



U.S. OFFICE OF SPECIAL COUNSEL
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Washington, D.C. 20036-4505

The Special Counsel

June 18, 2020

The Honorable Robert Wilkie
Secretary
U.S. Department of Veterans Affairs
810 Vermont Ave., N.W.
Washington, D.C. 20420

Re: OSC File No. DI-20-0740

Dear Secretary Wilkie:

I am referring to you for investigation a whistleblower disclosure alleging that employees of the U.S. Department of Veterans Affairs (VA), Veterans Health Administration (VHA), located at the Veterans Affairs Medical Center in White River Junction, Vermont, engaged in gross mismanagement and committed a gross waste of funds by failing to timely or accurately invoice the Dartmouth-Hitchcock Medical Center and the Geisel School of Medicine at Dartmouth (collectively, "Dartmouth") for medical services provided by the VA. A report of your investigation on these allegations and any related matters is due to the U.S. Office of Special Counsel (OSC) by August 17, 2020.

The whistleblower, [REDACTED], who consented to the release of her name, is a former accounting technician with the VHA at the White River Junction VA Medical Center.¹ The whistleblower stated that the White River Junction VA Medical Center maintains approximately 25 sharing agreements with Dartmouth in which VA Medical Center medical personnel, whose salaries are paid by the VA, provide medical, teaching, and research services to Dartmouth; under the sharing agreements, Dartmouth is obligated to pay the VA for the hours worked by the medical personnel. According to the whistleblower, each sharing agreement sets out the specific terms of services for each medical personnel employee, such as the services provided, the length of the contract and any option years, the hourly rate the VA charges Dartmouth, and the frequency of billing, which is typically monthly. The whistleblower alleges that these sharing agreements are grossly mismanaged, resulting in the VA effectively providing free medical services to Dartmouth. Specifically, the whistleblower alleges the following:

- VHA employees failed to keep adequate records related to VA sharing agreements with Dartmouth and failed to invoice Dartmouth timely and accurately for services provided by VA Medical Center medical providers for at least five years.

¹ [REDACTED] was employed by VHA from April 14, 2019, to March 31, 2020.

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The whistleblower stated that she was tasked with billing for the sharing agreements soon after she began working with VHA in April of 2019. She alleges that the records related to the sharing agreements were incomplete and disorganized, and she discovered that no records existed for some medical personnel, indicating that a sharing agreement was never formally executed before the medical personnel began providing services to Dartmouth.

The whistleblower alleges that the extent of the arrears varied among the sharing agreements but estimates that the VA failed to properly bill Dartmouth for approximately 25 medical providers over the course of at least five years. In addition, the whistleblower alleges that, according to the acquisition utilization specialist overseeing the contracts, Dartmouth owes the VA approximately \$1,100,000, or more, for services provided by VA employees.

Pursuant to my authority under 5 U.S.C. § 1213(c), I have concluded that there is a substantial likelihood that the information provided to OSC discloses gross mismanagement and a gross waste of funds. Please note that the specific allegations are not intended to be exclusive. If, in the course of your investigation, you discover additional violations, please include your findings on these additional matters in the report to OSC. As previously noted, your agency must conduct an investigation of these matters and produce a report, which must be reviewed and signed by you. Per statutory requirements, I will review the report for sufficiency and reasonableness before sending copies of the agency report, along with the whistleblower's comments and any comments or recommendations I may have, to the President and congressional oversight committees and making these documents publicly available.

Additional important requirements and guidance on the agency report are included in the Appendix, which can also be accessed online at <https://osc.gov/Services/Pages/DU-Resources.aspx>. If your investigators have questions regarding the statutory process or the report required under section 1213, please contact [REDACTED], Chief of the Retaliation and Disclosure Unit, at [REDACTED] for assistance. I am also available for any questions you may have.

As discussed above, your investigative report, including any remedial actions, is due to OSC by August 17, 2020.

Sincerely,



Henry J. Kerner
Special Counsel

Enclosure

cc: The Honorable Michael J. Missal, Inspector General, U.S. Department of Veterans Affairs

APPENDIX

AGENCY REPORTS UNDER 5 U.S.C. § 1213

GUIDANCE ON 1213 REPORT

- OSC requires that your investigators interview the whistleblower at the beginning of the agency investigation when the whistleblower consents to the disclosure of his or her name.
- Should the agency head delegate the authority to review and sign the report, the delegation must be specifically stated and include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5).
- OSC will consider extension requests in 60-day increments when an agency evidences that it is conducting a good faith investigation that will require more time to complete.
- Identify agency employees by position title in the report and attach a key identifying the employees by both name and position. The key identifying employees will be used by OSC in its review and evaluation of the report. OSC will place the report without the employee identification key in its public file.
- Do not include in the report personally identifiable information, such as social security numbers, home addresses and telephone numbers, personal e-mails, dates and places of birth, and personal financial information.
- Include information about actual or projected financial savings as a result of the investigation as well as any policy changes related to the financial savings.
- Reports previously provided to OSC may be reviewed through OSC's public file, which is available here: <https://osc.gov/PublicFiles>. Please refer to our file number in any correspondence on this matter.

RETALIATION AGAINST WHISTLEBLOWERS

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 allegations. The Special Counsel strongly recommends the agency take all appropriate measures to protect individuals from retaliation and other prohibited personnel practices.

EXCEPTIONS TO PUBLIC FILE REQUIREMENT

OSC will place a copy of the agency report in its public file unless it 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. 5 U.S.C. § 1219(a).

EVIDENCE OF CRIMINAL CONDUCT

If the agency discovers evidence of a criminal violation during the course of its investigation and refers the evidence to the Attorney General, the agency must notify the Office of Personnel Management and the Office of Management and Budget. 5 U.S.C. § 1213(f). In such cases, the agency must still submit its report to OSC, but OSC must not share the report with the whistleblower or make it publicly available. See 5 U.S.C. §§ 1213(f), 1219(a)(1).