



U.S. OFFICE OF SPECIAL COUNSEL

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The Special Counsel

September 1, 2016

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

Re: OSC File No. DI-15-5181

Dear Mr. President:

Pursuant to my duties as Special Counsel, I am forwarding to you reports provided to me in response to a disclosure received from a former employee at the Department of Veterans Affairs (VA), Southern Arizona VA Health Care System (SAVAHCS), Sterile Processing Service (SPS), Tucson, Arizona. The whistleblower, Denise Lena Cruz, who consented to the release of her name, alleged that since 2009, SPS employees have failed to follow proper procedures in the handling of reusable medical equipment. Ms. Cruz also alleged that the SPS was grossly understaffed and that SPS managers falsified education and training documents in order to satisfy VA recordkeeping requirements and pass periodic inspections. I have reviewed the VA reports and, in accordance with 5 U.S.C. § 1213(e), provide the following summary of the agency investigation, the whistleblower comments, and my findings.¹

I referred Ms. Cruz's allegations to VA Secretary Robert A. McDonald for investigation and a report pursuant to 5 U.S.C. § 1213(c) and (d). Secretary McDonald forwarded the allegations to the Under Secretary for Health, who directed the Office of the Medical Inspector (OMI) to conduct the investigation. Secretary McDonald delegated responsibility to submit the agency's report to then-Interim Chief of Staff Robert D. Snyder, who submitted the report to OSC on January 21, 2016. On April 5, 2016, OSC requested a supplemental report from the VA regarding the implementation of the action plan developed

¹ The Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health and safety. 5 U.S.C. § 1213(a) and (b). OSC does not have the authority to investigate a whistleblower's disclosure; rather, if the Special Counsel determines that there is a substantial likelihood that one of the aforementioned conditions exists, she is required to advise the appropriate agency head of her determination, and the agency head is required to conduct an investigation of the allegations and submit a written report. 5 U.S.C. § 1213(c) and (g). Upon receipt, I review the agency report to determine whether it contains all of the information required by statute and that the findings of the head of the agency appear to be reasonable. 5 U.S.C. § 1213(e)(2). I will determine that the agency's investigative findings and conclusions appear reasonable if they are credible, consistent, and complete based upon the facts in the disclosure, the agency report, and the comments offered by the whistleblower under 5 U.S.C. § 1213(e)(1).

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by the VA in response to the original report. The VA provided the supplemental report to OSC on April 19, 2016.

I. The Allegations and the Agency Investigation

A. SPS staff failed to adhere to competencies established by device manufacturers and VA procedures

The agency investigation did not substantiate the allegation that SPS staff failed to perform decontamination, cleaning, sterilization, packaging, storing, and distribution of medical and surgical device processes in accordance with competencies established by device manufacturers and VA procedures. The investigation found that SPS leadership enforced standard operating procedures (SOPs) and VHA Directives, has a “comprehensive” SOP and competency training program, and has “an engaged” and “responsive” quality assurance program. Nevertheless, the investigation identified one example of poor communication between the operating room staff and SPS relating to the procurement of a new surgical instrument. In addition, the report concluded that the national requirements necessitating that medical centers develop detailed SOPs and competencies for each individual piece of reusable medical equipment are “labor-intensive” and “extremely cumbersome” to manage at a busy facility.

In response to these conclusions, the report recommended that the SAVAHCS develop a protocol for the operating room staff to notify the SPS staff when new surgical equipment is procured in order “to facilitate a smoother and less urgent response for SPS processing.” The report further recommended that the Veterans Health Administration (VHA) review the requirement which mandates writing SOPs for each individual piece of reusable medical equipment to “make the competency assessment process more efficient.” In addition, the report recommended that the VHA publish a handbook to address the SPS portions of VA Directive and Handbook 7176, *Supply, Processing and Distribution*, as soon as possible.

B. SPS managers emphasize speed over compliance with the competencies

The investigation did not substantiate Ms. Cruz’s allegation that SPS managers emphasized speed over compliance with the competencies. The report concluded that “SPS leadership emphasized strict compliance and efficiency with SOPs and competencies” and noted the existence of a priority system to triage the SPS workload when it exceeds staffing resources.

Nevertheless, the report acknowledged that SPS leadership’s communication style and workload pressure increased the SPS technicians’ stress levels. In response, the report recommended that the SAVAHCS provide training on effective communication to SPS staff and consult with the National Center for Organizational Development (NCOD) to implement team building for SPS staff.

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C. SPS is understaffed and lacks the manpower needed to meet the competencies

The investigation partially substantiated Ms. Cruz's allegations. Specifically, the report confirmed that SPS is understaffed and that the available SPS staff is overwhelmed. The investigation did not substantiate Ms. Cruz's allegation that the understaffing resulted in the staff's failure to meet competencies. The report recommended that the SAVAHCS fill medical supply technician vacancies as soon as possible and consider using temporary contract staff until the SAVAHCS can hire and train new permanent staff.

D. SPS managers falsify official documents regarding education and training

The investigative team did not confirm the specific allegation that the Chief of SPS completed training for a subordinate employee. The investigative team nevertheless directed the SAVAHCS to convene an administrative investigation to further review this allegation and take appropriate administrative and disciplinary action, if warranted. In addition, the investigation noted that training and education is ongoing throughout the year and is not associated with external inspections, as Ms. Cruz suggested.

II. The Whistleblower's Comments

Ms. Cruz disagreed with the investigation's findings. Asserting that "shortcuts...occur on a daily basis at SAVAHCS," Ms. Cruz commented that any deviation from existing policies and procedures leads to errors. Ms. Cruz attributed the shortcuts to understaffing and time constraints imposed by SPS leadership. Ms. Cruz also disagreed with blaming operating room personnel for communication problems with SPS. She suggested that such problems could be avoided if SPS leadership was more knowledgeable, experienced, and better able to anticipate the need for temporary assistance to meet the demands placed upon SPS.

Ms. Cruz objected to the report's finding that the duplication of manufacturer's instructions was "cumbersome." She stated that duplication was necessary, because SPS leadership does not have the experience to educate the staff on the proper procedures. Additionally, Ms. Cruz asserted that SPS employees were not as candid with investigators as they could have been, because they feared reprisal. Finally, Ms. Cruz stated that she personally witnessed the Chief of SPS completing training modules on behalf of one particular employee.

III. Agency Supplemental Report

On April 5, 2016, OSC requested a supplemental report on the status of the corrective actions recommended in the OMI report. The supplemental report indicated that all the actions recommended in the report have either been completed or are ongoing. The completed actions included the SAVAHCS's development and publication of SOPs governing protocols for use by operating room personnel to notify SPS when reusable

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medical equipment is acquired from an outside vendor. The completed actions also included the publication of a handbook to address the specific SPS portions of the VA Directive and Handbook 7176, *Supply, Processing, and Distribution*. The ongoing corrective actions included training to improve communication for SPS staff (expected completion date was June 27, 2016); NCOD consultations with the SAVAHCS regarding SPS team building and implementation of NCOD recommendations; filling of medical supply technician vacancies and training of these new employees; and further exploration of potential responses to future staff shortages (expected completion date was July 2016). (Note: See page 4, V., confirming timely completion of these corrective actions). The ongoing actions also included the continued monitoring of SPS quality indicators for trends and appropriate response; taking disciplinary actions proposed as a result of an administrative investigation and a subsequent inquiry into a supervisor completing training on behalf of an employee; and VHA review of the requirements that mandate writing SOPs on each individual piece of reusable medical equipment.

IV. Whistleblower Comments to Supplemental Report

Ms. Cruz expressed her disagreement with the conduct and findings of the agency investigation. She asserted that the investigation focused on the issues with staffing and competencies rather than on the question of whether improper or inadequate processing of medical equipment actually occurred and created a danger to public health and safety. She maintains that current efforts to increase staffing do not address past practices. Ms. Cruz stated that “surprise” inspections are never a surprise and “have no validity,” as SPS staff members have been trained to do a better job when inspectors are present. Ms. Cruz again stated that management pressured employees into prioritizing quantity over quality. She also maintained that SPS staff members, who lied during the investigation or changed their testimony after the investigation, should be held accountable.

V. Agency Updates on Recommended Corrective Actions

On July 25, 2016, the agency submitted a final update on the status of the corrective actions recommended in the OMI report. According to the update, the SAVAHCS conducted training to improve SPS staff communication on June 16, 2016; the training included an SPS management two-day training class entitled “Crucial Conversations” and an SPS management reading assignment and follow-up discussion of the book “Seven Pillars of Servant Leadership: Practicing the Wisdom of Leading by Serving.” SPS management discussed concepts from the assigned reading at bi-weekly meetings from February through June 2016. During one meeting, SPS management presented the concepts to all SPS staff members, who were given an opportunity to submit suggestions regarding the implementation of the pillars. The update indicated that NCOD led three events reinforcing the training and assigned readings and that the SAVAHCS safety officer conducted a training session entitled “Stop the Line” in April 2016.

In response to the OMI report recommendation regarding staffing, the update indicated that the SAVAHCS hired six additional staff members, who were on full duty as of February

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1, 2016. The SAVAHCS determined that it would address future staff shortages resulting from turnovers or long-term absences by making adjustments to the schedule, including extended tour lengths, overtime, or compensatory time. In response to the recommendation regarding SPS quality indicators, the update stated that the SAVAHCS's Reusable Medical Equipment committee added SPS quality indicators to their standing agenda and that, beginning in February 2016, the SAVAHCS operating room began providing data on quality indicators to the committee. In response to the recommendation that the VHA review the requirements mandating the writing of SOPs for each individual piece of reusable medical equipment, the update indicated that a VA team, in conjunction with the National Program Office for Sterile Processing (NPOSP), developed a strategy to comply with the requirements of the newly written SPS handbook provisions, while minimizing the redundancy of writing the SOPs. The VA team and NPOSP also developed a plan to gather fully-compliant existing SOPs from medical centers and upload them to the VA's SharePoint site so other facilities can download them. The implementation of this plan, according to the update, has been discussed but not yet completed.

Finally, with respect to the disciplinary actions regarding the allegation that a supervisor completed training on behalf of an employee, the update indicated that the SAVAHCS imposed a five-day suspension against the SPS Chief and a three-day suspension against the SPS Evening Supervisor. The agency confirmed that these suspensions have been served.

VI. The Special Counsel's Findings and Conclusions

I have reviewed the original disclosure, the agency reports, and Ms. Cruz's comments. I thank Ms. Cruz for raising these important issues. The corrective measures recommended by OMI and adopted and/or executed by the SAVAHCS and VHA constitute significant steps toward addressing potential problems in the SPS process. Thus, I have determined that the report contains all of the information required by statute and that the findings appear reasonable.

As required by 5 U.S.C. § 1213(e)(3), I have sent a copy of this letter, the agency reports, and Ms. Cruz's comments to the Chairmen and Ranking Members of the Senate and House Committees on Veterans' Affairs. I have also filed copies of the agency reports and Ms. Cruz's comments in OSC's public file, which is available online at www.osc.gov. This matter is now closed.

Respectfully,



Carolyn N. Lerner

Enclosures