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The Special Counsel

February 3, 2016

The President  
The Whitehouse  
Washington, D.C. 20500

Re: OSC File No. DI-15-2774

Dear Mr. President:

Pursuant to my duties as Special Counsel, I am forwarding a Department of Veterans Affairs' (VA) report based on disclosures of wrongdoing at the Minneapolis VA Health Care System (Minneapolis VAMC), Minneapolis, Minnesota. I have reviewed the VA's report and, in accordance with 1213(e), provide the following summary of the agency investigation and whistleblower comments as well as my findings.

The whistleblower, Felicia Ricks, who consented to the disclosure of her name, alleged that providers in the Minneapolis VAMC Neurology Clinic failed to timely enter follow-up orders, cancelled appointments at the direction of providers with no attempt to reschedule or contact affected individuals, and that schedulers maintained an improper paper patient waiting list.

The agency substantiated that Neurology Clinic providers were not consistently entering orders for follow-up appointments, as the result of incorrect instructions given during employee training. While the report did not substantiate that appointments were improperly cancelled at the direction of providers, it did acknowledge that employees rescheduled appointments without soliciting patient time and date preferences, in violation of agency policy. The report did not substantiate that schedulers maintained an improper paper patient waiting list. In response to these findings, the Minneapolis VAMC provided additional training on entering follow-up appointments and educated employees on improper rescheduling practices. Based on my review, I have determined that the report meets all statutory requirements and the findings appear reasonable.

Ms. Ricks's allegations were referred to Secretary Robert McDonald to conduct an investigation pursuant to 5 U.S.C. § 1213 (c) and (d). Investigation of the matter was delegated to the Office of the Medical Inspector (OMI). Then-Chief of Staff Robert L. Nabors, II, was delegated the authority to review and sign the report. On December 1, 2015, Mr. Nabors submitted the agency's report to the Office of Special Counsel (OSC). Ms. Ricks commented on the report on January 3, 2016. As required by 5 U.S.C. §1213(e)(3), I am now transmitting the report to you.<sup>1</sup>

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<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

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With respect to the unsubstantiated allegations regarding improper paper patient waiting lists, the report explained that employees actually used a printed daily appointment list to track the completion of clinic visits and follow-up orders by providers, which is in compliance with VHA policy. *See* VHA Directive 2010-027. As such, no corrective actions regarding this allegation were necessary.

In her comments, Ms. Ricks explained that while scheduling employees received insufficient training, the negligence of providers was the primary reason for issues associated with follow-up appointments identified in her disclosure. She attributed scheduling issues to poor management and processes in the Neurology Clinic.

I have reviewed the original disclosure, the agency report, and Ms. Rick's comments. While Ms. Ricks called into question the effectiveness of Neurology Clinic management and work-processes used in this unit, the report noted that the agency retrained all employees, including supervisors, on proper scheduling methods, and has implemented ongoing monitoring to ensure compliance. For these reasons, I have determined that the report meets all statutory requirements and the findings appear reasonable.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of the agency report and Ms. Ricks'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 agency report and Ms. Ricks's comments in our public file which is available at [www.osc.gov](http://www.osc.gov).<sup>2</sup> OSC has now closed this file.

Respectfully,



Carolyn N. Lerner

Enclosures

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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 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).

<sup>2</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.