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PRIVACY BREACHES AND VIOLATIONS RESPONSE STATEMENT

OSC File No. DI-15-0971

I disagree with the agency Report of Investigation. The agency did a clever neat job in presenting statistics and data designed to deceive and mislead the OSC however no amount of agency white washing can conceal the facts of the privacy crisis at the Northport VA. The agency attempted to sugar coat and minimize the impact and extent of the privacy crisis with their sophisticated packaging of a delinquent and deficient report that is riddled with conclusory statements. Most of the illegal privacy breaches were acknowledged by the agency and the VA even admits that those employees seemed to not have any particular reason to access my medical record yet erroneously concluded that the access was legit despite not being for treatment, payment or healthcare operations (TPO). Simply put all the supervisors got a free pass.

The actual figures are much higher than the erroneous under-reporting with obvious data manipulation conducted by the agency's very own Officer of the Medical Inspector (OMI) team that was disbanded for their gross incompetence and corruption regarding other investigations. Sadly though the same sad cast of miscreants and characters is still conducting these investigations drawing their own warped conclusions. The OMI team provided misleading stats to obfuscate the facts of a dire privacy crisis that's out of control. The agency mischaracterizes the privacy crimes and victimization by misleading the public with skewed facts and data misrepresentation. Known repeat offenders were overlooked vs. investigating their entire access histories; especially managers. The OMI team contradicts itself when they stated that in 47 of the improper accesses they found no reason to explain the accesses yet none of those folks were flagged for disciplinary and adverse actions as mandated by the agency's own Table of Penalties and VHA Handbook 5021 on adverse and disciplinary actions.

The agency has failed to conduct a weekly reconciliation of access to charts flagged sensitive. Any deviations must be reported by the privacy officer to VACO on a PSETS. This is not being done in order to manipulate data to hide the privacy crisis at this facility.

The agency states that although they could find no reason for employees accessing my medical records in the end they got a free pass; especially supervisors like Ms. Melanie Brodsky social worker. The rabid information sharing occurs as a result of the illegal access bypassing local controls with the offender using their smart phone to take screen shots then store and share that information. I disagree with Ms. Joann DeMarco accessing my chart since the appointments listed were NOT related to TPO and the appointments in central intake is not a clinical area. Ms. April Esposito should not have accessed my chart since the menial task listed as an excuse is for frontline clerks; not at her supervisory level. Ms. Sharon Lyn Friedrich shouldn't have accessed my chart since the excuse given is not logical since Primary Care and Specialty clinics are task organized separately which is why I also disagree with the illegal access of Mr. Paul Haberman into my chart since it's not related to TPO – coordination of care efforts requires documentation



entries into the medical records which is missing in this and all other excuses as a fact pattern of cover ups as with Ms. Elain Hedges. The excuses proffered are contrived and coached to cover and whitewash management officials. Ms. Stacey Ann Harris' access was not related to TPO and not part of the function of an LPN as the agency contends. Ms. Eleanor Hobbs NP and Annamarie Hyne RN are known repeat offenders having worked together in Employee Health. Mr. William Marengo RN is another known repeat offender should be terminated, prosecuted and fined since there's no documentation in the medical records to justify the access which the OMI team admittedly could not find. Neither did he document in the Patient Advocate Tracking System. Dr. Michael Marino would have no reason to deliberately access my chart in his capacity as the Chief of Psychology other than to illegally obtain some sort of information against me that was passed along in damaging ways to my career advancement (it is NOT part of the process to review psych charts or consults) – it was not for TPO therefore it is illegal; simply put lack of reason for access = illegal access as in Ms. Susan Mehling's and Mr. Jeffrey Sparks RN (known repeat offender) access. And job title alone doesn't authorized access as in Mr. Douglas Murdock's illegal access and the illegal access by Ms. Stephanie Nelson as the director's AA. Gino Nardelli Police Officer is a known repeat offender and it's a violation for a law enforcement officer to access charts for demographic info since there are other data sources not containing PHI. A cop needs a court order, warrant, subpoena or release to access medical charts. He violated my civil rights. Other questionable accesses with conclusions offering a convenient excuse to not punish the privacy offenders such as Ms. Stacie Michell Woods and Ms. Cammie Wachter as GS-14. Ms. Ann Vazquez-Kosta is not part of her job duties as a social worker – that's for the PI/QM department. The most severe access was done by Mr. Thomas Sledge who has been protected by his brother Mr. Joseph Sledge PAO having illegally accessed other charts as a known repeat offender. "Mistakes" are NOT acceptable excuses as in Ms. Kristen R Seitz or the OMI's conclusion doesn't prove causality as in the illegal access of Ms. Joan Schilling, Ms. Nyny Romero in Human Resources, Ms. Wendy Robertson and Ms. Jennifer Pohl (who was dating Gino Nardelli at the time).

I was compelled to testify before this forum as a privacy victim and as a veteran. There have many Office of the Special Counsel (OSC) accepted privacy breach complaints for investigation with many additional complaints for investigation pending. This investigation exposes a privacy crisis and demonstrates how the agency uses veteran employee Protected Health Information (PHI) in nefarious ways that has been widely publicized and reported in open media outlets. Their PHI that was illegally obtained is used by the agency to discriminate, intimidate, harass and deny career advancement opportunities. I clearly stated how this occurred in the instance of my victimization since the spike in entries into my VA medical record at the times of my applications and interviews for positions that I was denied was beyond a mere coincidence. I was qualified for these positions and excelled in paygrades way above my current downgraded posting. These improper entries were not for treatment, payment or healthcare operations (TPO). It's very disturbing that a VA cop accessed my medical records without a subpoena, court order, warrant, release or probable cause along with many senior administrators

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and chiefs that was not necessarily for TPO. Not all disabilities are obvious. Not all disabilities are convenient. Not all disabilities have a heroic story. Not all disabilities are glamorous. But what they all share in common is the indignant suffering that the victims have to endure by institutional and personal cruelties and discrimination. Many disabilities do not illicit sympathy with the victim suffering in silence. The VA has hijacked the disabled veteran narrative continually misleading America, Congress and veterans with deceitful feel good optimism creating a cognitive dissonance between the lies that the VA PR machine spews forth and the grim reality that disabled Vietnam vets like myself has to face daily.

I am claiming Whistle Blower Retaliation in the agency's response to OSC File # DI-15-0971. I am also claiming a violation of my Veteran's Preference Points which I am entitled to by law as a 100% total and permanently service connected disabled veteran (10 points). The local Human Resources department is well aware of my veteran's preference points the RMO being Ms. Connie Kalfa. My current grade and title is Wage Grade WG-3 EMS Grounds Laborer. I applied for the Motor Vehicle Operator position WG-7 on 2/8/2017. I interviewed for the position on 4/19/2017. Although I exceeded the qualifications, standards and requirements for the position I was not selected for this position as the Motor Vehicle Operator. I was informed by e-mail for the non-select. Ms. Joanne DiMarco was on the interview panel. Ms. Dimarco should've been recused since she was investigated by the agency's Office of the Medical Inspector (OMI) team tasked with investigating the above referenced OSC file. Ms. Dimarco was found to have accessed my VA medical record inappropriately and illegally. It is clear in the OMI teams report of investigation (ROI). I informed the interview panel chair Mr. Joseph Sledge regarding my serious misgivings on Ms. Dimarco's involvement ahead of the scheduled interview however Mr. Sledge ignored my pleas. Also Mr. Sledge's brother Mr. Thomas Sledge (a known repeat privacy offender) was also deemed to have improperly accessed my medical records multiple times with the agency's ROI having only been recently filed. Finally Ms. Jennifer Pohl had also illegally accessed my medical records. Ms. Pohl was the former secretary for Mr. Rich Kitson (Chief of Voluntary Services) that the motor vehicle operator position is task organized under. The temporal proximity is beyond a mere coincidence that I was non-selected for. I was shy of the required 10 points which coincidentally happens to equal the 10 Veteran's Preference points that I am legally entitled to. I was told by Ms. Kalfa from HR that I was not eligible for the preference points despite personage being established. The vacancy ID # for the position was BF-1901882, announcement # BF-17-CK-1901882-BU.

What's even more painful for veteran employees is their disabilities stem from their service and sacrifice in defense of this nation only to be further ostracized and marginalized by the same scandal-ridden VA agency that has failed veterans miserably since its inception under Abraham Lincoln. I was spit upon by America when I returned home from Vietnam a shattered and disabled soul as a byproduct of the horrors of war in defense of this nation having been sent far away to do America's bidding. Shamefully the VA continues this victimization by spitting on me. The VA is only pro-veteran when it's convenient or for a sleazy photo-op or glitzy headline.

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Instead veterans are scowled and scoffed at by the same old Born on the Fourth of July VA. This disabled stigmata leads to further isolation and withdrawal. The VA in so violating my privacy by prying into my medical records exploited my service connected (SC) disabilities and conditions as a pre-text to deny positions that I have demonstrated outstanding proficiency in and requisite qualifications. There is a social contract in America and that is that the military defends America and her freedoms and way of life and after their service and sacrifice defending her, her freedoms and way of life America in return is tasked with the awesome and solemn responsibility of caring for these veterans. However the VA has repeatedly broken this social contract with America and the community of veterans it has failed which continues with my plight. My Veterans Health Administration (VHA) medical records were illegally accessed multiple times by many Veterans' Affairs (VA) employees including non-clinical staff such as administration, senior management, Business Office personnel, VA police, etc. This is a violation of the Privacy Act of 1974 and a violation of the HIPAA act of 1996. This is a violation of the VHA handbook series pertaining to privacy mainly 1605, 1605.1, 1605.2, 1605.03. This is a violation of VHA Handbook 6500 Information Security Program (to provide specific procedures and establish operational requirements to implement the Department of Veterans Affairs (VA) Directive 6500, Information Security Program). This is a violation of VHA Handbook 6500.2 MANAGEMENT OF DATA BREACHES INVOLVING SENSITIVE PERSONAL INFORMATION (SPI) (This Handbook establishes procedures for Department of Veteran Affairs (VA) management of data breaches involving VA Sensitive Personal Information (SPI). It implements 38 U.S.C. §§ 5721-28; and the implementing regulations at 38 C.F.R. §§ 75.111-119, section 13402 of the Health Information Technology for Economic and Clinical Health (HITECH) Act (codified at 42 U.S.C. § 17932) and interim final regulations at 45 C.F.R. §§ 164.400-.414, and Office of Management and Budget (OMB) Memorandum M-07-16, Safeguarding Against and Responding to Breach of Personally Identifiable Information) . This is a violation of VA Directive 6502 (the Department wide program policy for the protection of privacy of veterans, their dependents and beneficiaries, as well as the privacy of all employees and contractors of the Department of Veterans Affairs (VA), and other individuals for whom personal records are created and maintained in accordance with Federal law. This directive clarifies policies, roles, and responsibilities for the VA Privacy Service, also known as the VA Enterprise Privacy Program, the program that oversees all VA-wide privacy programs). This is a violation of VA Handbook 6502.1 (This handbook revises Department-wide procedures for the OneVA tracking of complaints and privacy incidents, and implements the policies set forth in Department of Veterans Affairs (VA) Directive 6502, VA Enterprise Privacy Program, and VA Handbook 6500.2, Management of Security and Privacy Incidents). This is a violation of the Federal Standards for Privacy of Individually Identifiable Health Information (IIHI) and/or the Security Standards for the Protection of Electronic Protected Health Information (PHI) (45 CFR Parts 160 and 164, Subparts A, C & E, the Privacy and Security Rules and the Breach Notification Rule Subpart D - Notification in Case of Breach of Unsecured Protected Health Information) (45 CFR SS 164.400 - 164-414). This also violates my 4th and 14th Amendment

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rights since VA law enforcement illegally accessed my medical records without a court order, subpoena, warrant or justification. I became very concerned regarding my VA medical records in light of the ongoing massive privacy breaches at the VA Northport NY facility; especially management targeting service connected disabled veteran employees. I also noticed other employees and management officials commenting on my service connected disabilities which are not obvious. I requested copies of the access logs a.k.a. Sensitive Patient Access Report (SPAR) via the Privacy Office under FOIA. This is a by-name listing of every single individual that accessed my VA medical records including the date and time of the entries. The multiple illegal accesses to his VA medical records in many instances were **NOT** for (TPO). Furthermore he **NEVER** sought healthcare on the dates/times of many of the entries in the SPAR so the illegal access was **NOT** necessarily related to their position descriptions (PD), functional statements (FS), job title, role, etc. This is a continued violation of law, rule and regulation as detailed above. As a VA disabled veteran employee I am painfully aware of the agency's repeated failures to secure my privacy since I am at a distinct disadvantage as a VA disabled veteran employee vs. my private sector counterparts since the VA as my employer also happens to be the maintainer of my medical records with their massive Systems of Records (SOR). The VA SOR contains very detailed biometric data, Protected Health Information (PHI), Sensitive Protected Information (SPI), Personally Identifiable Information (PII), Individually Identifiable Information (III) and Individually Identifiable Health (IIHI) Information that can be easily accessed by any VA employee and that has been used in nefarious ways against me as a veteran employee, a veteran, a patient, a private citizen, ID theft, etc. as has happened to other VA disabled veteran employees. In the wake of the extensive government spying with the NSA scandals and the current VA scandals that are daily reported in the media I am hopeful that the privacy issues put forth here will be accepted for further investigation. This has interfered with my rights and ability to access healthcare at the VA since I am fearful that the same agency that's failed to protect my privacy and rights has adversely use that PHI against me as a patient and as a veteran employee since much of the illegal access to my medical records was timed with adverse agency actions against me is beyond a mere coincidence given the temporal proximity. It's beyond a mere coincidence that these privacy breaches occurred regularly in a coordinated manner emanating from the director's office since VA Northport NY is comprised of 1800+ employees spread across a sprawling complex of buildings in thousands of cubicle farms and offices in buildings occupying a geographic footprint greater than 1 mile on the main campus. Simply put the illegal access was **NOT** random, haphazard or incidental. It should be very troubling that veteran and civilian VA employees request their access SPAR via FOIA since it's our right as veterans and/or employees to have that info upon request yet our only redress is thru FOIA since the VA Northport privacy office is non complaint with the mandates and standard requests for FOIA, access logs, investigations, etc. As a **100%** service connected disabled Vietnam veteran employee I am particularly vulnerable compared to my civilian employee counterparts and private sector counterparts since the employer (VA) is also the maintainer of those medical records. This creates an artificial barrier to access to care since we are hesitant to

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seek treatment for fear of our supervisors using this PHI against us as continually happens at this facility in the denial of promotions, derogatory comments, being slighted during interviews, disciplinary and adverse actions, discrimination, denial of awards, etc. The temporal proximity of most of the illegal entries into these medical records by supervisors is beyond a mere coincidence with many of the entries having occurred on days off, during off tours such as weekends, holidays, evenings and nights (WHEN) hours, during sick leave, etc. Many have tried and failed unsuccessfully with the former disgraced privacy officer Mr. Steven Wintch to have access to the SPAR and to have these entries properly investigated since he didn't even file a PSETS mandated by policy and regulation for each and every instance of alleged and actual improper access. The fact pattern remains that prior to my start date at the VA Northport NY no VA Northport employee accessed my VA medical records improperly so all of a sudden I becomes Mr. Popularity with supervisors, service chiefs, fellow employees, administrators, cops, etc. illegally entering my VA medical records for reasons other than TPO. I also have a unique name since I am the only **Mike Gallas** employed by the entire VA so the access was certainly deliberate and not incidental. Many of the illegal entries into the VA medical records occurred after the other OSC directed privacy breach investigations of other employees despite the VA's feeble attempts to whitewash and minimize the extent of these ongoing occurrences with meek "corrective actions" that has no effect on altering this alarming, disturbing and illegal behavior that shocks the conscious. I am very frightened of retaliation and agency adverse actions against me since the Northport VA Privacy Office is just an extension of the Director's mean spirited targeting of veteran disabled employees. The Privacy Office internal "investigation" into privacy breaches is whitewashed being riddled with inconsistencies, discrepancies, inaccuracies, conflicting statements, errors, omissions, incomplete, improper, partial, etc. The threat of whistle blower retaliation is a clear and present danger at the VA Northport NY which has had a profoundly disturbing chilling effect on anyone that dares to break the forced imposed silence of their corrupt practices and operations. We all know the abusive nightmare that other disabled veteran employees suffered for speaking out and exercising their rights. One of whom is a highly decorated disabled veteran and highly esteemed professional who was targeted for whistle blower retaliation. He was used as an example by management to terrify employees into not filing complaints with the chilling message being if they could do it to him they can do it to anyone with impunity. For this reason we are all terrified of management and the deep ties between the director and the privacy office in retaliating against whistle blowers by weaponizing PHI against employees. Those of us that risk complaining represent a mere fraction of the work force and the veteran employees whose privacy has been repeatedly violated and used against them in perverse abusive retaliatory ways. The chilling effect this has had has all but frozen the paralytic response of outside agencies to police the VA and hold them accountable. When the Secretary of the VA openly and blatantly lies about his military service it sets an ominous portent for guys like myself to be victimized by this corrupt system. The falsified data and documents reported to OSHA and VACO by the Northport VA is symbolic of a corrupt agency consistent with the many scandals daily reported by open media outlets of a government bureaucracy

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lacking any credibility and accountability that simply cannot be trusted to police itself. Perhaps if the VA focused more on their primary mission of veteran care instead of spying on crippled veteran employees and the work force there wouldn't be such scandals and squalid conditions reported by open media outlets daily. Everyone in this room today sleeps soundly at night with a comfortable lifestyle and rather high standard of living because brave men like myself fought to protect your freedoms and luxuries that you take for granted. I don't sleep well and sacrificed so much just so you can enjoy these niceties. Denying me these remedies is to spit on me again. Please don't spit on me.

Additional potential violations of law, rule and regulation:

Fraud - 18 United States Code 1001 & 1018

Destruction of documents, falsification of & tampering with evidence (witnesses) - 18 U.S.C. 2017 & 285

Perjury - 18 U.S.C. 1621

Disclosure of confidential information - 18 U.S.C. 1905

Conspiracy to conceal above facts - 18 U.S.C. 1001, 3 & 241

Constitutional rights:

4th Amendment - Protection from unreasonable search & seizure, evidence gathering & collection -> is investigator violating this right?

5th Amendment - Right to due process, protection from self-incrimination (must determine in advance if FFI will lead to any criminal charges) -> are these rights being violated?

6th Amendment - Confrontation clause (right to face accuser), right to counsel, informed of the nature & cause of accusation -> are these rights being violated?

14th Amendment - Due process clause - rights & freedoms not specifically mentioned in the Constitution but extend or derive from existing rights i.e. employee/workplace rights. The Court has significantly expanded the reach of procedural due process requiring some sort of hearing before the government may terminate civil service employees -> are these rights being violated?