

**STATEMENT OF LINDA A. HALLIDAY
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BEFORE THE
SUBCOMMITTEE ON MILITARY CONSTRUCTION,
VETERANS AFFAIRS, AND RELATED AGENCIES
COMMITTEE ON APPROPRIATIONS
UNITED STATES SENATE
HEARING ON
WHISTLEBLOWER CLAIMS AT THE
U.S. DEPARTMENT OF VETERANS AFFAIRS
JULY 30, 2015**

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to discuss how the VA Office of Inspector General (OIG) interacts with complainants and whistleblowers. This is my first hearing as the Deputy Inspector General and I look forward to continuing the working relationship between the OIG and the Congress. I have testified at congressional hearings in the past regarding projects and reports of the OIG's Office of Audits and Evaluations, and now I welcome the opportunity to share with you the work of all components of the OIG. I am accompanied by Maureen T. Regan, Counselor to the Inspector General and John D. Daigh, Jr., MD, CPA, Assistant Inspector General for Healthcare Inspections.

BACKGROUND

Under the *Whistleblower Protection Act of 1989*, it is unlawful for agencies to take or threaten to take a personnel action against an employee who makes a protected disclosure—information he or she reasonably believes evidences a violation of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health and safety. Personnel actions can include a poor performance review, demotion, suspension, or termination. In addition, the law prohibits retaliation for filing an appeal, complaint, or grievance; helping someone else file or testifying on their behalf; or cooperating with or disclosing information to the OIG.

The OIG does not make a determination as to whether an individual who makes a complaint or provides information to the OIG has made a protected disclosure as defined under the *Whistleblower Protection Act of 1989*, as amended, and applicable case law to be considered a “whistleblower.” This is a legal determination made by the U.S. Office of Special Counsel (OSC), the U.S. Merit Systems Protection Board (MSPB), or the U.S. Court of Appeals for the Federal Circuit.

The OIG Whistleblower Protection Ombudsman program provides education about protections for current or former employees of VA, VA contractors, or VA grantees who make protected disclosures. The Ombudsman coordinates with VA administrations and staff offices to increase awareness of prohibitions on whistleblower retaliation. In

addition, the program disseminates information on rights and remedies against retaliation for making protected disclosures. Specifically, the Ombudsman provides complainants with information on how to contact organizations that address reprisal allegations. This program was authorized by the *Whistleblower Protection Enhancement Act of 2012*, which became law on November 27, 2012. The OIG Ombudsman cannot act as a legal representative, agent, or advocate of the employee or former employee.

OIG HOTLINE PROCESS

Complainants, including whistleblowers, are the lifeline of OIG organizations, and the OIG is committed to protecting their identities, understanding their concerns, objectively seeking the truth, and ensuring VA pursues accountability and corrective action for wrongdoing. The *Inspector General Act of 1978* (IG Act), as amended, authorized the OIG to accept allegations from individuals concerning criminal activity, fraud, waste, abuse, and mismanagement of VA programs and operations.

The OIG Hotline serves as the central point of contact for employees, veterans and their family members, other Federal agencies, and the general public to report allegations. The OIG Hotline receives contacts via telephone, email, Internet, U.S. mail, and facsimile. The OIG takes seriously the provisions of Section 7(b) of the IG Act that prohibits the disclosure of the identity of an employee who has made a complaint or provided information to the OIG unless the employee consents to the disclosure or, in very rare occasions, the VA Inspector General personally determines such disclosure is unavoidable during the course of an investigation. When individuals contact our Hotline, they are advised of their right to submit their complaint anonymously, to identify themselves but remain confidential, or to waive the right to confidentiality, and of the potential consequences of their decision. Confidential status allows further communication between the OIG and the complainant after the original complaint is received. It is more advantageous to both the OIG and the complainant than anonymous status.

All complaints are logged and receive a preliminary evaluation by a Hotline analyst. Based upon the nature and substance of the complaint, the Hotline analyst determines whether the complaint merits referral to one of the Directorates within the OIG—the Office of Investigations, the Office of Audits and Evaluations, or the Office of Healthcare Inspections—for further evaluation. If one of these Directorates accepts the complaint, the Hotline analyst will notify the complainant that a case has been opened.

Because we receive more complaints than we have the resource capacity to review, we also make case referrals to VA of the complaints that are not appropriate for an OIG case but that appear to warrant further review, such as allegations of staff rudeness or medication refill problems. In these instances, the appropriate VA facility or program office is responsible for conducting an independent review and promptly reporting back to the OIG on the findings of their review within 60 days. The OIG does not identify the complainant to VA when making these referrals without the complainant's authorization.

The OIG does not evaluate complaints regarding matters that are unrelated to the programs and operations of VA or that can be addressed in other legal or administrative forums. When possible, the OIG refers the complainant to the appropriate VA program office or Federal agency that can provide further assistance on the matter. For example, individuals with complaints regarding claim adjudications for VA disability and pension benefits are advised to contact the Veterans Benefits Administration (VBA); individuals with complaints regarding discrimination are advised to contact VA's Office of Resolution Management (ORM); and individuals with allegations of prohibited personnel practices, including reprisal for whistleblowing, are advised to contact OSC. We also do not review complaints of poor quality of care when the veteran or family has filed an administrative tort claim. Those investigations are the responsibility of the Office of General Counsel.

For the 18-month period of October 1, 2013, through March 31, 2015, the OIG Hotline received more than 62,000 contacts. Over 7,800 (12.5 percent) of those contacts came from VA employees, and 1,545 (2.5 percent) contacts were from individuals raising concerns about retaliation or reprisal. Despite changes to our Hotline website that advise complainants of the limitations of anonymous submissions, approximately 20 percent (297) of the 1,545 complaints were from anonymous sources. Unfortunately, in these situations, the OIG can only provide generic education and instruction on whistleblower avenues of relief, which is available on our website. For the remaining 80 percent of complaints received via the Hotline:

- 477 complainants were advised to contact OSC.
- 54 complainants were advised to contact MSPB.
- 717 complainants were advised to contact ORM.

OIG INTERACTION WITH THE U.S. OFFICE OF SPECIAL COUNSEL

When OSC receives a complaint from a current or former employee alleging retaliation for making a protected disclosure to the OIG, OSC investigators contact the OIG's Release of Information Office to obtain relevant records and other information. In response, the OIG has provided the records requested, consistent with applicable laws and regulations affecting those records, engaged in discussions relating to what records or other information we have regarding any disclosures to the OIG, and made OIG personnel available for interview.

CHALLENGES FOR THE OIG AND COMPLAINANTS

Vague Allegations from Anonymous Complainants

It is critical in most instances that the OIG be able to communicate with the complainant to understand the nature of the complaint so as to effectively address the issue; otherwise, we are often left with a task akin to looking for "a needle in a haystack." For example, if a complainant makes a serious but vague allegation that surgery at a medical center is of poor quality, but does not provide any further information, it is difficult to address the complainant's issues. The OIG's ability to contact the complainant to obtain additional, more specific information is of paramount importance to fully address the complainant's issue. Examples of information critical to completion of our reviews could include which surgical service is involved (General Surgery,

Neurosurgery, or Podiatry); location (inpatient operating room or outpatient day surgery); specific providers' names; the time period; and the definition of quality of care (timely, mortality rate, or morbidity rate).

When an individual chooses to remain anonymous and does not provide sufficient information to assess or conduct a review of the complaint, the OIG cannot contact that person to obtain additional information regarding the allegation such as testimonial or documentary evidence, the identity of the patients impacted, the providers involved, or other witnesses, and we cannot inform the complainant as to what action the OIG has taken on the complaint. Similarly, a complainant may initially identify himself or herself to the OIG but later declines to provide critical information to enable the OIG to conduct a thorough review of the allegations. In these instances, we often have no choice but to discontinue processing the complaint.

The Need to Disclose a Complainant's Identity

In certain circumstances, it may be unavoidable to disclose a complainant's identity to VA in order for the allegation to be reviewed. For example, we receive many veteran-specific complaints regarding specific episodes of VA medical care, contracting issues, and mismanagement. Because we receive more allegations than we have the resources to review, we often make a case referral to the appropriate Veterans Health Administration (VHA) facility or other VA program office for review. In cases where it is not possible to review the complaint without disclosing the identity of the complainant, we advise the complainant and, before taking any further action on the complaint, request that they provide their written consent for the OIG to disclose their identity.

Protecting Complainant Confidentiality

On rare occasions, we receive complaints that OIG staff breached the confidentiality of a complainant. When this occurs, we investigate the allegations and take administrative action when the complaint is substantiated. There are also many instances where individuals who have requested confidentiality with the OIG have made the same complaints to VA management, coworkers, or media outlets, or they have made statements that they have gone to the OIG or threatened to go to the OIG. Even though the OIG does not disclose the identity of the complainant, either overtly or by refusing to confirm that the individual submitted a complaint, VA knows or, at a minimum suspects, that the individual filed the complaint. Furthermore, under certain circumstances, the very nature of the allegations brought forth by the complainant may render the complainant's identity obvious or possible to deduce by others outside the OIG.

Budgetary Constraints

The surfacing of allegations in fiscal year (FY) 2014 related to wait times and delays in care at the Phoenix VA Health Care System (PVAHCS) was a watershed event for VA and the OIG. The national attention sparked by reporting on PVAHCS led to an increased public awareness of the OIG and resulted in a dramatic increase in the number of contacts to the OIG Hotline, in the number of inquiries sent to us by Members of Congress, and by veterans and their families. In FY 2014, the OIG Hotline received almost 40,000 contacts, which represented a 45 percent increase from FY 2013.

During the first half of FY 2015, we received over 22,400 contacts, which puts us on pace to surpass FY 2014's record-breaking year. Similarly, we saw a 38 percent increase in the number of inquiries from Members of Congress, and we expect this upward trend to continue.

The OIG operates in a resource constricted environment with respect to the number of allegations and national reviews we are able to address. Because of this, the OIG must be highly selective in the cases we accept. In FY 2013, the OIG opened cases for 1,227 (4.5 percent) of the 27,420 contacts we received. In FY 2014, although we received more contacts (39,874) and opened more cases (1,330) than the previous year, the percentage of cases opened dropped to 3.3 percent.

Due to significant and sustained increases in the number of Hotline contacts the OIG receives, we have increased our Hotline staff by three positions within the last year. At present, there are 15 staff members in Hotline including 3 supervisors and 12 analysts. I am reviewing staffing levels throughout the organization including OIG line directorates; however, the outlook in FY 2016 is not advantageous to increasing staff levels in one part of the organization without increasing levels in other Directorates.

RECENT INITIATIVES

I assumed the position of Deputy Inspector General (IG) on July 6, 2015. On July 10, 2015, I announced that one of my first acts as Deputy IG would be to ensure that all OIG employees are fully trained on protections and remedies guaranteed to Federal employees by the *Whistleblower Protection Act of 1989*, the *Whistleblower Protection Enhancement Act of 2012*, and related laws. To this end, the OIG has registered with OSC to participate in the OSC's 2302(c) Certification Program and expects to complete all required actions for certification by December 2015. Undertaking the certification process will help strengthen our past training efforts so that all OIG employees—from our Hotline analysts who are a complainant's first point of contact with the OIG to our auditors, investigators, and healthcare inspectors who interact with complainants in the course of their daily work activities—can assist complainants in making protected disclosures and by educating them on their right to be free from retaliation for whistleblowing and other prohibited personnel practices.

I have also taken several actions to further strengthen the OIG's Whistleblower Protection Ombudsman program.

- **Improved Hotline submission process.** In order to better serve complainants and address complainant concerns of potential retaliation in an informed manner, we have created additional forms on our website designed to ensure anonymity, confidentiality, or allow for full identity disclosure. Providing these different classifications will allow complainants a greater degree of confidence that their personal information is appropriately protected. We also rewrote in plain English the notice Hotline sends to individuals who contact us so that there is a clear understanding of what to expect when making a complaint.

- **Reinvigorated the OIG Rewards Program.** To promote greater utilization of the OIG's cash reward program to individuals who disclose information leading to felony charges, monetary recovery, or significant improvements to VA operations or programs, each OIG Directorate and the OIG Whistleblower Ombudsman will proactively conduct a semiannual review of disclosures made to the OIG to identify potential recipients for cash rewards. Rewards will be based on such factors as the significance of the information, risks to the individual making the disclosure, time spent and expenses incurred by the individual making the disclosure, and cost savings to VA. Recipients will be recognized at either a public or private presentation according to their preference.
- **Enhanced crime awareness education briefing.** These briefings, provided by our criminal investigators as part of cyclical inspection reviews of VHA and VBA facilities, will be expanded to better define how VA employees can make disclosures of protected health information, the roles and responsibilities of the Whistleblower Protection Ombudsman, and the avenues of relief available to VA employees. For the period FY 2014 to present, a total of more than 300 briefings were attended by approximately 20,000 VA employees nationwide.

CONCLUSION

The OIG recognizes the critical role complainants and whistleblowers play in exposing serious problems and deficiencies in VA programs and operations, and I will continue to review and evaluate ways in which the OIG can enhance its interactions with complainants. We are committed to protecting the identity of any person who comes forward to the OIG to report serious allegations of criminal activity, fraud, waste, abuse, and mismanagement; getting to the bottom of those allegations; and monitoring VA to ensure they pursue accountability and corrective action when wrongdoing is found. We are committed to work on behalf of complainants and whistleblowers to ensure that VA operates in a manner that is befitting those veterans who have served to protect our country and our country's principles. Mr. Chairman, this concludes my statement and I would be happy to answer any questions that you or Members of Committee may have.