

VA



U.S. Department
of Veterans Affairs

USOSC HQ DC 14MAY28

Office of the General Counsel
Washington DC 20420

MAY 27 2014

In Reply Refer To:

The Honorable Carolyn Lerner
Special Counsel
U.S. Office of Special Counsel
1730 M. Street, NW, Suite 300
Washington, DC 20036-4505

RE: OSC File No. DI-13-3661

Dear Ms. Lerner:

Enclosed is the unredacted supplemental report for OSC File No. DI-13-3661. The redacted version will be sent separately via email. We hereby request that your office publish the redacted version.

If you have any questions about this request, please contact Jennifer Gray in the Office of General Counsel at 202-461-7634.

Sincerely,

A handwritten signature in cursive script, appearing to read "Renée L. Szybala".

Renée L. Szybala
Acting Assistant General Counsel

Enclosure

**Office of the Medical Inspector
Supplemental Report
to the
Office of Special Counsel
Northport Veterans Affairs Medical Center, Northport, New York
OSC File No. DI-13-3661
April 25, 2014**

TRIM 2014-D-473

Background

The Department of Veterans Affairs (VA) Under Secretary for Health (USH) requested that the Office of the Medical Inspector (OMI) investigate complaints lodged with the Office of Special Counsel (OSC) by (b)(6) (hereafter, the whistleblower) at the Northport Veterans Affairs 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. As part of its investigation, OMI conducted two site visits to the Medical Center on July 31–August 2, 2013, and September 9–13, 2013, and reported its findings to OSC on December 2, 2013.

Based on its investigation, OMI made four recommendations for the Medical Center. These recommendations were endorsed by the Secretary of Veterans Affairs and the USH. OMI and the Veterans Health Administration's (VHA) Office of the Deputy Under Secretary for Operations and Management reviewed and concurred with the Medical Center's action plan in response to report recommendations.

OMI concludes that the Medical Center has successfully completed all of the four recommendations made by OMI.

Recommendation 1. Ensure that all Medical Center employees who have access to electronic health records (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*.

Resolution: The Medical Center leadership held several training sessions with all the employees to reinforce privacy requirements for accessing medical records. These included training in protected health information, privacy, release of information, and VHA Handbook 1605.02 *Minimum Necessary Standard for Protected Health Information*. Also, a service-specific, question-and-answer session was held with distribution of a privacy fact sheet. All staff receives initial and annual training on VA 10176, VA Privacy and Information Security Awareness and Rules of Behavior, in the Talent Management System. The Medical Center Privacy Officer conducted a walk-through "just in time privacy training" during

business and nonbusiness hours to monitor, educate, and reinforce privacy requirements for accessing medical records. In addition, an informational screen saver was generated with a privacy alert message stating; *"There are only three reasons to access a medical record: Treatment, Payment, or Operations. Anything else is a violation."* A process for deactivating computer access for all staff whose training has expired is currently in place.

Action Completed

Recommendation 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.

Resolution: A delegation of authority memo has been generated by the Chief of Police authorizing other police officers to access EHRs of patients or employees in the performance of their duties. All police officers have been trained on the access requirements for accessing the EHR.

Action Completed

Recommendation 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.

Resolution: The 28 instances of improper access of the whistleblower's EHR were reported into the Privacy and Security Events Tracking System (PSETS) on August 2, 2013. On December 9, 2013, the Medical Center Director sent a letter to the whistleblower informing him of the results pertaining to the investigation and assuring him that appropriate corrective actions have been taken to make sure such incidents do not occur again.

Action Completed

Recommendation 4. Take appropriate action with those employees who improperly accessed the whistleblower's EHR.

Resolution: The Medical Center, in collaboration with the Office of Labor & Employee Relations (05E), issued letters of Reprimand to (b)(6), Medical Administration Specialist, and (b)(6), Nurse/Quality Management Coordinator. In addition, written counselings were issued to the following employees

- a. (b)(6) [REDACTED] – Nurse Practitioner
- b. (b)(6) [REDACTED] – Nurse
- c. (b)(6) [REDACTED] – Program Support Assistant
- d. (b)(6) [REDACTED] – File Clerk
- e. (b)(6) [REDACTED] – Nurse
- f. (b)(6) [REDACTED] – Medical Records Technician
- g. (b)(6) [REDACTED] – Medical Administration Specialist
- h. (b)(6) [REDACTED] – Medical Support Assistant
- i. (b)(6) [REDACTED] – Program Assistant for Nursing Service

Action Completed