



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

September 23, 2016

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

Re: OSC File No. DI-16-1181

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 Department of Veterans Affairs (VA), Malcolm Randall VA Medical Center (Randall VAMC), Pathology and Laboratory Medicine (PLMS), Gainesville, Florida. I have reviewed the agency report and, in accordance with 5 U.S.C. §1213(e), provide the following summary of the report, whistleblower comments, and my findings.¹ The whistleblower, who chose to remain confidential, disclosed that physicians in the Randall VAMC Surgical Service routinely neglected to sign orders for pre-operative blood tests, in violation of agency policy. The whistleblower further alleged that, in an effort to expedite patient care, Denys Krol, a PLMS lead health technician, improperly entered test orders herself, fraudulently using providers' names.

The whistleblower's allegations were referred to Secretary Robert McDonald for investigation pursuant to 5 U.S.C. § 1213 (c) and (d). The VA's Office of the Medical Inspector investigated the matter. Chief of Staff Robert D. Snyder was delegated the authority to review and sign the report. On August 3, 2016, Mr. Snyder submitted the agency's report to the Office of Special Counsel (OSC). The whistleblower commented on the report on August 22, 2016.

The investigation substantiated both of the whistleblower's claims. The report explained that Randall VAMC Surgical Service physicians failed to enter pre-operative blood test orders, creating undue delays in care. However, the report stated that these delays were

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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relatively minor and did not negatively impact patient care. The report also noted that Ms. Krol inappropriately entered test orders under providers' names without the proper authority or credentialing, which posed a substantial and specific danger to public health and safety. The investigation did not find any evidence of patient harm resulting from these inappropriate actions. In response, the report recommended implementing a quality improvement process to ensure that physicians enter timely orders, and providing additional training and oversight to Ms. Krol. As of the date of this letter, the VA is in the process of implementing a quality tracking process in PLMS and has detailed Ms. Krol out of her position and limited her computer access privileges to prevent her from entering orders.

In the comments, the whistleblower asserted that Randall VAMC management was on notice of these issues for at least three years, noting that PLMS employees raised concerns regarding Ms. Krol numerous times. The whistleblower noted that Ms. Krol should have received progressive discipline, and that training and reassignment was an insufficient corrective action.

I have reviewed the original disclosure, the agency report, and the whistleblower's comments. I want to thank the whistleblower for making these important disclosures. While the whistleblower believed more action should have been taken against Ms. Krol, the report indicated that the agency took immediate measures to remove Ms. Krol from her position while restricting her computer access, ensured that employees were retrained, and implemented proper policies to prevent further violations. For these reasons, I have determined that the report meets all statutory requirements and the findings appear to be reasonable.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of the agency report and the whistleblower's comments to the Chairmen and Ranking Members of the Senate and House Committees on Veterans' Affairs. I have also filed a redacted copy of the agency report and the whistleblower'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 has agreed to post the redacted version of the reports as an accommodation.