



U.S. OFFICE OF SPECIAL COUNSEL
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Washington, D.C. 20036-4505

The Special Counsel

February 2, 2016

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

Re: OSC File No. DI-14-3235

Dear Mr. President:

Pursuant to my duties as Special Counsel, I am enclosing a Department of Veterans Affairs' (VA) report based on disclosures of wrongdoing at the Olin E. Teague Veterans Medical Center, Temple, Texas. The Office of Special Counsel (OSC) has reviewed the VA's report, and in accordance with 5 U.S.C. § 1213(e), provides the following summary of the agency report, the whistleblower's comments, and my findings. The whistleblower, Jose Candelario, who consented to the release of his name, alleged that managers in the Orthotics and Prosthetics Laboratory improperly directed scheduling staff to close out consultation service requests.

The agency did not substantiate this allegation. The report noted that the investigation did not discover any evidence suggesting that employees inappropriately closed consultations. A review of patient records indicated that these cancellations were made for clinically and administratively appropriate reasons, and under agency policy, primary care providers were ultimately responsible for discussing cancellations with their patients. Based on my review, I have determined that the report meets all statutory requirements and the findings appear reasonable.

Mr. Candelario's allegations were referred to then-Acting Secretary Sloan D. Gibson to conduct an investigation pursuant to 5 U.S.C. § 1213 (c) and (d) on June 21, 2014. On August 18, 2014 the VA's Office of Inspector General (OIG) was advised by the Federal Bureau of Investigation (FBI) that the FBI had received allegations from Mr. Candelario identical to the allegations he filed with OSC. In response to the complaint filed with the FBI and the OSC referral, OIG conducted an investigation into Mr. Candelario's allegations and produced a report. Robert L. Nabors, II, then-chief of staff, was delegated the authority to review and sign the report. On November 30, 2015, Mr. Nabors submitted the agency's report to OSC. Mr. Candelario commented on the report on December 30, 2015. As required by 5 U.S.C. § 1213(e)(3), I am now transmitting the report to you.¹

¹ 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 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

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Mr. Candelario originally alleged that supervisors in the Orthotics and Prosthetics Laboratory verbally directed schedulers to improperly close out pending consultation service requests within five days, irrespective of whether veterans were notified or received care. He alleged that since October 2013, hundreds of consultations were closed without notifying patients. The investigation into these allegations determined that agency policy did not require the Orthotics and Prosthetics Laboratory to send letters to patients notifying them of appointment cancellations. Rather, cancellation notification was the responsibility of patients' primary care providers. In addition, the VA OIG's Office of Healthcare Inspections (OHI) reviewed cancellations Mr. Candelario provided and determined that consultations and cancellations were appropriately managed. OIG OHI further determined that patients did not suffer harm as a result of any closed consults.

In his comments, Mr. Candelario asserted that investigators were confused by the complexities inherent in VA policies and procedures governing consultation notifications. He explained that a significant amount of evidence supporting his original assertions was provided to investigators, who, in his opinion, did not fully understand the nature of the allegations they were responsible for reviewing.

I have reviewed the original disclosure, the agency report, and Mr. Candelario's comments. While Mr. Candelario questioned the efficacy of the investigation, based on the content of the report it appears that the agency appropriately investigated the allegations. For these reasons, I have determined that the report meets all statutory requirements and that the findings appear reasonable.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of the agency report and Mr. Candelario's comments to the Chairmen and Ranking Members of the Senate and House Committees on Veterans' Affairs. I have also filed a copy of the redacted agency report and Mr. Candelario's comments in our public file which is available at www.osc.gov.² OSC has now closed this file.

Respectfully,



Carolyn N. Lerner

Enclosures

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 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.