



U.S. OFFICE OF SPECIAL COUNSEL

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The Special Counsel

April 26, 2016

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

Re: OSC File Nos. DI-14-2520, DI-14-2763, and DI-14-2947

Dear Mr. President:

Pursuant to my duties as Special Counsel, I am forwarding agency reports based on disclosures made by three Department of Veterans Affairs (VA) employees at VA medical center and clinic locations in Texas. The whistleblowers disclosed that employees of these facilities engaged in scheduling manipulation that caused potential harm to patients.

In response to OSC's referrals, the VA submitted summaries of VA Office of Inspector General (OIG) investigations. The OIG summaries do not respond to the whistleblowers' specific concerns, which remain largely unaddressed. I have determined that the VA's reports are deficient and therefore, the agency's findings are unreasonable. The enclosed analyses provide additional detail on the health and safety concerns at issue and the deficiencies in the agency's reports.

Under 5 U.S.C. § 1213, the VA has a responsibility to conduct an investigation and to submit a report to OSC that responds to the whistleblower's specific allegations, contains reasonable findings, and lists actions taken to correct identified problems. Over the last two years, this process has prompted significant improvements in the quality of care and access to care at VA facilities throughout the country. Unfortunately, in these three cases, the VA did not fulfill its statutory responsibility to provide sufficient and reasonable responses to OSC's referrals.

After receiving the OIG summaries, OSC raised its concerns with the VA and the VA OIG about the completeness and quality of the VA reports. In response, the VA indicated that it will examine and improve its processes for investigating OSC referrals, with a particular focus on those cases currently being investigated by the OIG. In pending cases, the VA will consult with the OIG and ensure that the scope of the investigation will address all allegations referred by OSC. The VA also stated its intent to facilitate greater communication between its investigative teams and OSC. These process changes, when implemented, will help ensure that serious issues raised by whistleblowers are fully investigated and resolved, including in cases investigated by the OIG.

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As required by 5 U.S.C. § 1213(e)(3), I have sent copies of this letter, the unredacted reports, and whistleblower comments to the Chairmen and Ranking Members of the Senate and House Committees on Veterans' Affairs. In accordance with 5 U.S.C. § 1213(e), I have also enclosed more detailed discussions of my findings in these cases. I have also filed copies of this letter, the redacted reports, and the whistleblower comments in our public file, which is available online at www.osc.gov.¹ OSC has now closed these files.

Respectfully,



Carolyn N. Lerner

Enclosures

¹The VA provided OSC with a report containing employee names (enclosed), and a redacted report in which employees' names were removed. The VA did not provide a basis for the redactions; however, the VA generally cites Exemption 6 of the Freedom of Information Act (FOIA) (5 U.S.C. § 552(b)(6)) as the basis for its redactions to the report produced in response to 5 U.S.C. § 1213, and requests that OSC post the redacted version of the report 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 as an accommodation.