



DEPARTMENT OF VETERANS AFFAIRS
Washington DC 20420

December 2, 2013

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-13-3661

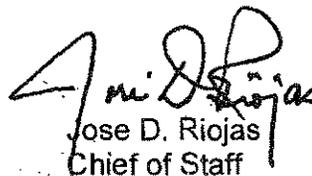
Dear Ms. Lerner:

I am responding to your letter regarding allegations made by a whistleblower that employees at the Northport Veterans Affairs Medical Center (hereafter, the Medical Center), in Northport, New York, engaged in conduct that may constitute a violation of law, rule, or regulation, and an abuse of authority. The whistleblower alleged that employees at the Medical Center have improperly and repeatedly accessed his medical records without cause. The Secretary has delegated to me the authority to sign the enclosed report and take any actions deemed necessary under 5 United States Code § 1213(d)(5).

The Secretary asked the Under Secretary for Health to review this matter and to take any actions deemed necessary under the above code. He, in turn, directed the Office of the Medical Inspector (OMI) to conduct an investigation. In its investigation, OMI partially substantiated the first of three allegations, and fully substantiated the remaining two. Regarding the allegation that Medical Center employees initially accessed the whistleblower's medical records, for unknown reasons, prior to his employment with the facility in August 2008, during the hiring process, OMI found that 6 out of 33 instances of access were improper. OMI substantiated the remaining two allegations, that employees repeatedly accessed his records during the period when he was on administrative leave, and that there were impermissible intrusions into those records. OMI made four recommendations for the Medical Center to improve its privacy practices. Findings from the investigation are contained in the report, which I am submitting for your review.

Thank you for the opportunity to respond.

Sincerely,


Jose D. Riojas
Chief of Staff

Enclosure

OFFICE OF THE MEDICAL INSPECTOR

**Report to the
Office of Special Counsel
File Number DI-13-3661**

**Department of Veterans Affairs
Northport Veterans Affairs Medical Center
Northport, New York**



**Veterans Health Administration
Washington, DC**

Report Date: October 3, 2013

TRIM 2013-D-1060

Any information in this report that is the subject of the Privacy Act of 1974 and/or the Health Insurance Portability and Accountability Act of 1996 may only be disclosed as authorized by those statutes. Any unauthorized disclosure of confidential information is subject to the criminal penalty provisions of those statutes.

Executive Summary

Summary of Allegations

The Under Secretary for Health requested that the Office of the Medical Inspector (OMI) investigate complaints lodged with the Office of Special Counsel by (b)(6) (hereafter, the whistleblower) at the Northport Veterans Affairs (VA) Medical Center, Northport, New York (hereafter, the Medical Center). The whistleblower alleged that the Medical Center engaged in conduct that may constitute a violation of law, rule, or regulation, and an abuse of authority by allowing its employees to improperly and repeatedly access his medical records without cause. OMI conducted two site visits to the Medical Center: July 31-August 2, 2013, and September 9-13, 2013.

The whistleblower also alleged that:

1. The Medical Center employees initially accessed his medical records, for unknown reasons, prior to his employment with the facility in August 2008, during the hiring process.
2. The Medical Center employees repeatedly accessed his medical records during a period in which he was on administrative leave from the facility and was not permitted to enter the property without an escort.
3. The improper access to medical records constitutes an impermissible intrusion into the whistleblower's privacy and a violation of law and agency policy.

OMI **substantiated** allegations when the facts and findings supported that the alleged events or actions took place. OMI **did not substantiate** allegations when the facts showed the allegations were unfounded. OMI **could not substantiate** the allegations when there was no conclusive evidence to either sustain or refute the allegation.

OMI found 43 current or retired Medical Center employees who were alleged to have improperly accessed the whistleblower's electronic health record (EHR). We evaluated a total of 104 instances of access between October 2007 and August 2013 and determined that 76 (73 percent) of them were proper and that 28 (27 percent) were improper. Of the 28 instances of improper access, OMI found:

- 10 (36 percent) were mistaken access;
- 10 (36 percent) were without apparent reason;
- 6 (21 percent) were possibly job-related; and
- 2 (6 percent) were unauthorized.

OMI identified 33 instances of access during the whistleblower's pre-employment period, which was from October 2007 to August 2008. Twenty-seven (82 percent) of these accesses were proper and 6 improper. The 6 improper ones were attributed to one employee and although the medical record does not show other activity, OMI

suspects these to be related to the whistleblower's pre-employment physical assessment (see Conclusion 1 below).

OMI identified 42 instances of access between May and August 2013, the period during which the whistleblower was on administrative leave and did not visit the Medical Center. We found that 37 (88 percent) were proper and 5 were improper. Of the 5 improper accesses, OMI found that in 3 situations, the employee had no apparent reason for accessing the EHR. We found the other 2 occurred for unauthorized reasons, not related to payment, treatment, or health care operations.

Conclusions

- OMI partially substantiates the whistleblower's first allegation. VA policy requires physical assessment of all health care professionals prior to employment. Staff members of the Occupational Health Clinic opened and made entries into the whistleblower's EHR, as part of their duty to complete his pre-employment physical assessment. Of the 33 instances identified to OMI, 27 were related to the pre-employment process. However, the other 6 instances of access, while we believe they were related to the pre-employment process when viewed against the standards of this report, were improper. One employee, a Medical Support Assistant, was responsible for this improper access, but he has since retired from the Medical Center.
- OMI substantiates the second allegation that Medical Center employees repeatedly accessed the whistleblower's EHR during his administrative absence from the facility; however, most of these accesses (37 out of a total of 42 or 88 percent) were proper. In particular, OMI found that the police officer's access to the EHR was compliant with the Veterans Health Administration (VHA) policy, but believes that the delegation from the Chief of Police authorizing this should have been in writing.
- In two of the five instances of improper access, OMI found that they were not related to payment, treatment, or health care operations, and in the remaining three, we found there was no reason for the employee to open the whistleblower's EHR; however, we did note that this access was neither for payment, treatment, nor health care operations.
- OMI substantiates the allegation that there were impermissible intrusions into the whistleblower's records, including 28 instances where employees may have violated the Privacy Act of 1974 or the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule.

Recommendations

The Medical Center should:

1. Ensure that all Medical Center employees who have access to the EHR receive education and training in protected health information, privacy, release of information, and VHA Handbook 1605.02 *Minimum Necessary Standard for Protected Health Information*.
2. Direct the Chief of Police to delegate in writing his authorization for other police officers, in the performance of their duties, to access the EHRs of patients or employees. In addition, assure that those officers who receive this delegation are given the training required to protect the privacy of the patients and employees whose records they enter.
3. Report the 28 instances of improper access to the Privacy and Security Events Tracking System (PSETS). Pursuant to VA Breach Policy (VA Handbook 6500.2, *Management of Security and Privacy Incidents*), the facility Privacy Officer makes this report. Again, by VA Breach Policy, once these improper accesses are reported to PSETS, the VA Incident Resolution Team (IRT) will determine for each improper access whether or not it results in a breach as defined by the HIPAA Breach Notification Rule. If the improper access is determined to be a breach, the VA IRT will report it to the Department of Health and Human Services, per policy, and recommend notification to the affected Veteran, in this case the whistleblower.
4. Take appropriate action with those employees who improperly accessed the whistleblower's EHR.

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I. Introduction

The Under Secretary for Health requested that the Office of the Medical Inspector (OMI) investigate complaints lodged with the Office of Special Counsel (OSC) by (b)(6) (b)(6) (hereafter, the whistleblower) at the Northport Veterans Affairs (VA) Medical Center, Northport, New York (hereafter, the Medical Center). The whistleblower alleged that the Medical Center engaged in conduct that may constitute a violation of law, rule, or regulation, and an abuse of authority, by allowing its employees to improperly and repeatedly access his medical records without cause. OMI conducted two site visits to the Medical Center: July 31-August 2, 2013, and September 9-13, 2013.

The whistleblower also alleged that:

1. The Medical Center employees initially accessed his medical records, for unknown reasons, prior to his employment with the facility in August 2008, during the hiring process.
2. The Medical Center employees repeatedly accessed his medical records during a period in which he was on administrative leave from the facility and was not permitted to enter the property without an escort.
3. The improper access to medical records constitutes an impermissible intrusion into the whistleblower's privacy and a violation of law and agency policy.

II. Facility Profile

The Medical Center, part of Veterans Integrated Service Network (VISN) 3, provides comprehensive primary care, tertiary care, and long-term care, covering medicine, surgery, psychiatry, physical medicine and rehabilitation, neurology, oncology, dentistry, and geriatrics. The Medical Center consists of an acute care hospital, an extended care facility, an outpatient pavilion, community-based outpatient clinics in East Meadow, Patchogue, and Riverhead, New York, and three mental health satellite clinics in Islip, Lindenhurst, and Valley Stream, New York. The Medical Center operates 293 beds with 35 medical-surgical beds, and a 9-bed Emergency Department (ED) with one surgical treatment room. In addition, it operates 170 long-term care beds spread over four Community Living Center units, housed in Building 8. A tertiary care facility that supports education and research, the Medical Center is affiliated with the State University of New York Medical School at Stony Brook and numerous other academic institutions, and each year trains over 100 university residents, interns, and students. Some 34,700 unique patients are seen per year, with 4,000 inpatient admissions and over 370,000 outpatient visits.

III. Conduct of Investigation

An OMI team consisting of (b)(6) Deputy Medical Inspector; (b)(6) (b)(6) Special Assistant to the Medical Inspector; (b)(6) (b)(6), Clinical Program Manager; (b)(6) Epidemiologist; and

(b)(6) Veterans Health Administration (VHA) Privacy Office, conducted the investigation, including the site visits. OMI reviewed relevant policies, procedures, reports, memorandums, and other documents, a full list of which is in Attachment A.

On July 26 and 29, 2013, OMI interviewed the whistleblower by telephone. After the second interview, the whistleblower faxed OMI a separate list of employees that he was concerned had improperly accessed his medical record, in addition to those listed in his OSC complaint.

OMI conducted its first site visit July 31-August 2, 2013, holding an entrance briefing with Medical Center leadership, including the Medical Center Director, Medical Center Associate Director, Chief of Staff, Associate Director for Patient Care Services, Assistant to the Director, Privacy Officer, and Information Security Officer. OMI held an exit briefing with the Medical Center Director, Medical Center Associate Director, Chief of Staff, Associate Director for Patient Care Services, Assistant to the Director, and Chief of Quality Management.

On September 5, 2013, the whistleblower provided OMI a third list of people who allegedly accessed his records in July and August 2013, and we added the names to the two lists already in hand.

OMI conducted its second site visit September 9-13, 2013. On September 9, OMI met with the whistleblower for a face-to-face interview at the Long Island Veterans Center in Babylon, New York. We held an exit briefing with the Medical Center Director, Medical Center Associate Director, Chief of Staff, Associate Director for Patient Care Services, Assistant to the Director, and Chief of Quality Management. The VISN 3 Privacy Officer also attended.

The 43 employees interviewed are listed by name, title, date of interview, and interview type (face-to-face or telephonic) in Attachment B.

The Office of General Counsel will review OMI's findings to determine whether there was any violation of law, rule, or regulation.

IV. 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, § 552a(b)(1) allows for disclosure to officers and employees of the agency maintaining the record in performance of their duties.

The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, 45 Code of Federal Regulations §§ 160 and 164, requires that covered entities, which includes 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 in a manner not permitted under the 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 protected health information to the minimum amount necessary. To accomplish the goal of limiting the use of protected health information, the Handbook divides employees into functional categories, each with an appropriate level of minimum access. Individuals in administrative support positions, as outlined in Appendix B of the Handbook, have limited access to medical records when necessary to complete an assignment. VHA Handbook 1605.02, paragraph 6, specifically states that all VHA personnel must use no more protected health information 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 only access the information necessary to perform an official function.

The VHA record system includes the electronic health record (EHR), which is comprised of 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 continuously update patient information. It also supports the practitioner's review and analysis of patient data to permit clinical decision making. VISTA is a VA-wide information system built around CPRS, providing a graphical interface that supports all clinical and administrative functions, allowing clinicians, support staff, and others access to the EHR. Access to VISTA is restricted according to the user's official information requirement.

V. Methodology

OMI assessed each employee's access to the whistleblower's EHR and determined whether it was **proper** or **improper**.

We defined **proper** access as one that was either documented by a provider progress note in the medical record at the date and time of the access, or one in which there was no progress note, but the EHR showed evidence of an authorized activity by the person who accessed the record. For example, a patient having an imaging study would need to sign into the imaging clinic and have the order for the study retrieved from the EHR. The clerk performing this task does not explicitly sign the patient's EHR. In those instances where an administrative person accessed the whistleblower's medical record at the date and time of such activity, OMI concluded it was more likely than not that the access was in support of the activity, and therefore, proper.

We defined **improper** access as falling into one of the following four subcategories:

- **Mistaken access:** The user mistakenly accessed the whistleblower's EHR, while attempting to access another Veteran's record. In this instance, the second patient's last name or identifying information (the first letter of the last name along with the last four digits of the social security number) was identical to that

of the whistleblower. Although OMI believes this error to be an honest one, the employee did not have an official reason to be in the whistleblower's record, and therefore, the access was improper.

- **Access for no apparent reason:** OMI was unable to find any documentation in the EHR supporting the need for access. Without evidence of an official reason for access, OMI concludes that the minimum necessary standard was not met and access was improper.
- **Access possibly job-related:** OMI believes that the access may have been related to the employee's ongoing need to open the whistleblower's record as part of his/her duties, but was unable to find any supporting documentation in the EHR. Therefore, although OMI believes that access in this category is related to the employee's responsibilities, without other corroborating medical record entries, we regard this type of access as improper.
- **Access for an unauthorized reason:** OMI believes that access was not permitted under the Privacy Act or the HIPAA Privacy Rule, and therefore, was improper.

The Sensitive Patient Access Report (SPAR) documents users' access to the EHR of a patient whose record is defined as sensitive, and users' access to the records of VA employees who, like the whistleblower, are Veterans. These records are also 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 will be required to prove a need to know. The user must acknowledge this warning before access to the sensitive record is allowed. The SPAR provides a definitive list of those users who have accessed a sensitive record, as well as the software option through which they accessed that record. The Medical Center provided OMI with the definition of each type of access identified in the SPAR (see Attachment C).

OMI collected the following information on each employee who accessed the whistleblower's EHR (see Attachment D and Attachment E):

- Name.
- Title at the time of the alleged instance of improper accesses.
- Date and time of alleged improper access. In several cases, two instances occurred at the same date and time; these instances are indicated by the notation "(twice)" after the time.
- Main job responsibilities around the time of alleged improper access. This section gives the general reason the employee would be in any Veteran's EHR.
- Date the Medical Center, Veterans Benefits Administration, or OMI granted access to the EHR. This date is the date the supervising organization authorized the employee to enter any Veteran's EHR.
- Reason employee entered the whistleblower's EHR. This section gives the specific reason the employee entered the whistleblower's record on the date and time indicated in the SPAR.
- Conclusion. This section presents OMI's final judgment on whether the instances of employee access were proper or improper.

Employees, identified by OSC, alleged to have improper access to the whistleblower's record and instances of this access are in Attachment D. Employees, identified by the whistleblower during interviews, alleged to have allegedly improper access to his record and instances of this access are listed in Attachment E.

Overall, 43 current or retired Medical Center employees were alleged to have improperly accessed the whistleblower's EHR. We evaluated a total of 104 instances of access between October 2007 and August 2013 and determined that 76 (73 percent) of them were proper and that 28 (27 percent) were improper. Of the 28 instances of improper access, OMI found:

- 10 (36 percent) were mistaken access;
- 10 (36 percent) were without apparent reason;
- 6 (21 percent) were possibly job-related; and
- 2 (6 percent) were unauthorized.¹

VI. Allegation 1

The Medical Center employees initially accessed his medical records, for unknown reasons, prior to his employment with the facility in August 2008, during the hiring process.

Findings

VA Handbook 5019/1, *Occupational Health Service* states:

A pre-placement physical examination shall be completed prior to appointment to determine the physical and mental fitness for candidates for appointment in VA.... The requirement for a pre-placement physical exam applies to all full-time, part-time, and intermittent physicians, dentists, podiatrist, optometrists, nurses, nurse anesthetists, physician assistants, expanded-function dental auxiliaries, chiropractors, residents, interns, graduate nurse technicians, medical consultants (unless otherwise specified), certified or registered respiratory therapists, occupational therapists, licensed physical therapists, licensed practical or vocational nurses, and pharmacists appointed under 38 U.S.C., chapter 73 or 74..."

The whistleblower identified his pre-employment period as October 2007 to August 2008. OMI identified 33 instances of access during this period, and found that 27 of them were proper and 6 improper.

The 6 improper ones were attributed to one employee (see Attachment E, page E8) who has since retired from VA. This medical support assistant would have been responsible for enrolling new employees in the occupational health program. He would have also scheduled pre-employment outpatient appointments, laboratory, and radiology testing. He accessed the whistleblower's record 10 times. We found evidence of scheduled appointments for 4 of the 10 instances, and deemed them

¹Percentages do not add to 100 percent due to rounding.

proper. In the other 6 instances, we found no entry in the EHR to explain this access. However, interviews with supervisors from the Occupational Health Clinic indicated that the medical support assistant would often need to enter a future employee's occupational health record in the course of his duties. Although the medical record does not show other activity supporting these instances, OMI suspects these to be related to the whistleblower's pre-employment physical assessment.

Conclusion

- OMI partially substantiates this allegation. VA policy requires physical assessment of all health care professionals prior to employment. Staff members of the Occupational Health Clinic opened and made entries into the whistleblower's EHR, as part of their duty to complete his pre-employment physical assessment. Of the 33 instances identified to OMI, 27 were related to the pre-employment process. However, the other 6 instances of access, while we believe they were related to the pre-employment process, when viewed against the standards of this report, were improper. One employee, a Medical Support Assistant, was responsible for this improper access, but he has since retired from the Medical Center.

Recommendation

None.

VII. Allegation 2

The Medical Center employees repeatedly accessed his medical records during a period in which he was on administrative leave from the facility and was not permitted to enter the property without an escort.

Findings

The whistleblower identified May through August 2013, as the period during which he was on administrative leave and did not visit the Medical Center.

OMI identified 42 instances of access and found that 37 (88 percent) were proper, while 5 were improper. The 2 instances by a Medical Center police officer were proper (see Attachment D, page 26) because VHA Handbook 1605.02, Appendix B, page B-2, gives the Chief of Police at a medical center, or his designee, the authority to access the EHR of a patient or employee to collect demographic information in completing a police report. For the first case, the police officer was completing a report. In the second case, he was granted access for this OMI report.

Of the five improper accesses, OMI found that in three situations, the employee had no apparent reason for accessing the EHR (two are described in Attachment D, page D7, and the third is described in Attachment D, page D17). With respect to the other two instances, we found these had occurred for unauthorized reasons, not related to payment, treatment, or health care operations. In one, a supervisor accessed the whistleblower's record to determine whether he had any appointments at the Medical

Center to assuage the concerns of a fellow employee (see Attachment D, page D19). In the other, an employee accessed the record to verify a rumor that the whistleblower had been terminated by the Medical Center (see Attachment D, page D31).

Conclusions

- OMI substantiates the allegation that Medical Center employees repeatedly accessed the whistleblower's EHR during his administrative absence from the facility; however, most of these accesses (37 out of a total of 42 or 88 percent) were proper. In particular, OMI found that the police officer's access to the EHR was compliant with VHA policy, but believes that the delegation from the Chief of Police authorizing this should have been in writing.
- In two of the five instances of improper access, OMI found that they were not related to payment, treatment, or health care operations, and in the remaining three, we found there was no legitimate reason for the employee to open the whistleblower's EHR. We noted that this access was neither for payment, treatment, nor health care operations.

Recommendations

The Medical Center should:

1. Ensure that all medical center employees who have access to the EHR receive education and training in protected health information, privacy, release of information, and VHA Handbook 1605.02 *Minimum Necessary Standard for Protected Health Information*.
2. Direct the Chief of Police to delegate in writing his authorization for other police officers, in the performance of their duties, to access the EHRs of patients or employees. In addition, ensure that those officers who receive this delegation are given the training required to protect the privacy of the patients and employees whose records they enter.

VIII. Allegation 3

The improper access to medical records constitutes an impermissible intrusion into the whistleblower's privacy and a violation of law and agency policy.

Findings

According to the definitions outlined in this report, OMI found 28 instances of improper access.

With regard to the Privacy Act, OMI could not find evidence of a need for the employees to access the whistleblower's records to conduct their official duties. In 12 of the 28 instances, which fall into the subcategories of mistaken or unauthorized access, we found that users were in the whistleblower's medical record without an official need.

In the remaining 16, we could not find evidence of an official need for them to be in the record, but also could not be certain that a need did not exist.

With regard to the HIPAA Privacy Rule, OMI could not find evidence that the 28 instances of improper access were for the purposes of payment, treatment, or health care operations. In 12 of the 28 instances, which fall into the subcategories of mistaken or unauthorized access, we found that users were in the whistleblower's medical record for purposes other than payment, treatment, or health care operations. In the remaining 16 instances, we could not find evidence that users were in the whistleblower's record for payment, treatment, or health care operations, but again could not be certain that a need did not exist.

With regard to the HIPAA Breach Notification Rule, OMI finds that the 16 instances of improper access, which fall into the subcategories of mistaken or possibly job-related, we found no evidence that they were intentional, made in bad faith, outside the scope of the individual's authority, or resulted in any further use or disclosure of the information. In the remaining 12 instances, which fall into the subcategories of without apparent reason (10 instances) or unauthorized (2 instances), we found evidence that, while they were not malicious and did not result in any further use or disclosure of information, they were intentional and clearly outside the scope of the individual's authority.

Conclusion

- OMI substantiates the allegation that there were impermissible intrusions into the whistleblower's records, including 28 instances where employees may have violated the Privacy Act of 1974 or the HIPAA Privacy Rule.

Recommendations

The Medical Center should:

3. Report the 28 instances of improper access to the Privacy and Security Events Tracking System (PSETS). Pursuant to VA Breach Policy (VA Handbook 6500.2, *Management of Security and Privacy Incidents*), the facility Privacy Officer makes this report. Again by VA Breach Policy, once these improper accesses are reported to PSETS, the VA Incident Resolution Team (IRT) will determine for each improper access whether or not it results in a breach as defined by the HIPAA Breach Notification Rule. If the improper access is determined to be a breach, the VA IRT will report it to the Department of Health and Human Services, per policy, and recommend notification to the affected Veteran, in this case the whistleblower.
4. Take appropriate action with those employees who improperly accessed the whistleblower's EHR.

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. VA Handbook 5019, April 15, 2002, 2009: *Occupational Health Services.*
6. VA Handbook 5019/1, June 16, 2004: *Occupational Health Services.*
7. Northport Medical Center Memorandum 11-217, April 6, 2010: *MRSA Prevention Initiative Guidelines Policy.*
8. Northport Medical Center Standard Operating Procedure, March 9, 2012: *System Access and Termination.*
9. Northport Medical Center Memorandum OI&T-1, March 4, 2010: *Information Security Program.*
10. Northport Medical Center Memorandum 00-170, May 11, 2012: *Privacy Policy and Procedures.*
11. U.S. Department of Labor, Office of Disability Employment Policy. *Employer's Practical Guide to Reasonable Accommodation Under The Americans With Disabilities Act.*
12. U.S Department of Justice, Civil Rights Division, Disability Rights Section, July 2009: *A Guide to Disability Rights Laws.*
13. VHA, Information Privacy Office Quarterly Monitor, May 14, 2011: *Privacy Compliance Assurance Audit on Northport Medical Center.*

ATTACHMENT B:

INDIVIDUALS INTERVIEWED BY OMI

Individuals Interviewed In Person on August 1, 2013

1. (b)(6) – Registered Nurse, Operation Enduring Freedom/Operation Iraqi Freedom (OEF/OIF) Program Manager
2. (b)(6) – Medical Support Assistant, Pathology and Laboratory Services
3. (b)(6) – Medical Records File Clerk, Business Office
4. (b)(6) – Program Support Assistant, Occupational Health Clinic
5. (b)(6) – Medical Support Clerk, Imaging Service
6. (b)(6) – Lead Release of Information Clerk, Business Office
7. (b)(6) – Health Technician, Emergency Department
8. (b)(6) – Infection Control Nurse Practitioner
9. (b)(6) – Nurse Manager, Emergency Department
10. (b)(6) – Medical Support Assistant, Compensation and Pension Clinic
11. (b)(6) – Licensed Practical Nurse, Occupational Health Clinic
12. (b)(6) – Occupational Health Nurse, Occupational Health Clinic
13. (b)(6) – Assistant Chief, Quality Management and Performance Improvement
14. (b)(6) – Chief, Fee Management Section
15. (b)(6) – Medical Records Coder, Health Information Management Section
16. (b)(6) – Patient Advocate
17. (b)(6) – Program Assistant, Social Work and Chaplain Services
18. (b)(6) – OEF/OIF Transition Patient Advocate
19. (b)(6) – Accounts Receivable Technician, Business Office

Individual Interviewed by Telephone on August 22, 2013

1. (b)(6) - Supervisory Legal Assistant Specialist, Veterans Benefits Administration (VBA)

Individuals Interviewed by Telephone on September 6, 2013

1. (b)(6) - Supervisor Core 4, VBA
2. (b)(6) - Vendor Service Representative, VBA

Individuals Interviewed In Person on September 10-11, 2013

1. (b)(6) - Chief, Podiatry Service
2. (b)(6) - Chief, Health Administration Services
3. (b)(6) - Nurse Manager
4. (b)(6) - Information Technology (IT) Specialist, Office of IT
5. (b)(6) - Assistant Chief, Business Office
6. (b)(6) - Supervisor, Health Information Management
7. (b)(6) - File Clerk, Health Information Management
8. (b)(6) - Nurse Practitioner, Director, Occupational Health
9. (b)(6) - Medical Administrative Specialist
10. (b)(6) - Patient Advocate, Social Work Service
11. (b)(6) - Administrative Assistant, Medical Center Chief of Staff
12. (b)(6) - Supervisory Police Officer
13. (b)(6) - Chief, Health Information Management
14. (b)(6) - Medical Support Assistant, Intensive Care Unit
15. (b)(6) - Former Supervisor, Occupational Health Clinic
16. (b)(6) - Medical Support Assistant, Compensation and Pension Clinic

17. (b)(6) - Attending physician, Gastroenterology Service
18. (b)(6) - Administrative Medical Specialist, Business Office
19. (b)(6) - Chief, Social Work Service
20. (b)(6) - Chief, Police Service
21. (b)(6) -- Registered Nurse, OEF/OIF Program Manager
22. (b)(6) - Assistant Chief of Staff, Primary Care and Emergency Department

ATTACHMENT C:

Sensitive Patient Access Report Access Type Definitions

The Sensitive Patient Access Report identifies which software option the person accessing the record used. In Attachments B and C of this report, the software option used by the accessing person is listed. The definition of each accessing option as provided by the Medical Center is listed below.

1. **Complete Orders From** – This menu option shows orders with a completed status (complete, DC, etc.) in the Current Orders list for a number of hours after the time of completion. Could relate to radiology requests. (Item #11 and 12.)
2. **Print VIC Labels** – This menu option is used to print labels on admission to an inpatient unit or a visit in the Emergency Department. VIC labels are printed for all hospital admissions to be used in labeling specimens and inpatient forms with Veterans identifying information.
3. **Appointment Management** – This menu option is used to make appointments and to make and see appointments. It is utilized by scheduling clerks/managers/clinical staff for all patients when scheduling/re-scheduling/verifying appointments.
4. **Load/Edit Patient Data** – This menu option is used to create and/or edit a patient record without generating a registration. Load/edit option is used to edit patient demographic information, as well as military service information. Employees that have access to this menu must complete catastrophic edit training. This menu is provided to employees working in areas such as Central Intake, Eligibility, Community Relations, and Employee Health.
5. **Change Patient** – This menu option is used to move from one patient record to another.
6. **ROI** – This menu option is used to obtain patient signatures for a release of their medical records.
7. **Patient Inquiry** – This menu option is used display patient information including basic demographic information, inpatient status, and future appointments. Employees cannot change information here; this only allows the viewer to view information.
8. **Admit a Patient** – This menu option is used to admit a patient to the medical center or edit/delete a previously entered admission.

9. **Incomplete Records** – This menu option is used to produce a listing of operation reports, interim summaries, and discharge summaries that are incomplete or deficient for one or more of the following reasons: undictated, not transcribed, not signed, or not reviewed. It may be used to generate this report for inpatients, outpatients, or both.
10. **Appointment Management** – This menu option is used by scheduling clerks/managers/clinical staff for all patients when scheduling/re-scheduling/verifying appointments. This action allows you to change which appointments will be displayed based on their status. For example, you may change the display to list cancelled, checked in, and checked out, future appointments, inpatient appointments, appointment where no action has been taken, non-count appointments, no show appointments, or all appointments.
11. **Print Radiology Request** – This menu option is used to print radiology requests of a selected status for a specific range of date/times.
12. **Register Patient for X-ray** – This menu option is used to check a patient in for an x-ray. This function allows the user to register a patient for one or more procedures. You may register a patient by selecting an existing request or by initiating a new request.
13. **Expanded Record Inquiry** – This menu option is used to process inquiries of an administrative nature.
14. **Eligibility Verification** – This menu option is used to enter/edit/verify data pertaining to a patient's rated disabilities and service record. It allows for entry, edit, and viewing of registration screens.
15. **View Registration Data** – This menu option is used to view the registration information contained in a patient's record.
16. **Display Appointments** – This menu option is used to schedule, re-schedule, or verify appointments. Most encounters are associated with an appointment (the exceptions are Standalone Encounters, which are usually walk-ins, and Historical Encounters, which usually took place at another location). Therefore, you need to identify an appointment to associate encounter information with before you enter this information.
17. **Pre-register a Patient** – This menu option is used by medical center staff to screen or update patient demographics, insurance information prior to or at the time of their appointment. This option does not allow employees to change service connection information, eligibility or military service information.
18. **VEJD Coding Manager** – This menu option is used by Business Office, Health Information Management Section to code services provided to patients.

19. **Detailed Inpatient** – This menu option is used by HIM, Utilization Review, and clinical or administrative staff to identify information needed to process administrative review, coding documentation for inpatient services.
20. **CAPRI GUI** – This software package (Compensation and Pension Record Interchange) is used principally by the Veterans Benefits Administration to view the medical record for the purposes of claims processing. The Office of the Medical Inspector is among Veterans Health Administration users.
21. **Programmer mode** – This menu option is used by the Applications staff in the Medical Center Office of Information and Technology. The option allows the staff to run routines, test software, troubleshoot problems and write code.
22. **Fee basis broker cal** – This menu option is a menu option, but it is not accessed directly, as other menu options are. It is a “behind the scenes” option/process which links VISTA to our other operating systems.
23. **Review progress note** – This menu option is used to review progress notes for coding or other administrative or clinical review.
24. **Patient lookup** – This menu option is most commonly used to see if a Veteran is eligible for fee basis care, or to access other pertinent information which is located in the patient record, including contact information and demographics. It is commonly used and the starting point for Fee transactions.
25. **PCE Encounter data** – This menu option is used to collect, manage and display outpatient encounter data including provider codes and diagnostic codes.

**ATTACHMENT D:
Employees Identified by the Office of Special Counsel (OSC) and
Instances of Access to the Whistleblower's EHR**

1.	(b)(6)	D3
2.		D4
3.		D5
4.		D6
5.		D7
6.		D8
7.		D9
8.		D10
9.		D11
10.		D12
11.		D13
12.		D14
13.		D15
14.		D16
15.		D17
16.		D18
17.	(b)(6)	D19
18.		D20
19.		D21
20.		D22
21.		D23
22.		D24
23.		D25
24.		D26

25.	(b)(6)	D27
26.	(b)(6)	D28
27.	(b)(6)	D29
28.	(b)(6)	D30
29.	(b)(6)	D31
30.	(b)(6)	D32
31.	(b)(6)	D33
32.	(b)(6)	D34

1. **Name:** (b)(6)

Title: Financial Accounts Technician, Business Office

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

January 11, 2008, at 8:39 a.m. into Change Patient Information.

Main job responsibilities around the time of alleged improper access into whistleblower's record:

As part of her job responsibilities, (b)(6) captures electrocardiogram (EKG) data for the cardiology service to facilitate the data capture for billing and coding purposes. (b)(6) requires access to electronic medical records to code EKG and other cardiology related procedures.

Date Medical Center granted access to the electronic medical record:

January 23, 2007

Reason employee entered whistleblower's medical record on the date and time given:

The whistleblower had an EKG on December 31, 2007. As part of her job responsibilities, (b)(6) accessed the whistleblower's record to code this clinical procedure. Because this is a routine procedure, a delay of several weeks would be common practice.

Conclusion:

Proper access on January 11, 2008, at 8:39 a.m.

2. **Name:** (b)(6)

Title: Clinical Program Manager, Office of Medical Inspector (OMI), Department of Veterans Affairs (VA) Central Office

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

June 18, 2013, at 2:39 p.m. and 3:52 p.m. into CAPRI GUI.

Main job responsibilities around the time of alleged improper accesses into whistleblower's record:

As part of her job responsibilities, (b)(6) assists Veterans who contact OMI with inquiries and requests for assistance. (b)(6) accesses the electronic medical records to fully assess the Veteran's clinical situation as related to the inquiry.

Date Office of the Medical Inspector granted access to the electronic medical record:

September 21, 2007

Reason employee entered whistleblower's medical record on the date and time given:

The whistleblower contacted OMI by telephone on June 17, 2013, requesting assistance. On June 18, 2013, (b)(6) accessed the whistleblower's medical records to respond to the whistleblower's request for assistance.

Conclusion:

Proper access on June 18, 2013, at 2:39 p.m. and 3:52 p.m.

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

Title: Vendor Service Representative, Veterans Benefits Administration (VBA)

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

January 27, 2012, at 8:29 a.m. into CAPRI GUI.

Main job responsibilities around the time of alleged improper access into whistleblower's record:

As part of his job responsibilities, (b)(6) makes determinations of adequacy of claims as related to military service, adequacy of medical evidence and lay testimony to establish claim. (b)(6) accesses the medical record to decide the type of examination and opinions to evaluate the existence of disabilities resulting from disease or injury.

Date Veterans Benefit Administration granted access to the electronic medical record:

March 19, 2008

Reason employee entered whistleblower's medical record on the date and time given:

On interview, (b)(6) supervisor, (b)(6) said (b)(6) was evaluating medical evidence to make a determination for the necessity of the Veteran to furnish documentation needed to make a final decision on his claim. On January 27, 2012, the VBA regional office sent the whistleblower a request for additional information to process his claims.

Conclusion:

Proper access on January 27, 2012, at 8:29 a.m.

4. **Name:** (b)(6)

Title: Medical Support Assistant, Pathology and Laboratory Services

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

December 31, 2007, at 11:57 a.m. into the Computerized Patient Record System (CPRS) Chart Version 1.

Main job responsibilities around the time of alleged improper access into whistleblower's record:

As part of his job responsibilities, (b)(6) accesses medical records to validate laboratory orders and print labels so the laboratory specimens can be properly processed.

Date Medical Center granted access to the electronic medical record:

December 1, 2008

Reason employee entered whistleblower's medical record on the date and time given:

On December 31, 2007, the whistleblower had laboratory studies performed which required this employee to enter the medical record to process the samples.

Conclusion:

Proper access on December 31, 2007, at 11:57 a.m.

5. **Name:** (b)(6)

Title: Medical Records File Clerk, Business Office

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

May 21, 2013, at 10:19 a.m. and 10:20 a.m. into Expanded Record Inquiry.

Main job responsibilities around the time of alleged improper accesses into whistleblower's record:

As part of her job responsibilities, (b)(6) receives requests for release of information from patients and from other authorized interested people. She prints information out of the medical records and discloses the information.

Date Medical Center granted access to the electronic medical record:

February 15, 2007

Reason employee entered whistleblower's medical record on the date and time given:

For the accesses on May 21, 2013, at 10:19 a.m. and 10:20 a.m., OMI finds no entry in the whistleblower's medical record or other reason that would explain why this employee accessed the medical record on these dates.

Conclusion:

Improper access on May 21, 2013, at 10:19 a.m. and 10:20 a.m.

6. **Name:** (b)(6)

Title: Program Support Assistant, Occupational Health.

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

August 21, 2008, at 8:31 a.m. into Change Patient and April 22, 2010, at 12:10 p.m. into CPRS Chart Version 1.

Main job responsibilities around the time of alleged improper accesses into whistleblower's record:

As part of her job responsibilities, (b)(6) schedules appointments for occupational health clinic, registers employees, and files documentation for employee workers' compensation claims. (b)(6) accesses medical records to accomplish these tasks.

Date Medical Center granted access to the electronic medical record:

May 19, 2008

Reason employee entered whistleblower's medical record on the date and time given:

On August 21, 2008, at 8:35 a.m., the registered nurse in the occupational health clinic reviewed laboratory results with the whistleblower as evidenced by a note she made in the whistleblower's medical record.

For the access on April 22, 2010, OMI finds no entry in the whistleblower's medical record or reason that would explain why this employee accessed the medical record on this date.

Conclusion:

Proper access on August 21, 2008, at 8:31 a.m. OMI believes that it is more likely than not that (b)(6) accessed the whistleblower's medical record in support of the registered nurse discussing the laboratory results with the whistleblower.

Improper access on April 22, 2010, at 12:10 p.m.

7. **Name:** (b)(6)

Title: Information Technology Specialist, Office of Information and Technology

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

August 1, 2013, at 12:10 p.m. and 12:11 p.m. into Programmer mode.

Main job responsibilities around the time of alleged improper accesses into whistleblower's record:

As part of her job responsibilities, (b)(6) assists all levels of medical staff in obtaining data and developing programs, options, menus, and extracts for a variety of information management activities, including sensitive patient access reports.

Date Medical Center granted access to the electronic medical record:

February 19, 1987

Reason employee entered whistleblower's medical record on the date and time given:

On August 1, 2013, the privacy officer came to her office asking for assistance in regards to an investigation he was working on. He wanted to know if any employees from human resources had accessed the whistleblower's records. (b)(6) found that human resource employees did not have system options that allowed them access to the whistleblower's record. As a result of entering the whistleblower's record via the programmer's mode (b)(6) name appeared on the whistleblower's sensitive patient access report.

Conclusion:

Proper access on August 1, 2013, at 12:10 p.m. and 12:11 p.m.

8. Name: (b)(6)

Title: Medical Support Clerk, Imaging Service

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

December 31, 2007, at 1:44 p.m. into Register Patient for x-ray.

December 31, 2007, at 1:45 p.m. into Print Radiology Request.

Main job responsibilities around the time of alleged improper accesses into whistleblower's record:

As part of her job responsibilities, (b)(6) schedules radiology appointments, notes cancellations, and enter no-show notes to providers. She also prints radiology requests that are in the Veteran's medical record and registers Veterans when they come to radiology so they can get their imaging done.

(b)(6) needs to get into the electronic medical record to accomplish these tasks.

Date Medical Center granted access to the electronic medical record:

July 18, 2006

Reason employee entered whistleblower's medical record on the date and time given:

On December 31, 2007, at 1:44 p.m., the whistleblower underwent a chest radiograph. The Medical Center records show that (b)(6) accessed the Print Radiology Request and Register Patient for x-ray fields in the medical record on this date and time.

Conclusion:

Proper access on December 31, 2007, at 1:44 p.m. and 1:45 p.m. OMI believes that it is more likely than not that (b)(6) accessed the whistleblower's medical record in support of the imaging study performed on that day.

9. Name: (b)(6)

Title: Lead Release of Information Clerk, Business Office

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

August 1, 2013, at 9:45 a.m. into Release of Information, 9:50 a.m. (twice) into Interim report and Order/test status.

August 1, 2013, at 9:51 a.m. and 2:43 a.m. into CPRS Chart Version 1.

August 9, 2013, at 9:37 a.m. into Release of Information (ROI).

August 9, 2013, at 9:39 a.m. into CPRS Chart Version 1.

August 9, 2013, at 9:46 a.m. into ROI.

Main job responsibilities around the time of alleged improper accesses into whistleblower's record:

As part of her job responsibilities, (b)(6) receives requests for release of information from patients and from other authorized interested people. She prints information out of the medical records and discloses the information.

Date Medical Center granted access to the electronic medical record:

August 13, 2002

Reason employee entered whistleblower's medical record on the date and time given:

On August 1, 2013, (b)(6) processed a request for information on the whistleblower requested verbally by the Medical Center privacy officer in support of the OMI investigation. The workload documentation report shows that the request was processed and information disclosed. On August 9, 2013, (b)(6) processed a request for information for the privacy officer.

Conclusion:

Proper access on August 1, 2013, at 9:50 a.m. (twice) and 2:43 a.m., August 1, 2013, at 9:51 a.m. and 2:45 a.m., and on August 9, 2013, at 9:37 a.m., 9:39 a.m., and 9:46 a.m.

10. Name: (b)(6)

Title: Patient Relations Assistant Clerk, OEF/OIF Clinic

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

December 8, 2009, at 4:51 p.m. (twice) into Appointment Management and Load/Edit Patient.

December 9, 2009, at 8:47 a.m. into CPRS Chart Version 1.

Main job responsibilities around the time of alleged improper accesses into whistleblower's record:

As part of his job responsibilities, (b)(6) verifies eligibility for and registration in the Medical Center's Operation Enduring Freedom/Operation Iraqi Freedom (OEF/OIF) program for Veterans and staff. (b)(6) accesses the electronic medical record to accomplish these tasks.

Date Medical Center granted access to the electronic medical record:

August 13, 2002

Reason employee entered whistleblower's medical record on the date and time given:

Related to (b)(6) and (b)(6) interactions with the whistleblower regarding his OEF/OIF eligibility on these 2 days (see the entries for these employees below) (b)(6) entered the whistleblower's medical record to establish his eligibility and document eligibility for the OEF/OIF program.

Conclusion:

Proper access on December 8, 2009, at 4:51 p.m. (twice) and on December 9, 2009, at 8:47 a.m.

11. **Name:** (b)(6)

Title: Podiatry Resident, Podiatry Service

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

January 25, 2011, at 4:23 p.m. into CPRS Chart Version1.

Main job responsibilities around the time of alleged improper access into whistleblower's record:

As part of her responsibilities (b)(6) diagnoses and treats diseases of the feet under the direction of staff podiatrists. (b)(6) accesses the medical records for treatment purposes.

Date Medical Center granted access to the electronic medical record:

June 12, 2009

Reason employee entered whistleblower's medical record on the date and time given:

Around the time of the access to the whistleblower's record, (b)(6) and other members of the podiatry service were treating a different Veteran well known to podiatry with the same last name. The chief of the podiatry service told the OMI team that it was the responsibility of one of the residents to access the medical record of podiatry patients during daily teaching rounds.

Conclusion:

Improper access on January 25, 2011, at 4:23 p.m. OMI believes that it is more likely than not that (b)(6) accessed the whistleblower's medical record mistakenly while trying to access the podiatry patient's medical records during teaching rounds.

12. Name: (b)(6)

Title: Infection Control Nurse Practitioner

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

May 5, 2010, at 1:41 p.m. into CPRS Chart version 1.

Main job responsibilities around the time of alleged improper access into whistleblower's record:

As part of her job responsibilities, (b)(6) reviews the charts of all patients admitted and discharged from the Medical Center for the presence of methicillin-resistant staphylococcus aureus and the presence of a central venous catheter. She reviews the charts for quality assurance purposes. (b)(6) accesses the medical records to accomplish these tasks.

Date Medical Center granted access to the electronic medical record:

August 13, 2002

Reason employee entered whistleblower's medical record on the date and time given:

On the day (b)(6) accessed the whistleblower's medical record, a different patient with the same last name as the whistleblower was admitted to the Medical Center intensive care unit (ICU). (b)(6) was required to review the ICU patient's record for her job.

Conclusion:

Improper access on May 5, 2010, at 1:41 p.m. OMI believes that it is more likely than not that (b)(6) accessed the whistleblower's medical record mistakenly while trying to access the ICU patient's medical records for treatment purposes.

13. Name: (b)(6)

Title: Medical Support Assistant, Compensation and Pension Clinic (C&P)

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

July 10, 2013, at 12:35 p.m. (twice) into Pre Register Patient and CPRS Chart Version 1.

Main job responsibilities around the time of alleged improper accesses into whistleblower's record:

As part of her job responsibilities, (b)(6) reviews VBA claims in the C&P clinic daily to identify Veteran employees. She does this to offer those Veteran-employees the option of having their C&P examinations performed at another VA medical center. In addition, she receives and reviews letters from VBA, schedules appointments and releases reports to VBA. (b)(6) accesses the medical records to accomplish these tasks.

Reason employee entered whistleblower's medical record on the date and time given:

On July 10, 2013, another employee working in the C&P clinic, (b)(6), received a letter regarding the whistleblower's claims from the VBA regional office. (b)(6) was unable to determine the disposition of this letter and consulted with her coworker in the office, (b)(6).

Date Medical Center granted access to the electronic medical record:

December 10, 2008

Conclusion:

Proper access on July 10, 2013, at 12:35 p.m. (twice). OMI believes it is more likely than not that (b)(6) entered the whistleblower's medical record to assist her coworker, (b)(6), in the proper disposition of the correspondence related to the whistleblower.

14. Name: (b)(6)

Title: Licensed Practical Nurse, Occupational Health Service.

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

December 31, 2007, at 1:22 a.m. into CPRS Chart Version 1.
January 17, 2008, at 10:15 a.m. into CPRS Chart Version 1.
January 17, 2008, at 10:37 a.m. into CPRS Chart Version 1.

The Sensitive Patient Access Report OMI received from the whistleblower listed an access by (b)(6) at 11:22 a.m. on December 31, 2007, not at 1:22 a.m.

Main job responsibilities around the time of alleged improper accesses into whistleblower's record:

As part of her job responsibilities, (b)(6) delivers and records patient care encounter information. She also extracts information from the medical record for review by the director of the occupational health clinic, and the nurse practitioner. (b)(6) accesses medical records to accomplish these tasks.

Date Medical Center granted access to the electronic medical record:

August 13, 2002

Reason employee entered whistleblower's medical record on the date and time given:

The whistleblower's medical record has an entry signed by (b)(6) on December 31, 2007, at 11:28 a.m., in which she recorded the whistleblower's vital signs and preliminary history.

The Director of the Occupational Health Service called the whistleblower on January 8, and on January 14, she received an e-mail from the whistleblower regarding the review and completion of the laboratory studies required to proceed with his hiring.

Then on January 17, 2008, at 5:08 p.m., the whistleblower's medical record shows that the Director of the Occupational Health Clinic recommended that the whistleblower was medically qualified to be hired.

Conclusion:

Proper access on December 31, 2007, at 11:22 a.m. and on January 17, 2008, at 10:15 a.m. and 10:37 a.m. OMI believes that it is more likely than not that (b)(6) accessed the whistleblower's medical record in January 2007 in performance of her job responsibilities for the purpose of collecting the laboratory results so the Director of Occupational Health could make her recommendation at 5:08 p.m. that day.

15. Name: (b)(6)

Title: Nurse practitioner, Director, Occupational Health

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

December 31, 2007, at 11:02 a.m. and 11:50 a.m. into CPRS Chart Version 1.
January 8, 2008, at 3:31 p.m. and 3:32 p.m. into CPRS Chart Version 1.
January 14, 2008, at 11:49 a.m. into CPRS Chart Version 1.
January 17, 2008, at 5:06 p.m. into CPRS Chart Version 1.
June 11, 2013, at 8:45 a.m. into CPRS Chart Version 1.

Main job responsibilities around the time of alleged improper accesses into whistleblower's record:

As part of her job responsibilities (b)(6) evaluates potential employees for physical appropriateness for hiring, monitors employee health as related to job performance and documents in employee health record.

Date Medical Center granted access to the electronic medical record:

August 13, 2002

Reason employee entered whistleblower's medical record on the date and time given:

On December 31, 2007, at 1:36 p.m., (b)(6) wrote a note documenting her pre-employment physical examination.

On January 8, 2008, at 3:59 p.m., (b)(6) entered a progress note in which she reviewed the whistleblower's laboratory results.

On January 14, 2008, at 11:52 a.m., (b)(6) wrote an addendum to pre-employment physical note acknowledging contact from whistleblower about pre-employment lab studies.

On January 17, 2008, at 5:08 p.m., (b)(6) evaluated whistleblower's laboratory studies and documented the opinion that he is physically fit for the job.

For the access on June 11, 2013, at 8:45 a.m., OMI finds no entry in the whistleblower's medical record or reason that would explain why this employee accessed the medical record on this date.

Conclusion:

Proper access on December 31, 2007, at 11:02 and 11:50 a.m.; January 8, 2008, at 3:31 and 3:32 p.m.; January 14, 2008, at 11:49 a.m.; and January 17, 2008, at 5:06 p.m. Improper access on June 11, 2013 at 8:45 a.m.

16. Name: (b)(6)

Title: Occupational Health Nurse, Occupational Health

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

August 18, 2008, at 1:28 p.m. into CPRS Chart Version 1.
August 21, 2008, at 8:34 a.m. into CPRS Chart Version 1.
April 5, 2012, at 3:19 p.m. into CPRS Chart Version 1.

Main job responsibilities around the time of alleged improper accesses into whistleblower's record:

As part of her job responsibilities (b)(6) assists the Director of Occupational Health in the evaluation of potential employees for their physical appropriateness for hiring, monitors employee health as related to job performance and documents in employee health record.

Date Medical Center granted access to the electronic medical record:

June 1, 2005

Reason employee entered whistleblower's medical record on the date and time given:

The whistleblower's first day of duty at the Medical Center was August 17, 2008. (b)(6) accessed the medical record on August 18, 2008, at 1:28 p.m.

On August 21, 2008, at 8:35 am, (b)(6) wrote a progress note to discuss whistleblower's laboratory results.

For the access on April 5, 2012, at 3:19 p.m., OMI finds no entry in the whistleblower's medical record or reason that would explain why this employee accessed the medical record on this date.

Conclusion:

Proper access on August 18, 2008, at 1:28 p.m. OMI believes that it is more likely that not that (b)(6) access of the whistleblower's record at this time was related to his commencement of employment at the Medical Center. Proper access on August 21, 2008, at 8:34 a.m. Improper access on April 5, 2012, at 3:19 p.m.

17. Name: (b)(6)

Title: Assistant Chief, Quality Management and Performance Improvement

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

June 26, 2013, at 12:14 p.m. into Display Appointments.

Main job responsibilities around the time of alleged improper access into whistleblower's record:

As part of her job responsibilities, (b)(6) is responsible and accountable for improving the health care of targeted population groups and furthering the organizational mission with respect to integrated programs that cross service or discipline lines. She recommends improvements based upon analysis of data and electronic medical records.

Date Medical Center granted access to the electronic medical record:

August 13, 2002

Reason employee entered whistleblower's medical record on the date and time given:

(b)(6) indicated that during a meeting with an employee recently detailed to her area in the presence of a police officer, she accessed the whistleblower's records in response to the employee's safety concerns to determine whether the whistleblower had any appointments at the Medical Center that day.

Conclusion:

Improper access on June 26, 2013, at 12:14 p.m. Although (b)(6) access was out of concern for her employee, the access of the whistleblower's medical records for the purposes of assuaging the employee's safety concerns was improper.

18. Name: (b)(6)

Title: Chief, Fee Management Section

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

June 12, 2013, at 7:20 p.m. into view registration data and 7:21 p.m. (twice) into CPRS Chart Version 1.

July 16, 2013, at 3:12 p.m. into CPRS Chart Version 1.

July 16, 2013, at 3:19 p.m. (twice) into Fee basis broker cal.

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

As part of her job responsibilities, (b)(6) is responsible for developing and implementing actions to manage, direct, control, analyze, and access care for Veterans from non-VA sources on a fee for service basis. The record for non-VA care is maintained in the Veteran's electronic medical records.

(b)(6) accesses the medical records to accomplish these tasks.

Date Medical Center granted access to the electronic medical record:

July 12, 1993

Reason employee entered whistleblower's medical record on the date and time given:

In an e-mail dated June 13, 2013, another Medical Center employee, (b)(6), documented his contact with (b)(6) on June 12, 2013, requesting that she evaluate a request he got by the whistleblower to evaluate his eligibility for fee basis.

On July 16, 2013, (b)(6) received another telephone call from the whistleblower regarding his eligibility for fee basis care. (b)(6) contacted (b)(6) again for the purposes of confirming the whistleblower's eligibility for fee basis care. As a result, (b)(6) accessed the whistleblower's medical records again for the purpose of confirming his Veteran eligibility.

Conclusion:

Proper access on June 12, 2013 at 7:20 p.m. and 7:21 p.m. (twice), and on July 16, 2013, at 3:12 p.m. and 3:19 p.m. (twice).

19. Name: (b)(6)

Title: Podiatry Resident, Podiatry Service

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

November 21, 2011, at 8:32 a.m. and 8:55 a.m. into CPRS Chart Version 1.

Main job responsibilities around the time of alleged improper accesses into whistleblower's record:

As part of his responsibilities (b)(6) diagnoses and treats diseases of the feet under the supervision of staff podiatrists. (b)(6) accesses the medical records for treatment purposes.

Date Medical Center granted access to the electronic medical record:

September 23, 2009

Reason employee entered whistleblower's medical record on the date and time given:

Around the time of the access to the whistleblower's record, (b)(6) and other members of the podiatry service were treating a different Veteran well known to podiatry with the same last name. The chief of the podiatry service told the OMI team that it was the responsibility of one of the residents to access the medical record of podiatry patients during daily rounds.

Conclusion:

Improper access on November 21, 2011, at 8:32 a.m. and 8:55 a.m. OMI believes that it is more likely than not that (b)(6) accessed the whistleblower's medical record mistakenly while trying to access the podiatry patient's medical records during teaching rounds.

20. **Name:** (b)(6)

Title: Clinical Program Manager, OMI, VA Central Office

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

July 24, 2013, at 8:35 a.m. into CAPRI GUI.

July 24, 2013, at 8:38 a.m. into CPRS Chart Version 1.

Main job responsibilities around the time of alleged improper accesses into whistleblower's record:

As part of her job responsibilities, (b)(6) assists Veterans who contact OMI with inquiries and requests for assistance. (b)(6) accesses the electronic medical records to fully assess the Veteran's clinical situation as related to the inquiry.

Date Office of the Medical Inspector granted access to the electronic medical record:

December 3, 2002

Reason employee entered whistleblower's medical record on the date and time given:

On July 24, 2013, OMI received the Office of Special Counsel request for investigation on behalf the whistleblower. At that time, (b)(6) was coordinating OMI's response to the whistleblower's request and accordingly accessed the whistleblower's medical record to assess the complaint and make an appropriate case manager assignment and disposition.

Conclusion:

Proper access on July 24, 2013, at 8:35 a.m. and 8:38 a.m.

21. Name: (b)(6)

Title: Certified Medical Records Technician/Coder, Health Information Management Section of Business Office

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

September 21, 2010, at 3:44 p.m. into VEJD- Coding Module.

Main job responsibilities around the time of alleged improper access into whistleblower's record:

As part of her job responsibilities, (b)(6) codes patient encounters for the purposes for workload and billing purposes. (b)(6) accesses the medical records to accomplish these tasks.

Date Medical Center granted access to the electronic medical record:

March 29, 2009

Reason employee entered whistleblower's medical record on the date and time given:

The supervisor's review of the workload tracking system for (b)(6) failed to identify any whistleblower encounters assigned to her for coding. OMI could not otherwise find a reason that would justify (b)(6) access to the whistleblower's record.

Conclusion:

Improper access on September 21, 2010, at 3:44 p.m.

22. Name: (b)(6)

Title: Patient Advocate

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

June 11, 2013, at 8:27 a.m. (twice) into View Registration and Review Progress Note.

August 1, 2013, at 3:55 p.m. into Patient lookup.

Main job responsibilities around the time of alleged improper accesses into whistleblower's record:

As part of her jobs responsibilities, (b)(6) serves as liaison between patients and the medical center and provides a specific channel through which patients can seek solutions to problems, concerns and unresolved needs. She accesses the Veteran's medical record to investigate these concerns and implement solutions.

Date Medical Center granted access to the electronic medical record:

August 13, 2002

Reason employee entered whistleblower's medical record on the date and time given:

On June 10 at 4:25 p.m., (b)(6) received a request from (b)(6) to investigate the whistleblower's eligibility for fee basis care as an OEF/OIF Veteran. She accessed his medical record the next morning on June 11, 2013, at 8:27 a.m. to confirm his eligibility for these programs. (b)(6) was unable to confirm his eligibility from these programs and contacted the OEF/OIF advocate, (b)(6), who told her that he was not eligible.

On August 1, 2013, (b)(6) accessed the whistleblower's medical record at the request of Medical Center leadership. This request was in response to OMI's investigation of the whistleblower's OSC complaint.

Conclusion:

Proper access on June 11, 2013, at 8:27 a.m. (twice) and on August 1, 2013, at 3:55 p.m.

23. Name: (b)(6)

Title: Gastroenterology Fellow

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

July 7, 2010, at 12:12 p.m. into CPRS Chart Version 1.

Main job responsibilities around the time of alleged improper access into whistleblower's record:

As part of his job responsibilities, (b)(6) evaluates and treats patients with gastrointestinal complaints and diseases under the direction of gastroenterology attending physician. (b)(6) accesses the medical records to document treatment.

Main job responsibilities around the time of alleged improper access into whistleblower's record:

As part of his responsibilities, (b)(6) diagnoses and treats diseases of the gastrointestinal tract under the supervision of an attending physician. (b)(6) accesses the medical records for treatment purposes.

Date Medical Center granted access to the electronic medical record:

December 9, 2009

Reason employee entered whistleblower's medical record on the date and time given:

OMI finds no entry in the whistleblower's medical record or other reason that would explain why this physician accessed the medical record on this date.

Conclusion:

Improper access on July 7, 2010, at 12:12 p.m.

24. Name: (b)(6)

Title: Supervisory Police Officer

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

May 24, 2013, at 4:12 p.m. into Patient Inquiry.
August 8, 2013, at 11:42 a.m. into Patient inquiry.

Main job responsibilities around the time of alleged improper accesses into whistleblower's record:

As part of his job responsibilities, Officer (b)(6) provides for the safety and security of the Medical Center. This responsibility requires the completion of police reports when necessary. These reports include the demographic information on individuals mentioned in the report. To facilitate the accomplishment of this task, VA Handbook 1605.1, 21g authorizes the Medical Center Chief of Police or designee to access the patient inquiry option for Medical Center security purposes. Officer (b)(6) accesses the patient inquiry option of the medical record to accomplish his Medical Center security tasks.

Date Medical Center granted access to the electronic medical record:

March 13, 2008

Reason employee entered whistleblower's medical record on the date and time given:

On May 24, 2013, Officer (b)(6) responded to a complaint by an employee that the whistleblower was creating a hostile work environment. As part of his job responsibilities, Officer (b)(6) filled out a police report of this incident on that date. To obtain the required demographic information for this report, Officer (b)(6) accessed the whistleblower's record through the patient inquiry option.

On August 8, 2013, at 11:42 a.m., the Chief of Police verbally directed Officer (b)(6) to access the whistleblower's record through the patient inquiry option to assist in OMI's investigation of the whistleblower's concerns.

VA Handbook 1605.2 allows the Chief of Police the authority to access the medical record of a patient or employee to collect demographic information. However, the Handbook requires that the Chief delegate that authority to other officers. OMI found no evidence of written delegation of that authority to Officer (b)(6).

Conclusion:

Proper access on May 24, 2013, at 4:12 p.m. OMI believes that there was delegation of the authority to access medical records to collect demographic information by the Chief of Police to Officer (b)(6) authorizing him to access the whistleblower's record, but it was informal and not in writing. This informal delegation of authority has been a long standing past practice at the Medical Center. Proper access on August 8, 2013, at 11:42 a.m.

25. Name: (b)(6)

Title: Medical Support Assistant, ICU

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

January 24, 2011, at 10:05 a.m. into Detailed Inpatient.

Main job responsibilities around the time of alleged improper access into whistleblower's record:

As part of her job responsibilities, (b)(6) accesses the electronic medical record to schedule appointments, process orders, and to scan advanced directives and organ donor authorizations for patients in the ICU.

Date Medical Center granted access to the electronic medical record:

April 18, 2006

Reason employee entered whistleblower's medical record on the date and time given:

On January 20, 2011, a patient with the same last name as the whistleblower was admitted to the medical center intensive care unit. (b)(6) was responsible for entering administrative and clinical information into this patient's medical record during his admission to the ICU.

Conclusion:

Improper access on January 24, 2011, at 10:05 a.m. OMI believes that it is more likely than not that (b)(6) accessed the whistleblower's medical record mistakenly while trying to access the medical record of the ICU patient who has the same last name as the whistleblower.

26. Name: (b)(6)

Title: Medical Support Assistant, Compensation and Pension Clinic (C&P)

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

July 10, 2013, at 12:25 p.m. into CPRS Chart Version 1.

Main job responsibilities around the time of alleged improper access into whistleblower's record:

As part of her job responsibilities, (b)(6) reviews VBA claims in the C&P clinic daily to identify Veteran employees. In addition, she receives and reviews letters from VBA, schedules appointments, and releases reports to VBA. (b)(6) accesses the medical records to accomplish these tasks.

Date Medical Center granted access to the electronic medical record:

December 7, 2010

Reason employee entered whistleblower's medical record on the date and time given:

On July 10, 2013, (b)(6) received a letter regarding the whistleblower's claims from the VBA regional office. (b)(6) was unable to determine the disposition of this letter and entered the medical record to determine whether the whistleblower had a pending C&P examination.

Conclusion:

Proper access on July 10, 2013, at 12:25 p.m. OMI believes it is more likely than not that (b)(6) entered the whistleblower's medical record to determine the proper disposition of the correspondence related to the whistleblower.

27. **Name:** (b)(6)

Title: Legal Administrative Specialist, VBA

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

July 6, 2012, at 4:58 p.m. and 5:07 p.m. into CAPRI GUI.

Main job responsibilities around the time of alleged improper accesses into whistleblower's record:

As part of her job responsibilities, (b)(6) responds to inquiries from Veterans and their families related to compensation and pension benefits, and payment questions. To accomplish these tasks, she accesses the medical records to research information related to the Veterans or family questions.

Date Veterans Benefit Administration granted access to the electronic medical record:

April 10, 2009

Reason employee entered whistleblower's medical record on the date and time given:

On July 6, 2012, the whistleblower called the VBA National Call Center requesting a status update on his December 2009 claim. During the call, (b)(6) accessed the whistleblower's medical record as documented in VBA's claim tracking system, to provide the whistleblower with the status of his claim.

Conclusion:

Proper access on July 6, 2012, at 4:58 p.m. and 5:07 p.m.

28. Name: (b)(6)

Title: Pulmonary Fellow, Pulmonary Service

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

June 25, 2011, at 9:09 a.m. into CPRS Chart Version 1.

Main job responsibilities around the time of alleged improper access into whistleblower's record:

(b)(6) is a physician trainee in lung diseases who performs physical examinations and recommends treatments under the supervision of an attending physician. He documents these activities in the electronic medical record.

Date Medical Center granted access to the electronic medical record:

June 15, 2007

Reason employee entered whistleblower's medical record on the date and time given:

On June 21, 2011, (b)(6) entered a progress note into the medical record of a patient with the same last name as the whistleblower. On June 23, 2011, (b)(6) signed this June 21 entry. In addition, the Pulmonary Service attending physician co-signed (b)(6) note on June 27.

Conclusion:

Improper access on June 25, 2011, at 9:09 a.m. OMI believes that it is more likely than not that (b)(6) accessed the whistleblower's medical record mistakenly while trying to access the medical record of the patient with the same last name who was being followed by Pulmonary Service.

29. Name: (b)(6)

Title: Administrative Medical Specialist, Business Office

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

August 7, 2013, at 8:14 a.m. into Patient inquiry.

Main job responsibilities around the time of alleged improper access into whistleblower's record:

As part of his job responsibilities (b)(6) receives a list of recently separated employees from the Human Resources Section. He enters the employee's record and removes the designation that identifies them as an employee.

Date Medical Center granted access to the electronic medical record:

September 23, 1992

Reason employee entered whistleblower's medical record on the date and time given:

In an interview with OMI, (b)(6) stated an unnamed third party suggested that the whistleblower had been separated from Federal service. Based on this rumor, (b)(6) accessed the whistleblower's record to attempt to verify separation from employment at the Medical Center.

Conclusion:

Improper access on August 7, 2013, at 8:14 a.m. (b)(6) attempt to verify the whistleblower's separation from employment at the Medical Center was inconsistent with the Medical Center's standard operating process for this function. He obtained the whistleblower's name as an employee separated from some third party rather than from the Human Resources Section through their list of recently separated employees.

30. Name: (b)(6)

Title: Program Support Assistant, Social Work and Chaplain Services

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

June 12, 2013, at 10:39 a.m. into CPRS Chart Version 1.

Main job responsibilities around the time of alleged improper access into whistleblower's record:

As part of her job responsibilities, (b)(6) performs a variety of clerical, administrative, program support, and technical duties in support of the medical center social work service.

Date Medical Center granted access to the electronic medical record:

April 13, 2007

Reason employee entered whistleblower's medical record on the date and time given:

On June 12, 2013, while processing incoming mail, (b)(6) opened a package from the whistleblower. In order to give the package to the appropriate social worker, (b)(6) accessed the whistleblower's medical record to see if the whistleblower had been assigned a social worker. She found that there was no assigned social worker so she consulted with the chief of social work and sent the package to the patient advocate who was referenced in the correspondence.

Conclusion:

Proper access on June 12, 2013, at 10:39 a.m.