

VA Fails to Clean Up Dirty and Dangerous Conditions at Hospital in Jackson, Mississippi

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9.0—Miscellaneous

The United States Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency, created by the Civil Service Reform Act of 1978. OSC also has authority under the Whistleblower Protection Act and the Uniformed Services Employment and Reemployment Rights Act. OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing. OSC's Disclosure Unit serves as a safe channel for federal employees (whistleblowers) to make allegations of wrongdoing within Executive Branch agencies.

The Special Counsel of the United States heads OSC. The Special Counsel is appointed by the President, with Senate confirmation, for a five-year term. The Honorable Carolyn Lerner has served as Special Counsel since June 2011.

The work of OSC is of great interest to me. I worked for OSC, as an attorney, in 2007-08. In 1996-97, I served (as an active duty Navy Captain) as the Director of the Hotline Investigations Division of the Office of the Naval Inspector General.

I know that many people (especially those who are in authority in federal agencies) consider whistleblowers to be a nuisance or worse. I have exactly the opposite opinion of them. From my own military and civilian service, I am well aware that it is only through disclosures by federal insiders (military and civilian) that fraud, waste, and abuse in federal agencies can be brought to the attention of inspectors general so that these abuses can be corrected. Whistleblowers often show great courage in disregarding the risks to their own careers in order to bring to light serious abuses.

In Law Review 13040 (March 2013), I reported that OSC has investigated complaints by whistleblowers concerning dirty and dangerous conditions and practices at the Department of Veterans Affairs (VA) medical center in Jackson, Mississippi. It appears that the VA has not corrected these dangerous deficiencies, despite having promised to do so. On September 18, 2013 OSC released the following press release:

"The Veterans Affairs Medical Center in Jackson, Mississippi, is deficient both in providing appropriate patient care and in responding to identified problems, according to a letter sent yesterday to President Obama from Special Counsel Carolyn Lerner. The letter is a statutorily

mandated report on the status of disclosures from two physicians at the Medical Center, a current primary care doctor and a retired ophthalmologist with knowledge of radiology issues.

The whistleblowers referenced in the letter are the fourth and fifth of seven Jackson VA employees in four years to disclose wrongdoing to the Office of Special Counsel (OSC). Past disclosures include the use of dirty, rust-stained instruments and other unsterilized medical equipment, incorrect sterilization procedures in the Medical Center and inaccurate statements to the public and Congress about problems at the Medical Center.

Allegations referenced include the following:

- Nurse practitioners lacking required licensure to prescribe narcotics in violation of state and/or federal law. Once the DEA discovered this and disallowed it, the VA pressured physicians to approve all nurse practitioners' prescriptions without evaluating the patient in question. The VA confirmed these allegations and said reform is underway.
- Chronic understaffing in the Primary Care Unit threatens patient safety. The VA substantiated the understaffing but refuted any impact on patient care.
- Due to staffing shortages, nurse practitioners lack state-required supervision by a physician. The VA confirmed that this was true for some nurse practitioners and said reform is proceeding.
- A radiologist failed to read thousands of images or misread them, leading to missed diagnoses. Medical records were falsified to cover up these errors. Management knew of these problems and did not notify patients or require a full review of the images in question. While the VA conceded that the peer review process was substandard, it did not substantiate the allegations, citing reviews of a very small fraction of the thousands of images in question.

The letter also noted that in the midst of the agency's own investigation into these practices, the director of the Jackson VA publicly stated that "the findings did not impact patient care," despite the agency's own admission that the impact to patients can be determined only through additional investigation.

"The agency's response to these and other cases is inadequate," said Special Counsel Carolyn Lerner. "In an era of thousands of returning service members, it is crucial that the VA provide appropriate care to veterans."

OSC requested an update from the VA within 60 days.

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Our basic authorities come from four federal statutes: the Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services

Employment & Reemployment Rights Act (USERRA). OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing. The Disclosure Unit serves as a safe channel for allegations of wrongdoing. For more information, please visit our website at www.osc.gov."

We will keep the readers informed of developments in this most disconcerting situation.