Description of document:	Advisory Memos, Management Implication Notifications, and the Referral Letters/Memos for 25 Department of Veterans Affairs (VA) Office of Inspector General (OIG) investigations, 2009-2012
Requested date:	25-May-2012
Released date:	10-September-2012
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Source of document:	Department of Veterans Affairs Office of Inspector General Release of Information Office (50CI) 810 Vermont Ave., NW Washington, DC 20420

DEPARTMENT OF VETERANS AFFAIRS
Office of Inspector General
Washington DC 20420

SEP 1 0 2012

Re: Freedom of Information Act (FOIA) Request dated May 25, 2012; Received June 4, 2012; FOIA Case No. 12-00218-FOIA

This refers to your FOIA request for copies of Advisory Memos, Management Implication Notifications, and the Referral Letters/Memos for 25 Department of Veterans Affairs (VA) Office of Inspector General (OIG) investigations. This letter is our second response to this FOIA request and includes the 25 documents that you have requested.

After review of the 25 documents, we are granting your request in part and denying your request in part. As such, the documents include individuals' names and other identifying information. We balanced these individuals' privacy interests against any public interest and concluded that the privacy interests of the individuals included in the documents outweigh any public interest. Therefore, we are redacting the individuals' names and other identifying information from the documents pursuant to FOIA exemption (b)(7)(C).

We are also redacting information pursuant to FOIA exemption (b)(5) as this information reveals the OIG's deliberative process and is also pre-decisional. Explanations of the exemptions and your appeal rights are attached for your information.

We will respond to your remaining FOIA request under separate cover.

Sincerely,

DARRYL JOE
Chief, Information Release Office

Enclosures

Explanation of Exemptions

Exemption (b)(5) authorizes the withholding of inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. 5 U.S.C. § 552(b)(5).

Exemption (b)(7)(C) authorizes the withholding of records or information compiled for law enforcement purposes but only to the extent that release of the information could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(7)(C).

Explanation of Appeal Rights

You may appeal this decision by submitting a signed, written statement by mail, fax, or email. You may submit your appeal by using either of the following addresses or fax number:

U.S. Department of Veterans Affairs
Office of Inspector General
Office of the Counselor (50)
810 Vermont Avenue, N.W.
Washington, DC 20420

VAOIGFOIA-Appeals@va.gov

(Fax) 202.495.5859

You must submit your appeal within sixty (60) calendar days from the date of this decision. Your appeal letter should include the notation, "Freedom of Information Act Appeal." Additionally, your appeal should include the FOIA case number, the name of the individual who issued the decision being appealed, and a statement from you as to why the Office of Inspector General should grant your appeal. Please be sure to attach copies of your original FOIA request and this decision.

2008-00417-IQ-0015

Department of

Veterans Affairs

Memorandum

Date: January 13, 2009

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation, Travel Irregularities, VACO, Washington, DC (2008-00417-IQ-0015)

To: VHA Office of the Chief Financial Officer (17)

1. The VA Office of Inspector General (OIG), Administrative Investigations Division, investigated allegations that Mr. Robert Schuster, Special Assistant to the VHA Chief Financial Officer, was, at times, not fiscally responsible when on official travel. To assess these allegations, we interviewed Mr. Schuster and reviewed travel records, other pertinent documents, Federal regulations, and VA policy. We investigated and did not substantiate an allegation of time and attendance abuse, and it will not be discussed further in this memorandum.

2. We concluded that Mr. Schuster did not always use transportation services that were the most advantageous to the Government when on official travel. We found several instances in which Mr. Schuster obtained a rental car rather than use less costly or free transportation, such as taxi or free hotel shuttle service, when meetings were at the same location as his lodging. We also found that Mr. Schuster frequently took a private limousine service roundtrip from his home to the airport in lieu of using a less costly mode of travel, such as a privately or Government owned vehicle. We suggest that Mr. Schuster receive refresher training in Federal Travel Regulations. I am providing this memorandum to you for your information, official use, and whatever action you deem appropriate. No response is necessary.

3. Federal regulations require that an agency pay only those expenses essential to official business; that employees exercise prudence when incurring expenses on official travel; and it prohibits the payment of excess costs resulting from unnecessary services in the performance of official business. 41 CFR § 301-2.2, -2.4. They further state that when authorizing an employee on official travel to use a rental vehicle, the agency must determine that such use is advantageous to the Government. 41 CFR § 301-10.450. In addition, they state that an employee should use courtesy transportation to the maximum extent possible as a first source of transportation between a place of lodging and a common carrier terminal. 41 CFR § 301-10.420.

4. Mr. Schuster's travel records showed that he took 54 trips between October 2003 and September 2007 as the Director of the Northport VA Medical Center. We found that on several occasions, he rented a car rather than use free shuttle transportation provided by his place of lodging or a less costly mode of travel, such as a taxi service.

For example, in May 2004, Mr. Schuster incurred $134.23 in rental car expenses for a 3-day San Francisco trip to attend a meeting at the same location as his lodging, the Embassy Suites Hotel in Burlingame, California. An electronic mail message, dated March 2, 2004, informed Mr. Schuster that the hotel provided complimentary shuttle service to and from San Francisco International Airport.

5. In another example, Mr. Schuster's travel records reflected that he traveled to Boston, Massachusetts, in October 2005. For this trip, he paid $170.72 for a rental car, and records showed that his meeting was at the same location as his lodging, the Sheraton Braintree Hotel. The hotel website showed that the hotel was located about 14 miles from the airport, and the Boston Logan Airport website indicated that taxi prices from the airport to Boston-area hotels range from about $25 to $50.

6. In yet another example, Mr. Schuster's travel records showed that he traveled to New Orleans, Louisiana, in April 2006. For this trip, he paid a total of $214.24 for a rental car and hotel parking, and according to you, the meeting was held at the same location as lodging at the Embassy Suites Hotel. The hotel website indicated that the cost of taxi service from New Orleans International Airport to the hotel is typically $30. Mr. Schuster told us that he was careful when on travel and that he only rented a car when the cost of public transportation exceeded the cost of a rental car or when he provided transportation for other individuals. However, he said that he could not remember the specifics of his travel, as these trips occurred some time ago.

7. Additionally, we found that on numerous occasions, Mr. Schuster hired a private limousine service to transport him roundtrip from his home to the airport in lieu of using a privately or Government owned vehicle. For example, travel records reflected that for a trip in January 2006, Mr. Schuster received $138.96 in reimbursement for mileage and parking expenses incurred for his 2-day trip; however, in April 2006, he received $204 in reimbursement for his use of a limousine service for a 2-day trip.

8. In another example, travel records showed that for a 2-day trip in January 2005, Mr. Schuster received $184 in reimbursement for his use of a limousine service; however for a 2-day trip in February 2005, he received a $93 reimbursement for mileage and parking expenses. In yet a third example, records reflected that for a 1-day trip in January 2004, Mr. Schuster received a $86.25 reimbursement for mileage and parking; however, he received a reimbursement of $188 for his use of a limousine service for a 1-day trip in September 2004.

9. We concluded that Mr. Schuster did not always use transportation services that were the most advantageous to the Government when on official travel. He, on occasion, rented a car rather than use less costly or free transportation, such as taxi or free hotel shuttle service, when meetings were at the same location as his lodging. In addition, his frequent use of a private limousine service roundtrip from his home to the airport in lieu of using a less costly mode of travel increased his transportation costs by about 50 percent.

10. (b)(5) [redacted] (b)(5) [redacted] (b)(5) [redacted] I am providing this memorandum to you for your information, official use, and whatever action you deem appropriate. It is subject to the provision of the Privacy Act of 1974 (5 USC § 552a). You may discuss its contents with Mr. Schuster and officials with a need to know within the bounds of the Privacy Act; however, this memorandum may not be released to Mr. Schuster. No response is necessary. If you have any questions, please call Ms. Linda Fournier, Director, Administrative Investigations Division, at (b)(7)(C) [redacted]

JAMES J. O'NEILL

2008-02037-IQ-0028

Department of Veterans Affairs

Memorandum

Date: March 30, 2009

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation – Misuse of Official Time by a Physician, Southern Arizona Health Care System, Tucson, Arizona (2008-02037-IQ-0028)

To: Director, Southern Arizona Health Care System

1. The VA Office of Inspector General, Administrative Investigations Division, investigated an allegation that (b)(7)(C) a full-time physiatrist assigned to the Polytrauma Network Site Team at Southern Arizona VA Health Care System, Tucson, Arizona, did not work full tours of duty. To assess the allegation, we obtained sworn, recorded testimony from (b)(7)(C) the Chief of Staff, the Chief Nurse Executive, the former Medical Director for Rehab and Transitional Care (retired), and other medical center and VA employees. We also reviewed time and attendance records, appointment schedules, and other relevant documents, Federal laws, regulations, and VA policies. We investigated and did not substantiate an allegation of nepotism, and we will not discuss it further in this memorandum.

2. We concluded that although (b)(7)(C) attended (b)(7)(C) sessions during (b)(7)(C) official tour of duty, did so with the authorization of the former Medical Director for Rehab and Transitional Care (retired), who improperly applied VA leave policy. In addition, we found that (b)(7)(C) time and attendance records improperly reflected that was at duty station on 30 occasions when was absent attending (b)(7)(C) sessions. Further, the Chief of Staff and (b)(7)(C) were incorrect in their belief that full-time physicians were considered present for the entire day if they worked a "majority" of the day and that they were not required to take leave when absent for a portion of the workday. We suggest that you ensure that the Chief of Staff and the title 38 employees for whom he is responsible become familiar with VA Handbook 5011, *Hours of Duty and Leave*, and ensure that they properly charge leave when absent from their duty stations. I am providing this memorandum to you for your information, official use, and whatever action you deem appropriate. No response is necessary.

3. The Standards of Ethical Conduct for Employees of the Executive Branch require employees to use their official time in an honest effort to perform official duties. 5 CFR § 2635.705. VA policy states that all employees are expected to be on duty during the full period of their tours of duty unless absent on approved leave. VA Directive 5011, Paragraph 2d. VA policy also states that full-time physicians will be charged a full day's leave for a part of a day, unless officials authorized to approve

leave authorize the absence. The authority to approve absence for tardiness and absence for portions of a day will be exercised only when such absence from duty is of short duration and will not be interpreted to cover absences of a major portion of the day, wherein annual or sick leave should be properly charged. VA Handbook 5011/6, Part III, Chapter 3, paragraph 9.

4. Two employees told us that they heard gossip of (b)(7)(C) abusing time; however, most employees said that they were not aware of any abuse by (b)(7)(C) One employee said that had duty hours similar to (b)(7)(C) and that saw (b)(7)(C) every day. The former Medical Director for Rehab and Transitional Care (retired) said that he never received any complaints indicating that (b)(7)(C) was unavailable during workday. Further, the employee who was responsible for processing (b)(7)(C) timekeeping records told us that (b)(7)(C) did not arrive late or depart early, and (b)(7)(C) saw (b)(7)(C) on the unit speaking with nurses, conferring with nurse practitioners, and attending meetings.

5. (b)(7)(C) told us that VA tour of duty was 8:30 a.m. to 5:00 p.m., Monday through Friday; however, said that on Mondays reported to work at 8 a.m. for rounds, departing that afternoon between 4:45 p.m. and 5:00 p.m. (b)(7)(C) told us that in May 2007 (b)(7)(C) further said that did not take sick leave to attend (b)(7)(C) however, said that notified supervisor that was leaving duty station. Furthermore (b)(7)(C) said that they never take sick leave.

6. (b)(7)(C) schedule reflected that attended numerous sessions during duty hours between May and October 2007. VA time and attendance records for that time period reflected that 30 of the (b)(7)(C) sessions were during (b)(7)(C) VA duty hours, yet the records did not reflect that was on an authorized absence. (b)(7)(C) told us that after attending morning appointments, (b)(7)(C) returned to work, but after afternoon sessions went home. Records reflected only two morning (b)(7)(C) sessions, August 9 and September 21, and the rest were afternoon appointments. Additionally, an internet mapping site estimated that the driving time between (b)(7)(C) duty station and (b)(7)(C) site was about 30 minutes. The following are a few examples:

Date	Duty Hours	(b)(7)(C)	Time Absent
06/11/2007	8:00 a.m. – 5:00 p.m.	3:00 p.m. – 3:45 p.m.	2.5 hours
07/06/2007	8:30 a.m. – 5:30 p.m.	2:30 p.m. – 3:15 p.m.	3.5 hours
08/13/2007	8:00 a.m. – 5:00 p.m.	4:00 p.m. – 4:45 p.m.	1.5 hours

7. The Chief of Staff told us that (b)(7)(C) attended (b)(7)(C) two to three times per week and that the Chief Nurse Executive granted (b)(7)(C) permission to leave (b)(7)(C) duty station to attend these sessions. He further said that full-time physicians were permitted to be absent from their duty stations for "a couple of hours," without a

charge to their leave, for personal medical appointments during their workday, as long as they worked the "majority of the day." The Chief Nurse Executive told us that she did not authorize these absences; however, she believed the former Medical Director for Rehab and Transitional Care did. The former Director said that he permitted (b)(7)(C) to attend (b)(7)(C) sessions during (b)(7)(C) duty hours; that he did not keep a record of (b)(7)(C) absences; nor did he require (b)(7)(C) to submit a request for sick leave. He further said that physicians were not required to take leave, if they were present for "so many hours a day." The Director of Employee Relations and Performance Management Service, the office responsible for VA Handbook 5011, *Hours of Duty and Leave*, told us that the intent of VA policy was to allow an absence of less than 1 hour, due to an unnecessary delay, not to allow full-time physicians to be absent from duty when appropriate leave should be taken.

8. We concluded that although (b)(7)(C) attended (b)(7)(C) sessions during (b)(7)(C) official tour of duty, (b)(7)(C) did so with the authorization of the former Medical Director for Rehab and Transitional Care (retired), who improperly applied VA leave policy. In addition, we found that (b)(7)(C) time and attendance records improperly reflected that (b)(7)(C) was at (b)(7)(C) duty station on 30 occasions when (b)(7)(C) was absent attending (b)(7)(C) sessions. Further, the Chief of Staff and (b)(7)(C) were incorrect in their belief that full-time physicians were considered present for the entire day if they worked what they deemed a "majority" of the day and were not required to take leave when absent for a portion of the workday. (b)(5)

(b)(5)

9. I am providing this memorandum to you for your information, official use, and whatever action you deem appropriate. It is subject to the provisions of the Privacy Act of 1974 (5 USC § 552a). You may discuss its contents with (b)(7)(C) and officials with a need to know within the bounds of the Privacy Act; however, this memorandum may not be released to (b)(7)(C) No response is necessary. If you have any questions, please call Ms Linda Fournier, Director, Administrative Investigations Division at (b)(7)(C)

JAMES J. O'NEILL

2008-02286-IQ-0166

Department of Veterans Affairs

Memorandum

Date: July 7, 2009

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation – Falsification of Employment Records, Sierra Pacific Network, Mare Island, CA (Case #2008-02286-IQ-0166)

To: Deputy Under-Secretary for Health for Operations and Management (10N)

1. The VA OIG Administrative Investigations Division investigated an allegation that Ms. Sheila Cullen, Veterans Integrated Service Network (VISN) 21 Director, falsified official employment records to state that she obtained an MBA, specifically in HCA, to obtain employment with VA and that this degree was a factor in her achieving promotions up to her current position. To assess this allegation, we obtained sworn testimony from Ms. Cullen and other VA employees and reviewed official personnel records, other relevant documents, Federal laws, regulations, and VA policy.

2. We substantiated that Ms. Cullen falsified official employment records to reflect that she obtained a Masters in Business Administration (MBA), specifically in Health Care Administration (HCA), when she did not. We found that although she was previously a graduate student, she did not complete the necessary academic credits to earn the degree nor was one awarded to her, yet she indicated on numerous official documents that Bernard M. Baruch College-Mt. Sinai School of Medicine bestowed that degree upon her. We suggest that Ms. Cullen receive refresher ethics and VA policy training and that you counsel her on the importance of a VA employee, especially a senior official who is held to a higher standard, to testify freely and honestly in cases respecting employment matters. We are providing this memorandum to you for your information and official use and whatever action you deem appropriate. No response is necessary.

3. Federal regulations state that employees will furnish information and testify freely and honestly in cases respecting employment and disciplinary matters. 38 CFR § 0.7355-12. Standards of Ethical Conduct for Employees of the Executive Branch state that public service is a public trust; that each employee has a responsibility to place loyalty to the Constitution, laws and ethical principles above private gain; and that employees shall endeavor to avoid any actions creating the appearance that they are violating the law or ethical standards. 5 CFR §2635.101. VA policy states that intentional falsification, misstatement, or concealment of material fact in connection with employment could result in a disciplinary action ranging from reprimand to removal. VA Handbook, 5021, Part I, Appendix A. The Office of Personnel Management (OPM) Standard Form (SF) 171, which is an Application for Federal Employment, states that a false answer to any question may be grounds for not employing an individual or for dismissing them after beginning work. The OPM SF-85P, which is a questionnaire used to conduct background investigations to establish whether an individual is eligible for a public trust or sensitive position, states that Federal agencies generally fire, do

not grant a security clearance, or disqualify individuals who have materially and deliberately falsified the form and that it remains a part of the permanent record for future placements. It further states that because the position for which the individual is being considered is one of public trust or sensitive, their trustworthiness is a very important consideration in deciding suitability for placement or retention in the position.

4. In a memorandum dated July 12, 1999, the Deputy Assistant Secretary for Security and Law Enforcement told the then Chief Network Officer that Ms. Cullen appeared to have falsified the SF-85P that she submitted in connection with her background investigation. He said that Ms. Cullen indicated on the form that she received an MBA in HCA in 1974 from Bernard M. Baruch College; however the verification returned from the college Registrar revealed that Ms. Cullen attended the school but that no degree was awarded. He further said that his office contacted Ms. Cullen first in August 1998, seeking additional documentation, and monthly thereafter for 11 months, and she still had not complied with the request. In a memorandum dated August 5, 1999, Ms. Cullen explained to the VA Sierra Pacific Network Director that she completed the didactic portion of the program but that she did not complete a thesis and was short of the required credits to be awarded an MBA degree. However, she did not explain why she initially listed inaccurate information.

5. In a memorandum dated October 6, 1999, the former (retired) Director of the Management Support Office provided the then Chief Network Director a summary of findings into an inquiry of whether Ms. Cullen "benefited inappropriately from claiming to have had an MBA degree." The Director concluded that Ms. Cullen's claim to possess an MBA did not appear to improperly affect her initial appointment or provide "undue weight for her subsequent advancements." However, the Director stated that "an untrue statement made by a senior official, even early in one's career, should give management pause, and cause them to reflect on whether or not the individual's contributions outweigh the infraction." We found no evidence that the then Chief Network Director addressed the issue of Ms. Cullen providing an untrue statement on an application for a security clearance, and in her personnel records we found additional documents in which she falsely claimed that she earned an MBA.

6. Ms. Cullen told us that although she believed that having an MBA could benefit her in her career and that it could "conceivably" give her an advantage over others without an MBA, she said that she did not believe that she fabricated information in reference to having an MBA on a resume or SF-171. She said that on these documents, she listed that she completed all the course work for an MBA but that she did not complete the thesis. She further said that she was truthful when filling out the paperwork for her security background investigation and that she was surprised when her former supervisor told her that there was an inquiry into a discrepancy on the security forms. When shown the SF-171 with her signature falsely stating that she earned an MBA, Ms. Cullen told us that she did not realize that she submitted inaccurate information nor was it intentional. When asked about the resume falsely stating that she earned an MBA, Ms. Cullen said that she did not know who wrote it, and she could not explain why it stated that she had an MBA. She also said that the OPM SF-85P would show that she did not claim to have a graduate degree; however, OPM records reflected that she included on this form that she had an MBA.

7. Personnel records contained the initial SF 171 that Ms. Cullen submitted to begin her employment at VA. She signed and dated the form on February 23, 1973, and it reflected that she was a graduate student with 16 semester hours, attending Bernard M. Baruch College-Mt. Sinai School of Medicine with a major in Public Administration. Records reflected that she received a career-conditional appointment at VA on July 1, 1973. In a review of records, we found that in addition to Ms. Cullen providing false information for a 1997 background investigation, she provided false information concerning her education in the following instances:

   - The VHA Management Support Office memorandum reported that the nomination form submitted by Ms. Cullen to participate in the Associate Director Training Program in 1983 falsely stated that she possessed an MBA.
   - An SF 171 that Ms. Cullen submitted for an Associate Director position, which she signed on September 9, 1985, certified that all statements were true, complete, and correct. The SF 171 stated that Ms. Cullen completed 54 semester hours and earned an MBA in 1974.
   - A resume Ms. Cullen submitted, dated April 21, 1994, associated with her selection as the Director of the Northern California System of Clinics, stated that she earned an MBA in HCA in 1974.
   - An SF 171 that Ms. Cullen submitted, which she signed on October 6, 1997, stated that Ms. Cullen earned 54 semester hours in an HCA graduate program at the City University of New York, without reflecting a year of graduation, but listing the degree as an MBA.

8. Ms. Cullen told us that in discussions with colleagues and on job applications she made reference to previously being in a graduate program, but she said that she did not falsely assert that she completed the program or finalized the thesis. She further said that sometime in the late 1990's or early 2000's "the IG" did a review based on a security questionnaire she completed for OPM; that they looked at the original application she submitted to VA; that they found no evidence she claimed to have completed a graduate program; and that they cleared her of any wrongdoing. We found no evidence that VA OIG conducted an investigation; however, we found that the VHA Management Support Office conducted an inquiry into the matter.

9. As a result of the inaccurate information submitted by Ms. Cullen, additional official records mirrored this information. Below are a few examples:

   - A request for approval to promote Ms. Cullen to the position of Associate Medical Center Director, Martinez, California, approved on March 1, 1989, and a letter announcing the appointment, addressed to the Chairman, Committee on Veterans Affairs, United States Senate, stated that Ms. Cullen possessed an MBA.
   - An employee education, training, and incentive awards record, dated May 26, 1990, stated that she earned an MBA in 1974.
   - A request for approval, signed by the then VA Secretary on June 23, 1993, promoting Ms. Cullen to a Senior Executive Service Career Appointment, stated that she possessed an MBA in HCA.
   - A document reflecting that the then VA Secretary approved Ms. Cullen's selection as the Director of the Northern California System of Clinics on May 13, 1994, and a letter

announcing the appointment, addressed to the Chairman, Committee on Veterans Affairs, U. S. Senate dated September 23, 1994, stated that she possessed an MBA in HCA.

- Records to select the Director, VA Medical Center, San Francisco, stated that the Network Screening Committee and Network Director identified Ms. Cullen as the top candidate, and stated that she had an MBA in HCA from the University of New York, and the VA Secretary approved her appointment on June 29, 1998.

10. Ms. Cullen told us that she could not recall anyone asking her about her education in any interview for a position within VA. Further, she said that she was not interviewed for the position of Associate Director; could not recall if she was interviewed to become a member of Senior Executive Service; and that she was not interviewed for the position of Medical Center Director of Northern California Health Care System. A VHA Human Resources Consultant told us that based on the timeframe of her promotions it was possible that the selections were based on Ms. Cullen's resumes and supervisory recommendations. However, she said that there was a high probability that Ms. Cullen had a personal interview when she competed for her first position as a VA Medical Center Director and to enter Senior Executive Service. Additionally, records for the selection process for the position of Director, VA Medical Center, San Francisco, reflected that the screening committee interviewed her for that position.

11. After requesting that Ms. Cullen provide us a copy of her transcript numerous times over 8 months, she produced a copy, dated March 24, 2009, from Bernard M. Baruch College. The transcript reflected that Ms. Cullen earned 45 credit hours, not the 54 she claimed on official records, in an unnamed graduate program. The transcript showed that she did not earn an MBA, which was contrary to numerous entries on official records, (b)(7)(C)
(b)(7)(C)
(b)(7)(C)

12. We found that Ms. Cullen included false information concerning her college education on official employment records. She admitted that an MBA degree on her applications for opportunities within VA could benefit her career and give her an advantage over others without a graduate degree. Ms. Cullen falsified the fact that she had a Master's degree on numerous occasions, including a form for a background investigation and applications for promotions, and throughout our investigation, she continued to make false assertions that she did not misrepresent having a Master's degree. Moreover, VHA regularly cited the phony Master's degree in various documents reflecting promotions and positive employment actions related to Ms. Cullen.

13. Bernard M. Baruch College transcripts stated that Ms. Cullen completed only 45 credit hours, (b)(7)(C) and did not earn an MBA. This is contrary to Ms. Cullen's entry on official records that she earned 54 credit hours and an MBA in 1974. Further, on an SF 171, she certified by her signature that all statements were true, complete, and correct when she submitted false information. This caused a "domino effect" in that most official records created subsequent to these submissions also contained inaccurate or false information. (We note that submitting false statements in official documents is a Federal crime; however, it appears

that the statute of limitations has expired in this case. 18 USC § 1001.) We recognize that the most recent document containing false information was dated 1997; but as recent as 2009, Ms. Cullen continued to assert that the information she put on these official records was a mistake and not intentional.

14. (b)(5) (b)(5) We are providing this memorandum to you for your information and official use and whatever action you deem appropriate. It is subject to the provisions of the Privacy Act of 1974 (5 U.S.C § 552a). You may discuss the contents of this memorandum with Ms. Cullen, within the bounds of the Privacy Act; however, it may not be released to her. No response is necessary. If you have any questions, please contact Ms. Linda Fournier, Director, Administrative Investigations Division, at (b)(7)(C)

James J. O'Neill

2007-1892-IQ-0137

Department of Veterans Affairs

Memorandum

Date: July 29, 2009

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation – Alleged Abuse of Authority, Poor Leadership, and Ethics Violations, Veterans Integrated Service Network 7, Duluth, GA (2007-1892-IQ-0137)

To: Deputy Under Secretary for Health for Operations and Management (10N)

1. The VA OIG Administrative Investigations Division investigated allegations that Mr. Thomas A. Cappello, former (Acting) Network Director, and Mr. Marc A. Magill, former (Acting) Deputy Network Director, engaged in unprofessional conduct by telling inappropriate jokes, making sexist remarks, and using profanity. In addition, Mr. Cappello allegedly improperly detailed Mr. Magill into the Deputy Network Director position, a higher grade with promotional potential. To assess the allegations, we interviewed Mr. Magill, Mr. Cappello, and current and former VA employees. We reviewed Human Resources (HR) files, personnel records, organization charts, electronic mail correspondence, Federal regulations, and VA policies.

2. We concluded that Mr. Cappello engaged in unprofessional conduct when he made inappropriate comments and used inappropriate language in the workplace. We also concluded that although Mr. Cappello properly detailed Mr. Magill into the (Acting) Deputy Network Director position, he violated policy when he allowed him to stay in the position for 18 months. We found that while Mr. Cappello was the approving official for the detail, the former Network HR Manager did not ensure that Mr. Cappello properly followed policy in this personnel action. We suggest that you provide guidance to Mr. Cappello concerning his unprofessional conduct and to ensure that he follows policy when detailing employees. (The former HR Manager is no longer with VA.) We are providing this memorandum for your information and official use and whatever action you deem appropriate. It is subject to the provisions of the Privacy Act of 1974 (5 USC § 552a). No response is necessary. We did not substantiate other allegations, and we will not discuss them in this memo.

3. Mr. Cappello served as the (Acting) Network Director (b)(7)(C)
(b)(7)(C)
(b)(7)(C) (b)(7)(C)
(b)(7)(C)

4. In response to the allegation that Mr. Cappello and Mr. Magill created an unprofessional office atmosphere by telling inappropriate jokes, making sexist remarks, and using profanity, Mr. Cappello denied telling jokes or making sexist comments, and he said that he never heard Mr. Magill make any comments of that nature. Mr. Cappello further said that if he heard someone doing so, he would take immediate action. He said that, on occasion, he used an expletive out of frustration; however, he said that was not his usual practice. He said that he never heard Mr. Magill use profanity, and Mr. Magill told us that he never heard anyone, to include Mr. Cappello, make any inappropriate comments or tell inappropriate jokes in the workplace. He further said that neither the organization nor he would tolerate such behavior.

5. Only one employee, of the many interviewed, told us that they heard Mr. Magill make what they thought was an unprofessional comment; however that employee could not recall what Mr. Magill supposedly said. Most employees said that they never heard Mr. Cappello make any unprofessional comments; however, one said that she heard him refer to women as "a bunch of whiners." She further said that on one occasion, Mr. Cappello referred to a particular woman by saying that she was "pretty to look at but way too aggressive for a woman." Another employee told us that once in a meeting, Mr. Cappello commented that a particular vacancy would probably be filled by "some dumb woman." In yet another example, an employee said that Mr. Cappello said, when speaking about a particular decision to be made, "it was a group of women, and you know how they decide things." The VISN HR Manager told us that he received no complaints concerning Mr. Cappello; however, he said that one employee brought to his attention her concerns with Mr. Cappello referring to the female staff as "gals" or "ladies." The HR Manager said that he spoke to Mr. Cappello about using that verbiage, and he said that Mr. Cappello was surprised and said that he did not intend for it to be taken as an insult.

6. In addition, most employees told us that they overheard Mr. Cappello use what they considered profanity, citing examples of "shit, damn, or hell." Several employees said that Mr. Cappello commonly used these words, and one employee said that some employees were uncomfortable with Mr. Cappello's use of these words. Another employee told us that in another part of the country, Mr. Cappello's use of this language may have been acceptable; however in the southeast, it was "kind of culturally a slap." (b)(7)(C) said that his use of phrases such as "what the hell" or "god damn" in professional discussions made employees uncomfortable. All employees told us that Mr. Cappello never directed this language toward anyone in particular, citing examples of him frequently using these words and phrases in their morning meetings or when talking about his golf game. VA Policy provides penalties for disrespectful conduct, use of insulting, abusive, or obscene language to or about other personnel. VA Handbook 5021, Part I, Appendix A.

7. With respect to the alletation regarding an improper detail, the Standards of Ethical Conduct for Employees of the Executive Branch state that employees shall act impartially and not give preferential treatment to any individual. 5 CFR § 2635.101. VA policy states that employees may be detailed in 120-day increments to the same or lower grade positions for up to 1 year and that a detail to higher grade position may be made for up to 1 year during periods of major reorganization. Details of 120 days to higher graded positions in the absence of a major reorganization may be extended for an additional 120 days. If a detail of more than 120 days is made to a higher graded position, or to a position with known promotion potential, it must be made under competitive promotion procedures. Whenever possible, temporary promotions should be considered for employees serving in higher grade positions for other than brief periods. VA policy defines a formal detail as one that is 30 days or longer, and it states that the Service or Division Chief or higher level manager is the approving official. VA Handbook, Part 3, Chapter 2, paragraph 13. Policy also states that the HRM Officer is responsible for anticipating staffing needs, developing plans for meeting those needs, and being aware of situations, conditions, and developments which indicate future personnel needs in each program. VA Handbook 5005, Part I, Chapter 1, paragraph 3.

8. In reference to an allegation that Mr. Cappello gave Mr. Magill preferential treatment and improperly detailed him, Mr. Cappello told us that (b)(7)(C)

(b)(7)(C)

(b)(7)(C) Mr. Cappello said that he therefore selected Mr. Magill as the (Acting) Deputy Network Director. Mr. Cappello also told us that he discussed rotating the position to give other employees an opportunity to gain experience as a Deputy Network Director,

but as time passed, he decided it was not in the best interest of the organization. He said that his goal was to keep stability within the office until a new Network Deputy Director could be appointed.

9. Mr. Magill was the (Acting) Deputy Network Director from January 2006 to June 2007. (b)(7)(C) (b)(7)(C) (b)(7)(C) Mr. Magill further said that he approached the challenging situation by treating the employees with respect at all levels, valuing their contributions to the organization and the team, and giving them all equal opportunities. He said that his approach was to try and match the needs of the organization with the skills of the employees, taking into consideration each employee's career development goals.

(b)(7)(C)

11. Two employees told us that when Mr. Cappello became the (Acting) Network Director, he said that he would rotate the (Acting) Deputy Network Director's position between Health System Specialist (HSS) staff every 30 days with Mr. Magill being the first to serve in the position. They said that after Mr. Magill finished his 30 days, Mr. Cappello decided that he was not going to rotate the position, because he trusted and felt comfortable with Mr. Magill. The employees said that they did not think it was appropriate for Mr. Cappello to keep Mr. Magill in the (Acting) position when he was the least experienced among the other HSS staff and their initial agreement was to rotate the position. (b)(7)(C) (b)(7)(C)

12. Personnel records reflected that Mr. Cappello initially detailed Mr. Magill as the (Acting) Deputy Network Director from January 9 to February 7, 2006; however, Mr. Magill stayed in the position through June 2007. Mr. Cappello told us that due to the disrupted work environment (b)(7)(C)

(b)(7)(C) he selected Mr. Magill because he was neutral in the issues (b)(7)(C) (b)(7)(C) He said that he discussed with his staff the possibility of rotating the position, but he said that as time passed, he realized that to maintain stability until a new Deputy Network Director was appointed, he kept Mr. Magill in the position. He further said that he considered competing the position as a temporary promotion, but he believed that the situation with the previous Network and Deputy Network Directors would be resolved before he could get the position filled.

13. The HR Manager told us that Mr. Magill remained in the (Acting) Deputy Network Director's position for over a year. (b)(7)(C) said that the matter was not handled properly, and they did not follow proper procedures, after the initial detail expired. (b)(7)(C) further said that according to policy they should have formally requested that the detail be a temporary promotion, since it was for such a long period of time. (b)(7)(C) said that due to the thought that the situation would end "at any moment," the expectations were that it was to be of a short duration.

14. We concluded that Mr. Cappello engaged in unprofessional conduct when he made inappropriate comments and used inappropriate language. Given an already "unhealthy" and disrupted environment and hypersensitive employees, he should have been cognizant of how these employees would receive his comments. We also concluded that Mr. Cappello failed to follow policy when he permitted Mr. Magill to remain in the (Acting) Deputy Network Director's position for 18 months. Further, we found that the former HR Manager failed to follow up with Mr. Cappello, after the completion of the first 120-day detail, to ensure the position was properly filled. (The former HR Manager is no longer with VA.) We recognize that Mr. Cappello saw the importance of maintaining consistency within the Network office; however, that did not preclude him from following policy by making it a temporary promotion or filling the position temporarily through the competitive process. (b)(5)

15. We are providing this memorandum for your information and official use and whatever action you deem appropriate. It is subject to the provisions of the Privacy Act of 1974 (5 USC § 552a). You may discuss the contents of this memorandum with Mr. Cappello, within the bounds of the Privacy Act. However, the memorandum may not be released to Mr. Cappello. No response is necessary. If you have any questions, please call Linda Fournier, Director, Administrative Investigations Division, at (b)(7)(C)

James J. O'Neill

Department of Veterans Affairs

Memorandum

Date: December 1, 2009

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation – Alleged Mismanagement of Government Resources, VA Medical Center, Huntington, WV, (2008-2052-IQ-0151)

To: Director, Huntington VA Medical Center

1. The VA Office of Inspector General (OIG) Administrative Investigations Division discovered that (b)(7)(C) Special Assistant, Huntington VA Medical Center, improperly used the Government centrally billed account to pay for personal indirect travel on at least three occasions. We found that two medical center employees electronically submitted these three travel authorizations; that those two and another employee approved the three separate travel submissions; that (b)(7)(C) submitted the final expense reports; and (b)(7)(C) Chief of Fiscal Service, approved the three expense reports for (b)(7)(C) reimbursements. To assess our findings, we interviewed (b)(7)(C), (b)(7)(C) other VA employees, and you. We reviewed official travel records, expense reports, travel credit card statements, time and attendance records, Federal regulations, and VA policies.

2. We concluded that (b)(7)(C), (b)(7)(C) and other medical center employees violated Federal travel regulations and VA policy when they improperly used the Government centrally billed account to initially pay for personal indirect travel. In addition, (b)(7)(C) did not resolve an improperly reimbursed baggage fee that [redacted] received for the shipment (b)(7)(C) (b)(7)(C) of a pet while on official travel, until [redacted] realized it was under OIG's scrutiny. We further found that the Medical Center Fiscal Services improperly allowed every employee who had official travel arranged through a travel clerk to use the Government centrally billed account rather than their contractor-issued Government travel cards. (b)(6) (b)(5),(b)(7)(C) (b)(5) We are providing this memorandum to you for your information, official use, and whatever action you deem appropriate. It is subject to the provisions of the Privacy Act of 1974 (5 USC § 552a). **No response is necessary**.

3. Federal travel regulations state that employees must travel by the usually traveled route unless the agency authorizes or approves a different route as officially necessary; reimbursement is limited to the cost of travel by a direct route on an uninterrupted basis; and employees are responsible for any additional costs. 41 CFR §301-10.7 and -10.8. A ruling by the Civilian Board of Contract Appeals stated that the Government has no authority to incur the added cost associated with a revised route and that erroneous authorizations or incorrect advice provided by Government officials cannot create or enlarge entitlements that are not provided by statute or regulation. CBCA 471 – TRAV.

VA policy states that VA employees are required to use their Government contractor-issued charge card for all official travel expenses unless an exemption is specifically granted; that employees may only use the card for expenses incurred in connection with official travel; and the centrally billed account is only used for employees who obtained an exemption from using the travel card or are not eligible for the card. VA Directive 0631.1

4. (b)(7)(C) told us that all travel to Florida was at own expense unless was on official travel with you. In a review of travel records, we found three separate occasions when (b)(7)(C) was on official travel and took indirect travel routes to vacation home located in West Palm Beach, Florida. Records showed that the method of payment for airfare was the Government centrally billed account and that air travel was reserved on noncontract air carriers, citing justification as flight arrival/departure cities and times. (b)(7)(C) told us that paid the difference between the cost of official travel and that of indirect travel. We found the following improper usage of the Government centrally billed account to initially pay for (b)(7)(C) indirect travel to West Palm Beach, FL:

- July 28-31, 2008 – Huntington, WV; to Washington, DC; to West Palm Beach, FL; no return city reflected
- February 24 - March 2, 2009 – Huntington, WV; to Nashville, TN; to West Palm Beach, FL; to Huntington, WV
- April 28 – May 3, 2009 – Huntington, WV; to St. Louis, MO; to Houston, TX; to West Palm Beach, FL; to Huntington, WV

5. (b)(7)(C) told us that the Medical Center Fiscal Services used the centrally billed account as the method of payment for all employees who used the travel clerk to make their travel arrangements. said that FedTraveler was centralized within Fiscal Services, and the travel clerk made flight arrangements for employees, unless otherwise approved. further said that did not purchase own airline tickets; therefore did not use Government travel card for official air travel. told us that Fiscal Services permitted employees to take indirect routes when charging their travel to the centrally billed account; however said that Fiscal Services then issued a bill of collection to the employee, if the cost of the trip exceeded the cost of taking a direct route.

6. travel records showed that received a reimbursement for excess baggage fees of $100 on July 28, 2008, and $15 on July 31, the indirect route portion of travel. could not explain the $100 fee, but later told us that the fee was a charge for transporting "pet." said that a secretary or student trainee who "did not realize" the purpose of the fee must have submitted it for reimbursement. also said that in looking at travel records, discovered other expenses related to the trip which had not been reimbursed to said that calculated those expenses to be $27, leaving a net of $73 owed to the Government. said that asked the travel clerk to issue a bill of collection, which then paid.

7. You told us that, in general, you were not the approving official for medical center employee travel and that you only approved travel when the approving official was not available or something needed to be approved on short notice. (b)(7)(C) travel records reflected that you were not the approving official for [redacted] travel or reimbursements. (b)(7)(C) Although we did not audit travel records for all medical center employees, we are concerned, after reviewing (b)(7)(C) travel records and receiving medical center employees' testimony, about the potential for misuse of Government funds, due to official travel, as well as indirect travel, being improperly charged to the centrally billed account.

8. We concluded that (b)(7)(C) and the approving officials for (b)(7)(C) travel authorization and reimbursement claims did not exercise due diligence in oversight of the travel program. Additionally, we concluded that (b)(7)(C) improperly scheduled indirect routes while on official travel and did not proactively resolve improper reimbursements; however, (b)(7)(C) we recognize that [redacted] did repay the net amount when it was brought to [redacted] attention. We (b)(7)(C) found that the Medical Center Fiscal Services improperly allowed the travel clerk to use the centrally billed account to pay for every medical center employee who had travel arranged through the clerk, to include indirect travel. Further, officials approving (b)(7)(C) travel (b)(7)(C) did not adequately review [redacted] expense reports before approving them, as reflected in (b)(7)(C) receiving a reimbursement for a $100 fee to transport a pet. (b)(5)

(b)(5),(b)(7)(C) [redacted]

9. We are providing this memorandum to you for your information and official use and whatever action you deem appropriate. It is subject to the provisions of the Privacy Act of 1974 (5 USC § 552a). You may discuss the content of this memorandum with the appropriate employees, within the bounds of the Privacy Act; however, it may not be released to them. **No response is necessary**. If you have any questions, please call Linda Fournier, Director, Administrative Investigations Division, at (b)(7)(C) [redacted]

James J. O'Neill

2008-00379-IQ-0012

Department of Veterans Affairs

Memorandum

Date: January 14, 2010

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation – Improper Gift from a Prohibited Source, Misuse of Time and Resources, and Misuse of Veterans Canteen Service Promotional Funds, VA Medical Center, Birmingham, Alabama (2008-00379-IQ-0012)

To: Director, Birmingham VA Medical Center
Director, Veterans Canteen Services

1. VA Office of Inspector General Administrative Investigations Division investigated allegations that (b)(7)(C), Chief of Business Management Service (BMS), accepted a gift from a prohibited source for (b)(7)(C) and subordinates when held a BMS employee retreat at a lake house belonging to (b)(7)(C), the former Birmingham VA Medical Center BMS Chief, currently a VA contractor, and a VA contractor at the time of the 2007 retreat. (b)(7)(C) also allegedly misused (b)(7)(C) and subordinates' official time when allowed retreat attendees to partake in boat rides during their tours of duty. To assess the allegations, we interviewed (b)(7)(C) (b)(7)(C), the Veterans Canteen Service (VCS) Chief Financial Officer (CFO), the Medical Center Canteen Chief, and other VA employees. We also reviewed VCS promotional fund policies, BMS employee retreat records, other VCS sponsored event records, past OIG investigations, VA Office of General Counsel (OGC) opinions, Federal regulations, and VA policies. The former Medical Center Director was also allegedly involved in the employee retreat; however (b)(7)(C) (b)(7)(C)

2. We concluded that (b)(7)(C) improperly accepted a gift, a thing of value for (b)(7)(C) and subordinates, from a prohibited source; misused Government resources when procured Government-owned vehicles to transport VA employees to (b)(7)(C) home; and misused and subordinates' official time when they did not conduct VA business during their official duty hours. In addition, we substantiated that VCS promotional funds were improperly used to purchase food and beverages for an employee retreat. I am providing this memorandum to you for your information and official use and whatever action you deem appropriate. No response is necessary.

3. The Standards of Ethical Conduct for Employees of the Executive Branch state that an employee cannot solicit or accept a gift from a prohibited source, and it defines a prohibited source as any person who does business or seeks to do business with the employee's agency. 5 CFR §§ 2635.202 & 203. Standards also

state that employees must use official time in an honest effort to perform official duties. 5 CFR § 2635.705. Federal law prohibits the use of Government-owned vehicles for anything other than official purposes. 31 USC §§ 1344 & 1349.

4. (b)(7)(C) told us that (b)(7)(C) held an employee retreat on October 11 and 12, 2007. (b)(7)(C) said that it was an annual event that began when (b)(7)(C) was the BMS Chief; however, we did not look at any retreats held prior to the one in 2007. (b)(7)(C) also told us that (b)(7)(C) was now a VA contractor. Contract records, dated July 25, 2006, reflected that (b)(7)(C) was the Contracting Officer Technical Representative (COTR) for contract # (b)(7)(C) between (b)(7)(C) and VA, and that under that contract, (b)(7)(C) was to provide the medical center with oversight, education, and deficiency follow-up for three Alabama State Veterans nursing homes and the contract nursing home program. (b)(7)(C) said that (b)(7)(C) provided (b)(7)(C) lake house free of charge for the annual retreat, and the event consisted of lunch, a review of FY 2007 accomplishments, discussions of FY 2008 goals, an evaluation of ways to improve employee/ customer satisfaction, and boat rides. (b)(7)(C) further said that 68 employees and 13 managers attended the 2-day retreat held at (b)(7)(C) lake house located about 50 miles south of Birmingham. Records reflected that the BMS Chief arranged, through the Office of the Medical Center's Chief of Police, to use Government-owned vehicles to transport attendees to and from (b)(7)(C) lake house for the 2-day retreat.

5. (b)(7)(C) told us that (b)(7)(C) discussed holding the retreat at other locations; however, (b)(7)(C) said that the employees really enjoyed the lake house atmosphere. (b)(7)(C) said that this was the third or fourth retreat held at that location, and (b)(7)(C) said that (b)(7)(C) did not feel there was anything wrong with using the VA contractor's lake house, since (b)(7)(C) did not benefit from it. (b)(7)(C) further said that it provided employees an opportunity to get involved in planning and taking ownership of their work; however, (b)(7)(C) said that the retreat was voluntary on the part of the employees. (b)(7)(C) said that employees who did not attend the retreat were required to work their normal tours of duty. (b)(7)(C) told us that (b)(7)(C) divided employees who wanted to attend the retreat into two groups, with one group attending the first day and the other group attending the second day; however, (b)(7)(C) said that the agenda was the same for both days. (b)(7)(C) said that employees left the medical center for the lake house around 10:00 a.m., with some riding in Government-owned vehicles, and the employees left the lake house to return to the Medical Center at 3:00 p.m.

6. (b)(7)(C) said that during the 4-hour employee retreat, the attendees helped set up, participated in a "meet and greet," discussed FY 2007 accomplishments and FY 2008 goals, ate lunch, and participated in brainstorming sessions for improving employee and customer satisfaction. However, we found that the October 2007 BMS employee retreat agenda did not contain any scheduled time for the agenda items listed. One employee told us that employees left the medical center in Government-owned vehicles around 8:30 a.m., traveled for 30 to 45 minutes, and once they arrived at the lake house, they "just cooled out and relaxed." The employee said that during their time at the retreat, employees played cards, read books, watched

television, took photographs, or went on boat rides. The employee also said that they ate lunch around noon, had a group session, and left for the medical center around 2:00 p.m. Another employee told us that they left the medical center at 8:00 a.m., and when they arrived at the lake house, they "mainly relaxed" by reading, listening to music, or taking boat rides. The employee said that after lunch, they had a brainstorming session at about 2:00 p.m., and they left the house at about 3:00 p.m. A different employee told us that they left the medical center at about 9:00 a.m., drove to the lake house, set-up, walked and sat around, socialized, took boat rides, ate lunch, had a meeting, and returned to the medical center by 4:00 or 4:30 p.m.

7. (b)(7)(C) initially told us that in previous years, (b)(7)(C) gave employees rides on a pontoon boat, but could not recall if employees rode on the boat in 2007. further said that employees were entitled to a 30-minute lunch break, so if they took a boat ride during their 30-minute lunch, did not see it as wrong. All the BMS employees we interviewed said that (b)(7)(C) provided boat rides to employees on both days. (b)(7)(C) told us that served as the Medical Center BMS Chief for over 25 years, and that was currently a VA contractor. said that during VA tenure, began the retreats, because thought it was a good idea for the employees to get away from the medical center to discuss the past year's accomplishments and develop plans and goals for the upcoming year. (b)(7)(C) further said that held the retreats at house, as there was no other place big enough to accommodate the group without incurring a cost. He said that in 2007, (b)(7)(C) asked to use house, and agreed. further said that was not compensated for the use of house but that incurred a personal cost to buy entertainment supplies and gas for boat.

9. Federal law provides that appropriated funds may only be used for the purposes intended. 30 USC §1301. A November 6, 1992, OGC Advisory Opinion, #44-92, states that VCS funds were appropriated funds and may be used "for activities designed to encourage added business and win increased support from VA patients and employees." It further noted that VCS could not legally use VCS promotional funds for the principal objective of enhancing employee morale and welfare. In an April 3, 1996, Memorandum, OGC reiterated that VCS promotional funds may be lawfully used only for activities that have as a primary purpose of promoting the VCS, as opposed to employee morale. VCS policy, Directive 06-04, dated November 1, 2006, states that promotional funds are used to advertise and promote VCS, build customer loyalty and support, increase sales, and encourage an on-going partnership with VA Medical Centers and other VA entities; that events must include recognition designed to maximize promotion of VCS, with VCS identified as the "Sponsor;"; that posters be placed in areas that provide for maximum advertising; and that local canteens be the primary source for VA activities using VCS promotional funds to purchase retail or food supplies, merchandise, or services.

10. In a November 17, 2000, OIG Advisory, we concluded that the Northern Indiana Health Care System Director improperly used promotional funds to purchase lunches for Medical Center Directors and senior managers attending meetings at the Medical

Center. In a January 25, 2002, OIG Report #01-01129-41, we concluded that the VCS Director located in St. Louis, MO, improperly used promotional funds to improve employee morale and the facility image. That report stated that although in some instances VCS may have received credit for "sponsoring" the event, mere "sponsorship" was insufficient to justify the use of the funds. In an April 15, 2002, OIG Advisory, we brought to the attention of the Deputy Under Secretary for Health another example of VCS funds being improperly spent to purchase items meant to enhance staff camaraderie at the Minneapolis, MN, Network Office. In a July 16, 2002, OIG Advisory, we concluded that VCS promotional funds were improperly used at the Kansas City VA Medical Center to purchase food for an organized event to recognize employees' performances.

11. The VCS internet website states that VCS was created for the primary purpose of making available to veterans who are hospitalized or domiciled in VA hospitals and homes, reasonably priced articles of merchandise and services essential to their comfort and well being. The VCS is also authorized to provide sales and services to employees, veteran's service organization members, patient relatives, and other facility visitors. The website also states that VCS is an independent unit within VA and that it operates 172 canteens at VA Medical Centers across the country. VCS Policy Directive 06-04, states that the VCS Director may make available to VA entities a specific spending authority for purposes of promoting the VCS. Promotional funds are used to advertise and promote VCS, build customer loyalty and support, increase sales, and encourage an on-going joint partnership with VA Medical Centers and other VA entities.

(b)(7)(C) 12. (b)(7)(C) told us that [redacted] used VCS promotional funds totaling $406.07 to purchase food for the 2007 BMS employee retreat. VCS records reflected that (b)(7)(C) submitted a request for funds on October 1, 2007, and both the former (now retired) Medical Center Director and the Canteen Chief both approved (b)(7)(C) request. A sales receipt totaling $329.01, dated October 8, reflected that (b)(7)(C) purchased food items at a Sam's Club store, such as beef patties, hot dogs, potato salad, chips, soda, brownies, etc., for the retreat. (b)(7)(C) told us that [redacted] used (b)(7)(C) promotional funds for the employee retreat based on what was done by the previous (b)(7)(C) BMS Chief, and [redacted] considered it a morale boosting event. [redacted] said that [redacted] did not (b)(7)(C) know how the VCS promotional funds could be used, other than to advertise the (b)(7)(C) VCS. [redacted] further said that [redacted] believed that using the funds for the employee retreat (b)(7)(C) was proper, due to the fact that all the attendees were medical center employees and she displayed a sign near the food reflecting VCS sponsorship. Employees told us that they did not recall seeing a VCS sign; however, one said that (b)(7)(C) verbally acknowledged VCS. Although (b)(7)(C) initially told us that having a retreat at the former BMS Chief's lake house was proper; that it was proper to use VCS promotional funds to purchase food for the event; and that [redacted] intended to hold (b)(7)(C) future retreats at the lake house, (b)(7)(C) later said that [redacted] did not hold an (b)(7)(C) employee retreat in 2008 or 2009.

13. The Medical Center Canteen Service Chief told us that [redacted] believed that VCS promotional funds could be used for any event where the majority of the participants were VCS customers or potential customers, citing examples such as sponsoring a holiday decorating contest or a lunch with a Medical Center Director. He further said that [redacted] believed that the 2007 BMS employee retreat complied with policy. The VCS CFO said that the BMS employee retreat met the promotion fund policy criteria, as attendees were medical center employees, and they recognized VCS as the sponsor. [redacted] said that promotional funds could be used for employee picnics where trinkets such as t-shirts and bandanas were given out; gift certificates for canteen services or area restaurants, if a facility did not have a canteen; holiday open house; or recognition events such as Nurses' Day. [redacted] said that [redacted] considered the Canteen Service Chiefs as the policy experts and that they should advise Medical Center Directors on ways to use promotional funds properly. [redacted] further said that [redacted] was not aware of any past OIG investigations into improper use of VCS promotional funds or OGC legal opinions concerning the use of promotional funds.

(b)(7)(C)

Conclusion

14. We concluded that [redacted] improperly accepted a gift from a prohibited source, a contractor doing business with VA, when [redacted] used [redacted] lake house; accepted and used his purchased entertainment items; and accepted his offer of boat rides, all to provide a 2-day retreat for her subordinates. We also concluded that [redacted] failed to use [redacted] official time and the official time of her subordinates in an honest effort to perform official duties for those 2 days. Although [redacted] said that the retreat was for employees to review accomplishments, discuss future goals, and develop ideas for improvement and that it was a morale boosting event, it was not mandatory for employees to attend. Attendees described it as a relaxing day away from the office, whereas, employees who did not attend worked their normal tours of duty. Moreover, [redacted] improperly used Government-issued vehicles to transport the employees to and from the retreat location.

15. We also found little connection between the employee retreat and VCS, its goods, or services, except that VCS promotional funds were used to pay for food items purchased for the retreat. Previously, OGC advised that VCS could not legally use VCS promotional funds for the principal objective of enhancing employee morale and welfare; however, contrary to this, both the Medical Center Canteen Service Chief and the VCS CFO believed that the retreat was a proper use of these funds. Further, VCS policy requires that local canteens be the primary source for activities using VCS promotional funds to purchase retail or food supplies, merchandise, or services; however, [redacted] held the retreat over 50 miles from the facility and spent over $300 on retreat food items at a local Sam's Club. Although [redacted] said that [redacted] displayed a VCS sign at the retreat, in a previous OIG investigation, we determined that mere "sponsorship" was insufficient to justify the use of VCS funds.

16. I am providing this memorandum to you for your information and official use and whatever action you deem appropriate. No response is necessary. It is subject to the provisions of the Privacy Act of 1974 (5 USC § 552a). You may discuss the contents with (b)(7)(C) the Medical Center Canteen Service Chief, and the VCS CFO, within the bounds of the Privacy Act; however, the memorandum may not be released to her. If you have any questions, please call Ms. Linda Fournier, Director, Administrative Investigations Division, at (b)(7)(C)

James J. O'Neill

2009-01492-IQ-0117

Department of Veterans Affairs

Memorandum

Date: January 19, 2010

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation – Improper Acceptance of Gratuities, National Programs and Special Events (2009-01492-IQ-0117)

To: Assistant Secretary for Public and Intergovernmental Affairs (002)

1. The VA Office of Inspector General Administrative Investigations Division investigated an allegation that (b)(7)(C) Director, National Veterans Wheel Chair Games, Office of National Programs and Special Events (NPSE), Office of Public and Intergovernmental Affairs, accepted gratuities from a prohibited source. To assess this allegation, we interviewed (b)(7)(C) and other NPSE employees; reviewed travel and email records; and reviewed Federal regulations and VA policy.

2. We found that some employees within NPSE felt that they were not subject to the same rules and regulations as other Federal employees concerning the acceptance of gifts from prohibited sources. (b)(5) (b)(5) (b)(5) We are providing this memorandum to you for your information and official use and whatever action you deem appropriate. No response is necessary.

3. The Standards of Ethical Conduct for Employees of the Executive Branch state that with limited exceptions, an employee shall not, directly or indirectly, solicit or accept a gift: (1) from a prohibited source; or (2) given because of the employee's official position. 5 CFR § 2635.202. Regulations state that a gift includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value, to include services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. 5 CFR § 2635.203(b). Regulations define a prohibited source as any person who: (1) is seeking official action by the employee's agency; (2) does business or seeks to do business with the employee's agency; (3) conducts activities regulated by the employee's agency; (4) has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or (5) is an organization a majority of whose members are described in paragraphs (d) (1) through (4) of this section. Id. 203(d). Federal acquisition regulations state that no Government employee may solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who (a) has or is seeking to obtain Government business with the employee's agency, (b) conducts activities that are regulated by the employee's agency,

or (c) has interests that may be substantially affected by the performance or nonperformance of the employee's official duties. 48 CFR § 3.101-2.

4. (b)(7)(C) told us that the city of Anchorage, Alaska, intended to bid on the 2012 or (b)(7)(C) 2013 Wheelchair Games, and in March 2009, [redacted] traveled to Anchorage at the invitation of the Anchorage Convention and Visitors Bureau to inspect new facilities that were added since the last time VA held the Wheelchair Games there. (b)(7)(C) said that while in (b)(7)(C) Anchorage, [redacted] made contact with an individual whom [redacted] described as a personal friend, (b)(7)(C) (b)(7)(C) and who [redacted] also said was an Event Planner under a VA contract for the previous Wheelchair Games in Anchorage. (b)(7)(C) said that the Event Planner wanted to again contract with VA, if the Wheelchair Games were held in Anchorage. (b)(7)(C) told us that upon leaving Anchorage to return home, the Event Planner gave [redacted] 20 pounds of Alaskan (b)(7)(C) King Crab Legs. Further, (b)(7)(C) said that this same individual gave [redacted] 20 pounds of (b)(7)(C) crab legs on one previous occasion contemporaneous to the previous Anchorage Wheelchair Games.

5. We found that other NPSE employees, during past site visits to Florida, accepted lunches from hotel executives while meeting with them regarding the possible use of their hotel for NPSE sponsored events. Although the value of each lunch was estimated to be around $15, the actual value of the lunch was unknown. In addition, the purpose of the visit was to evaluate the hotel to see if it could be used for a future NPSE event and the hotel executive was clearly a potential, if not actual, prohibited source.

(b)(5),(b)(7)(C)

[redacted]

7. We are providing this memorandum to you for your information and official use and whatever action you deem appropriate. It is subject to the provisions of the Privacy Act of 1974 (5 U.S.C. § 552a). You may discuss the contents of this memorandum with (b)(7)(C), within the bounds of the Privacy Act; however, it may not be released to (b)(7) No response is necessary. If you have any questions, please contact Ms. Linda Fournier, Director, Administrative Investigations Division, at (b)(7)(C)

JAMES J. O'NEILL

2008-03130-IQ-0001

Department of Veterans Affairs

Memorandum

Date: March 4, 2010

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation – Misuse of Official Time, Lexington VA Medical Center, Lexington, KY (2008-03130-IQ-0001)

To: Director, Lexington VA Medical Center

1. The VA Office of Inspector General Administrative Investigations Division investigated an allegation that Dr. Dennis Doherty, Chief of Medicine Service at the Lexington VA Medical Center (VAMC), misused his official time by giving non-VA lectures for remuneration without authorization during his VA duty hours. To assess this allegation, we interviewed Dr. Doherty; Dr. Walter Divers, the former VAMC Chief of Staff; Dr. Joseph Pellecchia, the current VAMC Chief of Staff; and another VA employee. We also reviewed VA time and attendance and personnel records; non-VA lecture schedules; and Federal laws, regulations, and VA policy.

2. We concluded that Dr. Doherty misused his official time when he was absent from his VA duty station without authorization on five occasions providing non-VA professional services for remuneration while receiving his VA salary. (b)(5) (b)(5) (b)(5) I am providing this memorandum to you for your information and official use and whatever action you deem appropriate. No response is necessary.

3. The Standards of Ethical Conduct for Employees of the Executive Branch require employees to use their official time in an honest effort to perform official duties and prohibits them from being compensated by any source other than the Government for teaching, speaking, or writing that relates to their official duties. 5 CFR §§ 2635.705 and 807. VA policy states that all employees are expected to be on duty during the full period of their tour of duty unless on approved leave. VA Directive 5011, Para. 2(d), (June 16, 2004). VA policy also provides that full-time physicians will be charged a full day's leave for absence for part of a day, unless excused by an official authorized to approve leave. This authority to approve absences for a portion of a day is to be exercised only when such absence is of short duration and will not be interpreted to cover an absence of a major portion of a day wherein annual or sick leave should be properly charged. VA Handbook 5011/6, Part III, Chapter 3, (January 26, 2006).

VA policy states that an unauthorized absence is defined as "any absence from duty which has not been approved," and requires that in cases of unauthorized absence, pay be forfeited in the applicable amount. The minimum charge for unauthorized absence for a full-time physician is one calendar day. VA Handbook 5011, Part III, Chapter 3, (June 16, 2004).

4. Dr. Doherty told us that his duty hours were Monday to Thursday 8:00 a.m. to 6:00 p.m. His VA time and attendance records, as compared to his non-VA lecture and travel schedule, reflected five instances when Dr. Doherty left his VA duty station early without taking leave or having an authorized absence. Dr. Doherty told us that in some instances, he left his duty station more than 5 hours early to arrive at his lecture destination in time to provide a non-VA professional service. Dr. Doherty said that on October 16 and November 13, 2007, he left the VAMC between 3:00 p.m. and 4:00 p.m. to drive to Indianapolis, Indiana, and Mansfield, Ohio, to give lectures. Dr. Doherty also told us that on January 23, 2008, he left the VAMC at 2:00 p.m. to give a lecture in Columbus, Georgia, and he said that on March 20, 2008 and August 27, 2008, he left the VAMC at 12:00 p.m. and 1:50 p.m., respectively, to give lectures in Kenilworth, New Jersey. Dr. Doherty told us that he received remuneration on each of these occasions for his lectures. Time and attendance records for these days reflected that Dr. Doherty worked his normal duty hours from 8:00 a.m. to 6:00 p.m. Dr. Doherty said that his then supervisor, Dr. Divers, did not authorize him to leave his duty station early.

5. Dr. Doherty told us that he thought it was permissible to leave his VA duty station early, without taking leave, if he completed his work, and that this was conveyed to him at his Chief of Service orientation and from recent discussions with Dr. Pellecchia, his current supervisor. He also said that he was unaware that he was required to obtain his supervisor's approval for being absent from his duty station or that he was prohibited from providing non-VA professional services for remuneration during his official VA time.

6. Dr. Divers told us that he did not recall permitting Dr. Doherty to leave VA early during his duty hours, and he said that about a year ago, another employee complained to him that Dr. Doherty frequently could not be found at times when he was required to be on-duty. He said that he spoke to Dr. Doherty about the matter and that Dr. Doherty told him that he was going to his affiliate office during his morning VA duty hours to use a computer there to check his VA email. Dr. Divers further said that he reminded Dr. Doherty of his VA responsibilities and that he had a computer in his VA office which he should use to check his VA email. However, Dr. Divers said that he was a "hands-off kind of person," so he did not follow up with Dr. Doherty to ensure he complied with these instructions.

7. Dr. Pellecchia told us that title 38 physicians may ask their supervisor to allow them to be absent for part of a day, provided they work a "substantial part of the day." He said that although VA Central Office did not explicitly define what constituted a substantial part of the day, the accepted "rule of thumb" was that a physician should work at least 4 hours to meet the "general tenor of the rule." He further said that his general rule was to not allow more than two of such absences within a pay period. For

a March 30, 2009, OIG Advisory Memorandum, the Director of Employee Relations and Performance Management Service, the office responsible for VA Handbook 5011, *Hours of Duty and Leave*, told us that the intent of VA policy providing approved absences for a portion of a day was to allow an absence of less than 1 hour, due to an unnecessary delay, not to allow full time physicians to be absent from duty when appropriate leave should be taken.

8. We concluded that Dr. Doherty misused his official time when he was absent from his duty station without authorization on five occasions providing non-VA professional services for remuneration while receiving his VA salary. (b)(5) (b)(5) (b)(5) I am providing this memorandum to you for your information and official use and whatever action you deem appropriate. It is subject to the provisions of the Privacy Act of 1974 (5 USC § 552a). You may discuss its contents with Dr. Doherty, Dr. Divers, and Dr. Pellecchia within the bounds of the Privacy Act; however, it may not be released to them. No response is necessary. If you have any questions, please call Ms. Linda Fournier, Director, Administrative Investigations Division, at (b)(7)(C)

JAMES J. O'NEILL

2010-00408-IQ-0010

Department of Veterans Affairs

Memorandum

Date: March 15, 2010

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation – Misuse of Travel Funds, Office of Information & Technology, VA Central Office (2010-00408-IQ-0010)

To: Assistant Secretary for Office of Information & Technology (005)

1. VA Office of Inspector General Administrative Investigations Division investigated an allegation that Mr. Stephen Warren, Principal Deputy Assistant Secretary, Office of Information & Technology (OI&T), misused travel funds when traveling to the United Kingdom (UK). To assess this allegation, we interviewed Mr. Warren and (b)(7)(C) Management Analyst, OI&T, and we reviewed travel records, Federal regulations, and VA policy.

2. We concluded that Mr. Warren did not exercise prudence when incurring travel expenses for official business and misused travel funds when he improperly sought reimbursement for lodging and per diem while on personal travel. Although Mr. Warren conducted official business during his personal travel, the purpose of the trip was for (b)(7)(C) to vacation in the UK, after a transatlantic crossing on an ocean liner. This was evident by Mr. Warren paying for his own transportation to and from the UK, as well as he and his wife staying in London while he traveled significant distances north of London to attend business meetings. Furthermore, Mr. Warren was required to pay for his own food and lodging for personal travel and that any official business was tangential to his family's vacation. (b)(5) (b)(5) (b)(5) I am providing this memorandum to you for your information and official use and whatever action you deem appropriate. No response is necessary.

3. Federal travel regulations state that agencies can only pay travel expenses that are essential to official business and prohibit the payment of excess costs resulting from circuitous routes or services unnecessary in the performance of official business. 41 CFR §§ 301-2.2 and -2.4. VA policy states that employees are expected to minimize costs of official travel; prohibits excess costs, circuitous routes, and services unnecessary or unjustified in the performance of official business; and states that an employee will be responsible for excess costs and any additional expenses incurred for personal preference for convenience. MP-1, Part II, Chapter 2, Paragraph 2(g), (February 28, 1995).

4. Mr. Warren told us that on August 1, 2007, he and (b)(7)(C) made their first payment on a 1-week transatlantic crossing aboard the Queen Mary 2 from New York City to Southampton, UK, sailing on June 8, 2008. He said that he, (b)(7)(C) (b)(7)(C) were all traveling together; however, at that time, they had no plans as to what they would do, upon arriving in the UK. Mr. Warren said that in December 2007, while at a conference, he met the Director of Infrastructure for the National Health Service (NHS) in the UK, and he said that sometime after that meeting, he decided that since he would be in the UK on personal travel, he would like to meet with his UK counterparts to ascertain how they met information technology challenges at NHS. (b)(7)(C) told us that about 4-5 months before Mr. Warren's June 2008 trip to the UK, he told (b)(7)(C) that he was taking a personal trip to the UK, and he asked (b)(7)(C) to help arrange meetings for him while he was there.

5. In an April 10, 2008, email, Mr. Warren asked the NHS Director if he (Mr. Warren) could visit NHS facilities and explore opportunities for collaboration while he was in the UK. In an April 29 email to (b)(7)(C) Mr. Warren wrote that their UK trip was "looking like: London, Leeds, Birmingham, Scotland, fly home." (b)(7)(C) responded by saying, "Would hope the order is London, Birmingham, Leeds, Scotland – sending us on a northward trajectory!" In a May 7 email concerning Mr. Warren's official passport, (b)(7)(C) wrote that Mr. Warren was paying for his own travel to and from the UK and that he scheduled official meetings "as he will be there already."

6. In a June 1 email string, Mr. Warren's (b)(7)(C) told an acquaintance in the UK that they would arrive in London on June 14; (b)(7)(C) wanted to arrange a get-together; and that (b)(7)(C) and Mr. Warren would be staying at the Plaza on the River "courtesy of the USGovt..." The Plaza on the River website states that it overlooks some of London's most impressive landmarks, and that it is "the ideal London hotel" for sightseeing. Mr. Warren's (b)(7)(C) further told (b)(7)(C) acquaintance that while Mr. Warren worked Monday through Wednesday (b)(7)(C) would be busy sightseeing either by (b)(7)(C) or with (b)(7)(C)

7. Mr. Warren's 2008 calendar reflected the following official business meetings he attended while he was in the UK on personal travel:

- Monday, June 16, 11:00 a.m. to 4:00 p.m. – Leeds, 194 miles north of London
- Tuesday, June 17, 10:00 a.m. to 3:30 p.m. – Birmingham, 118 miles north of London
- Wednesday, June 18, 10:00 a.m. to 4:30 p.m. – Watford and London
- Thursday, June 19, 2:00 p.m. to 4:00 p.m. – Aberdeen, Scotland

8. Mr. Warren's travel expense report, approved by the former Executive Assistant to the former Assistant Secretary for OI&T, reflected that he did not seek reimbursement for his travel to or from the UK; that he sought reimbursement for 3 nights lodging in London, UK, for June 15, 16, 17, and 2 nights in Scotland, for June 18 and 19. Although the expense report showed that he requested a reimbursement for lodging

in the amount of $1,260, his travel records contained lodging receipts for only $785.84. Further, his expense report reflected that he requested a reimbursement for Value Added Taxes (VAT); however, UK websites reflected that VAT incurred on business expenditures, i.e. hotel expenses, by non-UK business visitors may be reclaimed. Mr. Warren told us that he could not recall if he submitted the appropriate form to the UK's Revenue and Customs Office to have the VAT refunded. In addition, Mr. Warren's travel expense report reflected that he improperly received per diem from June 15 through June 20, totaling $857.25. Federal travel regulations state that per diem is permitted only when an employee performs official travel away from their official duty station and that per diem is not permitted if the official travel is 12 hours or less. 41 CFR §§ 301-11.1 and -11.2. Mr. Warren told us that he relied on information that others provided him when he prepared his travel expense report and that he would repay the Government any funds improperly reimbursed to him.

9. Mr. Warren told us that he and (b)(7)(C) lodged in London for 3 days and that he traveled by train and taxi north of London to get to his daily meeting sites. He said that it was "possible" that the decision to remain in London rather than lodge at hotels closer to his meeting sites was for personal convenience. A review of Mr. Warren's travel records reflected that he did not exercise prudence when he paid significantly more for individual train tickets rather than purchase a 4-day rail pass from BritRail to give him unlimited use of all rail travel within England and Scotland. We recognize that even with a rail pass, he may still have incurred taxi fares, but we could not determine to what extent. Mr. Warren told us that although he traveled to the UK previously and that he had family members residing outside of London, he did not think about purchasing a rail pass on this particular travel to the UK.

10. Travel records further reflected that Mr. Warren requested reimbursement for a one-way airline ticket to fly from London to Aberdeen, Scotland, on June 18, and his 2008 calendar reflected that he had a 2-hour meeting in Aberdeen on June 19. He told us that he personally paid for (b)(7)(C) airline ticket so that [redacted] could accompany (b)(7)(C) him to Scotland, and travel records reflected that Mr. Warren flew from Edinburgh, Scotland, to the US on June 20, 2008.

11. We concluded that Mr. Warren did not exercise prudence when incurring travel expenses for official business, in that he could have purchased a rail pass and reclaimed VAT collected by the UK. In addition, we concluded that Mr. Warren misused travel funds when he improperly sought reimbursement for lodging and per diem while on personal travel. Although Mr. Warren conducted official business during his personal travel, the purpose of the trip was for (b)(7)(C) to vacation in the UK, after a transatlantic crossing on an ocean liner. This was evident by Mr. Warren paying for his own transportation to and from the UK, as well as he and (b)(7)(C) staying at a hotel located at an "ideal" sightseeing spot in London while he traveled significant distances north of London to attend business meetings. Furthermore, Mr. Warren was required to pay for his own food and lodging for personal travel and that any official business was tangential to his family's vacation. We recognize that Mr. Warren relied on the input of others when completing his travel expense report;

however, he was ultimately the individual responsible for its accuracy and adhering to Federal travel regulations. (b)(5) [redacted]

(b)(5) [redacted]

12. I am providing this memorandum to you for your information and official use and whatever action you deem appropriate. No response is necessary. It is subject to the provisions of the Privacy Act of 1974 (5 USC § 552a). You may discuss the contents with Mr. Warren, within the bounds of the Privacy Act; however, you may not release the memorandum to him. If you have any questions, please call Ms. Linda Fournier, Director, Administrative Investigations Division, at (b)(7)(C) [redacted]

James J. O'Neill

2009-03058-IQ-0121

Department of Veterans Affairs

Memorandum

Date: May 5, 2010

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation – Misuse of Travel Funds, VHA Workforce Management and Consulting Office, VACO (2009-3058-IQ-0121)

To: Chief Officer Workforce Management & Consulting Office

1. The VA Office of Inspector General Administrative Investigations Division investigated an allegation that Dr. Rayshad Holmes, Director of Human Resource Development, and (b)(7)(C) Human Resources Specialist, both with Veterans Health Administration (VHA) Workforce Management and Consulting Office (WMCO) misused travel funds. To assess this allegation, we interviewed Dr. Holmes, (b)(7)(C) and other VA employees. We also reviewed time and attendance, travel, and email records, as well as Federal laws, regulations, and VA policy.

2. We concluded that Dr. Holmes misused travel funds when he asked for and received a reimbursement for an expense he did not incur and that (b)(7)(C) misused travel funds when (b)(7)(C) received mileage reimbursements for which (b)(7)(C) was not entitled. Furthermore, (b)(7)(C) violated travel regulations when (b)(7)(C) liberally used travel advances, without authorization, for personal expenditures, such as gambling, and that (b)(7)(C) violated Public Transit Fare Benefit requirements when (b)(7)(C) continued to download the full benefit each month and failed to reduce (b)(7)(C) next transit benefit by the amount that (b)(7)(C) did not use each month, (b)(7)(C) I am providing this memorandum to you for your information and official use and whatever action you deem appropriate. No response is necessary.

Dr. Holmes' Misuse of Travel Funds

3. Federal travel regulations require that employees pay only those expenses essential to the transaction of official business, and that the employee must exercise the same care in incurring expenses for Government business travel that a prudent person would exercise if traveling on personal business. 41 CFR §§ 301-2.2 and 301-2.3. Travel regulations and VA policy state that employees must have authorization to incur any travel expenses and specific approval for use of a rental car and travel card automated teller machine (ATM) cash advances. Id. §§ 301-2.1 and 301-2.5 and VA Handbook 0631.1, Sections 11 and 12. Travel regulations limit an employee's reimbursement for official travel to the cost of travel by a direct route and mandates official travel by a usually traveled route unless the agency approves a different route as officially necessary. Id. §§ 301-10.7 and 301-10.8.

4. Travel records reflected that for a January 2009 trip to Atlanta, Georgia, Dr. Holmes paid lodging costs of $181.15; however, records reflected that he submitted a voucher requesting reimbursement for $282, exceeding the actual cost by $100.85. Dr. Holmes told us that he left Atlanta early; agreed that he claimed too much on his expense voucher; and he said that he was willing to reimburse the Government. Travel records further reflected that Dr. Holmes traveled an indirect route from Washington, DC, to Salt Lake City, Utah, via Fort Lauderdale, Florida, from August 2-7, 2009. Dr. Holmes told us that he personally paid for his travel from Washington, DC, to Fort Lauderdale, but he said that he used the VA centrally billed account to pay for his trip from Fort Lauderdale to Salt Lake City and back to Washington, DC, without proper authorization. He said that he was not aware of any restrictions regarding indirect routes, and his travel records did not reflect that he calculated the cost of his travel from Fort Lauderdale to Salt Lake City as being a savings to the Government. A ruling of the Civilian Board of Contract Appeals stated that the Government has no authority to incur the added cost associated with a revised route and that erroneous authorizations or incorrect advice provided by Government officials cannot create or enlarge entitlements that are not provided by statute or regulation. CBCA 471 – TRAV.

(b)(7)(C) *Misuse of Travel Funds*

5. VA travel policy states that employees cannot be paid to commute to their permanent post of duty and that a local travel reimbursement calculation must subtract the distance from home to and from the employee's duty station as an amount which may not be reimbursed. It also limits the maximum amount of travel advance withdrawals in one week for any employee to $400 and states that travel advances may not exceed the employee's per diem, indicating that the amount may be decreased but not be increased. MP-1, Part II, Chapter 2 and VA Handbook 0631.1.

6. (b)(7)(C) travel records reflected that [redacted] traveled numerous times from (b)(7)(C) (b)(7)(C) home in (b)(7)(C) Maryland, to Baltimore, Maryland, on official local travel between January and May 2009, receiving $55 in mileage reimbursements for each of 10 trips in (b)(7)(C) which [redacted] claimed 100 miles roundtrip, totaling $550. (U.S. GSA website reflected that mileage reimbursement for that time period was $.55 per mile.) VA Travel Notice 07-05, December 5, 2006, states that all local travel mileage distances established are judged and measured from the Permanent Duty Station that the employee reports to on a daily basis to a distance not greater than 50 miles. An online mapping service reflected that the local roundtrip mileage from (b)(7)(C) official duty station in Washington, DC, to the local Baltimore commuting area was about 63 miles, not the 100 miles consistently (b)(7)(C) claimed; therefore, [redacted] was instead entitled to $35 in mileage reimbursement for each trip. Furthermore, (b)(7)(C) received improper reimbursements totaling $200 ($550- (b)(7)(C) $350 = $200). (b)(7)(C) told us that [redacted] used an online mapping service and actual (b)(7)(C) mileage to calculate the distance from [redacted] home to the Baltimore sites, but [redacted] offered (b)(7)(C) no explanation as to why each was precisely 100 miles roundtrip. [redacted] further said that (b)(7)(C) [redacted] did not know that [redacted] was required to subtract [redacted] normal daily commute from [redacted] (b)(7)(C) mileage calculations. (b)(7)(C)

7. [redacted] official travel and VA-issued travel card records dated from October 2008 to August 2009 reflected eight unauthorized ATM travel advances with two amounts over the weekly advance limit and two at gambling casinos. For example, [redacted] told us that while on official travel to New Orleans, Louisiana, [redacted] obtained a cash advance from an ATM located at Harrah's Casino using [redacted] Government travel card, to replace personal funds [redacted] spent at the casino. [redacted] travel credit card records reflected a cash advance of $104.99 obtained at Harrah's Casino, New Orleans, Louisiana, on July 8, 2009. [redacted] also said that while on official travel to Phoenix, Arizona, [redacted] obtained a cash advance from an ATM located at the 9700 East Indian Casino to replace personal funds and ultimately used those funds to gamble. [redacted] travel credit card records showed a cash advance of $202 obtained at 9700 East Indian Casino, Scottsdale, Arizona, on April 13, 2009. [redacted] told us that [redacted] was not aware of the regulations regarding [redacted] travel card. Further, [redacted] said that [redacted] could not provide travel receipts for a number of [redacted] trips, because [redacted] said that [redacted] misplaced them. Federal travel regulations require that receipts be retained for 6 years and 3 months. 41 CFR § 301-52.4.

[redacted] *Misuse of Transit Benefits*

8. The VA application to participate in the Public Transit Fare Benefit (VA Form 0722) requires an employee to certify, with their signature, that whenever they have usable transit benefits left over at the end of a distribution period due to leave or travel, they will reduce their next transit benefit by the amount of benefits they did not use during the previous distribution, with a maximum allowable benefit of $230 per month. The WMCO travel clerk told us that [redacted] oversaw the disbursement of transit subsidies for WMCO staff and that [redacted] sought [redacted] assistance in recovering transit funds unused from previous months. The travel clerk said that [redacted] discovered that [redacted] used [redacted] electronic "SmartTrip" card (a card used to obtain transit fare benefit monies electronically) to obtain her transit monetary benefit; however, [redacted] was not using the benefit for commuting back and forth to [redacted] duty station. [redacted] said that because [redacted] card was at its maximum capacity, it would not allow [redacted] to continue downloading additional monetary benefits to it. [redacted] said that [redacted] told [redacted] that [redacted] could not retroactively collect unused funds and that after investigating [redacted] transit benefit usage [redacted] said that [redacted] 2009 for improper usage.

Conclusion

9. We concluded that Dr. Holmes misused travel funds when he asked for and received a reimbursement for an expense he did not incur. In January 2009, his lodging costs were $181.15, but he asked for and received a reimbursement exceeding the actual cost by over $100. In yet another instance, he took an indirect route from Washington, DC, to Utah, via Florida, for personal reasons. Although he paid for his travel from Washington, DC, to Florida, he improperly used the centrally billed account to pay for his indirect route from Florida to Utah. Regulations limit reimbursement for official travel to the cost of travel by a direct route, unless officially necessary.

10. We also concluded that (b)(7)(C) misused travel funds when [redacted] failed to deduct the mileage of [redacted] daily roundtrip commute from [redacted] home to [redacted] duty station when [redacted] requested mileage reimbursement for local official travel between January and May 2009, thus receiving over $200 in reimbursements for which [redacted] was not entitled. Furthermore [redacted] violated travel regulations when [redacted] liberally used ATM travel advances without authorization for personal expenditures, such as gambling. In addition, (b)(7)(C) violated the requirements of the Public Transit Fare Benefit when [redacted] continued to download the full benefit each month regardless of what amount remained from the previous month; failed to reduce [redacted] next transit benefit by the amount that [redacted] did not use each month; thus, prompting an investigation resulting in (b)(7)(C) [redacted]

11. (b)(5) [redacted] (b)(5),(b)(7)(C) [redacted] (b)(5),(b)(7)(C) I am providing this memorandum to you for your information and official use and whatever action you deem appropriate. It is subject to the provisions of the Privacy Act of 1974 (5 USC § 552a). You may discuss its contents with Dr. Holmes and (b)(7)(C) within the bounds of the Privacy Act; however, it may not be released to them. No response is necessary. If you have any questions, please call Ms. Linda Fournier, Director, Administrative Investigations Division, at (b)(7)(C) [redacted]

JAMES J. O'NEILL

WARNING
5 U.S.C. §552A, PRIVACY ACT STATEMENT

This memorandum contains information subject to the provisions of the Privacy ACT of 1974 (5 U.S.C. §552a). Such information may be disclosed only as authorized by this statute. Questions concerning release of this memorandum should be coordinated with the Department of Veterans Affairs, Office of Inspector General. The contents of this memorandum must be safeguarded from unauthorized disclosure and may be shared within the Department of Veterans Affairs on a need-to-know basis only.

Department of Veterans Affairs

Memorandum

Date: July 27, 2010

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation – Alleged Preferential Treatment, VA Regional Office, Manila, Philippines (2010-02280-IQ-0088)

To: Associate Deputy Under Secretary for Field Operations

1. The VA Office of Inspector General Administrative Investigations Division investigated an allegation that Mr. Willie Clark, Sr., Director of the Western Area Office, Veterans Benefits Administration (VBA), gave preferential treatment to (b)(7)(C) Acting Assistant Veterans Service Center Manager (VSCM), as a result of their close personal relationship. To assess the allegation, we interviewed Mr. Clark; (b)(7)(C) (b)(7)(C) Director of the Manila VA Regional Office (VARO); and reviewed personnel and travel records, electronic mail messages, VBA Leadership program files, Federal regulations, and VA policy. We did not substantiate other allegations, and they will not be addressed in this memorandum.

2. We concluded that Mr. Clark's close personal relationship with (b)(7)(C) created the appearance that he gave (b)(7)(C) preferential treatment; however, we found no instances of actual preferential treatment. (b)(5),(b)(7)(C) (b)(5),(b)(7)(C) (b)(5),(b)(7)(C) No response is necessary.

3. The Standards of Ethical Conduct for Employees of the Executive Branch require employees to act impartially and not give preferential treatment to any individual and to avoid any actions creating the appearance that they are violating the law or ethical standards. 5 CFR § 2635.101(b).

4. Mr. Clark and (b)(7)(C) told us that they met and became close friends in 1996 (b)(7)(C) They said that their friendship evolved into a close personal relationship from 2001 to approximately 2003. They further said that (b)(7)(C) was never in Mr. Clark's chain of command during that time, which we confirmed through a review of personnel files and organizational charts. Personnel records reflected that Mr. Clark (b)(7)(C) (b)(7)(C) when he was promoted to a VSCM position at the Philadelphia VARO. Records further showed that from 2004 to 2008, he spent 2 years as a VARO Director in the Lincoln and the Boston Regional Offices, and in March 2008, he assumed his present position as the Western Area Regional Director. (b)(7)(C) stayed in

(b)(7)(C) but in June 2008, (b)(7)(C) was promoted to a Supervisory VSR position at the Manila VARO, placing (b)(7)(C) in Mr. Clark's chain of command. In April 2010, (b)(7)(C) was appointed to a VSCM position, assuming the position when the incumbent retires in October 2010.

5. Mr. Clark and (b)(7)(C) told us that although their close personal relationship ended in about 2003, they remained "good friends" to present. Email records reflected numerous examples of their continued close friendship. In a September 8, 2006, email, Mr. Clark told (b)(7)(C) that he would buy (b)(7)(C) a pair of "skating tennis shoes" because (b)(7)(C) In another, dated August 2, 2007, Mr. Clark suggested that (b)(7)(C) look into getting an Apple iPhone®, stating that it was expensive but "don't worry about that." When (b)(7)(C) replied that (b)(7)(C) would not spend that much money on a phone, he responded, "You never LISTEN to what I say, read my email," implying that he would pay for it. In yet another, dated December 3, 2007, Mr. Clark made reference to a reward he gave (b)(7)(C) (b)(7)(C) In addition, Mr. Clark and (b)(7)(C) both acknowledged that he gave (b)(7)(C) gifts of perfume and an inexpensive watch and that he gave money to (b)(7)(C) in the amounts of $5 to $25 for birthdays or academic achievements. In a December 3, 2007, email, Mr. Clark boasted to (b)(7)(C) about a designer purse that he bought for (b)(7)(C) but later returned to the store. An internet search reflected that these purses range in price from $650 to $2,200. Mr. Clark told us that he actually never bought the designer purse for (b)(7)(C) but that he fabricated the story "to make (b)(7)(C) feel good about (b)(7)(C) ... to get (b)(7)(C) spirits up."

6. In addition, we found numerous emails reflecting the close friendship between Mr. Clark and (b)(7)(C) Below are a few examples:

   - February 12, 2004, Mr. Clark entrusted (b)(7)(C) with his Senior Executive Service submission documentation, asking (b)(7)(C) to keep a copy for him.
   - January 18 and May 17, 2007, Mr. Clark shared confidential personnel information about another employee, a mutual friend, and asked (b)(7)(C) to keep the information confidential.
   - In various emails, Mr. Clark and (b)(7)(C) frequently conversed about (b)(7)(C)

(b)(7)(C) told us that Mr. Clark and (b)(7)(C) remained close, as Mr. Clark (b)(7)(C) (b)(7)(C) Mr. Clark told us that he remembered (b)(7)(C) birthday; he occasionally sent (b)(7)(C) holiday gifts; and he visited (b)(7)(C) as recently as December 2009 while visiting Manila on a site visit. Email records also reflected that (b)(7)(C) took personal trips to visit Mr. Clark after he left the St. Petersburg area and relocated to the Boston VARO. They both said that they split the cost of the airline tickets for the travel.

7. Other emails reflected that Mr. Clark provided (b)(7)(C) guidance when (b)(7)(C) sought other VBA positions. In a May 10, 2004, email, Mr. Clark gave (b)(7)(C) advice on

(b)(7)(C) application for Federal employment, stating "please review and anywhere I mention something that you received an award for, enter that data." Attached to the email was (b)(7)(C) Employee Supplemental Qualification Statement for a Veterans Claims Examiner GS-12 position. In a September 24, 2007, email, Mr. Clark wrote in the subject line "Interview Questions for AVSC Manager Position" and an attachment contained interview questions for the position. In a September 27, 2007, email, he wrote in the subject line "VSCM Questions," and an attachment contained interview questions for that position. In the first email, Mr. Clark told (b)(7)(C) to not "share these questions with anyone...," and in the second, he told [redacted] that he "[may be] hiring an AVSCM soon." (b)(7)(C) told us that [redacted] was not eligible for an AVSCM or VSCM position at that time but that [redacted] sought Mr. Clark's general advice as to the types of questions [redacted] might expect during these types of interviews. Mr. Clark told us that these emails were examples of the guidance and mentoring that he often provided to subordinate employees; however, we found no other similar emails sent to other employees.

(b)(7)(C) (b)(7)(C) (b)(7)(C) (b)(7)(C)

8. Several email exchanges contained personal language that reflected their close friendship. Below are a few examples:

   - They used the phrase "forever + 1 day." Mr. Clark and (b)(7)(C) told us that the term meant "friends forever."
   - In October 24, 2007, emails that appeared to be an intense exchange between Mr. Clark and (b)(7)(C), (b)(7)(C) told Mr. Clark that "nothing ever changes...you're not serious...you haven't been in eight years." Mr. Clark replied, "There is still tomorrow..." (b)(7)(C) responded with "you had the chance and opted not to...that's you...and always will be...now ENOUGH!" In response, Mr. Clark stated, "I'll never give up."
   - In a December 2007 email string, Mr. Clark told (b)(7)(C) "I'm not spending money on you ever again unless you change your mind" and "I can't [sit] by and see you make effort for others and not me." In the same string of emails, (b)(7)(C) told Mr. Clark, "I wouldn't even feel right at this point accepting anything from you" and "I'm done with it...one day maybe you'll realize just how really wrong this is/was."

(b)(7)(C) (b)(7)(C) told us that [redacted] and Mr. Clark will always be close friends, that they had many arguments, and that they have a "very sarcastic friendship." [redacted] could not recall the reasons behind the October and December 2007 emails, but [redacted] believed it was the result of their "sarcastic friendship." (b)(7)(C) said that there were a lot of rumors within VBA concerning [redacted] and Mr. Clark and that initially the rumors were true. [redacted] further said that after their relationship evolved into being just close friends, their relationship continued to be the subject of employee gossip.

(b)(7)(C) (b)(7)(C) (b)(7)(C) (b)(7)(C) (b)(7)(C) (b)(7)(C)

9. On July 8, 2008, less than a year after exchanging the above emails, Mr. Clark signed as a concurring official on the Centralized Merit Promotion Certificate and as a selecting official on the Personnel Action Request Form selecting (b)(7)(C) as a Supervisory VSR (Coach) at the Manila VARO. (b)(7)(C) told us that Mr. Clark spoke

highly of (b)(7)(C) due to their past working experience, but he said that Mr. Clark did not directly advocate for (b)(7)(C) (b)(7)(C) said that [redacted] never felt pressured or compelled by Mr. Clark to hire (b)(7)(C) and that [redacted] was selected after a rating and ranking of [redacted] resume and interview placed [redacted] as a top candidate.

10. On November 23, 2009, Mr. Clark signed an Incentive Awards Recommendation and Approval form as the authorizing official to give (b)(7)(C) a $700 award for (b)(7)(C) completing a detail to the Honolulu Regional Office. On April 16, 2010, he signed as a concurring official on a Centralized Merit Promotion Certificate selecting (b)(7)(C) for a VSCM position located in Manila. Following [redacted] selection, Mr. Clark issued a memorandum requesting that the Acting Under Secretary for Benefits and the Associate Deputy Under Secretary for Field Operations "select (b)(7)(C) but delay (b)(7)(C) appointment until the pay period that we lose the incumbent VSCM." (b)(7)(C) told us that it was typical for Manila to announce positions much earlier than normal to prevent large gaps of time with vacancies in key positions due to the lengthy processes involved in receiving security and medical clearances. Mr. Clark said that he did not influence the individuals selecting (b)(7)(C) for the supervisory VSR or VSCM positions, both located in Manila; however, he acknowledged that he should have recused himself from any personnel actions involving (b)(7)(C) He said that it was "poor judgment" on his part.

11. We concluded that Mr. Clark's close personal relationship with (b)(7)(C) created the appearance of preferential treatment; however, we found no instances of actual preferential treatment.. Although (b)(7)(C) supervisor told us Mr. Clark did not pressure [redacted] to hire or promote (b)(7)(C) the nature and history of their close personal relationship gave the appearance that Mr. Clark may be partial in personnel matters concerning (b)(7)(C) Mr. Clark told us that he recognized the possible appearance of preferential treatment toward (b)(7)(C) and said that part of his job should be to prevent such an appearance. (b)(5)

(b)(5)

(b)(5),(b)(7)(C)

12. We are providing this memorandum for your information and official use and whatever action you deem appropriate. It is subject to the provisions of the Privacy Act of 1974 (5 USC § 552a). You may discuss the contents of this memorandum with Mr. Clark, within the bounds of the Privacy Act; however, it may not be released to him. No response is necessary. If you have any questions, please contact Ms. Linda Fournier, Director, Administrative Investigations Division, at (b)(7)(C)

James J. O'Neill

2010-05111-IQ-0250

Department of Veterans Affairs

Memorandum

Date: October 14, 2010

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation – Accepting Gifts from a Prohibited Source

To: Chairman, Board of Veterans' Appeals (01)

1. The VA Office of Inspector General Administrative Investigations Division investigated an allegation that Ms. Amy Weber, Chief of Financial Management Division, Board of Veterans' Appeals (BVA), accepted a gift from a prohibited source. To assess this allegation, we interviewed Ms. Weber and reviewed travel, personnel, email, and Marriott reward point records, as well as Federal regulations and VA policy.

2. We concluded that Ms. Weber accepted a gift from a prohibited source when she, as a travel planner, gave her personal Marriott reward point account number to a hotel representative when scheduling official travel for BVA staff members. This resulted in her receiving 24,680 in reward points for which she was not entitled and could require numerous duty hours to rebook reservations to delete her personal information from them. (b)(5) [redacted] We are providing you this memorandum for your use and any action you deem necessary. No response is necessary.

3. Standards of Ethical Conduct for Employees of the Executive Branch state that employees shall not use public office for private gain. 5 CFR § 2635.101. It further states that employees shall not, directly or indirectly, solicit or accept a gift from a prohibited source, defined as any person who does business or seeks to do business with the employee's agency, and that a gift includes any item having monetary value. Id., at 2635.202 and 203. Federal acquisition regulations state that if an employee is offered frequent traveler benefits as a planner for other group travel, the employee may not retain such benefits for their personal use. 41 CFR § 301-53.3. VA policy states that employees may not solicit or accept any gratuity, gift, favor, entertainment, loan, or anything of monetary value from any party doing business with or seeking to obtain business with VA. VA Handbook 4080, Paragraph 2(d) (December 29, 2008).

4. Personnel records reflected that Ms. Weber began working at VA on December 6, 2009. Ms. Weber told us that she was responsible for a travel office that supported 515 BVA employees, which included arranging hotels and transportation, as well as, administering the BVA budget. She said that she received an ethics review during her

initial VA orientation and that she took an ethics course in or around January 2010. She also said that she had a Government contractor-issued travel card for her official VA travel, card ending in #1709, and that she received it in or around January 2010. Further, she said that she took travel card training sometime in February or March 2010 and that she was aware of travel policy.

5. Ms. Weber told us that BVA recently changed how they reserved lodging for travel. She said that she had BVA staff choose their top three hotels at each travel location and she then compiled a final list of hotels. She further said that in August 2010, her office implemented a new travel process by reserving lodging 1 year in advance, since staff members knew their schedule that far in advance. Ms. Weber told us that in the past, she rarely had a role in planning travel; however, she said that due to a staff shortage, she currently had a more active role.

6. Ms. Weber said that when she first started putting together the hotel list, she obtained a Centrally Billed Account (CBA) charge card to use when making hotel reservations. She said that although her office used the CBA to reserve hotel rooms, they did not use the account to pay for rooms, except on rare occasions. She said that once staff arrived at a hotel, they used their own Government contractor-issued travel card to pay for their individual rooms. Further, she said that when she researched setting up the CBA, she spoke to (b)(7)(C) Systems & Procedures Analyst, and (b)(7)(C) encouraged and authorized the use of the CBA in this manner. (b)(7)(C) told us that [redacted] office worked with Ms. Weber to set up a new CBA for BVA; that [redacted] did not recall it being specifically about lodging expenses; however, [redacted] said that his office recommended the use of a CBA to fund travel expenses over the use of individually billed accounts.

(b)(7)(C)

(b)(7)(C)

(b)(7)(C)

7. Twelve BVA travel reservations for the periods of September to November 2010 and March to June 2011 reflected that lodging was reserved at Marriott Hotels for various BVA staff members; however, the records contained the following information:

- Guest: Amy Weber
- Email: (b)(7)(C) @va.gov
- Phone: (b)(7)(C)
- Marriott Rewards Account #: (b)(7)(C)
- Credit Card #: VISA (b)(7)(C)

An online telephone record website, as well as Ms. Weber, confirmed that the listed telephone was Ms. Weber's residential telephone number. VA email records confirm the email as Ms. Weber's VA-assigned email account. Ms. Weber confirmed that the Marriott rewards number was her personal Marriott rewards account number. U.S Bank records confirmed that the VISA was the BVA CBA credit card number.

8. Ms. Weber told us that her Marriott rewards account was at the Platinum level until the end of 2010; that her balance was between 500,000 and 550,000 points; and that she attained Platinum status from her frequent travel. The Marriott rewards website

stated that members received exclusive hotel benefits and recognition at over 3,200 Marriott hotels worldwide – plus free nights, free flights and many other advantages, and Platinum members received additional benefits. A Marriott Customer Service Representative told us that as long as a member earned or used reward points at least once a year, or if they have a Marriott reward credit card, the reward points never expired. Ms. Weber could provide no other explanation as to why she accumulated reward points and did not use them except that (b)(7)(C) did not permit her to use them. Further, she said that she did not know why she gave her personal information when booking official travel for BVA staff members but that a reasonable person could conclude that she gave the number for personal gain.

9. Ms. Weber told us that while making official travel reservations at Marriott for BVA staff, she was on the telephone for over 3 hours with a Marriott representative. She said that she did not give the representative her home telephone number but that it "would not surprise her" if she gave the representative her Marriott rewards number. She said that the Marriott representative must have entered her (Ms. Weber's) home telephone number in the reservations from records associated with her rewards card number. She further said that she did not give her Marriott rewards card number "on purpose" and that she might have inadvertently said to the representative, "Here's my rewards number." Ms. Weber said that all the reservations she made at Marriott for BVA staff would contain her Marriott rewards card number.

10. Ms. Weber logged into her Marriott rewards account online, and it reflected that she had 606,193 reward points in her account, with 377 total membership nights. The membership activity log showed that from December 1, 2009, (just prior to her VA employment) to September 28, 2010, she earned numerous reward points. She identified all the activity on the log as personal travel with the exception of a reservation for September 19-24, 2010, at the Chicago Marriott Downtown Magnificent Mile, which she identified as official travel for a BVA staff member. However, Ms. Weber earned 24,680 reward points for that staff member's stay. Further, her Marriott profile reflected a VISA credit card (b)(7)(C) the same last four digits as the BVA CBA. Ms. Weber told us that she did not put the CBA number into her profile nor did she authorize it. She opined that the Marriott representative added it to her profile when she made the numerous reservations for BVA staff members. (b)(5)
(b)(5)

11. In a September 14, 2010, email, the Chicago Marriott Downtown Magnificent Mile reminded Ms. Weber of her reservation for the BVA staff member, and it referenced Ms. Weber's Marriott Platinum reward account number. A Marriott representative from that hotel told us that Ms. Weber was not a registered guest at that property during the above listed dates but that they rewarded her 24,680 points for the BVA staff member's stay. The representative said that on September 29, 2010, (1 day after our interview of Ms. Weber), Ms. Weber asked that they delete the 24,680 points from her account, and they complied. In a September 30 email, Ms. Weber provided us an updated copy of her online Marriott rewards account profile, which reflected that Marriott deleted the

improper 24,680 reward points from her account. She also sent a copy of a page from the Marriott website that stated that Marriott reward points "will not be credited to a stay where the hotel guest's name and the Marriott Rewards member's name do not match." In an October 4, 2010, letter, the Chicago Downtown Marriott's Director of Loss Prevention told us that Marriott gave the points to Ms. Weber due to her Marriott rewards membership account number given at the time of the reservation. He further said that since she was not a registered guest or listed as a travel agent booking business, she was not entitled to the points and that he was "happy to hear" that she had the points removed.

12. In an October 4, 2010, email, Ms. Weber told us that one of her employees called Marriott to change the previously made reservations into the names of the individual BVA staff members; however, a Marriott representative told the employee that they could not remove Ms. Weber's Marriott rewards account number from the reservations. Ms. Weber said that the only way to remove the Marriott rewards number was to cancel the reservations. Ms. Weber told us that once she confirmed this with Marriott, she would need to cancel and rebook all the reservations to have her personal Marriott rewards account number deleted from the official travel reservations associated with other BVA staff members.

13. We concluded that Ms. Weber accepted a gift from a prohibited source when she, as a travel planner, gave her personal Marriott reward point account number to a hotel representative when scheduling official travel for BVA staff members. This resulted in her receiving 24,680 in reward points for which she was not entitled and could require numerous duty hours to rebook reservations to delete her personal information from them. (b)(5) [redacted]

(b)(5) [redacted]

(b)(5) [redacted] We are providing you this memorandum for your use and any action you deem necessary. No response is necessary. It is subject to the provisions of the Privacy Act of 1974 (5 USC § 552a). You may discuss the contents with Ms. Weber, within the bounds of the Privacy Act; however, you may not release it to her. If you have any questions please call Ms. Linda Fournier, Director, Administrative Investigations Division, at (b)(7)(C) [redacted]

JAMES J. O'NEILL

Department of Veterans Affairs

Memorandum

2010-02858-IQ-0176

Date: December 14, 2010

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation – Alleged Preferential Treatment, OI&T, IT Field Security Operations, Fayetteville, Arkansas (2010-02858-IQ-0176)

To: Deputy Assistant Secretary for Information Security (005R)

1. The VA Office of Inspector General (OIG) Administrative Investigations Division investigated an allegation that (b)(7)(C) Director of IT Field Security Operations, gave a subordinate, (b)(7)(C) IT Specialist, Health Information Security Division, preferential treatment due to their personal relationship. To assess the allegation, we interviewed (b)(7)(C) (b)(7)(C) first and second-level supervisors, and other OI&T staff. We also reviewed email, personnel, and travel records; Federal regulations; and VA policy. (b)(7)(C)

2. We concluded that (b)(7)(C) close friendship with (b)(7)(C) created the appearance of preferential treatment; however, we found no instances of actual preferential treatment. We found that (b)(7)(C) and (b)(7)(C) had a closer than arms-length personal relationship, and (b)(5),(b)(7)(C)

(b)(5),(b)(7)(C)

(b)(5),(b)(7)(C) **No response is necessary.**

3. The Standards of Ethical Conduct for Employees of the Executive Branch require employees to act impartially and not give preferential treatment to any individual and to avoid any actions creating the appearance that they are violating the law or ethical standards. 5 CFR § 2635.101 (b)(8) and (14). It further prohibits an employee from directly or indirectly accepting a gift from an employee receiving less pay, except on an occasional basis, such as occasions when gifts are traditionally given, and items are valued at $10 or less per occasion. Id., at §§ 2635.302 and 304.

4. (b)(7)(C)

(b)(7)(C)

(b)(7)(C)

(b)(7)(C)

(b)(7)(C)

16. We concluded that (b)(7)(C) close friendship with (b)(7)(C) created the appearance of preferential treatment; however, we found no instances of actual preferential treatment. (b)(7)(C)

(b)(7)(C)

17. Additionally, the closer than arms length relationship between (b)(7)(C) and (b)(7)(C) contributed to friction between and among their colleagues; (b)(7)(C)

(b)(7)(C)

(b)(5),(b)(7)(C)

18. We are providing you this memorandum for your information and official use and whatever action you deem necessary. It is subject to the provisions of the Privacy Act of 1974 (5 U.S.C. § 552a). You may discuss the contents of this memorandum with (b)(7)(C) within the bounds of the Privacy Act; however, it may not be released to (b)(7)(C) No response is necessary. If you have any questions, please contact Ms. Linda Fournier, Director, Administrative Investigations Division, at (b)(7)(C)

JAMES J. O'NEILL

2010-02858-IQ-0017

Department of Veterans Affairs

Memorandum

Date: January 4, 2011

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation – Alleged Preferential Treatment and Misuse of Position, Office of Quality, Performance, and Oversight, OI&T, VACO (2010-02858-IQ-0017)

To: Executive Director, Quality, Performance and Oversight (005X)

1. The VA Office of Inspector General (OIG) Administrative Investigations Division investigated an allegation that Ms. Shelby Bell, (GS-15) Director of Quality and Performance, gave a subordinate, (b)(7)(C) (GS-12) IT Specialist, preferential treatment due to an inappropriate personal relationship. To assess the allegation we interviewed Ms. Bell, (b)(7)(C), and other OI&T staff. We also reviewed email, personnel, and travel records; Federal regulations; and VA policy.

2. We concluded that although Ms. Bell's close friendship with (b)(7)(C) created an appearance of preferential treatment, we found no instances of actual preferential treatment; however, we found that Ms. Bell and (b)(7)(C) closer-than-arms-length personal relationship was problematic. Email records reflected that their familiarity and comfort level with one another went beyond that of professional colleagues while (b)(7)(C) she was [redacted] second-level supervisor, and computer, email, and telephone records reflected that it continued after she no longer supervised [redacted] but still wielded influence (b)(7)(C) as a senior official within OI&T. We also found that their personal use of VA-issued equipment went beyond that of limited personal use. Further, we found that Ms. Bell misused her position and title when she used her VA-assigned email to send a "letter of concern" to a military Commanding Officer regarding treatment of a member of Ms. Bell's family. (b)(5)

(b)(5),(b)(7)(C)

(b)(5),(b)(7)(C) **No response is necessary.**

3. Standards of Ethical Conduct for Employees of the Executive Branch require employees to act impartially and not give preferential treatment to any individual and to avoid any actions creating the appearance that they are violating the law or ethical standards. 5 CFR § 2635.101(b)(8) and (14). It further states that an employee shall not use or permit the use of his Government position or title in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities. Id., at .702(b).

4. Ms. Bell and (b)(7)(C) told us that they first met in August 2009 when Ms. Bell was the Acting Information & Technology Oversight and Compliance (ITOC) Director, and they found that they had common backgrounds in that they were both former US Army military police and they knew some of the same people. Ms. Bell said that she was the Acting Director from April 2009 to February 2010. Ms. Bell and (b)(7)(C) said that while Ms. Bell was the Acting ITOC Director, their interactions were always professional but that it was not until Ms. Bell completed her tenure as Acting Director that their relationship developed into a close friendship. To the contrary, (b)(7)(C) (b)(7)(C) Director of ITOC Region 3, told us that while on a site visit to Minneapolis during the time that Ms. Bell was the Acting Director, [redacted] attended a baseball game with Ms. Bell and (b)(7)(C) who were also there on official travel. [redacted] said that (b)(7)(C) felt awkward while at the game, because Ms. Bell and (b)(7)(C) were overtly flirtatious with one another. (b)(7)(C) described it as being in the company of two "16-year olds."

5. In an October 6, 2009, email chain, Ms. Bell told (b)(7)(C), while serving as (b)(7)(C) second level supervisor, about a tasking she gave to an unidentified Regional Director, a subordinate to Ms. Bell but a superior to (b)(7)(C) and said "Why is it that people can't accomplish tasks unless you give them a suspense and then threaten them?" (b)(7)(C) responded:

A) they don't give a crap
B) short attention span
C) they didn't come up with the idea, therefore its not important to them or...
D) all the above

Ms. Bell replied, "D - I could be more creative if I were drinking linnies..." (b)(7)(C) then asked Ms. Bell, "Are you still pool side?? :-p" Their email conversation continued about a televised baseball game, and (b)(7)(C) then said, "Oh, loser buys dinner (unless you're chicken) bak, bak...:-p LOL" Ms. Bell replied, "I am not a loser nor am I a chicken! I am (at least for the next few days) a huge twins fan. Not to say that I'm not pickin up the tab."

6. In a December 18, 2009, email, Ms. Bell sent (b)(7)(C) an attached photograph and said, "Here's a holiday pic taken earlier this month. Not the best color combo – but I was packing light. Let me know if you get this and if which account you want me to use if I send other pics." In a December 22, 2009, email chain, (b)(7)(C) asked Ms. Bell to "send me an im [instant message] please!" She replied, "Did u get it?" (b)(7)(C) responded, "Sent u some too..." Ms. Bell then told (b)(7)(C), "Weird. Didn't get em." (b)(7)(C) wrote back, "Whaaa:(, and Ms. Bell replied, "I know!!!!" After additional back and forth comments, Ms. Bell told (b)(7)(C) that, "Might be my fault. I sent u a couple on liz phair tunes and a risqué headline." On January 21, 2010, Ms. Bell, while still serving as his second line supervisor, forwarded (b)(7)(C) an email that was mistakenly distributed within OI&T and she commented, "Fuckin stupid...Opps!"

7. One ITOC Regional Director told us that he saw no preferential treatment or inappropriate behavior between Ms. Bell and any of her subordinates. Another ITOC

Regional Director told us that through rumors heard that Ms. Bell had a personal relationship with further said that Ms. Bell made attempts to have placed on a special project without going through supervisor. said that and tried to figure out why Ms. Bell wanted on the tasking, since did not have the skill sets for it. The Regional Director said that for the tasking they needed someone with technical skills and was a "fiscal security expert," not an "IT security expert." told us that it was a member of the team that suggested that be part of the team. Ms. Bell said that she recommended all team members for monetary awards, because of their work on the team. She said that two of the team members were GS- and was the only GS- on the team, and she said that got the smallest award of the three. Personnel records reflected that on February 15, 2010, received a $1,500 monetary award and that two team members received $2,500 each.

8. told us that Ms. Bell assigned and another employee that worked for to a specific work group without telling said that it was a collaborative work group with VA Security and Law Enforcement and that no one provided information about employees' involvement unless asked for information to "make sure that they were gainfully employed." further said that in spring 2010 Program Manager, requested that be assigned to a Homeless Veterans Project for technical assistance. said that when told what skill sets needed, explained that did not possess any of those skills. told us that was "taken back" and that told her that Ms. Bell recommended as a good fit for the project. In an April 28, 2010, email, asked to permit to be part of the Elimination of Veterans' Homelessness Initiative, and in response asked to call so that they could discuss the project needs. told us that asked Ms. Bell to recommend for the Homeless Veterans Project and that also told that wanted to be involved with it. said that name was given to however, said that told that needed someone with GS-2210 technical skills, not operations skills.

9. A forensic examination of Ms. Bell's VA-issued computer and laptop reflected that they contained numerous digital photo files including images of which created between December 14, 2009, and May 3, 2010, using a Blackberry 8330. These images included generic photos and various photos of face and of body either clothed or bare-chested. Further, we found various emails that sent Ms. Bell between March 13 and June 4, 2010, which contained attached images to include generic photos and various photos of face or body, clothed and bare-chested. In one email, dated April 5, 2010, Ms. Bell sent an image that she took of herself in front of a mirror and dressed in what appeared to be a bikini top and low slung workout shorts. VA policy states that VA employees are permitted limited use of Government office equipment for personal needs if the use does not interfere with official business and involves minimal additional expense to the Government. It further states that employees are expected to conduct themselves professionally in the workplace and

are required under the Standards of Conduct to refrain from using Government office equipment for activities that are inappropriate. Employees also have no inherent right to use Government office equipment for other than official activities and VA Administrations and Staff Offices will establish necessary controls to ensure that the equipment is used appropriately. VA Directive 6001, Paragraphs 2a, 2c, and 2e (July 29, 2000)

10. A forensic examination of Ms. Bell's VA-issued cellular telephone reflected that between July 4 and July 27, 2010, Ms. Bell either called or received calls from (b)(7)(C) VA-issued cell phone 97 times or an average of four times a day. Ms. Bell's telephone also contained two image remnants, one of (b)(7)(C) face and another of (b)(7)(C) bare-chested. Further, text messages sent between Ms. Bell and (b)(7)(C) VA-issued cellular telephone reflected that on July 16, 2010, (b)(7)(C) sent her a text message of "XXXX" and on July 17, she sent (b)(7)(C) a message of "XOXOXOXO." Moreover, her telephone contained over 110 email messages sent or received by Ms. Bell and (b)(7)(C) between July 2 and July 26, 2010. In one email, dated July 21, 2010, with the subject line "Series – Grade – Ste[- Salary – Position Number validation(b)(7)(C)","Ms. Bell responded to (b)(7)(C), "I will follow up w (b)(7)(C) (b)(7)(C) I promise I will do everything I can. I'm so sorry u r havin to go through all this." (b)(7)(C) told us that career ladder promotion that was due in August 2010 to GS-(b)(7)(C) was placed on hold, because (b)(7)(C) requested to be changed from a series GS-2210 to a GS-343. (b)(7)(C) said that (b)(7)(C) spoke to (b)(7)(C) supervisor about it; however, (b)(7)(C) said that (b)(7)(C) told him that (b)(7)(C) needed to be patient. The OI&T Organizational Chart reflected that (b)(7)(C) had oversight for both Ms. Bell's and (b)(7)(C) Directorates.

11. A forensic examination of images that (b)(7)(C) took of (b)(7)(C) reflected (b)(7)(C) in non-work related functions during (b)(7)(C) tours of duty. For example, one image taken on Thursday, December 17, 2009, at 8:56 a.m., showed (b)(7)(C) in workout clothing at a gym. (b)(7)(C) told us that (b)(7)(C) worked out of (b)(7)(C) house; that the gym was about a 5-minute drive from (b)(7)(C) home; and that (b)(7)(C) went there to work out during (b)(7)(C) 30-minute lunch period. Another image taken on Monday, December 14, 2009, at 4:14 p.m., showed (b)(7)(C) in a vehicle in front of a store. (b)(7)(C) said that (b)(7)(C) could not recall why (b)(7)(C) was away from (b)(7)(C) duty station that day. In a Tuesday, May 11, 2010, email sent at 3:51 p.m. (b)(7)(C) told Ms. Bell, "I got a haircut today." (b)(7)(C) said that (b)(7)(C) barber was a 5 or 10-minute drive from (b)(7)(C) home but that (b)(7)(C) could not recall when (b)(7)(C) got the haircut. Time and attendance records reflected that (b)(7)(C) duty hours were 8:00 a.m. to 4:30 p.m. Standards of Ethical Conduct for Employees of the Executive Branch state that an employee shall use official time in an honest effort to perform official duties. 5 CFR § 2635.705. (b)(7)(C) told us that it was not acceptable for an employee to leave their duty station during the workday, except for short trips, such as picking up lunch or going to the post office, and that these must be accomplished during their 30-minute lunch period. (b)(7)(C) further said that unless there were extenuating circumstances, (b)(7)(C) would not approve of an employee taking their lunch break within 1.5 hours of reporting for duty. In a December 28, 2010, email (b)(7)(C) told (b)(7)(C) that (b)(7)(C) was permitted a 15-minute break in the morning, a 30-minute lunch break to be taken mid-shift, and a 15-minute afternoon break.

12. On February 19, 2010, Ms. Bell, using her VA-assigned email, sent an email message titled "Letter of Concern" to a Commanding Officer of a military medical facility. In her email, she stated, "**We are very disappointed in the deplorable service** (emphasis added) our family has received from Kimbrough." Ms. Bell (b)(7)(C) continued describing what [redacted] believed was inadequate medical care for a family member, and she ended the email with, "**Kimbrough Clinic is a disgrace to the Army and the medical community** (emphasis added) and has forced one young Army family member to suffer dearly due to poor leadership and a lack of compassion and commitment." She signed the email as "Shelby E. Bell, Director, Quality & Performance, Office of Information & Technology, Department of Veterans Affairs." VA policy states that employees have the responsibility to ensure that they are not giving the false impression that they are acting in an official capacity when they are using Government office equipment for non-Government purposes. VA Directive 6001, Paragraph 2e (July 28, 2000).

13. We concluded that although Ms. Bell's close friendship with (b)(7)(C) created an appearance of preferential treatment, we found no instances of actual preferential treatment; however, we found that Ms. Bell and (b)(7)(C) closer-than-arms-length personal relationship was problematic. Email records reflected that their familiarity and comfort level with one another went beyond that of professional colleagues while (b)(7)(C) she was [redacted] second-level supervisor, and computer, email, and telephone records reflected that it continued after (b)(7)(C) no longer supervised (b)(7)(C) but still wielded influence as a senior official within OI&T. We also found that their personal use of VA-issued equipment went beyond that of limited personal use. Further, we found that Ms. Bell misused her position and title when she used her VA-assigned email to send a "letter of concern" to a military Commanding Officer regarding treatment of a member of Ms. Bell's family. (b)(5) [redacted] (b)(5),(b)(7)(C) [redacted] (b)(5),(b)(7)(C) [redacted] **No response is necessary.**

14. We are providing you this memorandum for your information and official use and whatever action you deem necessary. It is subject to the provisions of the Privacy Act of 1974 (5 U.S.C. § 552a). You may discuss the contents of this memorandum with Ms. Bell and (b)(7)(C) [redacted] within the bounds of the Privacy Act; however, it may not be released to them. No response is necessary. If you have any questions, please contact Ms. Linda Fournier, Director, Administrative Investigations Division, at (b)(7)(C) [redacted] (b)(7)(C) [redacted]

JAMES J. O'NEILL

WARNING
5 U.S.C. §552a, PRIVACY ACT STATEMENT

This memorandum contains information subject to the provisions of the Privacy Act of 1974 (5 U.S.C. §552a). Such information may be disclosed only as authorized by this statute. Questions concerning release of this memorandum should be coordinated with the Department of Veterans Affairs, Office of Inspector General. The contents of this memorandum must be safeguarded from unauthorized disclosure and may be shared within the Department of Veterans Affairs on a need-to-know basis only.

Department of Veterans Affairs

Memorandum

Date: April 7, 2011

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation – Alleged Prohibited Personnel Practices, Other Improper Hiring Practices, and Conduct Prejudicial to the Government, Office of Human Resources and Administration, VACO (2011-00198-IQ-0002)

To: VA Chief of Staff

1. The VA Office of Inspector General Administrative Investigations Division investigated an allegation that Mr. John Sepulveda, Assistant Secretary for Human Resources and Administration (HRA), engaged in prohibited personnel practices by giving a preference or advantage to five employees that he hired for his immediate staff. Mr. Sepulveda also allegedly used improper hiring practices and did not exercise due diligence and sound judgment when he hired the employees and then later nominated one of the five to a limited term Senior Executive Service (SES) position. To assess these allegations, we interviewed Mr. Sepulveda, the five employees, and other HRA staff. We also reviewed VA personnel and email records, as well as Federal laws, regulations, and VA policy. In addition, we reviewed personnel, disciplinary, and (b)(7)(C) from Federal agencies that previously employed four of the five employees.

2. Although we did not substantiate that Mr. Sepulveda engaged in a prohibited personnel practice, we concluded that he did not exercise sound judgment or due diligence, giving the appearance of preferential treatment, when he hired his immediate staff and later withheld key information when recommending that the VA Secretary appoint one staff member to a limited term SES position, contrary to Federal law and regulations, as the Executive Director of VA's Human Capital Investment Plan (HCIP) initiative. We found that four of the employees had misconduct or performance-related problems at Federal agencies previously employing them and pre-employment checks were not sufficiently completed or, in some cases, done at all. We found that Mr. Sepulveda had longstanding professional friendships with two of them, one of whom was his first nominee for the SES position, and that he had prior knowledge that these two former colleagues had previous Federal employment problems. (b)(5) (b)(5) (b)(5) Further, we found that two of the employees falsified employment records when they failed to disclose that they had (b)(7)(C) on the Federal Declaration of Employment form (Optional Form 306) completed as part of their VA employment process. We are providing you this memorandum for your information and official use and whatever action you deem necessary. **No response is necessary.**

VA FORM 2105
MAR 1989

Standards

3. Federal law states that any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority discriminate for or against any employee or applicant for employment or grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment. 5 USC § 2302(b)(1) and (6). Federal regulations state that an employee shall not engage in conduct prejudicial to the Government. 5 CFR § 735.203. The Standards of Ethical Conduct for Employees of the Executive Branch require employees to act impartially and not give preferential treatment to any individual and to avoid any actions creating the appearance that they are violating the law or ethical standards. 5 CFR § 2635.101(b)(8) and (14).

4. VA policy requires that in all appointments where the applicant has been or is now employed in the Federal government, appointing officials will obtain verification of employment and satisfy themselves that employment of the applicant is consistent with VA requirements. VA Handbook 5005/12, Part II, Chapter 2, Section A, Paragraph 5(d)(2). VA policy states that the verification of employment and suitability can be made by FL 5-127, Inquiry Concerning Applicant for Employment, letter, telephone, or personal visit, and that documents generated will become a part of the employment investigation records with telephone calls and personal visits summarized for the record. Upon employment, such records will accompany the SF-85, Questionnaire for Non-Sensitive Positions (or SF-86, Questionnaire for National Security Positions) and SF-87, OPM Fingerprinting Chart, when they are submitted to OPM. Id., at Paragraph 5(d)(3).

Background

5. The U.S. Senate Committee on Veterans' Affairs confirmed Mr. Sepulveda as the VA Assistant Secretary for HRA in May 2009. At the Committee Hearing, Mr. Sepulveda told the Committee, "We must make sure that we have the right people doing the right job at the right place at the right time, at all times." As Assistant Secretary and VA's Chief Human Capital Officer, Mr. Sepulveda serves as principal advisor to the Secretary, his executive staff, and the Department's human resources managers and practitioners on matters pertaining to human resources, labor-management relations, diversity management and equal employment opportunity, resolution management, employee health and safety, workers' compensation, and Central Office administration.

6. Between September 2009 and January 2010, he approved the appointment of five individuals to his immediate staff: Ms. Mara Patermaster, Mr. Armando Rodriguez, Ms. Mary Santiago, (b)(7)(C) and Mr. Joseph Viani. Mr. Sepulveda told us that he was "intimately involved" in appointing all of these individuals. Of the five, Mr. Viani was the only one for which we found no evidence of prior employment issues. Personnel records reflected that his initial and later SES appointments were proper, and we do not discuss Mr. Viani further in this memorandum. See **figure 1** for a summary.

Non-Competitive Appointments Authorized by The Assistant Secretary for HRA

(September 2009 to January 2010)

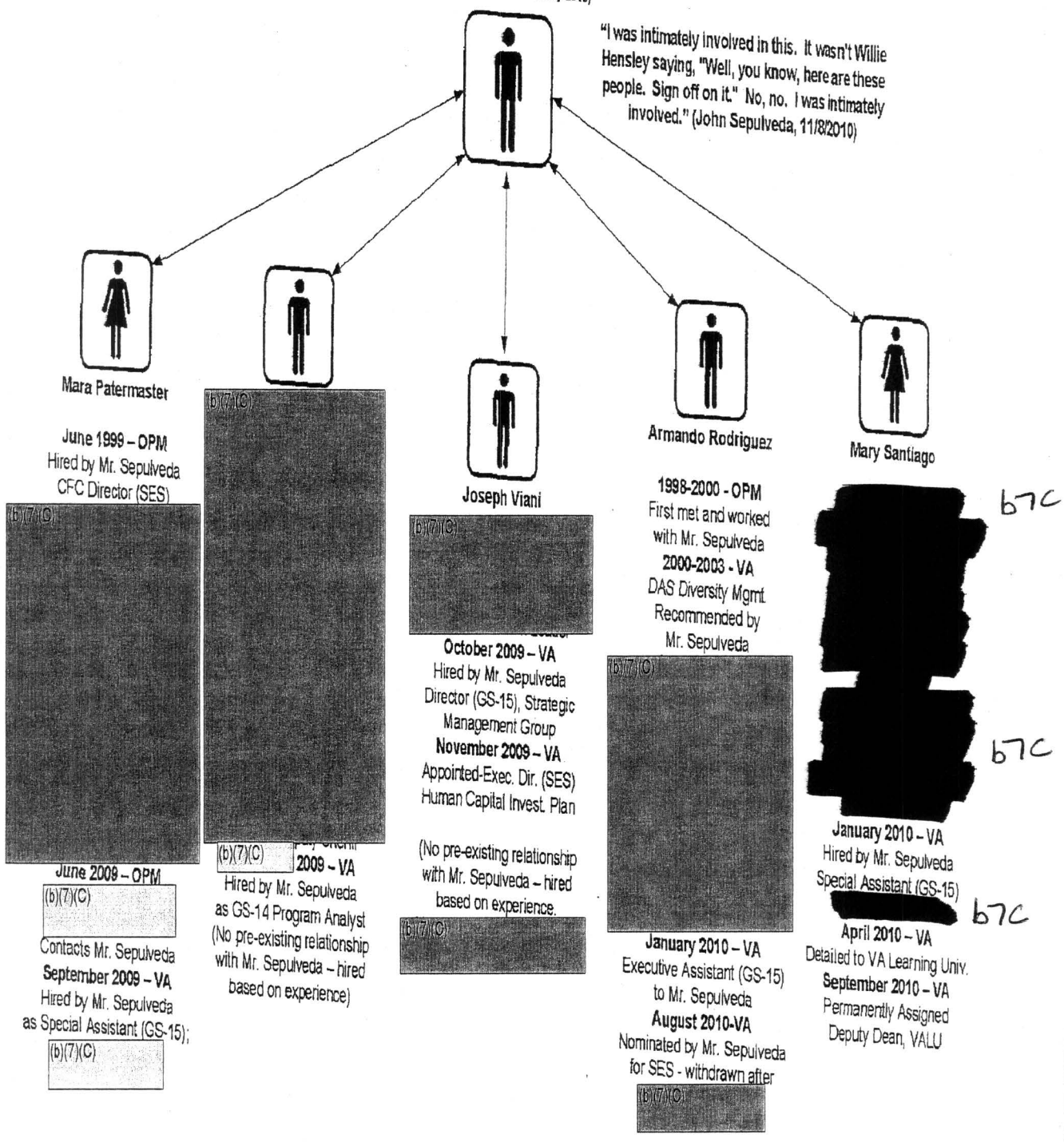


Figure 1

Ms. Patermaster's Appointment

7. Personnel records reflected that Mr. Sepulveda authorized Ms. Patermaster's VA appointment, effective September 13, 2009, as a GS-15, step 10, Special Assistant. Mr. Sepulveda told us that he first met Ms. Patermaster during the Clinton Administration when he (Mr. Sepulveda) was the Deputy Director (Presidentially-Appointed Senate confirmed) of the U.S. Office of Personnel Management (OPM) and that he hired her to be the Director (SES) of the Combined Federal Campaign (CFC). He said that he left OPM at the end of the Clinton Administration but that Ms. Patermaster continued working there. He further said that they occasionally had lunch together and exchanged emails, and he said that their relationship was that of "professional friends." He told us that with the exception of occasional lunch meetings, they did not socialize with one another on a personal level; however, he said that because they were both Puerto Rican and because the Puerto Rican community in Washington, DC, was small, they knew some of the same people.

8. (b)(7)(C)
(b)(7)(C)

9. (b)(7)(C)
(b)(7)(C)

(b)(7)(C) Mr. Sepulveda further said that after the 2008 Presidential election, he was considered for positions at both OPM and VA and that it was around that same time that Ms. Patermaster, (b)(7)(C) contacted him again expressing her desire to work for him. He said that he told Ms. Patermaster that he could not promise her anything, because at that time, he was unsure what was going to happen. He said that he told her that if there was a job opening, she would need to apply for it and go through the hiring process.

10. Personnel records reflected that in July 2009, Ms. Patermaster applied for a newly created Special Assistant to the Assistant Secretary for HRA position. Although her resume reflected her OPM employment, it listed her grade as a GS-15 and not as an SES, and it listed Mr. Sepulveda as a professional reference. On August 31, 2009, Mr. Willie Hensley, a subordinate to Mr. Sepulveda and the former Principal Deputy Assistant Secretary for HRA, approved Ms. Patermaster's VA appointment as a Special

Assistant to Mr. Sepulveda; however, Mr. Sepulveda told us that he authorized this personnel action.

11. Mr. Sepulveda told us that prior to hiring Ms. Patermaster, he did not contact anyone at OPM to ask them about her OPM employment, because he said that he did not know who to contact. He said that his decision to hire her was, in part, based on his own positive experience of when she worked for him years earlier at OPM and that he, himself, was Ms. Patermaster's job reference. (b)(7)(C)

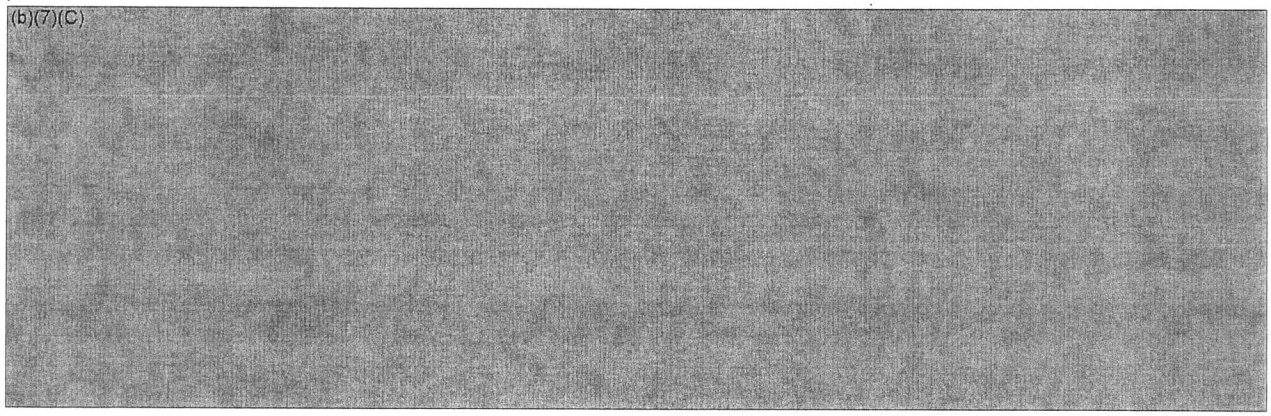
(b)(7)(C)

12. (b)(7)(C)

(b)(7)(C)

(b)(7)(C)

(b)(7)(C)



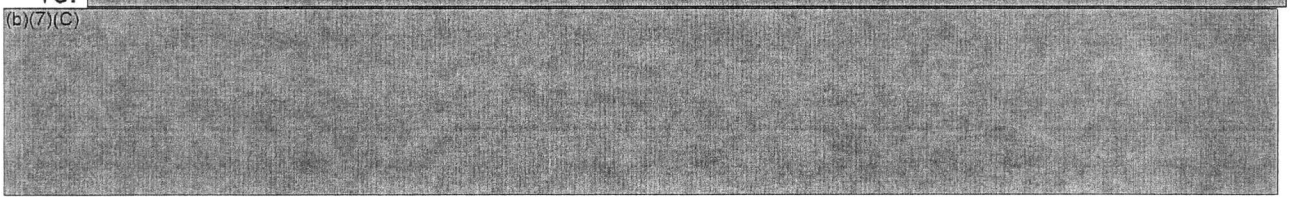
Mr. Rodriguez's Appointment

14. Personnel records reflected that Mr. Rodriguez's most recent VA employment began January 17, 2010, as a GS-15, step 10, Executive Assistant to Mr. Sepulveda. Mr. Sepulveda told us that he first met and worked with Mr. Rodriguez at OPM and that they stayed in touch with one another over the years, occasionally meeting for breakfast or lunch. He said that Mr. Rodriguez recommended him (Mr. Sepulveda) to a former CIA Director to be part of a diversity advisory group within the intelligence community. He characterized their relationship as that of professional friends, and he said, "It's a friendship that really is steeped in us having worked together, both at OPM and also working together at–when I was part of the staff at the intelligence community diversity advisory group."

15. Mr. Sepulveda told us that after he became the Assistant Secretary for HRA, he began recruitment efforts to find an executive assistant. He said that he did not want the individual to function in a traditional administrative role because of the numerous department-wide transformational initiatives that were ongoing as part of the Human Capital Investment Plan. He said that he needed someone with a background in human resources. Mr. Sepulveda also said that he considered the position to be a "confidential" one that required the individual to have his trust and confidence. He told us that after announcing the position and interviewing several candidates, he was unable to find anyone that he felt was the right fit for the job. Mr. Sepulveda said that while at OPM, Mr. Rodriguez did a very good job for him and for OPM and that he had a "solid reputation." He said that he (Mr. Sepulveda) needed someone with Mr. Rodriguez's extensive background in human resources, so he contacted Mr. Rodriguez, who, at the time, was in a GS-15 position at the Department of Energy. Mr. Sepulveda said that he asked Mr. Rodriguez to transfer to VA and to become his executive assistant.

16. (b)(7)(C)

(b)(7)(C)



(b)(7)(C) [redacted]

(b)(7)(C) [redacted]

17. (b)(7)(C) [redacted]
(b)(7)(C) [redacted]

18. Mr. Sepulveda told us that when he selected Mr. Rodriguez as his Executive Assistant, he did not contact, nor did he instruct anyone on his staff to contact, any of Mr. Rodriguez's past employers as a pre-employment check. (b)(7)(C) [redacted]
(b)(7)(C) [redacted]
(b)(7)(C) [redacted] He further said that he never asked Mr. Rodriguez if he had any issues with any previous employers and that he based his decision to hire Mr. Rodriguez on his past experience in working with him at OPM, which was 10 years ago.

19. Mr. Sepulveda told us that the VA Deputy Secretary mandated senior management positions be created and filled with people who would take ownership of the various transformational initiatives and that in keeping with that mandate, Mr. Sepulveda created the position of Executive Director, HCIP, a limited term SES position. Mr. Sepulveda said that Mr. Rodriguez as his Executive Assistant had a broad understanding of all the initiatives and was HRA's principal liaison with VA's Office of Policy and Planning (OPP), which had charge of 16 initiatives through the Operations Management Review (OMR). Mr. Sepulveda said that the position of Executive Director of HCIP had the primary role of interfacing with OPP and OMR and since Mr. Rodriguez already filled that role, he nominated him (Mr. Rodriguez) for the limited term SES position.

20. Mr. Sepulveda acknowledged that at the time he recommended to the VA Secretary that Mr. Rodriguez be given the SES Executive Director position, he failed to tell the VA Chief of Staff, the approving official, that (b)(7)(C) (b)(7)(C) In an undated memorandum, he also failed to disclose it to the VA Secretary when he wrote, "Mr. Rodriguez served for 5.5 years as an SES in the Federal government and is already OPM certified. He can be appointed to the [e-PMO] position as a limited term SES employee without OPM approval."

21. (b)(7)(C) (b)(7)(C) (b)(7)(C) Federal law states that a former career appointee may be reinstated to any SES position for which the appointee is qualified if the appointee left the SES for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful executive performance. 5 USC § 3593(a)(2). Federal regulations state that to be eligible for SES reinstatement, an individual's separation from his last SES career appointment cannot be the result of a removal for misconduct, neglect of duty, malfeasance, or a resignation after receipt of a notice proposing or directing removal. 5 CFR § 317.702 (a)(2). Mr. Sepulveda told us that his failure to tell the Chief of Staff of (b)(7)(C) (b)(7)(C) was an oversight and that he did not purposely withhold the information. He said that he now realized that he was wrong for not disclosing it to the Chief of Staff.

Ms. Santiago's Appointment

22. On January 31, 2010, Ms. Santiago was appointed as a GS-15, step 10, Special Assistant to Mr. Sepulveda. She is currently the Deputy Dean of VA Learning University. Mr. Sepulveda told us that he did not know Ms. Santiago prior to interviewing her for the position or whether (b)(7)(C) The resume that Ms. Santiago submitted for the VA position reflected that she was previously employed at a private sector company and prior to that employed at the U.S. Department of Treasury, Office of Thrift Supervision (OTS) in an SES position as Chief, Human Capital Officer. Her resume reflected that while at OTS, she had an annual salary of $201,000, and that after leaving (b)(7)(C) (b)(7)(C)

23. Mr. Sepulveda told us that people leave jobs for many different reasons; however, he said that during Ms. Santiago's interview, he asked her why she left OTS. He said that Ms. Santiago told him that she was previously an SES; (b)(7)(C) (b)(7)(C) (b)(7)(C) Mr. Sepulveda told us that after hearing Ms. Santiago's story, he did not question her further about her previous employment. (b)(7)(C) (b)(7)(C) Mr. Sepulveda said that Ms. Santiago's story "resonated" with him and that as a Hispanic-

American he said to himself, "Okay. I understand. I don't need to go any further than that." However, Mr. Sepulveda also said that he did not hire Ms. Santiago because she was Hispanic but that he did so because she was the best person for the job. Further, he said that before he hired Ms. Santiago, he asked Ms. Patermaster to call Ms. Santiago's job references, and he said that when he later followed up with Ms. Patermaster, she told him that "everything is fine."

24. As part of her VA employment application, Ms. Santiago twice signed and submitted to VA an Optional Form 306, answering "no" both times to (b)(7)(C), which in part asked if (b)(7)(C) (b)(7)(C) Although she answered "no" to the question, her personnel records contained a Request for Personnel Action, Standard Form 52, dated March 7, 2008, (b)(7)(C)

25. Ms. Santiago told us that when she applied for the VA position, she answered all the questions on the Optional Form 306 truthfully. She said that after she took a 2-year break from OTS, she decided that it was time for her to go back into Federal Service, so she said that she began applying for various Federal jobs through USAJOBS. She told us that she left OTS, because she said that she discovered a pattern of discrimination and other improper practices taking place against minorities. She said that after she (b)(7)(C) (b)(7)(C) she decided to resign.

26. When asked about the Standard Form 52 reflecting (b)(7)(C) (b)(7)(C) (b)(7)(C) (b)(7)(C) told us that (b)(7)(C) (b)(7)(C) (b)(7)(C) however, later said that (b)(7)(C) (b)(7)(C)

27. (b)(7)(C) (b)(7)(C)

28. Ms. Santiago continually told us that she truthfully answered all questions on her Optional Form 306. (b)(7)(C) (b)(7)(C)

However, Ms. Santiago said that after being employed at VA for several months, she told

Mr. Sepulveda and Mr. Rodriguez [redacted]

29. [redacted]

Appointment

30. Personnel records reflected that [redacted] began his VA employment on September [redacted] 2009, as a GS-14 Program Analyst (Strategic Planner) in HRA. He told us that [redacted] said that before [redacted] was interviewed, the former Director of Central Office Human Resources Service (COHRS) called and told [redacted] that they were not considering [redacted] for the GS-15 position but that [redacted] was being considered for a different position. [redacted] said that Mr. Sepulveda and [redacted] interviewed [redacted] and that during the interview they told [redacted] that [redacted] was not a "top runner" for the GS-15 position but that based on [redacted] skills and background, they wanted to hire [redacted] for a newly created position.

31. [redacted] told us that [redacted]

32. Personnel records reflected that [redacted] was a GS-14 at [redacted] and that [redacted] told us that when [redacted] submitted [redacted] Optional Form 306 as part of the VA hiring process, [redacted] answered all the questions truthfully; however, when specifically asked about question 12 on the form, [redacted] admitted that [redacted] said that [redacted] answered "no" to

(b)(7)(C) on the Optional Form 306, because said that (b)(7)(C) (b)(7)(C)
(b)(7)(C)

33. (b)(7)(C)
(b)(7)(C)

34. (b)(7)(C)
(b)(7)(C)

35. Mr. Sepulveda told us that he did not know (b)(7)(C) before job interview. He said that he and (b)(7)(C) interviewed (b)(7)(C) and that they thought (b)(7)(C) was a good candidate for a newly created position within the Strategic Management Group, a newly created organization. He said that (b)(7)(C) appeared to have considerable experience in the area of contracting which was what he (Mr. Sepulveda) wanted in terms of the new position. He recalled that during (b)(7)(C) interview, as they went over resume, Mr: Hensley recognized the name of a reference listed on the resume as someone also knew. Mr. Sepulveda said that he asked Mr. Hensley to call the reference and that Mr. Hensley later told him that the reference, who was also (b)(7)(C) former supervisor, said that (b)(7)(C) was a good employee.

36. Mr. Sepulveda told us that during (b)(7)(C) interview, (b)(7)(C) never said a thing about (b)(7)(C) and that gave a reasonable explanation as to why left that employment, recalling that it had something to do with (b)(7)(C) (b)(7)(C) Mr. Sepulveda said that he was comfortable with (b)(7)(C)

(b)(7)(C) explanation and that there was nothing [redacted] said about [redacted] employment at [redacted] that (b)(7)(C) caused him to question it further.

37. Mr. Sepulveda told us that these individuals were all good VA employees, and he said that "there is no law, there's no regulation, there's no policy prohibiting the hiring of people who have been [redacted]" He said that "we have people who served in prisons for murder working at VA. There is no violation in that regard." Mr. Sepulveda told us that he heard this from a third party and could not provide any specifics when asked about this prison comment.

Conclusion

38. Although we did not substantiate that Mr. Sepulveda engaged in a prohibited personnel practice, we concluded that he did not exercise sound judgment or due diligence, giving the appearance of preferential treatment, when he hired his immediate staff and later withheld key information when recommending that the VA Secretary appoint one of them, Mr. Rodriguez, to a limited term SES position contrary to Federal law and regulations. We found that four of the employees had misconduct or performance-related problems at Federal agencies previously employing them and that a pre-employment check was not sufficiently completed or, in some cases, done at all. We found that Mr. Sepulveda had long-standing professional friendships with two of them, one of whom was his first nominee for the SES position, and that he had prior knowledge that these two former colleagues had previous Federal employment problems.

We recognize that in the hiring process, on rare occasions, an applicant may have prior employment issues that go undetected; however, Mr. Sepulveda appointed four individuals to his immediate staff, professional confidants, who were either removed or left Federal service as the result of conduct or performance issues. He knew the backgrounds of two and his failure to take the necessary steps to develop essential information concerning the other two establishes a pattern of questionable judgment on his part. Other Federal agencies accused these individuals of misconduct or actions that are incompatible with service as a senior member of HRA management, to include prohibited personnel practices in the form of nepotism, abuse of subordinates, hostile work environment, and poor performance. Mr. Sepulveda's selection of these individuals may not be in the best interest of VA.

39. (b)(5) [redacted] (b)(5) [redacted] (b)(5) [redacted] Further, we found that Ms. Patermaster and Ms. Santiago falsified employment records when they failed to disclose that they had (b)(7)(C) [redacted] on the Optional Form 306 each completed as part of the VA employment process.

40. We are providing this memorandum to you for your information and official use and whatever action you deem appropriate. **No response is necessary.** It is subject to the provisions of the Privacy Act of 1974 (5 U.S.C. § 552a). You may discuss the contents of this memorandum with Mr. Sepulveda, within the bounds of the Privacy Act; however, it may not be released to him. No response is necessary. If you have any questions, please contact Ms. Linda Fournier, Director, Administrative Investigations Division, at (b)(7)(C) [redacted]

JAMES J. O'NEILL

Department of Veterans Affairs

Memorandum

Date: May 30, 2011

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigations- Prohibited Personnel Practices, Preferential Treatment, Nepotism, Office of Informatics and Analytics, Tuscaloosa, AL (2010-00299-IQ-0175)

To: Assistant Deputy Under Secretary for Health for the Office of Informatics and Analytics (10P2)

1. The VA Office of Inspector General Administrative Investigations Division investigated an allegation that (b)(7)(C) Management and Program Analyst with VHA's Office of Informatics & Analytics (OIA), engaged in a prohibited personnel practice, preferential treatment, and nepotism when [redacted] influenced the hiring of (b)(7)(C) (b)(7)(C) (b)(7)(C), as a Program Analyst with VHA OIA Healthcare Identity Management team (HIMT). To assess these allegations, we interviewed (b)(7)(C) (b)(7)(C) Director, Data Quality Program, OIA Health Information Governance (HIG); (b)(7)(C) HIMT Program Manager, OIA HIG; (b)(7)(C) Director, OIA Program Support Office; other VA employees; and you. We also reviewed personnel records, hiring packages, training materials, relevant Federal regulations, and VA policy.

2. We did not substantiate that (b)(7)(C) engaged in a prohibited personnel practice, preferential treatment, or nepotism; however, we concluded that [redacted] actions resulted in (b)(7)(C) the appearance of violating ethical standards when [redacted] signed a Request for Personnel (b)(7)(C) Action, Standard Form (SF) 52, authorizing a recruitment action that was later used to appoint (b)(7)(C) VA Office of General Counsel (OGC) was unable to determine whether (b)(7)(C) actions constituted nepotism, as they said that it was (b)(7)(C) unclear if [redacted] qualified as a "public official," and we recognize that [redacted] actions may have (b)(7)(C) been ministerial in nature. We suggest that you ensure that (b)(7)(C) has no future involvement in any personnel actions concerning (b)(7)(C) to avoid even the appearance of an ethical violation. We are providing this memorandum to you for your information, official use, and whatever action you deem appropriate. **No response is necessary.**

3. Federal law prohibits public officials from appointing, employing, promoting, advancing, or advocating for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which the public official is serving or over which the public official exercises jurisdiction or control any individual who is a relative of the public official. 5 USC § 3110(b). Standards of Ethical Conduct for Employees of the Executive Branch prohibits employees from using their public office for private gain or the private gain of relatives and to ensure that the performance of their official duties does not give rise to the appearance of the use of public office for private gain 5 CFR § 2635.702.

4. Personnel records reflected that between May 2005 and December 2006, (b)(7)(C) worked as a contractor at the VA Office of Information and Technology (OI&T) Service Desk in Tuscaloosa, Alabama. In January 2007, while still a contractor, (b)(7)(C) worked on what today is the HIMT (formerly the Office of Health Data & Informatics, Identity Management Data Quality Team) as a Data Quality Analyst. (b)(7)(C) was also employed on the current HIMT, as a Program Analyst, until April 2007, when (b)(7)(C) accepted a position within OIA's Program Office. We also found that (b)(7)(C) (b)(7)(C) was previously employed by VA as a Logistics Management specialist within OI&T, until (b)(7)(C) ; however, we found no evidence that (b)(7)(C) was involved in (b)(7)(C) VA appointments.

5. Personnel records reflected that VA issued a competitive announcement in 2007 for six Information Technology Specialist GS-2210 (Customer Support) positions at the GS-5/7/9/11/12 grade levels to be located in Tuscaloosa, Alabama, and Hines, Illinois. (Record retention for this recruitment has since passed, so record availability was limited.) Records reflected that certificate number VO-07-TLB-00177S0, dated (b)(7)(C) 2007, contained three names with applicants one and two having veterans' preference and (b)(7)(C) ranked as number three. Records also showed that applicants one and two were selected for positions in Hines and Tuscaloosa, respectively, and on (b)(7)(C) 2007, (b)(7)(C) , OI&T Support Services Supervisor, selected (b)(7)(C) for a GS-7 position at the OI&T National Help Desk in Tuscaloosa. (b)(7)(C) appointment was effective (b)(7)(C) 2007.

(b)(7)(C) 6. (b)(7)(C) told us that [redacted] started at VA as a GS-7, step 6, a rate of pay above the (b)(7)(C) minimum, after [redacted] wrote a letter to the HR Office asking them to match [redacted] then salary. (b)(7)(C) In a letter dated May 8, 2007, (b)(7)(C) wrote that [redacted] had over 1 year and 7 months of (b)(7)(C) experience performing the duties of an IT Specialist (Customer Support) for the VA Service Desk and asked for a salary readjustment to meet [redacted] annual salary of $49,000. (b)(7)(C) (b)(7)(C) (b)(7)(C) said that in addition to the letter, [redacted] also submitted records to document (b)(7)(C) salary history. In a May 9, 2007, memorandum, (b)(7)(C) Director of Support Services, proposed a GS-7, step 6, rate of pay, based on (b)(7)(C) qualifications and prior experience as a help desk specialist at the VA Service Desk, and it was approved by (b)(7)(C) Executive Program Manager. Record retention for this action has since passed, so record availability was limited. Absence a review of all relevant documents, we could not determine whether (b)(7)(C) appointment at a rate of pay above the minimum was done properly. Federal regulations state that an agency may make a superior qualifications appointment and set the initial pay at a rate higher than the minimum rate and that in determining the rate of pay, an agency may consider one or more factors, including the level, type, or quality of the candidate's skills or competencies or the candidate's existing salary or recent salary history. 5 CFR § 531.212.

7. (b)(7)(C) told us that VA issued a competitive announcement in (b)(7)(C) 2007 for two Program Analyst GS-0343 vacancies at the GS-11 grade level with one position to be located in Birmingham and one in Tuscaloosa. Personnel records reflected that certificate number VO-08-DMa-00336S0, issued by the Cleveland Business Center HR

and dated (b)(7)(C), 2007, contained five names, with (b)(7)(C) ranked as number two. Records reflected that none of the applicants had veterans' preference; the first applicant declined the position; and on (b)(7)(C), 2007, (b)(7)(C) properly selected (b)(7)(C) for one of the GS-11 positions. (b)(7)(C) told us that all five applicants were interviewed in person and that (b)(7)(C) selected (b)(7)(C) for the Tuscaloosa vacancy based on (b)(7)(C) previous HIMT experience and training. (b)(7)(C) appointment was effective (b)(7)(C) 2008. (b)(7)(C) told us that (b)(7)(C) had some clerical involvement with the position announcement, as (b)(7)(C) sent the announcement documents to the Cleveland Business Center HR (b)(7)(C) said, however, (b)(7)(C) had no involvement in the ranking or selection process for (b)(7)(C) See Figure 1 for a timeline of (b)(7)(C) and (b)(7)(C) positions.

(b)(7)(C)		(b)(7)(C)	
Dates	**Position**	**Dates**	**Position**
(b)(7)(C) /2005 – (b)(7)(C) /2006	OI&T VA Service Desk *(Contractor)*	(b)(7)(C) /2005 - (b)(7)(C) /2007	(GS-12) IMDQ Team (HIMT)
(b)(7)(C) /2007 – (b)(7)(C) /2007	IMDQ Team (HIMT) *(Contractor)*	(b)(7)(C) /2007 - Present	(GS-13) Office of Informatics & Analytics (OIA)
(b)(7)(C) /2007 - (b)(7)(C) /2008	(GS-7) OI&T VA Service Desk *(Federal)*		
(b)(7)(C) /2008 - Present	(GS-11) IMDQ Team (HIMT) *(Federal)*		

Figure 1

8. Personnel records reflected that (b)(7)(C) listed herself as the point of contact on the SF 52 that requested a GS-11 recruitment, effective December 23, 2007, and on (b)(7)(C) 2007, signed "for" (b)(7)(C) supervisor as the authorizing official for this action. It also reflected that the position filled by (b)(7)(C) was the one left vacant by (b)(7)(C) when (b)(7)(C) was selected for (b)(7)(C) current job, a position with greater promotional potential. We found no evidence that (b)(7)(C) vacated the position for (b)(7)(C) (b)(7)(C) told us that (b)(7)(C) signed "for" (b)(7)(C) supervisor "a bunch" and that sometimes the Director of the Program Office also signed for (b)(7)(C) supervisor. In a July 2, 2007, memorandum, you gave (b)(7)(C) and three other employees the authority to sign on your behalf when you were "unavailable but have verbally indicated support or initiated the action."

9. (b)(7)(C) told us that when (b)(7)(C) authorized the action, no name or employee data appeared on the SF 52. (b)(7)(C) said that program staff entered information such as cost center, location, title of position, etc., on the form and that information pertaining to the appointed employee was left blank. (b)(7)(C) said that this was due to not yet knowing who would be selected for the position. (b)(7)(C), who is (b)(7)(C) supervisor, told us that

once a selection was made, a Cleveland HR Specialist entered (b)(7)(C) name on the form. Other program office employees told us that it was a standard practice to not enter employee information on recruitment action forms when the action was initiated, and in other investigations, we found this was a standard administrative practice in other offices as well. An OIG forensic laboratory examination report reflected that there was some evidence to indicate that (b)(7)(C) did not write (b)(7)(C) name on the form. The report also noted that (b)(7)(C) signature on the form was probably a genuine signature; however, it was unclear when the signature was applied to the document.

10. OGC was unable to determine whether (b)(7)(C) action constituted nepotism, because they said that it was unclear if (b)(7)(C) qualified as a "public official." They said that (b)(7)(C) would be a public official "if (b)(7)(C) was delegated the authority to appoint, employ, promote, or advance individuals, or to recommend such actions." (b)(7)(C) told us that (b)(7)(C) was not a supervisor and did not have any selection authority. OGC also said that if the Delegation of Authority memorandum existed prior to July 2, 2007, anyone who signed for (b)(7)(C) in such a situation was acting as a mere proxy for (b)(7)(C) and was signing only, in the words of the delegation memo, to "maintain the continuity of workflow without undue interruption." They said that if (b)(7)(C) authority was not limited to merely signing "for" and at the direction of (b)(7)(C) (b)(7)(C), (b)(7)(C) actions could constitute nepotism. Standards of Ethical Conduct for Employees of the Executive Branch reflect that employees shall avoid any actions creating the appearance that they are violating the law or ethical standards. It also states that it "shall be determined from the perspective of a reasonable person with knowledge of the relevant facts." 5 CFR § 2635.101 (b) (14).

11. (b)(7)(C) told us that (b)(7)(C) was not a supervisor and that (b)(7)(C) did not have the authority to select or recommend employees. (b)(7)(C) said that (b)(7)(C) prepared position descriptions and recruitment packages for recruiting supervisors with their approval, and (b)(7)(C) told us that (b)(7)(C) processed this recruitment as (b)(7)(C) did all the others. (b)(7)(C) told us that (b)(7)(C) was the Cleveland Business Center HR liaison but that (b)(7)(C) had no involvement in the selection of (b)(7)(C) (b)(7)(C) said that (b)(7)(C) role was to receive the certificate and give it to the manager. You told us that (b)(7)(C) only signed for you with your approval but that you did not recall this particular instance. You said that, in your opinion, you would have preferred that (b)(7)(C) not be the one signing the forms for this personnel action, since the applicant being appointed was (b)(7)(C)

12. We did not substantiate that (b)(7)(C) engaged in a prohibited personnel practice, preferential treatment, or nepotism; however we concluded that (b)(7)(C) actions resulted in the appearance of violating ethical standards when (b)(7)(C) signed an SF 52 authorizing a recruitment action that was later used to appoint (b)(7)(C). OGC was unable to determine whether (b)(7)(C) actions constituted nepotism, as they said that it was unclear if (b)(7)(C) qualified as a "public official," and we recognize that (b)(7)(C) actions may have been ministerial in nature. Further, (b)(7)(C) jump from a GS-7 to a GS-11 position can be explained by (b)(7)(C) applying for each position through the competitive process and qualifying based on (b)(7)(C) past experience as a contract employee. The first was an IT

Specialist, GS-2210, and the second was a Program Analyst, GS-0343, which require differing skills and abilities. We suggest that you ensure that (b)(7)(C) has no future involvement in any personnel actions concerning (b)(7)(C) to avoid even the appearance of an ethical violation.

13. We are providing this memorandum to you for your information and official use and whatever action you deem appropriate. It is subject to the provisions of the Privacy Act of 1974 (5 USC § 552a). You may discuss the contents of this memorandum with (b)(7)(C) (b)(7)(C) and may have a copy of the redacted version, within the bounds of the Privacy Act. The unredacted version may not be released to (b)(7)(C) If you have any questions, please call Linda Fournier, Director, Administrative Investigations Division, at (b)(7)(C)

JAMES J. O'NEILL

Department of Veterans Affairs

Memorandum

Date: June 28, 2011

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation, Conflict of Interest, West Palm Beach VA Medical Center, Florida (2011-01682-IQ-0104)

To: Director, West Palm Beach VA Medical Center

1. The VA Office of Inspector General Administrative Investigations Division, while conducting another investigation, discovered that (b)(7)(C) former (b)(7)(C) (b)(7)(C) Human Resources (HR) Officer at the West Palm Beach VA Medical Center, engaged in a conflict of interest when (b)(7)(C) signed as the approving official on (b)(7)(C) own official personnel actions. To assess this matter, we interviewed (b)(7)(C) Associate Director at the West Palm Beach VA Medical Center, and you. We were unable to interview (b)(7)(C)

2. We found that (b)(7)(C) engaged in a conflict of interest when (b)(7)(C) signed, as the authorizing official, personnel actions leading to (b)(7)(C) own monetary gain. We recognize that (b)(7)(C) signing these actions may have been ministerial and administrative in nature and that the actions were approved by (b)(7)(C) supervisors, prior to (b)(7)(C) signing them; however, as an HR Officer (b)(7)(C) knew, or should have known, that applying (b)(7)(C) signature to these actions as the approving official constituted a conflict of interest. Further, the issue of HR Officer's signing their own personnel actions was discussed in a December 9, 2009, HR Conference, in which a solution was given, yet, we found (b)(7)(C) authorizing (b)(7)(C) own personnel actions as recent as August 2010. (b)(5) (b)(5) We are providing this memorandum for your information and official use to take whatever action you deem appropriate. No response is necessary.

3. Standards of Ethical Conduct for Employees of the Executive Branch state that employees shall not use public office for private gain and prohibits participating in matters affecting an employee's own financial interests (18 USC § 208). 5 CFR § 2635.702 and § 2635.902(g).

4. While conducting another administrative investigation, we discovered Notification of Personnel Action forms (SF-50s) for (b)(7)(C) with (b)(7)(C) electronic and/or hand-signed signature in the authorizing block, such as retention incentives, individual cash awards, and general salary adjustments, from January 2008 to August 2010. You told us that you did not know why (b)(7)(C) signature appeared on (b)(7)(C) own SF-50s but that (b)(7)(C) name was automatically filled into the authorizing block by the electronic system. You said that it was an administrative oversight and that these personnel actions were all appropriate and approved by (b)(7)(C) supervisors. You also said that (b)(7)(C) signature in the authorizing

block of own personnel actions was improper and that someone else with the proper authority should have signed the SF-50s relating to

5. told us that once we made aware of this issue, relayed it up through chain of command and that they were going to take corrective action to avoid any future oversights. said that the issue was originally discussed in December 2009 but that they had not yet taken the steps to avoid this type of conflict. Recorded minutes from a December 9, 2009, HRM Conference Call reflected that in a discussion of electronic official personnel folders, the speaker told attendees that "personnel actions on the HR Officer should be signed by another authorized signer, such as the Director." told us that in the future, they would manually process these personnel actions, using paper rather than electronic forms, to obtain signatures until they could put in place a mechanism to avoid HR Officers electronically authorizing their own personnel actions.

6. We found that engaged in a conflict of interest when signed, as the authorizing official, personnel actions leading to own monetary gain. We recognize that signing these actions may have been ministerial and administrative in nature and that the actions were approved by supervisors, prior to signing them; however, as an HR Officer knew, or should have known, that applying signature to these actions as the approving official constituted a conflict of interest. Further, the issue of HR Officer's signing their own personnel actions was discussed in a December 9, 2009, HR Conference, in which several solutions were given, yet, we found authorizing own personnel actions as recent as August 2010. We suggest that you ensure a mechanism is put in place to avoid future occurrences of HR Officers signing their own personnel actions.

7. We are providing this memorandum to you for your information and official use and whatever action you deem appropriate. It is subject to the provisions of the Privacy Act of 2974 (5 USC § 552a). You may discuss the contents of this memorandum with and may have a copy of the redacted version, within the bounds of the Privacy Act. The unredacted version may not be released to If you have any questions, please call Linda Fournier, Director, Administrative Investigations Division, at

JAMES J. O'NEILL

Department of Veterans Affairs

Memorandum

Date: August 18, 2011

From: Assistant Inspector General for Investigations (51)

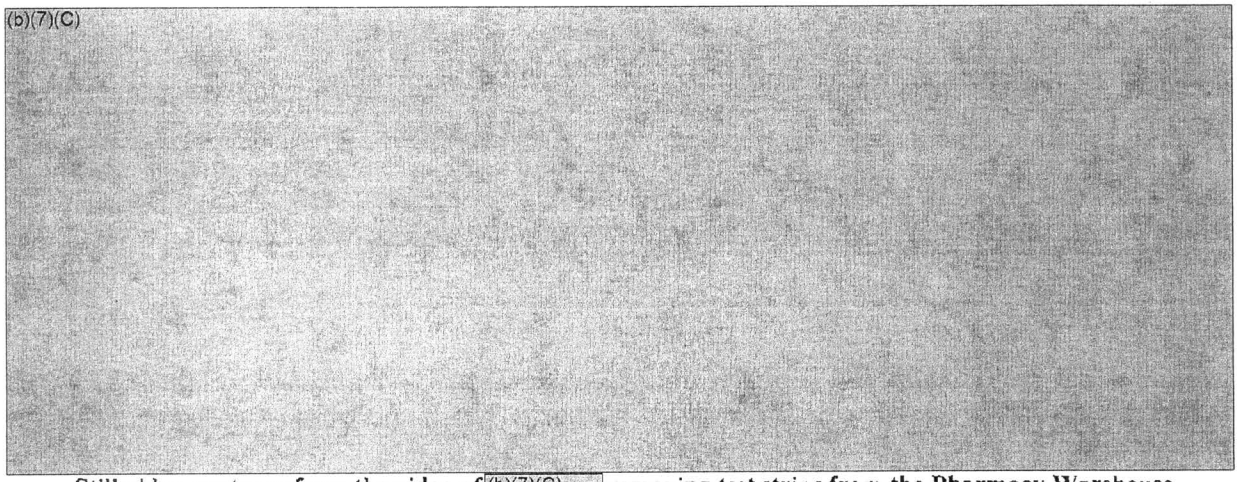
Subj: Management Implications Notification – Pharmacy Warehouses

To: Principle Deputy Under Secretary for Health

This memorandum is provided to you to offer observations regarding possible weaknesses in VA's physical security and control at Pharmacy Warehouses. While investigating the theft of nearly $200,000 worth of diabetic test strips by former VA Pharmacist (b)(7)(C) from the Pharmacy Warehouse at the West Los Angeles Medical Center, we discovered systemic managerial and physical security control weaknesses that facilitated the theft.

We initiated our investigation when we learned that Special Agents from the Food and Drug Administration and Immigration and Customs Enforcement had identified (b)(7)(C) as one of several people who had sold diabetic supplies to Donald PEPIN, who resold these supplies over the Internet. In addition to trafficking stolen merchandise, PEPIN was suspected of placing unrefrigerated insulin back in the medicine supply stream, which presented a health risk to downstream patients.

Review of the records contained in the electronic key card system that provided access to the warehouse revealed that (b)(7)(C) had been entering it at odd times every few days. A covert camera we installed captured (b)(7)(C) entering the warehouse, proceeding directly to where the diabetic test strips were stored, and removing several cases of this product. Each case, half the size of a box of copier paper, costs VA $1,080 and contains 72 boxes of strips.

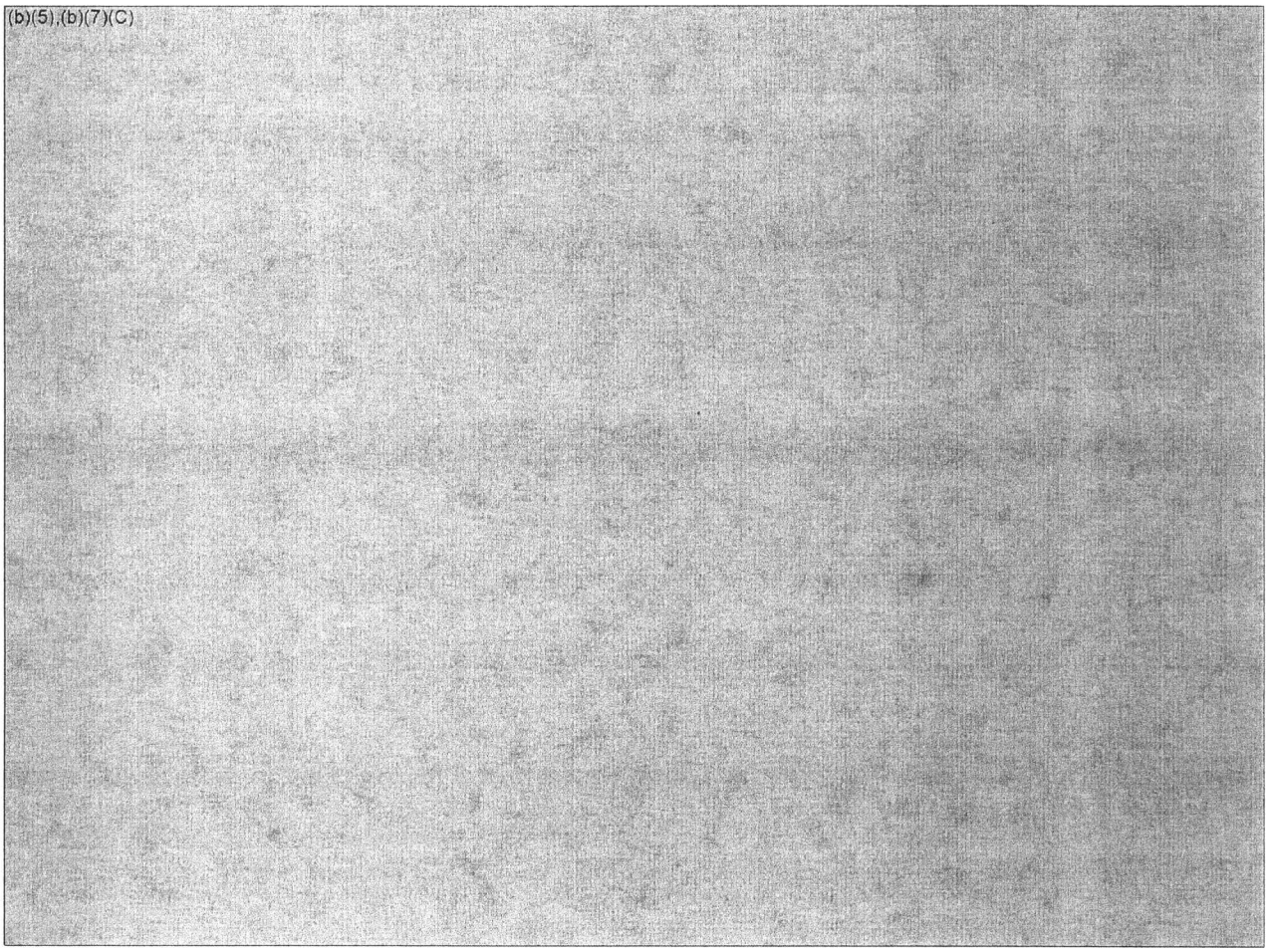


Still video captures from the video of (b)(7)(C) removing test strips from the Pharmacy Warehouse.

When confronted with the evidence we had gathered, (b)(7)(C) admitted stealing diabetic test strips from the warehouse and the outpatient pharmacy for nearly five

When confronted with the evidence we had gathered, (b)(7)(C) admitted stealing diabetic test strips from the warehouse and the outpatient pharmacy for nearly five years and selling them to PEPIN for approximately $191,000. The vast majority were stolen from the warehouse. On August 10, 2010, (b)(7)(C) provided good faith restitution of $180,864 to VA. On April 18, 2011, (b)(7)(C) was sentenced to 6 months' home confinement, 3 years' probation, fined $3,000, ordered to pay additional $1,250 restitution, and ordered to surrender her pharmacy license.

This investigation of pharmacy warehouse theft demonstrates the need for vigilant security in warehouse areas. Large, open areas where inventory is stored presents challenges to control, including physical security, access, and record keeping.



Should you have any questions or require additional information, please contact me at (b)(7)(C)

James J. O'Neill

2011-00651-IQ-0024

Department of Veterans Affairs

Memorandum

Date: October 27, 2011

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation – Failure to Follow VA Performance Policy Office of Diversity and Inclusion, VA Central Office, Washington, DC (2011-00651-IQ-0024)

To: Deputy Assistant Secretary for Resolution Management (08)

1. The VA Office of Inspector General Administrative Investigations Division, while investigating another allegation, found that Ms. Carolyn Wong, Director for Training and Communications, Office of Diversity and Inclusion (ODI), as well as other ODI supervisors, failed to provide (b)(7)(C) Writer-Editor, ODI, a performance plan within 60 days after the beginning of the appraisal period from 2006 to 2010 and the required interim progress reviews in 2006, 2007, 2009, and 2010, as required by VA policy. We also found that the Office of Human Resources gave (b)(7)(C) Deputy Assistant Secretary for ODI, ambiguous advice in reference to use of (b)(7)(C) overlapping percentage ranges to calculate performance-based cash awards.

2. (b)(5) (b)(5) (b)(5) We are providing this memorandum to you for your information and official use and whatever action you deem appropriate. No response is necessary. We addressed an unsubstantiated allegation in a separate memorandum, and it will not be discussed in this memorandum.

Performance Plans and Progress Reviews

3. Federal regulations require agencies to establish performance appraisal systems which provide for communicating to each employee at the beginning of an appraisal period the performance plan and critical elements of the employee's position and for evaluating each employee during the appraisal period on these standards and elements. It also requires performance plans be provided to employees at the beginning of each appraisal period and that employees receive one or more progress reviews during each appraisal period. 5 CFR §§ 430.204, 430.206(b) and 430.207(b). VA policy states that a performance plan must be developed to measure performance requirements of each employee's position and requires raters to ensure that each

employee receives a performance plan for each rating cycle and obtain the employee's signature verifying receipt of the performance plan within 60 days after the beginning of the appraisal period, the employee's appointment to a new position, or a change in the employee's performance plan. It also states that raters must use VA Form 0750 for documenting the approved performance plan; each plan must include all elements that will be used in assigning a summary level; each must contain at least one critical element and one non-critical element that address individual performance; an employee must receive and have documented at least one progress review during the appraisal period; and the progress review must be documented on VA Form 0750 or its electronic equivalent. VA Handbook 5013/1, Part 1, Paragraphs 6 and 7.

4. [redacted] performance appraisal forms (VA Form 0750) reflected that from 2006 to 2010, [redacted] did not receive [redacted] performance plan within 60 days after the beginning of the appraisal period and the forms did not document the required progress reviews for rating periods October 1, 2005, to September 30, 2006; October 1, 2006, to September 30, 2007; March 13, 2009, to September 30, 2009; and October 1, 2009, to September 30, 2010. [redacted] told us that in the past 3 to 4 years [redacted] believed that [redacted] awards were lower than they would have been, had [redacted] performance standards been properly identified as critical and non-critical and not arbitrarily made critical. [redacted] further said that in 2006, [redacted] supervisor changed [redacted] elements in the middle of the rating period but failed to tell [redacted] of the change. [redacted] told us that [redacted] always received [redacted] performance plans late. He further said that in 2010, [redacted] and Ms. Wong disagreed throughout the year about [redacted] critical elements and that [redacted] did not sign [redacted] performance plan until the end of the year.

5. Ms. Wong told us that she did not know why [redacted] did not receive [redacted] performance plans within 60 days after the beginning of each appraisal period. She said that she also did not know why the VA Forms 0750 associated with [redacted] annual performance plan did not document [redacted] mid-term progress reviews. She said that she met with [redacted] weekly to give [redacted] feedback on [redacted] work and provided regular guidance through email or face-to-face, and she said that [redacted] did not have any problems meeting [redacted] performance elements.

6. We concluded that Ms. Wong, as well as other ODI supervisors, failed to provide [redacted] a performance plan within 60 days after the beginning of the appraisal period from 2006 to 2010 and the required interim progress reviews in 2006, 2007, 2009, and 2010, as required by VA policy. [redacted]

Performance-Based Awards

7. Federal laws and regulations require that performance-based cash awards be based on employees' ratings of record and that systems for calculating performance-based cash awards, as designed and applied, must make meaningful distinctions based on levels of performance. 5 USC § 4505a and 5 CFR § 451.104. According to the Office

of Personnel Management (OPM), "meaningful distinctions based on levels of performance" means that, "employees with higher ratings of record receive larger . . . cash awards than those with lower ratings of record." OPM Performance Management Appraisal Systems and Programs FAQs. (http://www.opm.gov/perform/faq/pbcawards.asp) VA incorporated this into policy, as reflected in VA Handbook 5017/9, paragraph 2 (July 7, 2010). OPM guidance also states that agencies "can design their awards programs so employees with higher ratings of record receive larger cash awards, as a percentage of base pay, than those with lower ratings," indicating that "larger cash awards" in this context can mean a larger percentage of base pay. However, OPM gives wide latitude to Federal agencies in interpreting this requirement, stating that agencies have flexibility to design their awards programs to meet the needs of their agencies, provided that these programs reflect meaningful distinctions based on levels of performance, so that employees with higher ratings of record receive larger cash awards. 5 CFR Part 451.

(b)(7)(C) 8. (b)(7)(C) told us that used a system for calculating performance-based cash awards by using overlapping percentage ranges, and award records reflected that this, at times, resulted in some employees with different ratings of record receiving the same award when calculated as a percentage of their base pay. Email records reflected that in September 2010, (b)(7)(C) sought guidance from the Chief of Central Office HR, (b)(7)(C) who assured that the use of overlapping percentage ranges to calculate performance-based awards was permissible. (b)(7)(C) however, told us that (b)(7)(C) beginning in fiscal year 2011, would use fixed percentages to avoid any concerns. Given the latitude granted to Federal agencies, the ambiguity in the applicable laws, regulations, policy, and guidance, and the advice HR gave (b)(7)(C), we found that (b)(7)(C) (b)(7)(C) acted in good faith when used overlapping percentage ranges to calculate performance-based awards. However, we found that the use of overlapping percentage ranges, although not explicitly prohibited, was questionable under OPM guidance and VA policy, as it sometimes resulted in an employee with a lower rating of record receiving the same award as someone with a higher rating. (b)(5)
(b)(5)

10. We are providing this memorandum for your information and official use and whatever action you deem appropriate. It is subject to the provisions of the Privacy Act of 1974 (5 USC § 552a). You may discuss the contents of this memorandum with the identified parties and provide them a redacted copy of this memorandum, within the bounds of the Privacy Act; however, the unredacted version may not be released to them. No response is necessary. If you have any questions, please contact Ms. Linda Fournier, Director, Administrative Investigations Division, at (b)(7)(C)

JAMES J. O'NEILL

Department of Veterans Affairs

Memorandum

Date: November 9, 2011

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation, Improper Use of Veterans Recruitment Appointment Authority, VBA Regional Office and Insurance Center, Philadelphia, Pennsylvania (2011-00211-IQ-0018)

To: Veterans Benefits Administration Eastern Area Director (20F1)

1. The VA Office of Inspector General Administrative Investigations Division investigated an allegation that applicants with veterans' preference were purposely not selected during a 2009 Veterans Service Representative (VSR) hiring effort. To assess this allegation, we interviewed Mr. Thomas M. Lastowka, Director of the Regional Office and Insurance Center (ROIC); Ms. Lucy Filipov, Assistant Director of ROIC; (b)(7)(C) (b)(7)(C) Chief of Human Resources (HR) ROIC; (b)(7)(C), HR Specialist; other VBA staff; Detroit Delegated Examining Unit (DEU) staff; other VA employees; and an Office of Personnel Management (OPM) HR Specialist. We also reviewed personnel and email records, other relevant documents, and Federal laws, regulations, and VA policy. We did not substantiate other allegations, and they will not be discussed in this memorandum.

2. We concluded that the selecting and approving officials, Ms. Filipov, and (b)(7)(C) respectively, as well as (b)(7)(C) who assessed the preferred candidates for Veterans Recruitment Appointments (VRA), improperly applied the VRA hiring authority when they used it to disregard the rating and ranking scores assigned to applicants on an open general announcement certificate in order to select preferred applicants for VSR positions and when they failed to apply VRA rules equally to all VRA eligible applicants on the certificate. (b)(5) (b)(5),(b)(7)(C) (b)(5) We are providing this memorandum to you for your information and official use and whatever action you deem appropriate. No response is necessary.

Background

3. In March 2009, the DEU issued two vacancy announcements for 65 VSR trainee positions in Philadelphia. The first was an open general announcement, and the second was a Federal Career Intern Program (FCIP) announcement. The certificate of eligibles generated from the open general announcement (DEU certificate) referred 146 qualified applicants, to include 78 with veterans' preference; however, the certificate was marked as "unused" and returned to the DEU. A DEU HR Specialist told us that for

the DEU certificate, the DEU rated and ranked the applicant packages, to include applying veterans' preference, and developed a certificate of eligibles, which the DEU then sent to the ROIC. She said that the DEU did not have any records on the VRA appointments, as the ROIC handled those internally. The certificate generated from the FCIP announcement (FCIP certificate) referred 131 qualified applicants, of which 70 were selected, and of those, 4 had veterans' preference.

4. Personnel records reflected that Ms. Filipov, who at that time was the Pension Management Center Manager, was the selecting official, and (b)(7)(C) was the appointing official for this VSR hiring effort. The Assistant Pension Maintenance Center Manager told us that he reviewed applications and interviewed applicants from both certificates and referred the names of his preferred candidates to HR. Emails dated April 14 and 15, 2009, reflected that the Assistant Manager asked (b)(7)(C) to make "job offers" to a few select applicants listed on the DEU certificate and to "please confirm application of Rule of 3." However, the DEU certificate reflected that no selections were made from it. Instead, personnel records reflected that these applicants were offered positions by utilizing the VRA hiring authority. (b)(7)(C) said that they "offered five VSR positions under the VRA hiring authority." The DEU certificate reflected that those applicants were rated and ranked as numbers 4, 6, 11, 16, and 17 on that list.

5. VA policy states that officials authorized to recommend or to approve the selection of a person for a position are responsible for being familiar with and following the policies and principles expressed in VA Handbook 5005, Part II, Chapter 2. VA policy also states that certain veterans may be given excepted VRA appointments under 5 CFR 307.103 to positions otherwise in the competitive service at GS-11 or below. VA Handbook 5005/12, Part II, Chapter 2, Section C, Paragraph 1 (August 12, 2005).

6. Federal regulations state that veterans' preference procedures of Part 302 apply when there are preference eligible candidates being considered for a VRA; each agency shall establish definite rules regarding the acceptance of applicants for employment in positions covered by this part; and each agency shall apply its rules uniformly to all applicants who meet the conditions of the rules. 5 CFR §§ 307.103 and 302.301(b). It also states that each agency shall grant veterans preference by (a) numerical scores and granting 5 or 10 points to preference eligibles as required by law, or (b) without ranking and noting preference eligibles by "CP" or "XP" or "TP" as required by law. 5 CFR § 302.201. Federal regulations also state that when making an appointment from a list on which candidates have received numerical scores, the agency must make its decision for each vacancy from not more than the highest three names available for appointment and when making an appointment from a regular list on which candidates have not received numerical scores, an agency must make its selection from the highest available preference category. 5 CFR § 302.401.

7. The Office of Personnel Management's (OPM) *Guide for Federal Staffing, Recruiting, Examining, and Assessment Policy, VetGuide*, clarifies the above regulations by stating that if an agency has more than one VRA candidate for the same job and one (or more)

is preference eligible, the agency must apply veterans' preference procedures prescribed in 5 CFR Part 302 in making VRA appointments. It further states that a veteran who is eligible for a VRA appointment is not automatically eligible for veterans' preference and that an agency must consider all VRA candidates on file who are qualified for the position and could reasonably expect to be considered for the opportunity. Moreover, it states that an agency cannot place VRA candidates in separate groups or consider them as separate sources in order to avoid applying preference or to reach a favored candidate. (http://www.opm.gov/staffingPortal/Vetguide.asp#VRA-Authority)

DEU Certificate

8. The Assistant Pension Maintenance Center Manager told us that the DEU sent the DEU certificate to them on April 8, 2009, and that based on [redacted] personal notes, [redacted] said that it appeared that they interviewed applicants from this certificate and made offers. [redacted] said that not every offer was accepted but that they appointed applicants from this certificate. [redacted] further said that once they received the certificate, they tried to schedule interviews with the first 22 applicants but that they only interviewed 14. [redacted] said that typically two management officials conducted the interviews; they assigned a score to each applicant based on how they answered the interview questions; and they used the "rule of three" in making their selections. [redacted] initially told us that offers were made to five individuals from that certificate; however, DEU records reflected that no selections were made from it. The Assistant Manager later told us that HR may have used the VRA hiring authority to make those appointments. A DEU Supervisory HR Specialist confirmed that the certificate was returned unused and that when [redacted] inquired as to why, an unrecalled ROIC employee told [redacted] that they filled the positions through other recruitment sources. [redacted] also said that after the DEU notified applicants that no selections were made from the DEU certificate, the DEU received complaints from several applicants.

9. Ms. Filipov told us that between external recruitment and merit promotion activities, she probably hired 800 employees. She said that in only two instances did she remember a certificate not being used. She also said that she was familiar with VA hiring policies and that she followed the guidance that [redacted] provided her. She said that as the selecting official, she had the ultimate responsibility for this hiring effort; however, she said that the last time she received any training in the hiring process was when she first became a supervisor in 1989. She told us that although the DEU certificate was not used to select applicants in this instance, some applicants listed on that certificate were offered jobs using the VRA hiring authority. She said that she believed that she acted responsibly and that they selected the applicants that were best qualified.

10. [redacted] told us that [redacted] could not explain why no one was selected from the DEU certificate, and [redacted] said that it was not the role of the HR Office in this recruitment process. [redacted] said that there was no requirement to use one source over another or any prohibition over using numerous sources to fill these positions. [redacted] said that [redacted] did

not determine which applicants were VRA eligible; however, [redacted] said that as the approving official for this hiring effort, [redacted] "probably" reviewed [redacted] assessment of the applicants. [redacted] also said that if it was not for the DEU certificate, they "would not have known" the applicants that they ultimately offered positions using the VRA hiring authority.

11. [redacted] told us that [redacted] was an HR staffing specialist and that [redacted] was [redacted] supervisor. [redacted] said that [redacted] was aware of VA hiring policies, but [redacted] said that [redacted] gained this knowledge through conferences and reviewing Federal regulations and VBA directives. [redacted] however, told us that [redacted] could not recall the last time [redacted] received any formalized training. [redacted] confirmed that for this hiring effort she reviewed the applicant packages for the individuals that Ms. Filipov was interested in selecting to determine if they were VRA eligible.

12. Ms. Filipov told us that when she used a DEU-generated certificate, she administered the "rule of three" as required. She said that veteran status put applicants at the top of the list, due to their higher score with the 5- or 10-point preference, and that it would be difficult to select a non-veteran over a veteran on a DEU certificate. [redacted] told us that the "rule of three" did not apply to the FCIP certificate. [redacted] told us that [redacted] did not know why the FCIP certificate was preferred for these selections but that it was ultimately Ms. Filipov's decision. [redacted] said that [redacted] thought that Ms. Filipov selected more applicants from the FCIP certificate due to the "rule of three" applying to the DEU certificate. [redacted] further said that Ms. Filipov, in the interviewing process, may have determined that the most desirable candidates on the DEU certificate were not within reach, due to the "rule of three." [redacted] said that in using the "rule of three," if the selecting official did not like the first three or six [applicants], "they're stuck." Federal regulations state that an appointing officer shall select an eligible for the first vacancy from the highest three eligibles on the certificate who are available for appointment and the second and each succeeding vacancy from the highest three eligibles on the certificate who are unselected and available for appointment. 5 CFR § 332.404.

Veterans Recruitment Appointment

13. Mr. Lastowka told us that the VRA recruitment option allowed eligible veterans to be selected for direct appointments without competition. He said that they were therefore able to hire the applicants that they wanted as opposed to those they did not. [redacted] told us that they selected preferred applicants from the DEU certificate and then offered them positions under VRA. [redacted] said that they made five job offers using the VRA hiring authority; however, [redacted] said that two of the applicants declined the job offer. [redacted] told us that [redacted] believed that Ms. Filipov wanted to select applicants from the DEU certificate; however, [redacted] said that those particular applicants were not within reach, based on the "rule of three." [redacted] said that since those applicants were veterans and eligible for non-competitive appointments through the use of the VRA, Ms. Filipov chose to go that route.

14. (b)(7)(C) told us that Ms. Filipov considered candidates from multiple recruitment sources and that the DEU certificate was one source. (b)(7)(C) said that it yielded many qualified candidates; the top 22 were considered; and Ms. Filipov determined that from among those, there were 5 that "they were interested in offering employment." (b)(7)(C) also said that they then offered employment to the 5 candidates via VRA appointments and that those candidates were listed on the DEU certificate as either "CP or CPS veterans." The DEU certificate reflected that it contained the names of 38 applicants rated CP (disability rating of at least 10 but less than 30 percent) or CPS (disability rating of 30 percent or more) and that the certificate reflected a numerical rating and ranking score for each. As noted above, the 5 candidates offered VRA appointments were rated as numbers 4, 6, 11, 16, and 17 on the DEU certificate. (b)(7)(C) told us that they could have offered positions to any of the veteran applicants using VRA, provided they met the eligibility requirements. (b)(7)(C) said that they did not review all the applicant packages on the DEU certificate to identify all applicants who met VRA requirements, because (b)(7)(C) said that there was no requirement to do so. (b)(7)(C) told us that the applicants appointed under VRA were otherwise "desirable candidates" to Ms. Filipov and would not have been available for appointment using the DEU certificate.

15. A VA HR Consultant told us that for this VSR hiring effort, the ROIC HR Office should have reviewed and applied veterans' preference to all of the VRA eligible candidates listed on the DEU certificate and not just those that they were interested in offering employment. (b)(7)(C) said that (b)(7)(C) had a duty to "put them collectively in a barrel and list them based on their veterans' preference." (b)(7)(C) further said that this list, or at least the entire list of CP eligible candidates, should have been referred to the selecting official for consideration. Further, the OPM HR Specialist who is responsible for OPM's *VetGuide* told us that VRA appointments are done by virtue of part 302 in the Code of Federal Regulations; veterans' preference procedures apply as provided in 5 CFR 302.201; and that OPM's *VetGuide* was updated most recently in 2009.

Conclusion

16. We concluded that the selecting and approving officials, Ms. Filipov, and (b)(7)(C) respectively, as well as (b)(7)(C) who assessed the preferred candidates for VRA, improperly applied the VRA hiring authority when they used it to disregard the rating and ranking scores assigned to applicants on a DEU certificate in order to select preferred applicants for VSR positions. Ms. Filipov said they considered only the top 22 applicants, and the Assistant Manager said that they interviewed 14. However, there were 38 10-point eligible veterans ranked on the DEU certificate, and it was only after they identified their preferred candidates, who were not within reach because of the "rule of three," that only those few were assessed to determine if they were eligible for and could be appointed by VRA. (b)(7)(C) told us that had it not been for the DEU certificate, they would not have known these applicants. They also failed to apply VRA rules uniformly when they did not assess at least all 10-point veteran eligible applicants to determine who met the conditions of the rules and equally consider those applicants. (b)(5),(b)(7)(C)

(b)(5),(b)(7)(C)

(b)(5) We are providing this memorandum for your information and official use and whatever action you deem appropriate.

17. We are providing this memorandum to you for your information and official use and whatever action you deem appropriate. It is subject to the provisions of the Privacy Act of 1974 (5 USC § 552a). You may discuss the contents of this memorandum with the individuals named, within the bounds of the Privacy Act; however, copies may not be released to them. Please be advised that OIG maintains this memorandum in a Privacy Act system of records and you must ensure that it is appropriately safeguarded. If you have any questions, please call Linda Fournier, Director, Administrative Investigations Division, at (b)(7)(C)

JAMES J. O'NEILL

Department of Veterans Affairs

Memorandum

Date: January 19, 2012

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation – Alleged Improper Relocation Incentives, Central Alabama Veterans Health Care System (2011-03313-IQ-0193)

To: Director, VA Southeast Network

1. The VA Office of Inspector General Administrative Investigations Division investigated an allegation that Mr. Glen Struchtemeyer, former (retired) Director, Central Alabama Veterans Health Care System (CAVHCS), and (b)(7)(C) former CAVHCS Associate Director, improperly authorized two relocation incentives. To assess this allegation, we reviewed personnel and pay records and interviewed the current CAVHCS Human Resources (HR) Officer. We also reviewed applicable Federal laws, regulations, and VA policies.

2. We concluded that (b)(7)(C) improperly requested and Mr. Struchtemeyer improperly authorized two relocation incentives when they did not comply with VA policy by first fully documenting in the request the required factors to consider or that the employees would relocate to Montgomery, Alabama, a location more than 50 miles from their previous worksite in (b)(7)(C) We did not find that the incentives were improper but that the requirements of VA policy were not met. Because we found no evidence of intentional misconduct, we are not making a recommendation for administrative action; however, (b)(5) (b)(5) (b)(5) We are providing you this memorandum for your information, official use, and whatever action you deem appropriate. **No response is necessary.** We did not substantiate another allegation against Mr. Struchtemeyer, and we addressed it in a separate memorandum.

Background

3. Recruitment records reflected that, in July 2009, Mr. Struchtemeyer selected a candidate to fill an HR Officer (GS-201-13) position, and in October 2009, (b)(7)(C) selected a candidate to fill a Supervisory HR Specialist (GS-201-13) position, both leadership positions in CAVHCS HR Management Service. Both candidates relocated from their previous worksites in (b)(7)(C) to accept the CAVHCS positions. Personnel (b)(7)(C) records reflected that the HR Officer began VA employment on (b)(7)(C), 2010, (b)(7)(C) and the Supervisory HR Specialist began VA employment on (b)(7)(C) 2010.

4. Personnel records reflected that, on (b)(7)(C), 2010, (b)(7)(C) signed a (b)(7)(C) memorandum requesting that Mr. Struchtemeyer approve a relocation incentive for the prospective HR Officer. By signature, (b)(7)(C) certified that the justification

(b)(7)(C) contained in [redacted] request met the criteria for approval contained in VA policy. On [redacted] 2010, Mr. Struchtemeyer signed the memorandum approving the relocation incentive. The HR Officer signed a relocation service agreement (RSA) agreeing to work at VA for 3 years ([redacted] 2010, to [redacted] 2013) as a condition of being paid a lump-sum $47,866 relocation incentive (15 percent of basic pay). The HR Officer retired from Federal service on [redacted] 2011, before the end of the 3-year service period, and the Defense Finance and Accounting Service (DFAS) issued a bill of collection for $28,842.23 to recoup the unfulfilled portion of [redacted] service agreement. (b)(7)(C)

5. Personnel records reflected that, on [redacted] 2010, [redacted] signed another memorandum requesting that Mr. Struchtemeyer approve a relocation incentive for the (b)(7)(C) prospective Supervisory HR Specialist. By [redacted] signature, [redacted] again certified (b)(7)(C) that the justification contained in [redacted] request met the criteria for approval contained in VA policy. On [redacted], 2010, Mr. Struchtemeyer signed the memorandum approving the relocation incentive. The Supervisory HR Specialist signed an RSA agreeing to serve for 2 years ([redacted] 2010, to [redacted] 2012) as a condition of being paid a $31,910 relocation incentive (15 percent of basic pay), half paid the first year as a lump sum and half paid in the second year in 26 equal installments.

Standards

6. VA policy states that recruitment and relocation incentives may be used to appoint high quality employees in positions that are likely difficult to fill without such incentives. Incentives up to 25 percent of an employee's annual rate of basic pay multiplied by the number of years in a service agreement (4-year maximum) may be authorized. Total incentive payments may not exceed 100 percent of an employee's annual rate of basic pay. It also states that approving officials must review and approve each recruitment or relocation incentive in writing before the employee enters on duty, and approvals may not be made on a retroactive basis. VA Handbook 5007/20, Part VI, Chapter 2, Paragraph 1 (October 13, 2005).

7. VA policy states that HR Management Officers (HRMOs) are responsible for advising management officials on the provisions in this chapter, providing technical advice and assistance on incentive percentages, length of service obligation requirements, definition of the geographic area, and other technical matters, and assuring the completeness of requests prepared or approved at the local level. Id., at Paragraph 4c. Further, VA policy states that relocation incentives may be authorized to Federal employees who must change worksite and physically relocate to a different geographic area when the approving official determines that without the incentive, it would be difficult to fill the position with a high quality candidate. A position is considered to be in different geographic area if the worksite of the new position is 50 or more miles from the worksite of the position held immediately before the move. Id., at Paragraphs 5b(1) and (2).

8. VA policy states that a recruitment or relocation incentive may be authorized if, without one, the VA is likely to have difficulty recruiting candidates with the

competencies required for the position. In determining whether a position is likely to be difficult to fill in the absence of a recruitment or relocation incentive, the following factors will be considered and evidence that these factors were considered must be fully documented in the request to pay an incentive and retained as part of the record.

(1) The availability and quality of candidates possessing the competencies required for the position, including the success of efforts within the previous 6 months to recruit candidates for similar positions, using indicators such as job acceptance rates, the proportion of positions filled, and the length of time to fill similar positions;

(2) The salaries typically paid outside the Federal Government for similar positions;

(3) Turnover within the previous six months in similar positions;

(4) Employment trends and labor-market factors that may affect the ability to recruit candidates for similar positions;

(5) Special or unique competencies required for the position;

(6) Efforts to use non-pay authorities, such as special training and work scheduling flexibilities, to resolve difficulties alone or in combination with a recruitment incentive;

(7) The desirability of the duties, work or organizational environment, or geographic location of the position; and

(8) Other supporting factors, such as historical information on the occupations or types of positions VA has experienced difficulty in filling with high quality candidates or geographic areas that traditionally have been considered less desirable. Id., at Paragraph 6a.

VA policy states that information addressing all these criteria must be included in the recruitment or relocation incentive request. Id., at Paragraph 7a(8) and Appendix VI-A. In addition, for a relocation incentive, the incentive request must include a statement that the worksite of the employee's position is not in the same geographic area as the worksite of the position held immediately before the move, or that a waiver was approved. Id., at Paragraph 7a(12).

Review of Relocation Incentives

9. The relocation incentive request for the HR Officer position contained the following limited narrative justification:

> This position is an integral part of the leadership structure of our Medical Center. The Human Resources Officer not only provides support to the

> Human Resources Officer, but also ensures the compliance of administrative organizational components of the facility. The Human Resources Officer ensures that performance measures and standards within HR are met. In addition, this position requires someone with exceptional interpersonal skills and leadership abilities in order to oversee important programs and operations in designated areas of responsibilities. Approval of the relocation incentive will enhance our recruitment efforts in attracting highly qualified candidates who can support the delivery of outstanding services and healthcare to our veterans.

The relocation incentive request for the Supervisory HR Specialist contained an almost identical limited narrative justification:

> This position is an integral part of the leadership structure of our Medical Center. The Supervisory Human Resources Specialist not only provides support to the Human Resources Officer, but also ensures the compliance of administrative organizational components of the facility. The Supervisory Human Resources Specialist ensures that performance measures and standards within HR are met. In addition, this position requires someone with exceptional interpersonal skills and leadership abilities in order to oversee important programs and operations in designated areas of responsibilities. Approval of the relocation incentive will enhance our recruitment efforts in attracting highly qualified candidates who can support the delivery of outstanding services and healthcare to our veterans.

The justifications did not fully document the eight factors/criteria to consider as required by VA policy, and they therefore did not establish that the VA was likely to have difficulty recruiting candidates with the required competencies without an incentive. The relocation incentive requests also failed to identify each employee's worksite and state that it was not in the same geographic area as the worksite of the position held immediately before the move.

10. We concluded that (b)(7)(C) improperly requested and Mr. Struchtemeyer improperly authorized two relocation incentives when they did not comply with VA policy by first fully documenting in the request the required factors to consider or that the employees would relocate to Montgomery, Alabama, a location more than 50 miles from their previous worksite in (b)(7)(C) We did not find that the incentives were improper but that the requirements of VA policy were not met. Because we found no evidence of intentional misconduct, we are not making a recommendation for administrative action;

(b)(5)

11. We are providing this memorandum to you for your information and official use and whatever action you deem appropriate. It is subject to the provisions of the Privacy Act of 1974 (5 USC § 552a). If you have any questions, please call Linda Fournier, Director, Administrative Investigations Division, at (b)(7)(C)

JAMES J. O'NEILL

Department of Veterans Affairs

Memorandum

Date: February 16, 2012

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation – Failure of Management to Ensure that Possible Felony Criminal Activity was Promptly Referred to OIG, VA Medical Center, Washington, DC (2011-03720-IQ-0196)

To: Deputy Under Secretary for Health for Operations and Management (10N)

1. The VA Office of Inspector General (OIG) Administrative Investigations Division investigated an allegation that Washington, DC, VA Medical Center Management Officials failed to ensure that possible felony criminal activity was immediately reported to OIG. To assess this allegation, we interviewed Mr. Fernando Rivera, Director of Veterans Integrated Service Network (VISN) 5; Mr. Michael Dunfee, Associate Medical Center Director; Medical Center Police Officials; and other current and former medical center employees. We also reviewed VA Police Uniformed Offense Reports (UOR); Administrative Investigations Board (AIB) and email records; and applicable Federal regulations and VA policy.

2. We concluded that Mr. Rivera and Mr. Dunfee did not always ensure that OIG was immediately notified in cases involving possible or actual felony criminal activities occurring at the medical center. We also found that poor communication between Medical Center Management and Police Officials most likely contributed to the failure to make timely OIG notifications. We noted that the Medical Center Police Service was undergoing a change in leadership and a recertification process and that Mr. Rivera recently took positive steps to ensure that within VISN 5, Medical Center Directors, Associate Directors, and Police Chiefs were aware of the notification requirement and directed them to immediately notify OIG when required. Finally, we found that the local medical center policy did not comply with VA policy in that it lacked specific guidance and reference to making such referrals.

3. (b)(5)
(b)(5)
(b)(5) We are providing you this memorandum for your information and official use and whatever action you deem necessary. **No response is necessary.**

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4. On April 10, 2003, VA published in the Federal Register a final rule pertaining to the *Referral of Information Regarding Criminal Violations*. The final rule required that VA employees report information about possible criminal activity to appropriate authorities; VA Management Officials report criminal violations occurring on VA property to VA Police; and VA Management Officials to ensure that possible criminal activities involving felonies be promptly referred to OIG. Federal Register, Vol. 68, No. 69, Page 17549, April 10, 2003. VA policy states that criminal matters involving felonies should be immediately referred to OIG, Office of Investigations, and that VA Management Officials are responsible for the prompt referral. It states that felonies include, but are not limited to, theft of Government property over $1,000, false claims, false statements, drug offenses, crimes involving information technology systems, and serious crimes against a person. 38 CFR § 1.204. VA Security and Law Enforcement (SLE) Operations policy requires that each facility publish a standard operating procedure (SOP) for Police and Security Operations [or other similarly titled SOP] that is consistent with Federal laws and VA and VA's SLE policies. VA Handbook 0730, Paragraph 5, (August 11, 2000).

5. In a May 2009 AIB, a clinical Section Chief gave sworn testimony to Medical Center Officials alleging that two physicians covered up shortages of narcotics by falsifying patient records to reflect that the drugs were administered to patients when they were not. The AIB's limited investigative authority did not include investigating these new allegations, so AIB officials, according to their final report, notified Mr. Rivera of the matter 3 days later. We found no records reflecting that Medical Center Management Officials took any action to investigate or refer this matter to OIG. Mr. Rivera told us that he recalled learning of an issue with regards to medication reconciliation; he did not recall this specific allegation; and he could not explain why no action was taken.

6. The Section Chief also told the AIB about a nurse who took narcotics out of the medical center. Email records reflected that this matter was not referred to OIG until almost 1 year later when Regional Counsel became involved to review the matter. Records also reflected that Regional Counsel recognized that the nurse's misconduct required notifying OIG and of Mr. Rivera's reporting requirement. An Assistant Regional Counsel told us that he notified Mr. Rivera about the matter and that Mr. Rivera asked him (Assistant Regional Counsel) to notify OIG. Mr. Rivera told us that he recalled that the nurse took "mixes" out of the medical center; did not realize it involved narcotics; and, he could not recall if he ensured that OIG was notified. He said, "Clearly you have some examples where the IG wasn't notified. But I have thousands in my career where they have been notified."

7. A September 20, 2010, UOR reflected that a burglary and theft of about $12,000 in merchandise occurred at the medical center canteen store and that it was reported to medical center police and management. An OIG Criminal Investigator told us that he learned of the burglary and theft by happenstance on September 23 while visiting the medical center on unrelated business. The Criminal Investigator told us that medical center police failed to preserve some of the physical evidence and that due to a lack of leads, the investigation was later suspended.

8. Another UOR reflected that on May 22, 2011, 8 months later, another burglary occurred at the medical center and that medical center police again conducted an investigation without notifying OIG. OIG eventually learned of this felony crime on May 31, 2010, when an Assistant United States Attorney requested that OIG attend a proffer session involving the suspect. During the proffer session, the suspect also admitted to committing the September 2010 burglary. The OIG Criminal Investigator told us that medical center police never connected the two burglaries and that they did not realize until the proffer session that the suspect was responsible for both. For the second offense, the Police Detective in charge of the investigation admitted that he failed to notify OIG; however, it was unclear what role management played in the notification failure. Mr. Dunfee told us that at the time these burglaries occurred, he was unfamiliar with the requirement to immediately notify OIG and as such, he said that he never thought to ensure that notifications were made.

9. In yet another example, the Medical Center Compliance and Business Integrity (b)(7)(C) Officer (CBIO) told us that [redacted] initiated an internal investigation after receiving an allegation that a contractor employee falsified timecards. Although the timecards (b)(7)(C) were in [redacted] possession for several weeks, [redacted] never questioned whether the (b)(7)(C) (b)(7)(C) signatures were valid, until just before [redacted] and Mr. Dunfee notified VA police. Email records reflected that on July 29, 2011, Mr. Dunfee told medical center police of their internal investigation, after they realized that the employee forged signatures of identified VA Officials before submitting the timecards to the contractor for payment. Email records reflected that the loss to VA was estimated to be around $50,000. Records also reflected that once notified, medical center police began an investigation; however, they did not notify OIG until August 5. The UOR reflected that medical center police interviewed the contractor employee, who confessed to falsifying and forging the timecards. The Detective told us that after the interview, (b)(7)(C) allowed the employee to leave without making an arrest, without contacting OIG, or without seeking guidance from the United States Attorney's Office. The OIG Criminal Investigator told us that the contractor employee did not return to work and was never heard from since.

10. The Detective told us that Mr. Dunfee directed medical center police not to notify OIG concerning this matter, and in a July 29, 2011, email, the former Medical Center Police Chief told the Detective that Mr. Dunfee "...doesn't want to notify the IG yet, so just keep this to yourself." Mr. Dunfee told us that the Chief Financial Officer told him about the suspected timecard fraud early on and that he knew that the CBIO was investigating the matter. Mr. Dunfee said that he never told the CBIO not to notify medical center police and that he did not recall telling anyone not to notify OIG. He said that it was possible that he wanted to delay notifying OIG until he had an opportunity to notify "everyone up the chain of command."

11. The Detective told us that the medical center failed an inspection, (b)(7)(C) (b)(7)(C) and Mr. Rivera told us that they were recruiting for a new Police Chief and undergoing a recertification process. In addition, on December 14, 2011, Mr. Rivera sent an email to all Medical Center Directors, Associate Directors, and Police Chiefs within the VISN informing them

about the requirement to immediately notify OIG of possible felony criminal activities, and he directed his staff to make sure that they complied with those requirements.

12. In addition, we found that the Washington, DC, VA Medical Center policy did not comply with VA policy. It stated in part, "On all deaths where there is a possibility that there may be a crime scene...the VA Police will be notified immediately...notify the Federal Bureau of Investigations and the Metropolitan Police Department." The policy not only did not contain language requiring the notification of OIG of any possibly felony criminal activity but it did not require notifying OIG in cases of a death resulting from a crime.

Conclusion

13. We concluded that Mr. Rivera and Mr. Dunfee did not always ensure that OIG was immediately notified in cases involving possible or actual felony criminal activities occurring at the medical center. We also found that poor communication between Medical Center Management and Police Officials most likely contributed to the failure to make timely OIG notifications. We noted that the Medical Center Police Service was undergoing a change in leadership and a recertification process and that Mr. Rivera recently took positive steps to ensure that within VISN 5, Medical Center Directors, Associate Directors and Police Chiefs were aware of the notification requirement, directing them to immediately notify OIG when required. However, we found that the local medical center policy did not comply with VA policy in that it lacked specific guidance and reference to making such referrals.

14. (b)(5) (b)(5) However, we stress that compliance with the obligation to immediately notify OIG does not override the need to contact other local law enforcement as appropriate to the situation for immediate response. (b)(5) (b)(5) (b)(5) We are providing you this memorandum for your information and official use and whatever action you deem necessary. It is subject to the provisions of the Privacy Act of 1974 (5 USC § 552a). You may discuss the contents of this memorandum with Mr. Rivera, Mr. Dunfee or VA Police Officials, within the bounds of the Privacy Act; however, it may not be released to them. If you have any questions, please contact Ms. Linda Fournier, Director of Administrative Investigations Division, at (b)(7)(C)

JAMES J. O'NEILL

Department of Veterans Affairs

Memorandum

Date: March 7, 2012

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation, Misuse of Time and Resources, VA Ambulatory Surgery Unit, United States Air Force Academy, Colorado Springs, Colorado (2011-02935-IQ-0115)

To: Director, VA Eastern Colorado Health Care System

1. VA Office of Inspector General Administrative Investigations Division investigated allegations that (b)(7)(C) a contract anesthesiologist employed by (b)(7)(C) (b)(7)(C), failed to report on 13 days that was to work at VA and that (b)(7)(C) (b)(7)(C) Administrative Officer at VA Ambulatory Surgery Unit located at the U. S. Air Force Academy (USAFA), failed to disclose (b)(7)(C) absences. (b)(7)(C) and (b)(7)(C) also allegedly solicited and accepted gratuities and (b)(7)(C) and Dr. Peter D'Ambrosia, USAFA Attending Physician, allegedly misused resources when he injected (b)(7)(C), who was not a veteran patient, with prescription medication while both were on duty. To assess these allegations, we interviewed (b)(7)(C), (b)(7)(C), Dr. D'Ambrosia; (b)(7)(C), Contracting Officer's Technical Representative (COTR); (b)(7)(C), Chief of Surgical Services, VA Eastern Colorado Health Care System; and CAS employees. We also reviewed email, pay, and contract records, as well as Federal laws, regulations, and VA policy.

2. We concluded that (b)(7)(C) failed to report for duty and did not coordinate leave as required by VA's contract and that (b)(7)(C) did not establish and maintain proper time and attendance records for contractor services prior to certifying payment. (b)(5) (b)(5),(b)(7)(C) (b)(5) Further, we found that Dr. D'Ambrosia misused resources when he injected (b)(7)(C) with prescription medication during their VA tour of duty. (b)(5) (b)(5) (b)(5) We also found an ambiguity in the chains of command for VA, contractor, and USAFA employees, and although (b)(7)(C) created new organizational charts in an effort to address this issue, we found that there was still confusion at the facility. (b)(5) (b)(5) (b)(5) We are providing this memorandum to you for your information and official use and whatever action you deem appropriate. **No response is necessary.**

Misuse of Time and Attendance

3. Federal acquisition regulations state that Government contractors must conduct themselves with the highest degree of integrity and honesty. 48 CFR § 3.1002. Contract

records reflected that VA contracted with CAS for 40 hours of anesthesia coverage per week, on-call telephone coverage on weeknights, and overtime as needed at the USAFA. The contract required that the contractor be present at the medical treatment facility and be actually performing the required services for the period specified in the contract and that the contractor not invoice for any time that they were not physically present at the USAFA performing services. VA259-P00781, dated April 1, 2010. Contract records stated that the contract anesthesiologist must send an email to the COTR within 24 hours after performing overtime, stating the date and number of hours worked and that the information provided was true and accurate. In addition, the contract prohibited the contractor from invoicing any time that its employees were not physically present at the USAFA performing services. Id., at Section B.4, Subsection 1.2.3. The contract stated that services performed by the contractor must be performed in accordance with VA policies, procedures, and regulations of the medical staff by-laws of the VA facility. Section B.5, subsection 1c. Moreover, the contract stated that the anesthesiologist must be present at the Ambulatory Surgery Unit at USAFA; must be actually performing the required services for the period specified in the contract; and that CAS's monthly invoices would be reduced by a prorated amount for services billed but not performed. Id., at Section B.5, Subsection 12.

4. Contract records reflected that the COTR was required to establish and maintain a record-keeping system that recorded the services performed by anesthesiologists and that the records consist of time and attendance logs to ensure that required services were received. Further, any incidents of contractor non-compliance as evidenced by the monitoring procedure must be forwarded immediately to the Contracting Officer; documentation of services performed must be reviewed prior to certifying payment; and contract monitoring and record-keeping procedures must be sufficient to ensure proper payment and allow audit verification that services were provided. Id., at Section B.5, Subsection 25a and b.

5. (b)(7)(C) told us that conducted a fact-finding inquiry based on allegations (b)(7)(C) received that were identical to those sent to OIG. The allegations included 11 dates between November 2010 and April 2011 that (b)(7)(C) was absent for the entire workday and 2 when left 4 hours early. For the fact-finding, (b)(7)(C) reviewed physician notes, and based on review concluded that (b)(7)(C) was not present at the clinic for 10 of the 11 dates. To address the results of inquiry, (b)(7)(C) met with (b)(7)(C) and (b)(7)(C) on April 27, 2011. (b)(7)(C) Report of Contact reflected that (b)(7)(C) told (b)(7)(C) that (b)(7)(C) was away from duty station on the identified dates but that (b)(7)(C) authorized it. (b)(7)(C) said that worked overtime and instead of charging VA for the overtime, took off those days. The Report of Contact reflected that (b)(7)(C) told (b)(7)(C) that never gave (b)(7)(C) permission to take time off in a paid or unpaid status and that assumed that when (b)(7)(C) was not at duty station, coordinated leave with (b)(7)(C) (b)(7)(C) told us that (b)(7)(C) told when would be out of the office; however, (b)(7)(C) said that if (b)(7)(C) thought that (b)(7)(C) could approve leave, it would be a misunderstanding on the part of (b)(7)(C)

6. Email records reflected that following the April 27 meeting, a CAS employee told (b)(7)(C) that CAS would discount $15,628.80 from (b)(7)(C) April month-end payroll and remove 88 hours from the VA April 2011 invoice to account for the 13 days that (b)(7)(C) was not present or left early. CAS records reflected that for the April 2011 billing cycle, they subtracted $15,628.80 from (b)(7)(C) pay and invoiced VA for the time that (b)(7)(C) worked minus 88 hours. (b)(7)(C) said in an email to a CAS employee, (b)(7)(C) (b)(7)(C) and others that on 7 of the days that (b)(7)(C) was away from the facility, (b)(7)(C) was delivering paperwork and performing "other work related duties in Denver." (b)(7)(C) told us that (b)(7)(C) volunteered to perform these administrative tasks until a courier service was arranged, since (b)(7)(C) lived "pretty close" to the Denver VA Medical Center. (b)(7)(C) said that on 2 of the days (b)(7)(C) did not have clinical duties; on 2 other days (b)(7)(C) was present at the clinic; and on 1 day (b)(7)(C) was at the Denver VA Medical Center.

7. (b)(7)(C) told us that (b)(7)(C) did not report overtime (b)(7)(C) worked earlier in the week to compensate for the time that (b)(7)(C) was absent from the clinic or that (b)(7)(C) delivered documents to Denver. (b)(7)(C) said that (b)(7)(C) thought that was acceptable, since a September 7, 2010, email (b)(7)(C) received from (b)(7)(C) authorized (b)(7)(C) to leave at noon on a specific workday and stated that (b)(7)(C) had until the end of the billing cycle to make up the hours. However, (b)(7)(C) could not recall if (b)(7)(C) averaged the overtime on a weekly or a monthly basis, but (b)(7)(C) said that (b)(7)(C) "probably" averaged the hours per week, which would be "the easiest thing" for (b)(7)(C) (b)(7)(C) could not provide us any timekeeping or other records reflecting any overtime worked, and (b)(7)(C) did not comply with our request for copies of (b)(7)(C) work calendar. (b)(7)(C) (b)(7)(C) and a CAS employee all told us that CAS deducted $15,628.80 from the amount they invoiced VA, due to (b)(7)(C) absences.

8. The Report of Contract reflected that (b)(7)(C) explained to (b)(7)(C) that the VA contract with CAS "clearly states the process for leave usage" to which (b)(7)(C) did not adhere, and that "overtime costs were written into the contract and VA was prepared to compensate as outlined in the contract." CAS invoice records reflected that (b)(7)(C) began submitting overtime in May 2011, the month following this meeting.

9. (b)(7)(C) told us that (b)(7)(C) did not, as the contract required, establish and maintain a recordkeeping system for (b)(7)(C) time and attendance which would allow (b)(7)(C) to review services performed prior to certifying payment. (b)(7)(C) said that since (b)(7)(C) was not physically located at the same facility, (b)(7)(C) current recordkeeping practices, which involved examining medical records, made it difficult to account for every day that (b)(7)(C) was to be present. (b)(7)(C) also said that had time and attendance logs existed, as the COTR for the contract, (b)(7)(C) would be responsible for maintaining those logs.

Gratuities

10. The Standards of Ethical Conduct for Employees of the Executive Branch state an employee shall not solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency. 5 CFR § 2635.101(b)(4). The standards require employees to endeavor to avoid any actions creating the appearance that they are violating the law or

ethical standards. Whether particular circumstances create an appearance that the law or standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts. 5 CFR § 2635.101(b)(14).

11. [redacted] told us that in [redacted] inquiry [redacted] addressed the allegation that [redacted] gave gifts to [redacted] to include cosmetic products, a bicycle, and exercise equipment during [redacted] fact-finding. [redacted] and [redacted] both told us that [redacted] offered to lend [redacted] bicycle when [redacted] began an exercise regimen. [redacted] told us that during [redacted] meeting with [redacted] instructed [redacted] to immediately return the bicycle to [redacted], which [redacted] agreed to do. [redacted] told us that [redacted] had it for 3 to 4 months and that [redacted] returned it when [redacted] told [redacted] that [redacted] wanted the bicycle back. [redacted] told us that [redacted] returning the bicycle had "nothing to do" with believing the action was improper. [redacted] said [redacted] did not consider the bicycle a gift of an item of value, because [redacted] said that [redacted] planned to use it and give it back to [redacted] [redacted] told us that [redacted] also gave [redacted] two or three resistance bands, which according to [redacted] report had a relative value of $3.00 to $5.00. [redacted] and [redacted] told us that [redacted] gave [redacted] used bottles of a cosmetic product, which [redacted] valued at $40.00 to $50.00. [redacted] told us that during their meeting [redacted] told [redacted] that [redacted] would dispose of the product. [redacted] and [redacted] told us that [redacted] returned the cosmetic product to [redacted] because [redacted] did not like the product.

12. Although training records reflected that [redacted] received healthcare ethics training in June 2010, [redacted] told us that [redacted] did not know, at the time, that Federal regulations prohibited a Federal employee from accepting gifts or things of monetary value from VA contractors.

Misuse of Resources

13. Federal regulations state an employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes. 5 CFR § 2635.704(a). They further state that an employee must use official time in an honest effort to perform official duties and that employees have an obligation to expend an honest effort and a reasonable proportion of his time in the performance of official duties. Id., at 2635.705(a).

14. [redacted] fact-finding did not address an allegation that [redacted] asked a VA physician, Dr. D'Ambrosia, to inject [redacted] with prescription medication. [redacted] told us that in the fall of 2010 and while on duty, [redacted] had a conversation with Dr. D'Ambrosia about pain that [redacted] felt in [redacted] knee and that during their conversation Dr. D'Ambrosia offered to inject steroids into [redacted] knee. [redacted] said that [redacted] did not know if Dr. D'Ambrosia brought the steroids from home or if he obtained them from VA inventory. Dr. D'Ambrosia told us that while he and [redacted] were on duty, he examined [redacted] knee and told [redacted] that [redacted] had "a very simple diagnosis" that "probably" needed a steroid injection. He said that at that time, he offered to get [redacted] an appointment with another doctor at the University of Colorado Hospital orthopedic clinic where he also worked. Dr. D'Ambrosia further said that [redacted] approached him shortly thereafter with the needed steroids and asked him to

inject them into knee, which he said that he did. Dr. D'Ambrosia could not tell us if the steroids used for the injection were from VA inventory or not and that he did know where got the medication.

15. Although did not address the issue of Dr. D'Ambrosia injecting steroids into knee while both were on duty, told us that spoke to Dr. D'Ambrosia about the "difference between good samartitanism and appropriate clinical behavior" shortly after learning of the incident. However, Dr. D'Ambrosia told us that he and never discussed the matter.

16. Dr. D'Ambrosia told us that he provided medical treatment to a certified registered nurse anesthetist who suffered a wrist injury after falling while on duty at the USAFA facility. He said that he told of that incident for "clarification" on regulations regarding treating a patient on VA time. He said that offered no other information other than "I understood and just left it at that." He also said that he "definitely followed regulations since" and provided two more recent examples of times that he did not provide medical attention to VA employees when asked to do so.

17. Records of fact-finding inquiry reflected that took appropriate action to told us that would no longer provide regular anesthesia support to VA after September 8, 2011. Records also reflected that instructed to not "accept gifts from contract staff for any reason." and told us that they asked to prepare and give a presentation on ethics for VA staff located at the USAFA facility. told us that attended and that the presentation was "good" and centered on conflicts of interest.

Reporting Chain Ambiguity

18. told us that employees located at the USAFA facility asked him to create a new organizational chart to remove "ambiguity" in the reporting chain. said that 'watch[ed] over a clinical operation" for which did not have sufficient experience and that placing in an administrative role over clinicians was "probably not the right thing to do." said that there was another nurse manager, creating "two pathways of information exchange. One was from the clinical side, by The other was from the administrative side by " also said that Air Force personnel expressed concern to because said that they "weren't quite sure who to talk to about different matters." Records reflected that drafted a new organizational chart with only placed in a supervisory role for the clinicians at the facility.

19. told us that the chart was created and distributed about July 25, 2011; met with employees; and employees at the facility should no longer be confused. However, Dr. D'Ambrosia told us that he believed that was still in a supervisory role at the clinic. Further, records reflected that was confused and misunderstood the

parameters of (b)(7)(C) authority, because [redacted] said that [redacted] believed that (b)(7)(C) had the authority to modify (b)(7)(C) schedule.

Conclusion

20. We concluded that (b)(7)(C) failed to report for duty and did not coordinate leave as required by VA's contract and that (b)(7)(C) did not establish and maintain proper time and attendance records for contractor services prior to certifying payment. (b)(5) (b)(5),(b)(7)(C) Further, we found that Dr. D'Ambrosia misused resources when he injected (b)(7)(C) with prescription medication during their VA tour of duty. (b)(5) (b)(5) We also found an ambiguity in the chains of command for VA, contractor, and USAFA employees, and although (b)(7)(C) created new organizational charts in an effort to address this issue, we found that there was still confusion at the facility. (b)(5) (b)(5)

21. We are providing this memorandum to you for your information and official use and whatever action you deem appropriate. It is subject to the provisions of the Privacy Act of 1974 (5 U.S.C. § 552a). If you have any questions, please contact Ms. Linda Fournier, Director of Administrative Investigations Division, at (b)(7)(C)

JAMES J. O'NEILL

Department of Veterans Affairs

Memorandum

Date: January 3, 2012

From: Assistant Inspector General for Investigations (51)

Subj: Management Implication Notification – Issuance of Debt, Fayetteville, AR, VAMC

To: Principal Deputy Under Secretary for Health (10A)

This memorandum is provided to you to offer observations regarding the possible negative and unintended consequences of VA issued debt notifications during ongoing criminal investigations involving fraud losses. Specifically, this notification addresses the effects of such actions on the successful criminal prosecution of accused subjects.

The VA Office of Inspector General (VA OIG) along with the U.S. Secret Service (USSS) initiated an investigation in May 2010, based upon a criminal referral from the Director of the Veterans Health Care System of the Ozarks (VHCSO), Fayetteville, AR. The Director explained that a VA Agent Cashier, whose job is to handle cash, check payments to the facilities, and reconcile cash disbursements to veterans, was found to have prepared several [yet-to-be-processed] Federal Reserve Bank deposits that were short of funds. The amount initially reported by VHCSO staff as missing was approximately $52,000.00.

During the ensuing investigation, the Agent Cashier admitted to theft of the funds from VHCSO. The case was subsequently referred to the United States Attorney's Office (USAO) for the Western District of Arkansas, for a decision on the merits of prosecution. The Assistant United States Attorney (AUSA) decided to offer the Agent Cashier a pre-trial diversion agreement in lieu of prosecution. This is a non-judicial mechanism, by which the accused enters into an agreement with the USAO to pay restitution for their fraud and avoid any other criminal activity. If these criteria are not met, then the accused is prosecuted.

In October 2010, the VA OIG Case Agent assigned to this matter spoke with the Agent Cashier and she stated that she was in contact with the Federal Probation Office, and everything was proceeding satisfactory. The Agent then spoke with the federal probation officer handling the matter and he concurred with the assertion of the Agent Cashier.

In February 2011, VA OIG contacted the AUSA who stated that the Agent Cashier was not cooperating with the probation officer and that the USAO would pursue an indictment.

In May 2011, the VA OIG Case Agent testified before the grand jury seated in the Western District of Arkansas. The grand jury returned a true bill and an arrest warrant

was issued for the Agent Cashier. She was subsequently arrested, arraigned, and appointed a federal public defender as counsel.

During the Agent Cashier's bond hearing in June 2011, her attorney entered into evidence a VA Form 5655, titled: Financial Status Report. Her counsel posited the form was filled out by his client, and he argued to the court that his client had been sent the paperwork along with a letter stating that the VA had created a debt in her name. He argued that she believed that she was indeed complying with the USAO's diversion agreement process based upon the VA creating the debt. At that point, the magistrate admonished the AUSA and instructed her to reform the Pre-Trial Diversion Agreement process on the Agent Cashier. The AUSA contacted the Case Agent and admonished him for the VA's attempt to enter into a civil debt agreement with a subject that the Justice Department was expending resources to criminally prosecute. The AUSA stated the apparent effort to enter into a repayment agreement with the VA made the continued criminal prosecution of the Agent Cashier very problematic. The Case Agent assured the AUSA that he had no knowledge of such an attempt and that he would find out how this came to be.

In turn, the Case Agent contacted the VHCSO's Acting Chief Financial Officer, (b)(7)(C) (b)(7)(C) and the acting VAMC Director (b)(7)(C) regarding this matter. (b)(7)(C) stated that in October 2010, the VA Central Office (VACO) had in fact directed the VHCSO to create a debt in the Agent Cashier's name in the amount of the loss. (b)(7)(C) stated that the reason they were required to create the debt was to "balance the accounts" with the money that was missing from the Agent Cashier's account. The creation of this debt causes a computer-generated letter of Debt to be mailed to the debtor. The letter requested payment, and offered a possible decrease in the amount of debt, if the matter was attended to by the debtor. In this case, several such letters were generated from November 2010, through February 2011, and mailed to the Agent Cashier.

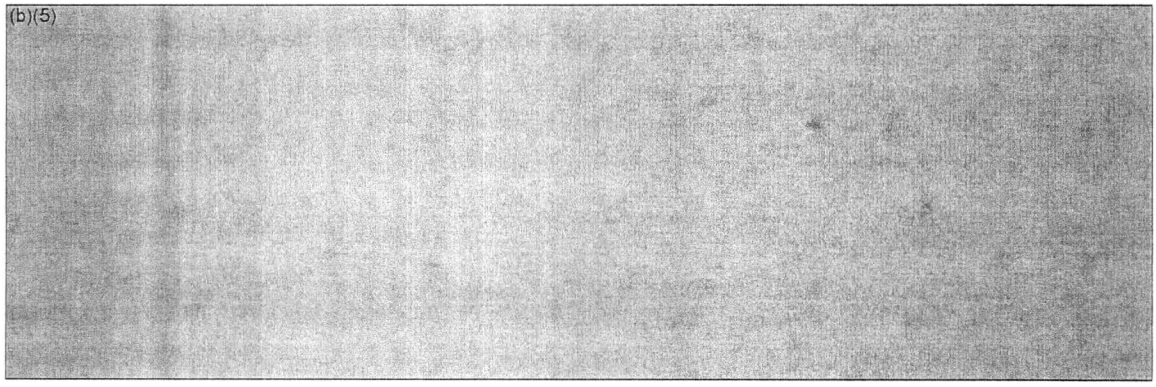
The Case Agent asked (b)(7)(C) if VA was attempting to come to a civil agreement with the Agent Cashier for repayment. (b)(7)(C) stated that the debt-origination process was used strictly to offset the money missing from the Agent Cashier's account and that its purpose was not to actually collect the debt. (b)(7)(C) verified that the Agent Cashier made no attempt to reply to the letters or contact the business office in regards to the debt. (b)(7)(C) also confirmed that no one at the business office attempted to contact the VA OIG regarding the possible consequences of these letters on the criminal prosecution of the Agent Cashier.

The Case Agent contacted the AUSA and informed her of the results of his inquiry. The AUSA stated that the intent of the debt creation was inconsequential. The fact that the

Agent Cashier was notified that a debt was created and repayment required caused a perception of civil action that would negate a successful outcome at trial. As a result, the USAO decided to dismiss the indictment and pursue a Pre-trial Diversion Agreement with the Agent Cashier. The USAO was embarrassed in the court's eyes, and the Department of Justice, VA OIG, and USSS resources were unnecessarily expended.

If the VACO or the VHCSO administration had contacted VA OIG notifying us of the proposed debt notifications, they would have been informed of the very negative impact such actions would have on the criminal prosecution. With this coordination, the criminal prosecution of the Agent Cashier would have undoubtedly been pursued, and could have resulted in a felony conviction and restitution paid back to the Department.

Based upon our observations in the above matter the VA OIG would make the following recommendation:



Should you have any questions or require additional information, please contact me at 202-461-4702.

James J. O'Neill

Department of
Veterans Affairs

Memorandum

February 28, 2012

Assistant Inspector General for Investigations (51)

Management Implications Notification – Pharmacy Inventory/Drug Diversion

Principal Deputy Under-Secretary for Health

This memorandum is provided to offer observations regarding weaknesses in VA's control of narcotics located within controlled areas of the Pharmacy. While investigating the theft of nearly 6000 tablets (80mg Oxycotin, Vicodin, Oxycodone, and Clonazepam) from the Pharmacy located at the VA Medical Center in Roseburg, OR, we discovered systemic weaknesses in VA Systems and management controls that facilitated the theft.

The investigation revealed a disconnect between VA narcotics inventory system, VISTA, and the remote narcotic dispensers located throughout the facility. The disconnect allowed Pharmacy personnel to divert narcotics directly from the Pharmacy inventory giving the appearance of replenishing remote narcotic dispensers. This disconnect also suppressed alerts notifying VA management.

Under existing processes, the narcotic dispensers are "refilled" when the dispenser alerts the Pharmacy that a particular narcotic supply depletes below a predetermined threshold. When that occurs, the Pharmacy receives a written dispenser-generated "refill" order. Upon receipt, Pharmacy personnel enter the replenishment type, quantity, and dispenser location in VISTA. When the request is entered in VISTA and transferred to the dispener, the Pharmacy inventory balance is reduced accordingly. To ensure proper accounting, the Pharmacist controls the transfer of narcotics from the Pharmacy inventory to the dispenser in sealed containers and signature verification. The dispenser "refill" request and the VISTA inventory disbursement are matched and audited for accuracy by the Pharmacist.

It was determined that a Pharmacy employee can initiate a "refill" request in VISTA without ever receiving a legitimate written "refill" request from a narcotic dispenser. Under the fraud, the Pharmacy employee enters a transaction in VISTA by designating a transfer of narcotics from the Pharmacy to a fictitious dispenser. The Pharmacy employee then balances the Pharmacy "on-hand" inventory by removing narcotics from the Pharmacy, giving the appearance that the narcotics were transferred to a local narcotic dispenser located elsewhere at the medical facility. Since there were no legitimate requests, there were no audits and any subsequent physical inventory check of the Pharmacy would now match the inventory balance in VISTA.

When confronted, the Pharmacy employee admitted to entering fictitious orders into VISTA using her computer and VISTA access code for over an 18-month period. She also admitted to using her co-workers' computers and VISTA access codes when they left their computer logged on and unattended. She advised that she could also enter the fictitious orders from any computer located at the VAMC. The challenge was removing the narcotics from the Pharmacy vault. When scheduled in the vault, the employee simply removed the narcotics from inventory when left alone in the vault. When the employee was not scheduled in the vault, she used her vault access card to enter the vault when the scheduled vault employee would leave on break. The employee also admitted she would "piggy back" entry into the vault on others' entry codes.

In order to identify the magnitude of the diversion, the VA OIG and the Pharmacist conducted an audit. First, the review verified all "matched" dispenser "refill" requests and VISTA inventory disbursements. The second phase compared the verified "matched" VISTA inventory disbursements with all VISTA inventory disbursements. The result isolated numerous disbursements without verified "matched" requests/disbursements. The audit also discovered several methods the employee used to avoid detection. The employee would designate dispensers that normally would not stock the particular narcotic being diverted to avoid alerts from the dispenser requesting a refill and VISTA inventory revealing recent disbursements. The employee would also select quantities consistent with prepackaged amounts to easily and quickly remove narcotics from the vault without taking time to count tablets.

(b)(5)

(b)(5)

If you desire more information, our case agent for this investigation was (b)(7)(C) (b)(7)(C). He may be reached at (b)(7)(C)

James J. O'Neill