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The Special Counsel

March 29, 2018

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

**VIA ELECTRONIC MAIL**

Re: OSC File No. DI-17-4599

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), I am forwarding to you a report from the Department of Veterans Affairs (VA) based on disclosures of wrongdoing at the Wilmington VA Medical Center (Wilmington VAMC), Wilmington, Delaware. I have reviewed the agency report and, in accordance with 5 U.S.C. § 1213(e), provide the following summary of the report and my findings. The whistleblower, who chose to remain anonymous, disclosed that Wilmington VAMC Telehealth Services (telehealth) employees improperly manipulated Return to Clinic (RTC) dates in the VA's Computerized Patient Records System, in violation of Veterans Health Administration (VHA) Directive 1230(5)(g)(3).

The whistleblower's allegations were referred to former Secretary David J. Shulkin for investigation pursuant to 5 U.S.C. § 1213 (c) and (d). The Office of the Medical Inspector (OMI) investigated the allegations. Former Secretary Shulkin delegated responsibility to review and sign the report to former Chief of Staff Vivieca Wright Simpson, who submitted the report to OSC on December 14, 2017. The whistleblower did not comment on the agency's report.

The whistleblower reported that on June 29, 2017, the telehealth supervisor held a staff meeting to discuss the department's low success rates when scheduling patient appointments within the RTC date. The whistleblower explained that the supervisor instructed schedulers to contact providers after patient appointments in order to change RTC dates based upon appointment availabilities.<sup>1</sup> However, VHA Directive 1230 (5)(g)(3) prohibits schedulers from altering RTC dates due to the lack of availability of appointments. The policy explicitly states, "the provider make[s] a CID determination based upon the clinical needs of the patient." According to the whistleblower, after instituting this practice, the supervisor

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<sup>1</sup> VHA Directive 1230 requires all outpatient appointments to be scheduled no more than 30 calendar days from the Clinically Indicated Date (CID), the date a new consult or return appointment is deemed clinically appropriate by the provider, or 30 calendar days from the patients Preferred Date. When a return appointment is needed, the provider is required to negotiate the CID with the patient prior to the patient leaving the provider's office. The provider is then to enter the agreed upon CID as an RTC order. Both a CID and RTC date should be entered in the patient's record.

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maintained a success rate chart that demonstrated a significant increase in schedulers meeting RTC dates as well as an increase in the overall performance of the facility. The whistleblower asserted that the improper scheduling practice falsely inflated these success rates.

OMI substantiated the whistleblower's allegation that the supervisor's instruction during the June 29, 2017 staff meeting was improper. In its investigation, OMI interviewed four telehealth clinical technicians (TCTs), three of whom indicated that RTC orders are rarely entered. Rather, TCTs schedule the next appointment at the end of the telehealth session when both provider and patient agree on a time. Because of this practice, providers would not enter RTCs because the next appointment is already scheduled. Instead, the provider would document the appointment date in their notes as the CID. The agency concluded that this practice violated VHA Directive 1230, which requires that all providers enter an RTC order for schedulers to use when setting a patient's next appointment.

However, OMI did not conclude that the supervisor gave the improper instructions in order to manipulate the scheduling process or with malicious intent. Further, the report explained that the perceived success rate chart was actually a telehealth Pending Appointment Report (PAR), which was not indicative of scheduler performance in meeting RTC dates.<sup>2</sup> OMI recommended that the facility immediately review VHA Directive 1230 with all telehealth providers, TCTs, and telehealth leadership, and ensure that providers are complying with the directive by entering RTC orders within CIDs for all telehealth encounters. The report also recommended that all VHA facilities ensure that the telehealth scheduling processes are compliant with this directive.

I have reviewed the original disclosure and the report, and determined that the report meets all statutory requirements and the findings appear reasonable. The whistleblower's disclosure and agency investigation led to an important review of VHA scheduling practices and agency directives.

As required by 5 U.S.C. § 1213(e)(3), OSC has sent a copy of this letter and the agency report to the Chairmen and Ranking Members of the Senate and House Committees on Veterans Affairs. I have also filed copies of this letter and the redacted agency report in our public file, which is available at [www.osc.gov](http://www.osc.gov). This matter is now closed.

Respectfully,



Henry J. Kerner  
Special Counsel

Enclosures

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<sup>2</sup> Rather, the PAR reflects each TCT's percentage of telehealth appointments that had different CIDs. The telehealth provider appointment and telehealth patient appointment should both have the same CID based on the RTC order and not on the next available appointment on the scheduling grid.