



DEPARTMENT OF VETERANS AFFAIRS  
Under Secretary for Health  
Washington DC 20420

January 19, 2016

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

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SPECIAL COUNSEL  
WASHINGTON, D.C.

RE: OSC File Nos. DI-14-0838 & DI-14-1959

Dear Ms. Lerner:

I am responding to your request for supplemental information on the Northport Department of Veterans Affairs (VA) Medical Center (the Medical Center), Northport, New York, in response to three follow-up questions raised by whistleblowers upon reading the VA report of March 20, 2015, on this matter.

This supplemental report answers why a whistleblower would have a medical record at the Medical Center without ever having had treatment there, why additional accesses were made to a medical record following the VA investigation, and whether the warning box in the system of records has been updated. This report makes no supplemental recommendations to the Medical Center.

If you have any other questions, I would be pleased to address them. Thank you for the opportunity to respond.

Sincerely,

David J. Shulkin, M.D.

Enclosure

**Department of Veterans Affairs (VA)**  
**Supplemental Report**  
**To the**  
**Office of Special Counsel**  
**Northport Veterans Affairs Medical Center, Northport, New York**  
**OSC File Nos. DI 14-0838 and DI 14-1959**  
**December 3, 2015**  
**TRIM 2015-D-6826**

The Under Secretary of Health (USH) requested that the Office of the Medical Inspector (OMI) investigate complaints lodged with the Office of the Special Counsel (OSC) by two whistleblowers at the Northport VA Medical Center (hereafter, the Medical Center), who alleged that Medical Center employees improperly and repeatedly accessed their medical records without cause, and that this may constitute a violation of law, rule, or regulation. OSC has reviewed the whistleblowers' comments to the agency's 1213(c) report. As a result, they have follow-up questions, which are outlined with responses below:

**OSC Question 1:** Dr. Zias maintains that she has never had any treatment or care at the VA. Thus, there is no reason that employees should have accessed her medical records. Is this correct? In particular, Dr. Zias asserted that the report falsely states that she had an EKG at Northport. Is this correct? Please provide any other information that may be helpful.

**VA Response:** It is not correct that employees should not access another employee's medical record even though the later employee is not a Veteran receiving medical care at the facility.

While most employee records held by VA and the Veterans Health Administration (VHA) are not protected health information (PHI), and therefore, not protected by the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, employee occupational health records are PHI and are subject to the provisions of the HIPAA Privacy Rule. [See 45 CFR 160.103] Even when an employee is not a Veteran receiving care from VHA, the employee has an occupational health record which may be accessed by VHA employees for the purposes of treatment, payment, and health care operations. [See 45 CFR 164.506(c)] The employee's occupational health record may include a preplacement physical examination, fitness for duty examination, lab or radiology tests, a record of immunization such a flu shots, and records of any time the employee presents to Occupational Health for care. Portions of the occupational health records are in Veterans Health Information Systems and Technology Architecture (VistA), Computerized Patient Record System (CPRS), and the Occupational Health Records System (OHRs). Therefore, the statement that VHA employees would never need to access the medical record of an employee who does not receive Veteran care at a facility is inaccurate. There would not be a Veteran medical record, but an occupational health record would still exist and need to be accessed by VHA employees at various times for legitimate and authorized purposes.

It is not correct that the original report says that Dr. Zias received an electrocardiogram (EKG) at the Northport VA Medical Center. The only EKG mentioned in the original report is one administered to Whistleblower 2, not Dr. Zias, who was identified as Whistleblower 1 in that report. (See pages E2, E9 and E13 of the original report.)

**OSC Question 2:** Mr. Walters asserted that since OSC referred his concerns, his medical records have been accessed an additional 37 times. Is this correct? If yes, please explain.

**VA Response:** Mr. Walters' sensitive patient access report (SPAR) for January 1, 2014 through March 10, 2015, lists 37 accesses of his electronic health record (EHR). According to the definitions outlined in the original report, we found 3 of these accesses to be improper and 34 to be proper. We investigated one of the improper accesses for the original report.

The Medical Center Privacy Officer determined that the accesses by Laura Vandermaas on August 20, 2014, and by Delores Vogt on October 15, 2014, were accidental accesses into Mr. Walters' EHR. In both instances, the Privacy Officer found that the first letter of the last names and the last four digits of the social security numbers of the patients whose EHR these two employees intended to access were similar to those of Mr. Walters. The Medical Center communicated these determinations to Mr. Walters in a letter dated May 7, 2015. Ms. Vandermaas was counseled in writing on May 22, 2015, and Ms. Vogt was counseled in writing on May 7, 2015.

The access by Mr. Carl Annunziata on February 14, 2014, is evaluated in our original report where we found the access to be improper. (see page F2 of the original report). The Medical Center reports that Mr. Annunziata received a written counseling statement for this on December 2, 2014.

The other 34 accesses of Mr. Walters' EHR occurred pursuant to our original investigation, and therefore, as accesses necessary for health care operations are proper. Eighteen of the accesses were by the Medical Center Privacy Officer, all during the time frame of the original investigation. Two of the accesses were by Ms. Gladys Felan, a member of the OMI investigating team, and occurred during the time of the original investigation. The other 14 accesses were by 5 other Medical Center employees (Patricia Helgesen, Eleanor Hobbs, Alberto Ambizas, Renato Ignacio, and April Miles). Each of the accesses by these employees was in the time frame of our original investigation and occurred with the Medical Center Privacy Officer sitting with each employee. The Medical Center Privacy Officer told the OMI investigative team that she sat with each employee during these accesses to help them attempt to reconstruct a rationale either for an earlier entry on their part or for an earlier entry of an employee they supervised.

**OSC Question 3:** In his comments, Mr. Walters stated that recommendations have been made to change the warning box that notifies a staff member that he is about to access sensitive information. Has the warning box been updated? If yes, what were those changes? If not, please explain.

**VA Response:** The warning box notifying a staff member that he or she is about to access a sensitive record has not been updated. OMI did not recommend that VHA consider updating that message in the original report; however, the September 29, 2014, cover letter to that report did note that a Failure Mode and Effects Analysis made such a recommendation in October 2013. Changes to the existing warning, in addition to additional audit capabilities are in the system development process as explained below.

In another OMI report (OSC File Number DI-14-5178), OMI did recommend that VA's Office of Information and Technology assess the Medical Center's computerized weekly audit process in VistA of suspected inappropriate EHR accesses and consider implementing it nationwide.

As we reported in a supplemental report to the OSC File Number DI-14-5178 report, VHA Office of Informatics and Analytics (OIA) assessed the Medical Center's computerized weekly VistA audit process of suspected inappropriate EHR accesses and determined that implementation of a similar process and reports nationwide was appropriate. OIA submitted a new service request (NSR) that included requests to modify the existing warning displayed to users when accessing a record flagged sensitive, to add an additional warning for suspicious accesses based on set criteria, and to create a new report listing all suspicious accesses for more efficient auditing and identification of unauthorized accesses. The Integrated Project Team formed to review the NSR worked with the Requirements Development and Management Service to develop a Business Requirements Document (BRD) for the NSR. The BRD was approved by the business owner on August 17, 2015. This request is not yet funded. The prioritization and funding decision is made once a year for funding 2 fiscal years (FY) in the future, so this project is being considered for funding in FY 2018. The tentative date for funding approval of projects submitted this FY is March 15, 2016.