

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

ORRIN G. HATCH, UTAH
JEFF SESSIONS, ALABAMA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
JEFF FLAKE, ARIZONA
DAVID VITTER, LOUISIANA
DAVID A. PERDUE, GEORGIA
THOM TILLIS, NORTH CAROLINA

PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
CHARLES E. SCHUMER, NEW YORK
RICHARD J. DURBIN, ILLINOIS
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
AL FRANKEN, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, Chief Counsel and Staff Director
KRISTINE J. LUCIUS, Democratic Chief Counsel and Staff Director

April 21, 2015

VIA ELECTRONIC TRANSMISSION

The Honorable Robert A. McDonald
Secretary
U.S. Department of Veteran Affairs
Washington, D.C. 20420

The Honorable Richard J. Griffin
Inspector General
U.S. Department of Veteran Affairs
Washington, D.C. 20420

Dear Secretary McDonald and Inspector General Griffin:

According to the *Washington Post*, since your confirmation as Secretary in July 2014, the Office of Special Counsel (OSC) has received 111 whistleblower reprisal cases involving health and safety issues at the Department of Veterans Affairs (VA).¹ Improvement of veteran health care is dependent, in large part, on the encouragement and protection of whistleblowers within the VA. Yet, it appears that whistleblowers are not encouraged but instead retaliated against.

According to news reports, this past December an employee at the VA Hospital in Phoenix, Mr. Brandon Coleman, was suspended after voicing concerns regarding the hospital's policy for treating suicidal veterans.² Reportedly, Mr. Coleman approached his supervisor after he observed five suicidal veterans leave the emergency room without receiving any assistance or treatment.

Six days after Mr. Coleman's conversation with his supervisor, he was suspended. After he was suspended, two other VA employees came forward to support his claims, both filed for whistleblower protection with the OSC.

¹ Emily Wax-Thibodeaux, *At VA Health Facilities, Whistleblowers Still Fear Retaliation*, WASH. POST (March, 5, 2015).

² *Id.*

Unfortunately, Mr. Coleman's situation is not an outlier. For example, this past January a director at the VA hospital in Denver reportedly told employees that they were not permitted to speak with the media about wait lists or delays in care for veterans.³ In a VA hospital in St. Louis, the Chief of Psychiatry was removed from his position after raising concerns about some of his superiors who exhibited a "disregard for veteran care and safety."⁴

In Puerto Rico, a VA employee, Ms. Rosayma Lopez, was reportedly dismissed after her supervisors disapproved of the results of an internal investigation she conducted.⁵ Ms. Lopez had concluded that her colleague's report against an executive did not constitute wrongdoing. Supervisors urged her to reconsider and when she refused, she was dismissed from her position.

On April 13, Ms. Carolyn Lerner, Special Counsel at the U.S. Office of Special Counsel, testified before the House Veterans' Affairs subcommittee on Oversight and Investigations and stated, "In several cases, the medical records of whistleblowers have been accessed and information in those records has apparently been used to attempt to discredit the whistleblowers."⁶ Moreover, Ms. Lerner testified that 40% of all government whistleblower cases come from the VA.⁷ Out of all federal agencies, the VA has the highest number of whistleblower cases.

The *Washington Post* recently reported that whistleblowers have not only been demoted, but moved into windowless rooms and basements as punishment.⁸ One whistleblower in particular, Dr. Christian Head, blew the whistle on patient wait time cover-ups at the Greater Los Angeles VA Health Care System. He was subsequently moved to a storage bin.⁹

The pervasiveness of whistleblower retaliation at the VA creates a culture that deters positive organizational change. In the aggregate, it appears that there is an epidemic of whistleblower retaliation at the VA. Frankly, the status quo is beyond unacceptable.

Accordingly, please provide answers to the following questions:

1. In July 2014, Secretary McDonald reportedly stated that he wanted to celebrate whistleblowers and "make every employee a whistleblower." What steps has the VA made towards this goal?

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Carolyn Lerner, Testimony, *U.S. House of Representatives Committee on Veterans' Affairs Subcommittee on Oversight and Investigations*, "Addressing Continued Whistleblower Retaliation Within the VA," (April 13, 2015).

⁷ *Id.*

⁸ Emily Wax-Thibodeaux, *Isolated. Harassed. Their personal lives investigated. That's the life as a VA whistleblower, employees tell Congress*, WASH. POST (April 14, 2015).

⁹ *Id.*

2. The VA Office of the Inspector General (OIG) refers whistleblowers alleging retaliation to three different offices: Office of Special Counsel (OSC), the Merit Systems Protection Board (MSPB), and the Office of Resolution Management (ORM). For each office, please provide the number of cases referred by the VA OIG and a brief summary of the issues for each case.
3. In March 2015, Secretary McDonald met with Mr. Coleman to discuss retaliation at the VA hospital in Phoenix. What progress has the VA made concerning Mr. Coleman's claims?
4. Based on news reports, it appears that the VA still fails to provide an office or employee that whistleblowers feel they can make disclosures to without the fear of retaliation. Please respond to these concerns. What plans do you have to implement a remedy?
5. What steps are being made to prevent VA employees from accessing the medical records of whistleblowers? Please explain in detail.
6. According to the *Washington Post*, the OSC has received 111 whistleblower retaliation cases as of early March. In light of this, what role will the VA and VA OIG leadership play in combating whistleblower retaliation? Please explain in detail.
7. What steps has the VA OIG Whistleblower Protection Ombudsman made to train employees on the importance of whistleblowers and/or the protections afforded to whistleblowers? Please explain in detail and provide the training materials.
8. Generally, when it is determined that a VA employee retaliated against another employee for blowing the whistle, what is the range of remedial steps, if any, that are made regarding the retaliating employee?

Thank you in advance for your cooperation with this request. Please number the responses according to their corresponding questions and respond no later than May 11, 2015. If you have questions, contact Josh Flynn-Brown of my Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary