



U.S. OFFICE OF
SPECIAL COUNSEL
WASHINGTON, D.C.
DEPARTMENT OF VETERANS AFFAIRS
UNDER SECRETARY FOR HEALTH
WASHINGTON DC 20420
2015 MAY 12 PM 2:02

May 6, 2015

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

RE: OSC File No. DI-14-3310

Dear Ms. Lerner:

I am responding to your request for supplemental information on the Memphis Department of Veterans Affairs (VA) Medical Center, Memphis, Tennessee, about which your office posed three follow-up questions. The Secretary has delegated to me the authority to sign the enclosed report and take any actions deemed necessary as referenced in 5 United States Code § 1213(d)(5).

Detailed responses to all three questions may be found in the enclosed supplemental report.

If you have any other questions, I would be pleased to address them.

Sincerely,

A handwritten signature in cursive script, reading "Carolyn M. Clancy", with a small "MD" to the right.

Carolyn M. Clancy, MD
Interim Under Secretary for Health

Enclosure

**Department of Veterans Affairs
Supplemental Report
to the
Office of Special Counsel
Memphis Veterans Affairs Medical Center, Memphis Tennessee
OSC File Number DI-14-3310
May 5, 2015**

Trim 2015-D-2101

At the request of the Secretary, the Interim Under Secretary for Health (I/USH) directed the Office of the Medical Inspector (OMI) to assemble and lead a team to investigate allegations lodged with the Office of Special Counsel (OSC) concerning the Orthopedic Clinic at the Memphis Department of Veterans (VA) Medical Center, Memphis, Tennessee (hereafter, the Medical Center) by the whistleblower, a physician assistant. The whistleblower alleged that Medical Center management receives financial bonuses for limiting the number of non-VA referrals, thereby engaging in conduct that may constitute violations of laws, rules or regulations, and gross mismanagement, which may lead to a substantial and specific danger to public health. The VA team conducted a site visit to the Medical Center on October 14–17, 2014, and transmitted its report to OSC on March 6, 2015.

On March 31, 2015, in an email request to OMI, OSC asked VA to answer three questions related to the original investigation. The questions and our responses are as follows:

Question 1: The report indicates that patients were previously sent to a non-VA provider in Jackson, Tennessee, for care, but experienced negative outcomes. Was this facility in Jackson the only non-VA facility that was available to conduct total joint replacements in 2012? If not, is there a reason that the other facilities were not considered for patient referrals?

Response: This was the only facility that accepted the VA's reimbursement rate at this particular time. Unless facilities accept VA's rates and complete all necessary paperwork for processing, the Medical Center cannot refer to them. The referral source has to right to refuse to take VA payment.

Question 2: The report states that in July 2013, the Medical Center Director directed that staff increase the number of orthopedic patients referred for non-VA care. The report does not indicate the percent increase in the number of patients referred out, only that 70 patients total were sent out following the 2013 policy change. Is this information available, and if so, can you provide it to us?

Response: The information prior to 2013 is unavailable due to the data retrieval systems for non-VA referrals in fiscal year (FY) 2012 were classified as "medical non-VA," i.e., not specific to the service or the specialty.

| Fiscal Year | # Non-VA Ortho referrals | # Total Joints | % increase since FY 2013 |
|-------------|--------------------------|----------------|--------------------------|
| FY 2013 | 70 | 18 | - |
| FY 2014 | 125 | 51 | 79 |
| FY 2015 * | 163 | 53 | 133 |

*=FY 2015 to date

In FY 2014, there were 125 orthopedic consults for non-VA care, a 79 percent increase since FY 2013. To date in FY 2015, there have been 163 orthopedic consults, a 133 percent increase since FY 2013.

Question 3: With regard to the patients who lodged complaints, the report does not explain whether the 16 patients reviewed are the entire universe of complaints lodged by orthopedic patients, or just a sample. If these patients represent a sample, how were they chosen and how many complaints total were filed over the same time period?

Response: During FYs 2012–2014, 16 Veterans complained about waiting times for non-VA care among a total of 133 complaints lodged with the orthopedic service. VA reviewed all 16 of these complaints.