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

The Special Counsel

November 19, 2015

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

Re: OSC File No. DI-14-2118

Dear Mr. President:

Pursuant to my responsibilities as Special Counsel, enclosed please find the report from the U.S. Department of Veterans Affairs (VA) based on disclosures of wrongdoing at the West Palm Beach VA Medical Center, Community Living Center South (CLC South), West Palm Beach, Florida. 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 investigation and my findings.

The whistleblower, who chose to remain anonymous, disclosed serious breaches in clinical safety and patient care at CLC South. Specifically, the whistleblower reported that CLC South had a significant staffing shortage, particularly of nursing assistants (NAs), which went unaddressed by management. The whistleblower alleged that this staffing shortage made it difficult for the remaining staff to complete their duties, which resulted in patient neglect, including a consistent failure to change patients' undergarments, unsanitary methods of care, a failure to bathe patients regularly; unclean patient rooms and bathrooms; improper signage outside patients' rooms, which increased the risk of patient infection and cross-contamination; a failure to adhere to VA policies for employee hand-washing and the reuse of supplies; and a shortage of clean provider garments and soap. The whistleblower further alleged that CLC South management was aware of these concerns but took minimal steps to correct them.

The VA's investigation substantiated the allegation that CLC South had a significant staffing shortage, but noted that the facility had consistently met the required minimum hours per patient per day. The VA further substantiated at least one occasion of improper signage for contact precaution outside a patient's room, although investigators did not observe such improper signage in the course of their investigation. The VA also found that hand-washing compliance was below policy standards when entering patient rooms. Finally, the VA found that CLC South had a history of delays in responding to patient calls. However, the VA's investigation did not substantiate allegations of patient neglect, unclean patient rooms and bathrooms, or a shortage of clean provider garments. The VA also did not substantiate that CLC South management was aware of but failed to address concerns; rather, it found that management had taken steps to address the deficiencies. In response to these findings, the VA made a number of recommendations, including continued and additional

monitoring of contact precaution signage outside patients' rooms, handwashing, and improved response times to patient calls, as well as programs promoting employee awareness of VA policies and requirements. I have reviewed the VA's report and determined that it contains all the information required by statute and that the findings appear reasonable.

The whistleblower's allegations were referred to then-Acting Secretary of Veterans Affairs Sloan D. Gibson to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). Acting Secretary Gibson asked that Interim Under Secretary for Health Carolyn Clancy task the Office of the Medical Inspector with assembling and leading a team to investigate the allegations. Then-Chief of Staff Jose D. Riojas submitted the agency report to OSC. The whistleblower declined to provide comments.

As required by 5 U.S.C. §1213(e)(3), I am now transmitting the unredacted agency report to you and to the Chairmen and Ranking Members of the Senate and House Committees on Veterans' Affairs.[1] I have also filed a copy of the redacted agency report in OSC's public file, which is available online at www.osc.gov.[2] This matter is now closed.

Respectfully,

Carolyn N. Lerner

Enclosure

---

[1] The Office of Special Counsel (OSC) is authorized by law to determine whether a disclosure should be referred to the involved agency for investigation or review, and a report. OSC may refer allegations of 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 or safety. 5 U.S.C. § 1213(a) and (b). Disclosures must include information that aids OSC in making its determination. Disclosures must include information sufficient for OSC to determine whether referral is warranted. OSC does not have the authority to investigate disclosures and therefore, does not conduct its own investigations. 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 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).

[2] The VA provided OSC with a report containing employee names (enclosed), and a redacted report 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.