



U.S. OFFICE OF SPECIAL COUNSEL

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

The Special Counsel

January 16, 2018

The Honorable David J. Shulkin, M.D.
Secretary
U.S. Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420

Re: OSC File Nos. DI-18-0169; DI-18-0225; and DI-18-0226
Request for Investigation – 5 U.S.C. § 1213(c)

Dear Secretary Shulkin:

Pursuant to my responsibilities as Special Counsel, I am referring to you for investigation a whistleblower disclosure concerning employees of the Department of Veterans Affairs (VA), Richard L. Roudebush VA Medical Center (Medical Center), Indianapolis, Indiana. The disclosure alleges employees may have engaged in conduct that constitutes gross mismanagement and a substantial and specific danger to public health. A report of your investigation is due to the Office of Special Counsel on March 19, 2018.

██████████ and ██████████, social workers at the Medical Center who consented to the release of their names, along with another whistleblower who chose to remain anonymous, allege the following:

- ██████████ the chief of Social Work, directed social workers to stop entering home health care consults (consults) into the Computerized Patient Record System (CPRS) without ensuring other staff were adequately trained or able to perform this function; and
- The lack of adequate planning, training, and communication has resulted in significant delays and apparent harm to veterans.

Social workers are part of the Patient Aligned Care Team (PACT) model at the VA and are responsible for veteran care management and coordination. According to the whistleblowers, social workers assigned to the inpatient team at the Medical Center have been responsible for entering consults into CPRS for physicians to sign electronically for at least nine years, facilitating smooth and coordinated hospital discharges for veterans.

On or about March 1, 2017, ██████████ directed that social workers should no longer enter consults into CPRS. However, the whistleblowers disclosed that ██████████

The Honorable David J. Shulkin, M.D.
January 16, 2018
Page 2 of 4

failed to establish who would assume this duty or provide training to those assigned employees.¹ The whistleblowers alleged the lack of adequate planning, training, and communication has resulted in significant delays to veteran discharges and home health care, and apparent harm to veterans. For example:

- On June 14, 2017, an inpatient social worker for a veteran requiring home wound care requested the physician enter a consult into CPRS. The consult was not entered, and the veteran did not receive home wound care. On June 21, 2017, the veteran was re-admitted through the emergency room, because the infection to his wound had worsened. The veteran was discharged again on June 26, 2017, with home wound care established prior to discharge. However, the veteran returned to the emergency room on July 3, 2017, due to the condition of his wound, at which time he required a below the knee amputation;
- A social worker requested that [REDACTED] enter a consult for a veteran requiring a home health aide on September 26, 2017. On November 22, 2017, the social worker discovered the consult had not been entered, and re-requested entry of a consult. The doctor failed to enter the consult, and on November 28, 2017, over two months from the original request date, a social worker in the Geriatrics and Extended Care Service opted to enter the consult. Without the assistance of a home health aide, the veteran was unable to bathe for weeks at a time;
- In October 2017, a utilization nurse entered a consult improperly for an elderly veteran who was at high risk for falls. The veteran fell at home within 48 hours of his discharge. Because he did not receive a timely home health care visit, approximately 12 hours passed before he was discovered.

The whistleblowers alleged there has been an increased delay in veterans' receipt of home health care due to the recent inconsistency and uncertainty regarding the procedures for entering consults into CPRS, resulting in apparent harm to veterans.

* * * * *

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 or safety. 5 U.S.C. § 1213(a) and (b). If I find, on the basis of the information disclosed, that there is a substantial likelihood that one of these conditions exists, I am required to advise the appropriate agency head of my findings, and the agency head is required to conduct an investigation of the allegations and prepare a

¹ From March to July 2017, and again after November 2017, physicians entered consults; utilization nurses entered consults from July to November 2017.

The Honorable David J. Shulkin, M.D.

January 16, 2018

Page 3 of 4

report within 60 days of notification of the allegations. 5 U.S.C. § 1213(c) and (g). OSC will not routinely grant an extension of time to an agency in conducting a whistleblower disclosure investigation. However, OSC will consider extension requests in 60-day increments where an agency concretely evidences that it is conducting a good faith investigation that will require more time to successfully complete.

Upon receipt, I review 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). I 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).

I have concluded that there is a substantial likelihood that the information the whistleblowers provided to OSC discloses a violation of law, rule, or regulation; gross mismanagement; and a substantial and specific danger to public health. As previously stated, I am referring this information to you for an investigation of the whistleblowers' allegations and a report of your findings due to this office on March 19, 2018. By law, this report should be reviewed and signed by you personally. Nevertheless, should you delegate your authority to review and sign the report to the Inspector General, or other agency official, the delegation must be specifically stated and must include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5). The requirements of the report are set forth at 5 U.S.C. § 1213(c) and (d). Summaries of section 1213(d) are enclosed. Please note that specific allegations and references to specific violations of law, rule, or regulation are not intended to be exclusive.

As a matter of policy, OSC also requires that your investigators interview [REDACTED] and [REDACTED] at the beginning of the agency investigation when, as in this case, the whistleblowers consent to the disclosure of their names. As the subject matter experts, [REDACTED] and [REDACTED] can provide additional information and an explanation of their allegations, thereby streamlining the agency investigation.

Further, in some cases, whistleblowers who have made disclosures to OSC that are referred for investigation pursuant to 5 U.S.C. § 1213 also allege retaliation for whistleblowing once the agency is on notice of their claims. I urge you to take all appropriate measures to ensure that those reporting wrongdoing are protected from such retaliation and from other prohibited personnel practices, including informing those charged with investigating [REDACTED] and [REDACTED] allegations that retaliation is unlawful and will not be tolerated.

If your investigative team has questions regarding the statutorily mandated report you will deliver to OSC under 5 U.S.C. § 1213, OSC attorneys are available to discuss OSC's statutory process, expectations for credible, consistent, and complete reports, and

The Honorable David J. Shulkin, M.D.
January 16, 2018
Page 4 of 4

for general assistance. Please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 804-7088 to initiate this process.

As required by 5 U.S.C. § 1213(e)(3), I will send copies of the report, along with any comments on the report from the whistleblower and any comments or recommendations from OSC, to the President and the appropriate oversight committees in the Senate and House of Representatives. Unless the report is classified or prohibited from release by law or by Executive Order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs, I will place a copy of the report in a public file in accordance with 5 U.S.C. § 1219(a). To prevent public disclosure of personally identifiable information (PII), please ensure that the report does not contain any sensitive PII, such as Social Security numbers, home addresses and phone numbers, personal e-mail addresses, dates and places of birth, personal financial information, and patient names. OSC does not consider names and titles to be sensitive PII requiring redaction, and requests that agencies not redact such information in their report.

Please refer to our file numbers in any correspondence on this matter. If you need further information, please contact Ms. McMullen. I am also available for any questions you may have.

Sincerely,



Henry J. Kerner
Special Counsel

Enclosure

cc: The Honorable Michael J. Missal, Inspector General

Requirements of 5 U.S.C. § 1213(d)

Any report required under subsection (c) shall be reviewed and signed by the head of the agency¹ and shall include:

- (1) a summary of the information with respect to which the investigation was initiated;
- (2) a description of the conduct of the investigation;
- (3) a summary of any evidence obtained from the investigation;
- (4) a listing of any violation or apparent violation of law, rule, or regulation; and
- (5) a description of any action taken or planned as a result of the investigation, such as:
 - (A) changes in agency rules, regulations or practices;
 - (B) the restoration of any aggrieved employee;
 - (C) disciplinary action against any employee; and
 - (D) referral to the Attorney General of any evidence of criminal violation.

In addition, we are interested in learning of any dollar savings, or projected savings, and any management initiatives that may result from this review.

To prevent public disclosure of personally identifiable information (PII), OSC requests that you ensure that the report does not contain any sensitive PII, such as Social Security numbers, home addresses and phone numbers, personal e-mail addresses, dates and places of birth, and personal financial information. With the exception of patient names, OSC does not consider names and titles to be sensitive PII requiring redaction. Agencies are requested not to redact such information in reports provided to OSC for inclusion in the public file.

¹ Should you decide to delegate authority to another official to review and sign the report, your delegation must be specifically stated.