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The Special Counsel

January 11, 2012

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

Re: OSC File No. DI-11-2808

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), enclosed please find an agency report based on a disclosure alleging that employees of the Department of the Army, Womack Army Medical Center (Womack), Fort Bragg, North Carolina, may have engaged in conduct that constitutes a substantial and specific danger to public health and safety. The whistleblower, who requested anonymity, also alleged that management officials failed to take appropriate action despite being aware of this conduct.

On August 1, 2011, I referred these allegations to the Honorable John McHugh, Secretary of the Army, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). The Secretary delegated authority to Thomas R. Lamont, Assistant Secretary of the Army, Manpower and Reserve Affairs, to review and sign the report. On October 5, 2011, Mr. Lamont submitted his report, based on the results of an investigation conducted by the Commander, U.S. Army Medical Command (MEDCOM).¹ As required by law, 5 U.S.C. § 1213(e)(3), I am now transmitting the report to you.

The whistleblower disclosed that Registered Nurses in Womack's Post Anesthesia Care Unit (PACU) and Neonatal Intensive Care Unit (NICU) slept during duty hours when they should have been caring for patients. In addition, the whistleblower alleged that Womack

¹The Army provided OSC with a redacted report, which substituted duty titles for the names of each Army service member and civilian employee referenced therein. The Army cited the Privacy Act of 1974 (Privacy Act) (5 U.S.C. § 552a) as the basis for these revisions to the report produced in response to 5 U.S.C. § 1213. OSC objects to the Army's use of the Privacy Act to remove the names of each Army service member and civilian employee on the basis that the application of the Privacy Act in this manner is overly broad.

nursing supervisors were aware of this conduct but took no action to correct the problem or prevent it from recurring.

The MEDCOM investigation substantiated four of six allegations of nurses sleeping on duty. The investigation determined that on March 8, 2011, Registered Nurses Karen Casiano and Eric Cole were sleeping in the PACU nurses station while monitoring a critical care patient who had just undergone surgery. According to the report, while the patient's health was not jeopardized as a result of this incident, these nurses received Letters of Warning which were placed in their Official Personnel Files (OPF). The investigation substantiated the whistleblower's allegation that Nurse Michael Moore was sleeping on duty on April 21, 2011, and Nurse Jessica Williams was sleeping on duty on April 6, 2011. Nurse Moore received a letter of reprimand, which was placed in his OPF for six months as a result of his misconduct, and Nurse Williams was verbally counseled. As with the allegations of sleeping on duty involving Nurse Casiano and Nurse Cole, the agency determined that there was no evidence that any patient's health was jeopardized as a result of this misconduct.

In addition, the whistleblower alleged that nursing supervisors failed to respond appropriately to the allegations to correct the problem and/or prevent it from recurring. The agency investigation found that the allegations regarding the supervisor responses were unsubstantiated. According to the report, in each instance, "... the supervisors investigated the allegations, counseled the nurses accused of sleeping, and took corrective action in accordance with the collective bargaining agreement and LABOR MER guidance."

The whistleblower was given the opportunity to review and comment on the report in accordance with 5 U.S.C. § 1213(e)(1). The whistleblower submitted comments, which are enclosed, but requested that the comments not be placed in OSC's public file.

I have reviewed the original disclosure, the agency's report and the whistleblower's comments. Based on that review, I have determined that the agency's report contains all of the information required by statute and that the findings appear to be reasonable.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of the unredacted agency report and the whistleblower comments to the Chairmen and Ranking Members of the Senate and House Committees on Armed Services. I have also filed a copy of the redacted report in our public file, which is now available online at www.osc.gov, and closed the matter.

Respectfully,



Carolyn N. Lerner

Enclosures