mr. Jenkins's allegation that the Jackson VAMC Medical Center failed to notify veterans of the improper creation of MHV accounts. As noted above, the investigation found that VA employees created 24,215 MHV accounts for veterans without their knowledge or permission.

In response to this finding, the matter was referred to the Data Breach Core Team (DBCT) to determine whether the unauthorized creation of MHV accounts constituted a breach of veterans' sensitive personal information (SPI).<sup>5</sup> The DBCT considered several definitions of "breach," and on March 19, 2013, ultimately determined that the unauthorized creation of MHV accounts did not qualify as a reportable data breach. Accordingly, the DBCT categorized the incidents as unauthorized electronic access to SPI with low risk of compromise, requiring no further action. Affected veterans were therefore never notified that employees accessed their PHI to create MHV accounts without their permission.

---

<sup>2</sup> Mr. Nichols retired on July 17, 2014.

<sup>3</sup> Mr. Trammell's 7-day suspension was mitigated to a 2-day suspension, which was completed August 16-17, 2014.

<sup>4</sup> Ms. Lay-Welch's 3-day suspension was reduced to a formal reprimand, which was delivered on September 12, 2014.

<sup>5</sup> VA Handbook 6500.2 defines SPI as individually identifiable information protected by one or more confidentiality provisions such as the Privacy Act, 5 U.S.C. § 552a; 83 U.S.C. § 5701, 5705, and 7332; or the HIPAA Privacy Rule. Protected health information and personally identifiable information are subsets of SPI.

The President  
October 7, 2015  
Page 4 of 5

Upon later review, the National Information Access and Privacy Office found that employees' unauthorized electronic access to veterans' electronic health records to retrieve demographic data to create MHV accounts did qualify as a violation of VHA privacy policy.<sup>6</sup> The report concluded that unauthorized access to veterans' PHI had occurred, resulting in a violation of the HIPAA Privacy Rule and the Privacy Act, and that the Medical Center should have informed veterans of these violations.

### *C. Improper Storage of Patient Information at the CFU*

Mr. Jenkins disclosed that Jackson VAMC management violated patient privacy by allowing the improper storage of patient billing information and other personally identifiable information at the VISN 16 CFU in Pearl, Mississippi. The agency substantiated Mr. Jenkins's allegation that management allowed improper storage of patient billing information. The report cited a lapse in security during a period when a large amount of paper records was stored in the CFU due to computer issues. It noted that privacy information was contained in these records, and that unsupervised contract personnel, who had no need for access to privacy information, may have had incidental exposure to these sensitive documents.

The agency, however, failed to substantiate that the paper records were improperly secured, finding that they were always kept behind a locked door. In addition, the agency did not substantiate the allegation that veterans' privacy was violated by the temporary storage practices at CFU. The report noted that the investigation found no evidence that CFU staff or contract personnel inappropriately accessed veterans' records.

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

In its report, the agency made five recommendations for the Jackson VAMC and the VHA. The recommendations included: (1) developing specific training to ensure that Medical Administration Service staff understand VA and Veteran Health Administration privacy policies and regulations; (2) monitoring compliance with privacy policies and regulations, to address noncompliance as appropriate; (3) developing formal written guidance for the MHV program, to include the account registration process; (4) sending letters to all veterans whose MHV accounts were established without their knowledge or permission; and (5) developing appropriate safeguards for the temporary storage of paper records to prevent incidental disclosure.

The agency indicated in its report that the recommended training was conducted in May and June, 2014. In addition, the agency confirmed that it will provide educational updates to staff concerning the MHV website, including business rules and policies prohibiting MHV registration for veterans without their consent. It will also establish a link on the existing Talent Management System to MHV rules of behavior by September 30,

---

<sup>6</sup> VHA Handbook 6505.1, *Privacy and Release of Information*; paragraphs 3a.(1) ; 3b.(1) and (5); and 12a. provides guidance. VHA Handbook 1502.02, Minimum Necessary Standard for Protected Health Information, paragraphs 50., 61., and 6b.

The Special Counsel

The President  
October 7, 2015  
Page 5 of 5

2015. Further, the agency will implement federal credential access, which will prevent staff from establishing MHV accounts for veterans. The agency also stated that it will send letters to all veterans whose MHV accounts were established without their knowledge or permission in August, 2015; the CFU now requires contract janitorial staff to complete the VA's Privacy and Information Security Training; and temporary paper records are now stored in file cabinets until final disposition. Finally, the agency confirmed that significant disciplinary actions were taken against the five responsible management officials.

## **II. The Special Counsel's Findings and Conclusions**

I have reviewed the original disclosure and the agency report. Based on that review, I have determined that the report contains all of the information required by statute and the findings appear reasonable. I note that the Medical Director responded to these allegations and initiated significant disciplinary actions against five employees who were critically involved in the issues raised in Mr. Jenkins's disclosures. He additionally took or recommended a number of corrective actions to ensure that appropriate safeguards are in place to prevent further violations of veterans' protected privacy information.

As required by 5 U.S.C. § 1213(e)(3), I have sent unredacted copies of the agency's report to the Chairmen and Ranking Members of the Senate and House Committees on Veterans' Affairs. 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).<sup>7</sup> This matter is now closed.

Respectfully,



Carolyn N. Lerner

Enclosures

---

<sup>7</sup>The VA provided OSC with reports containing employee names (enclosed), and redacted reports in which employees' names were removed. The VA has cited Exemption 6 of the Freedom of Information Act (FOIA) (5 U.S.C. § 552(b)(6)) as the basis for its redactions to the reports produced in response to 5 U.S.C. § 1213, and requested that OSC post the redacted version of the reports in our public file. OSC objects to the VA's use of FOIA to remove these names because under FOIA, such withholding of information is discretionary, not mandatory, and therefore does not fit within the exceptions to disclosure under 5 U.S.C. § 1219(b), but has agreed to post the redacted version of the reports as an accommodation.