



Department of Veterans Affairs Office of Inspector General

Administrative Investigation Conflict of Interest and Misuse of Leave South Texas Veterans Health Care System, San Antonio, Texas

Redacted



DEPARTMENT OF VETERANS AFFAIRS
Office of Inspector General
Washington, DC 20420

TO: Under Secretary for Health
Director, South Texas Veterans Health Care System

SUBJECT: Administrative Investigation, Conflict of Interest and Misuse of Leave
South Texas Veterans Health Care System, San Antonio, Texas
(2010-02814-IQ-0089)

Summary

We substantiated that [REDACTED] South Texas Veterans Health Care System (STVHCS), engaged in a conflict of interest (b)(6) when [REDACTED] approved the appointment of [REDACTED] private business partner, [REDACTED] to a VA position and recommended [REDACTED] for a \$21,274 recruitment incentive. We made a criminal referral to the U.S. Department of Justice for [REDACTED] engaging in a conflict of interest; however, they declined criminal prosecution in favor of available administrative remedies. We also found that [REDACTED] and other title 38 employees—physicians and healthcare providers appointed under VA's authority in title 38 U.S.C. as distinguished from civil service employees appointed under title 5—misused leave and that [REDACTED] misused official time for [REDACTED] private business.

Introduction

The VA Office of Inspector General Administrative Investigations Division investigated an allegation that [REDACTED] improperly appointed [REDACTED] to a VA position, as they worked together at [REDACTED] private practice. We also investigated an allegation that [REDACTED] misused official time and that [REDACTED] and [REDACTED] improperly used leave. To assess these allegations, we interviewed [REDACTED] other STVHCS staff, and non-VA employees. We also reviewed emails, personnel files, and other relevant documents, as well as Federal regulations and VA policy. We investigated but did not substantiate other allegations and they will not be discussed in this report.

Results

Issue 1: Whether [REDACTED] Engaged in a Conflict of Interest

Federal law prohibits that an employee of the executive branch from participating personally and substantially through decision, approval, or recommendation in a particular matter in which, to his knowledge, his general partner has a financial interest. 18 USC § 208.

The Standards of Ethical Conduct for Employees of the Executive Branch state that where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a person with whom he has a covered relationship, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee. An employee has a covered relationship with a person with whom the employee has a business, contractual, or other financial relationship that involves other than a routine consumer transaction. 5 CFR § 2635.502(a).

Records of the Texas Comptroller of Public Accounts reflected that [REDACTED] was the registered agent of [REDACTED] with a registration date of [REDACTED] (b)(6)
[REDACTED] Records further reflected that [REDACTED] was the registered agent of [REDACTED] with a registration date of [REDACTED] website reflected [REDACTED] as the [REDACTED] and [REDACTED] as the [REDACTED] and [REDACTED] at [REDACTED]. [REDACTED] gave us a Professional Service Agreement, signed on [REDACTED] by [REDACTED] reflecting that [REDACTED] and [REDACTED] would “[REDACTED]” [REDACTED] told us that [REDACTED] and [REDACTED] used the same facility and shared common expenses, and that [REDACTED] and [REDACTED] mutually agreed to share income and expenses for the benefit of the businesses. [REDACTED] further said that under the agreement, [REDACTED] functioned as the [REDACTED] and [REDACTED] for [REDACTED]. [REDACTED] told us that sometime in 2009, [REDACTED] and [REDACTED] decided to start a private laboratory, due to a market demand for their unique qualifications. [REDACTED] said that [REDACTED] business was [REDACTED]; [REDACTED] was [REDACTED]; and that they performed different testing on the same specimens received at their laboratory.

[REDACTED] told us that [REDACTED] was a [REDACTED] certified by the [REDACTED] and that [REDACTED] was a [REDACTED] certified by the [REDACTED]. [REDACTED] said that combining their specialties allowed [REDACTED] to work under the umbrella of [REDACTED] license so that [REDACTED] was not required to obtain a separate license and that they shared overhead expenses “50/50.”

██████████ told us that ██████████ first met ██████████ in the early 2000's when they both (b)(6)
worked at the ██████████ ██████████ said
that ██████████ retired from ██████████ in early 2009 and started ██████████ own business, ██████████
██████████ further said that ██████████ and ██████████ subsequently established a Professional Service
Agreement to be mutually beneficial for both ██████████ and ██████████. ██████████ and
██████████ records contained a Bill of Sale, signed by ██████████ and ██████████ on
██████████, 2009, stating that ██████████ will pay ██████████ within
7 days of the execution date to partly cover the cost of items paid out of ██████████ account
and that beginning ██████████ 2010, ██████████ will pay ██████████ in six monthly
installments, the remaining ██████████ owed for equipment and supplies.

Personnel records reflected that ██████████ authorized ██████████ VA appointment as
a GS-13, step 10, ██████████ with an annual salary of \$106,369, effective ██████████
2010, and that ██████████ also recommended ██████████ for a \$21,274 recruitment incentive.
and ██████████ both told us that ██████████ ██████████ ██████████ at VA;
however, they did not think that their private partnership interfered with their working
relationship at VA.

Conclusion

We concluded that ██████████ engaged in a conflict of interest when ██████████ approved (b)(6)
██████████ VA appointment and recommended ██████████ for a recruitment incentive.
Federal law and regulations prohibit ██████████ a VA employee, from participating
personally and substantially in a matter that directly affected the financial interest of ██████████
private business partner, ██████████ ██████████ and ██████████ had a long-term
working relationship, and in 2009, they established respective private businesses. In
██████████ 2009, they combined their businesses into a joint-venture, signing a business
agreement to share a facility, expenses, and jointly work toward the betterment of both
entities; therefore, creating a general partnership. In addition, they signed a bill of sale
requiring that ██████████ initially pay ██████████ and then in installments,
beginning on ██████████ 2010, pay another ██████████ Two weeks later, ██████████
approved ██████████ VA appointment and recommended ██████████ for a \$21,274
recruitment incentive.

Recommendation 1. We recommend that the Director, STVHCS, confer with the Office
of Human Resources (OHR) and the Office of General Counsel (OGC) to determine the
appropriate administrative action to take against ██████████ and ensure that action is
taken.

Recommendation 2. We recommend that the Director, STVHCS, ensure a bill of
collection in the amount of \$21,274 is issued to ██████████ to recover the improper
recruitment incentive.

Issue 2: Whether [REDACTED] and Others Misused Leave

VA policy requires all employees to be on duty during the full period of their tour of duty and to observe the opening and closing hours established for the tour of duty, unless on approved leave. VA Handbook 5011, Part II, Chapter 2, Paragraph 1(a)(7), (April 15, 2002). It states that the minimum charge for leave for a title 5 employee will be a quarter hour (15 minutes). *Id.*, at Part III, Chapter 2, Paragraph 2 (June 16, 2004). It also states that for title 38 fulltime physicians the minimum charge for leave will be 1 day and multiples thereof and a quarter hour or multiples thereof for part-time physicians. *Id.*, at Part III, Chapter 3, Paragraph 3b (December 6, 2006). VA policy states that the supervisor is responsible for administering leave and that sick leave shall be granted when an employee is incapacitated for the performance of duties by physical or mental illness; pregnancy or childbirth; when the employee receives medical, dental, or optical examination or treatment; or when exposure to a contagious disease would jeopardize the health of others. *Id.*, at Part III, Chapter 1, Paragraph 2b and 4a, (April 15, 2002).

Time and attendance records showed that from April 26 to July 31, 2010, [REDACTED] official tour of duty was from 7:30 a.m. to 4:00 p.m. Records also reflected many days that [REDACTED] took sick leave for 1-2 hours at the beginning of [REDACTED] workday during this time period. [REDACTED] told us that due to [REDACTED] age and family medical history, [REDACTED] wanted to exercise in the morning, so [REDACTED] took sick leave on Tuesdays, Wednesdays, and Thursdays to exercise, and records reflected some weeks when [REDACTED] took 1 or 2 hours of sick leave on those particular week days. Records also reflected that [REDACTED] took leave almost as quickly as [REDACTED] earned it and that in [REDACTED] first 100 days of working for VA [REDACTED] took from 1 to 8 hours of leave on over 25 percent of [REDACTED] workdays. Further, after working at VA for over a year, earning at least 312 hours of leave, [REDACTED] had less than 8 hours total in [REDACTED] leave balances. (b)(6)

Personnel records reflected that [REDACTED] became a fulltime title 38 employee effective [REDACTED]. [REDACTED] told us that as the [REDACTED] and a title 38 employee, [REDACTED] was not clear as to whether [REDACTED] could take leave for a partial day or if [REDACTED] was required to take a full day. [REDACTED] said that [REDACTED] timekeeper told [REDACTED] that if [REDACTED] took a partial day of leave, the system would not recognize the partial day. [REDACTED] said that when [REDACTED] took time off from work for a partial day, [REDACTED] kept a record of it, and when [REDACTED] took another partial day, [REDACTED] would combine the two and take leave for 1 full day. Another fulltime physician, told us that [REDACTED] submitted partial day leave requests when [REDACTED] took a partial day of leave. [REDACTED] said that [REDACTED] colleagues also took partial days of annual leave and that “if they are doing [it], it means it’s right, you can do it.”

The VA Medical Center Deputy Chief of Staff told us that if a title 38 employee was at work for more than half of the workday, such as 4.5 hours of an 8-hour shift, then they were considered at work for the full 8 hours and that they were not required to submit a leave request. The VA Medical Center Chief Medical Officer of the South Bexar Outpatient Clinic told us that VA policy permitted a fulltime physician’s supervisor to

grant short periods, up to a half day, of authorized absence. VA policy states that a fulltime physician will be charged a full day's leave for absence for a part of a day, unless the absence is excused by officials authorized to approve leave. This 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(b).

For a March 30, 2009, OIG Advisory Memorandum titled *Misuse of Official Time by a Physician*, the VA Director of Employee Relations and Performance, the office responsible for VA Handbook 5011, *Hours of Duty and Leave*, told us that the intent of the policy for authorizing absence for a part of a day was not to allow fulltime physicians to be absent from duty when the appropriate leave should be taken but when an unnecessary delay or absence of less than 1 hour occurred.

Conclusion

We concluded that [REDACTED] misused [REDACTED] sick leave when [REDACTED] used it numerous times (b)(6) between April and July 2010 to physically exercise as a personal choice rather than for medical purposes. We also found that there was a misperception as to the proper use of leave for title 38 fulltime physicians at South Texas Veterans Health Care System. Both [REDACTED] and another fulltime physician did not submit the appropriate leave requests for 1-day when taking a partial day off from work. Further, we found that the Deputy Chief of Staff and a Chief Medical Officer believed that supervisors were permitted to grant authorized absences up to a half of a day for fulltime physicians, with the Deputy Chief of Staff saying that a fulltime physician was considered at work for a full 8-hour workday, if the physician worked more than 4 hours that day.

We are not making recommendations for administrative action against [REDACTED] or the other fulltime physician for their misuse of leave, because we again found a general misperception as to the proper use of leave for title 38 fulltime physicians. In the past, OIG investigated and found a systemic misinterpretation of VA policy in which fulltime physicians and their supervisors believed and conveyed that belief to others that working over 4 hours in a day met the definition of a “major portion of the day” as reflected in VA policy. However, contrary to those assertions, the VA Director of Employee Relations and Performance told us that the intent of the policy for authorizing absence for a part of a day was not to allow fulltime physicians to be absent from duty but for an unnecessary delay or absence of less than 1 hour.

Recommendation 3. We recommend that the Under Secretary for Health confer with OHR and OGC to determine if VA leave policy for title 38 fulltime physicians should be amended to permit leave in less than 1-day increments and take such corrective action. Should the Under Secretary determine to leave the policy as is, we recommend that the

Under Secretary ensure that all title 38 fulltime physicians and their supervisors receive refresher training so that they have a correct understanding of VA leave policy for title 38 fulltime physicians.

Issue 3: Whether [REDACTED] Misused Official Time for [REDACTED] Private Business

Standards of Ethical Conduct for Employees of the Executive Branch state that an employee must use official time in an honest effort to perform official duties. 5 CFR § 2635.705. (b)(6)

[REDACTED] said that [REDACTED] was [REDACTED] at VA and that [REDACTED] VA tour of duty was Monday through Friday from 7:30 a.m. to 4:00 p.m. [REDACTED] said that neither [REDACTED] nor any other VA employee performed functions for [REDACTED] private lab during their VA work hours. [REDACTED] also said that no one performed activities at the VA facility or used Government resources in support of [REDACTED] and [REDACTED] private business. [REDACTED] told us that [REDACTED] only performed work for [REDACTED] personal business after [REDACTED] VA duty hours and that [REDACTED] took leave when visiting [REDACTED] business during [REDACTED] VA workday. However, [REDACTED] also said that [REDACTED] received “brief” telephone calls on [REDACTED] personal cellular telephone concerning [REDACTED] business during [REDACTED] VA workday, which [REDACTED] said occurred, on average, two to three times a week. [REDACTED] said that the calls lasted a few minutes each and that [REDACTED] did not believe that they interfered with [REDACTED] VA duties. [REDACTED] said that if the [REDACTED] employees had a technical problem or received a telephone call from a physician regarding a specimen, they contacted [REDACTED]. In addition, [REDACTED] said that [REDACTED] also used [REDACTED] personal telephone to check [REDACTED] email during [REDACTED] VA tours of duty.

Conclusion

We concluded that [REDACTED] misused [REDACTED] VA time when [REDACTED] performed professional functions for [REDACTED] private business during [REDACTED] VA duty hours. We acknowledge that we could not quantify the amount of time or put a dollar amount to it; however, this was not a de minimis personal use of time but a frequent use of VA time for personal gain when [REDACTED] performed tasks for [REDACTED] private company during [REDACTED] VA tours of duty. (b)(6)

Recommendation 4. We recommend that the Director, STVHCS, confer with OHR and OGC to determine the appropriate administrative action to take against [REDACTED] for performing tasks for [REDACTED] private business during [REDACTED] VA duty hours and ensure that action is taken.

Comments

The Under Secretary for Health and the Director of the South Texas Veterans Health Care System were responsive and provided comments to our recommendations. Their responses are in Appendix A and Appendix B, respectively. We will follow up to ensure that the recommendations are fully implemented.

A handwritten signature in black ink, reading "James J. O'Neill". The signature is written in a cursive style with a large initial "J" and "O".

JAMES J. O'NEILL
Assistant Inspector General for
Investigations

Under Secretary Comments

**Department of
Veterans Affairs**

Memorandum

Date: October 5, 2011

From: Secretary for Health (10)

Subject: **Administrative Investigation, Conflict of Interest and Misuse of Leave, South Texas Veterans Health Care System, San Antonio, Texas**

To: Assistant Inspector General for Investigations (51)

1. The draft report has been reviewed.
2. Attached are comments and the corrective action plan from the South Texas Veterans Health Care System (STVHCS) and the Veterans Integrated Service Network (VISN) 17 to address Recommendations 1, 2, and 4.
3. In response to Recommendation 3, research has begun about the background for the current VA leave policy for title 38 fulltime physicians. The next steps will involve consultation with a number of offices to ascertain whether a change in policy is appropriate. A response is expected to be complete by the end of the year. A corrective action plan to address Recommendation 3 is also attached.
4. Thank you for the opportunity to review the draft report. If you have any questions, please contact Linda H. Lutes, Director, Management Review Service (10A4A4) at (202) 461-7014.

(original signed by:)

Robert A. Petzel, M.D.

Attachment

Under Secretary's Comments to Office of Inspector General's Report

The following Under Secretary for Health's comments are submitted in response to the recommendation(s) in the Office of Inspector General's Report:

OIG Recommendation(s)

Recommendation 3. We recommend that the Under Secretary for Health confer with OHR and OGC to determine if VA leave policy for title 38 fulltime physicians should be amended to permit leave in less than 1-day increments and take such corrective action. Should the Under Secretary for Health determine to leave the policy as is, we recommend that the Under Secretary ensure that all title 38 fulltime physicians and their supervisors receive refresher training so that they have a correct understanding of VA leave policy for title 38 fulltime physicians.

Comments:

The Under Secretary for Health (USH) will confer with the officials in the Veterans Health Administration (VHA) Workforce Management and Consulting Office (WMC), Office of the Deputy Under Secretary for Operations and Management (DUSHOM), Department of Veterans Affairs (VA) Office of General Counsel (OGC), and VA Office of Human Resources (OHR) about considering a change to the VA leave policy for title 38 fulltime physicians to permit leave in less than 1-day increments. After determining whether a change is appropriate, the USH will take appropriate action about policy and training issues. In all cases, the USH will ensure that title 38 fulltime physicians and their supervisors receive refresher training so that they have a correct understanding of VA leave policy for title 38 fulltime physicians.

Director Comments

**Department of
Veterans Affairs**

Memorandum

Date: September 28, 2011

From: Director, South Texas Veterans Health Care System

Subject: **Administrative Investigation, Conflict of Interest and Misuse of Leave, South Texas Veterans Health Care System, San Antonio, Texas**

To: Director, VISN 17 (10N17)

1. Attached please find the response from the South Texas Veterans Health Care System.
2. If you have any questions, please contact Amjed Baghdadi, Chief Quality Management Officer at 210-617-5205.

(original signed by:)

Marie L. Weldon, FACHE

Director's Comments to Office of Inspector General's Report

The following Director's comments are submitted in response to the recommendation(s) in the Office of Inspector General's Report:

OIG Recommendation(s)

Recommendation 1. We recommend that the Director, STVHCS, confer with the Office of Human Resources (OHR) and the Office of General Counsel (OGC) to determine the appropriate administrative action to take against [REDACTED] and ensure that action is taken. (b)(6)

Comments:

The Veterans Integrated Service Network (VISN) 17 and facility will confer with OHR and OGC to identify the appropriate action. Identification of appropriate action and implementation, as needed, are expected to be completed NLT December 31, 2011.

Recommendation 2. We recommend that the Director, STVHCS, ensure a bill of collection in the amount of \$21,274 is issued to [REDACTED] to recover the improper recruitment incentive.

Comments:

In order to address all human resources and legal concerns about a recoupment, the Veterans Integrated Service Network (VISN) 17 and facility will confer with OHR and OGC to identify the appropriate action about the repayment of the recruitment incentive. Identification of appropriate action and implementation, as needed, are expected to be initiated NLT December 31, 2011.

Recommendation 4. We recommend that the Director, STVHCS, confer with OHR and OGC to determine the appropriate administrative action to take against (b)(6) [REDACTED] for performing tasks for [REDACTED] private business during [REDACTED] VA duty hours and ensure that action is taken.

Comments:

[REDACTED] [REDACTED] effective [REDACTED] and is no longer employed by the VA. No further action required.

OIG Contact and Staff Acknowledgments

OIG Contact	For more information about this report, please contact the Office of Inspector General at (202) 461-4720
Acknowledgments	Robert Warren

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