



U.S. OFFICE OF SPECIAL COUNSEL

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The Special Counsel

September 14, 2016

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

Re: OSC File No. DI-15-1544

Dear Mr. President:

Pursuant to my duties as Special Counsel, I am forwarding a Department of Veterans Affairs' (VA) report based on disclosures of wrongdoing at the North Florida/South Georgia Veterans Health System, Jacksonville VA Outpatient Clinic (the Clinic), Mental Health Intensive Case Management (MHICM) Unit, Jacksonville, Florida. The whistleblower, Polly Charette, a Licensed Clinical Social Worker who consented to the release of her name, alleged that her supervisor, Ms. Ebony Benjamin, a clinical coordinator, engaged in conduct that was detrimental to VA patients and coworkers and violated ethics regulations. I have reviewed the report and, in accordance with 5 U.S.C. § 1213(e), provide the following summary of the agency report, whistleblower comments, and my findings.¹

Ms. Charette's allegations were referred to Secretary Robert McDonald for investigation pursuant to 5 U.S.C. § 1213. The VA's Office of the Medical Inspector investigated the allegations, and then-Chief of Staff Robert L. Nabors II was delegated the authority to review and sign the report. On October 29, 2015, Mr. Nabors submitted the agency's report to the Office of Special Counsel (OSC). On November 6, 2015, OSC requested a supplemental report providing further information on the agency's conclusions and recommendations. OSC received the supplemental report on January 20,

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). Upon receipt, the Special Counsel reviews the agency report to determine whether it contains all of the information required by statute and that the findings of the head of the agency appear to be reasonable. 5 U.S.C. § 1213(e)(2). The Special Counsel will determine that the agency's investigative findings and conclusions appear reasonable if they are credible, consistent, and complete based upon the facts in the disclosure, the agency report, and the comments offered by the whistleblower under 5 U.S.C. § 1213(e)(1).

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2016. On February 11, 2016, the VA provided additional information concerning possible disciplinary action. Ms. Charette provided comments dated May 9, 2016.

Ms. Charette alleged that Ms. Benjamin failed to properly record an encounter with a highly agitated patient who informed Ms. Benjamin that he wanted no more in-person contact from VA staff. Ms. Charette asserted that when VA employees later visited this individual at his residence, their physical safety was at risk. The report substantiated that Ms. Benjamin did not timely document an encounter with this patient in agency treatment records; however, it did not substantiate that the delay in documenting the encounter endangered the safety of VA employees who visited that patient at his home. The report also noted that the MHICM unit and its employees were not compliant with proper documentation regulations. The report further determined that Ms. Benjamin's practice of referring patients to the privately run River Point Behavioral Health facility, while she was employed there, potentially violated criminal conflict of interest laws. *See* 18 U.S.C. § 208. The report noted that these referrals could have had a direct and positive impact on the financial interests of her outside employer. The report also explained that the MHICM program lacked policies and procedures for how the unit should refer patients for medically necessary inpatient evaluations to non-VA facilities for possible admission or placement. The report did not substantiate that Ms. Benjamin improperly dispensed medications, as defined by applicable federal and state law, when she delivered medications to VA patients or filled patients' pill boxes with drugs already in the patients' possession.

Since its investigation of the whistleblower's allegations, the VA provided additional training to staff about accurate and timely documentation and ethical conduct standards. The initial report also recommended further investigation into Ms. Benjamin's delivery of medication to determine if any controlled substances were involved and further inquiries into the ethical issues noted above. An update from the VA indicated that no controlled substances had been dispensed, and as such, no disciplinary or legal action was warranted. An additional update explained that the Clinic investigated the ethics issues by auditing referrals that Ms. Benjamin authorized to outside facilities and assessing the terms and conditions of her part-time employment at River Point Behavioral Health. The additional update noted that based on these reviews, the agency determined that no disciplinary or administrative action was warranted. In addition, the VA explained that there is no prohibition on employees other than physicians and dentists from holding outside employment and no requirement that VA employees must obtain their supervisors' approval before seeking outside employment.

Ms. Charette commented that she personally had observed Ms. Benjamin improperly filling medication trays with controlled substances, and objected to the agency's conclusion that Ms. Benjamin had not done so. Ms. Charette also raised objections to the conclusion that Ms. Benjamin's failure to document a patient encounter

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did not endanger VA employees, noting that the patient was highly agitated and informed Ms. Benjamin that he wanted no more in-person contact from VA staff. Finally, Ms. Charette disputed the conclusion that no disciplinary action was warranted for Ms. Benjamin's ethical violations, and Ms. Charette expressed her disappointment in this determination.

I have reviewed the original disclosure, the agency report, and Ms. Charette's comments. I note that the agency found a potential criminal conflict of interest for Ms. Benjamin to occupy a position enabling her to refer VA patients to a private inpatient mental health facility where she maintains outside employment. I call upon the VA to continue to hold employees to appropriate professional standards and refer serious potential breaches of these standards to the Department of Justice. I have determined that the reports meet all statutory requirements and the findings are reasonable.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of the agency reports and Ms. Charette's comments to the Chairmen and Ranking Members of the Senate and House Committees on Veterans' Affairs. I have also filed redacted copies of the agency reports and Ms. Charette's comments in our public file which is available at www.osc.gov.² OSC has now closed this file.

Respectfully,



Carolyn N. Lerner

Enclosures

² The VA provided OSC with reports containing employee names (enclosed), and redacted reports in which employees' names were removed. The VA has cited Exemption 6 of the Freedom of Information Act (FOIA) (5 U.S.C. § 552(b)(6)) as the basis for its redactions to the reports produced in response to 5 U.S.C. § 1213, and requested that OSC post the redacted version of the reports in our public file. OSC objects to the removal of 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), nevertheless, OSC has agreed to post the redacted version of the reports as an accommodation.