



U.S. OFFICE OF SPECIAL COUNSEL

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The Special Counsel

May 15, 2012

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

Re: OSC File Nos. DI-11-2109 and DI-11-2110

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), enclosed please find an agency report based on disclosures made by employees at the Department of Justice, Federal Bureau of Prisons (BOP), Federal Correctional Institution, Fort Dix, New Jersey (FCI Fort Dix). Medical Officers Pradip M. Patel, M.D., and Nicoletta A. Turner-Foster, M.D., who consented to the release of their names, alleged that employees failed to timely collect samples for medically ordered laboratory diagnostic tests, including blood, stool, and urine samples, which in turn, caused delays in receiving medical results that were necessary for medical diagnoses.

On July 1, 2011, I referred these allegations to the Honorable Eric Holder, Attorney General, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). Attorney General Holder delegated authority to Scott N. Schools, Associate Deputy Attorney General, to review and sign the report. I received an agency report dated November 7, 2011. Drs. Patel and Turner-Foster provided comments on the agency report on December 27, 2011, and December 21, 2011, respectively. As required by law, 5 U.S.C. § 1213(e)(3), I am now transmitting the agency report and Drs. Patel and Turner-Foster's comments to you.

The agency report partially substantiated Drs. Patel and Turner-Foster's allegations. The report revealed that a large number of medical tests had been ordered by medical staff at FCI Fort Dix, but that medical staff had experienced delays in securing results. The agency report found that the problem with delinquent lab tests was systematic and multifaceted. Several factors contributed to the delinquency of ordered lab work, including lack of proper staffing and a "tremendous" workload, the unsuccessful attempts to hire a qualified phlebotomist, the necessity to reschedule patients, the failure to adhere to pre-testing requirements, such as fasting, and duplicative lab test orders.

The agency report reflected that Jeffrey D. Allen, M.D., BOP Central Office, Chief of Health Programs, opined that there was a significant problem with pending diagnostic lab orders,

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even if there were duplicative requests. Dr. Allen stated that, even though management was aware of the problem, they were unaware of the magnitude and scope. Dr. Allen found that there was a potential of harm to patients as a result of such delays.

Although the investigation did not reveal a violation of law, rule, or regulation as a result of untimely lab tests, the agency report found that the failure to ensure timely test results involved several institutional components, including BOP's Health Services' failure to acknowledge, assess, and remedy the medical untimely lab testing problems. The effort to hire another phlebotomist, alone, did not constitute a realistic effort to address the issue. Unfortunately, FCI Fort Dix management focused on this singular solution, and continued to operate as usual pending this hire. Nonetheless, the agency report also emphasized that if an inmate needed lab work immediately, health care staff could bring the inmate to the phlebotomist to have labs drawn immediately.

During the investigation, Dr. Patel emphasized that the delay in receiving medical tests adversely affected his ability to appropriately treat his patients and that clinicians need to secure lab work in timely manner. Dr. Turner-Foster added that approximately 50% of her patients had delays in their lab work. The agency report reflects, however, that no patients were harmed as a result of lab work delays. The agency report also revealed a number of initiatives to resolve the lab work delays, including hiring additional contract and federal employee lab staff; training for all clinical staff on reviewing pending lab requests, laboratory specimen collection, and the use of new diagnostic testing equipment; and evaluating the lab work backlog for chronic care patient needs. In addition, BOP's Central Office and Northeast Regional Office established a medical review team to audit all medical files with abnormal lab results for which there was a delay in receiving lab tests. Furthermore, BOP's Improving Organizational Performance (IOP) Coordinator will audit the pending lab reports monthly to ensure that any pending or backlogged labs are scheduled in a timely manner.

The Office of Special Counsel confirmed that the IOP Coordinators have been auditing Federal Correctional Institute (FCI) Fort Dix's pending lab reports, as planned, in order to ensure that pending or backlogged labs are scheduled timely. The IOP Coordinators currently monitor the "pending collection" lab reports on a daily basis. In its most recent monthly report, FCI Fort Dix had no lab requests pending collection with a due date greater than 30 days. The agency report further reflected that Drs. Patel and Turner-Foster agreed that the systematic review processes should resolve the problem.

Pursuant to 5 U.S.C. § 1213(e), Drs. Patel and Turner-Foster had the opportunity to review and comment on the agency report. In their comments, they were critical of FCI Fort Dix approach to management. Dr. Patel asserted that increasing the patient workload was detrimental to attempting to "stay above water." Dr. Turner-Foster also said that physicians work hard. She asserted that not properly managing backlogs resulted in a lack of proper records and an appearance of not caring for patients.

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I have reviewed the original disclosures, the agency report, and Drs. Patel and Turner-Foster's comments. I have determined that the agency report contains all of the information required by statute, and that the findings of the agency appear to be reasonable. Notwithstanding this determination, I find it troubling that the agency failed to address this serious health and safety risk regarding timely medical test results more aggressively. While I am encouraged that the agency appears to be making progress as a result of Drs. Patel and Turner-Foster's disclosures, I am requesting that the Department of Justice provide me with an update in six months about its progress monitoring patient medical tests at FCI Fort Dix.

As required by law, 5 U.S.C. § 1213(e)(3), I have sent copies of the agency report and Drs. Patel and Turner-Foster's comments to the Chairmen and Ranking Members of the Senate Committee on the Judiciary and the House Committee on the Judiciary. I have also filed copies of the agency report and Drs. Patel and Turner-Foster's comments in our public file, which is available online at www.osc.gov, and closed the matter.

Respectfully,



Carolyn N. Lerner

Enclosures