



**Department of Veterans Affairs
Office of Inspector General**

**Administrative Investigation
Conflict of Interest, Misuse of Resources,
Gratuities, and Failure to Follow Policy
James A. Haley Veterans' Hospital
Tampa, Florida**



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

TO: Director, James A. Haley Veterans' Hospital

SUBJECT: Administrative Investigation, Conflict of Interest, Misuse of Resources, Gratuities and Failure to Follow Policy, James A. Haley Veterans' Hospital, Tampa, Florida (2011-00561-IQ-0021)

Summary

We substantiated that [REDACTED] James A. Haley Veterans' Hospital (JAHVH), Tampa, Florida, engaged in a conflict of interest when [REDACTED] referred VA patients to [REDACTED], a VA fee-for-service provider, while [REDACTED] also had a private working relationship with them as the owner of [REDACTED]. We made a criminal referral for conflict of interest (18 USC § 208) to the U. S. Department of Justice; however, they declined criminal prosecution in favor of available administrative remedies. We also found that [REDACTED] improperly accepted gifts from [REDACTED] that [REDACTED] misused VA time and resources when [REDACTED] conducted [REDACTED] business during VA workday; and [REDACTED] improperly used VA time and resources to develop an [REDACTED] application (app) for personal gain. Further, we found that [REDACTED] failed to follow VA policy requirements when [REDACTED] sent VA patient radiology and photograph images from [REDACTED] VA-assigned email account to [REDACTED] private email accounts and accessed them on non-VA issued equipment. Finally, we found that [REDACTED] also violated VA policy when [REDACTED] asked other VA employees to log onto the VA network using [REDACTED] username and password to falsely reflect that [REDACTED] was at [REDACTED] VA duty station when [REDACTED] was not. (7)(c)

Introduction

The VA Office of Inspector General Administrative Investigations Division investigated allegations that [REDACTED] engaged in a conflict of interest as a VA employee and owner of [REDACTED] misused [REDACTED] VA time and resources to do [REDACTED] work, and improperly received gifts from a VA contractor. We also investigated whether [REDACTED] violated privacy policy when [REDACTED] sent unencrypted VA patient health information to [REDACTED] private email account and accessed it on non-VA equipment and when [REDACTED] asked other VA employees to access the VA network using [REDACTED] username and password. To assess these allegations, we interviewed [REDACTED] VA employees, and non-VA employees. We reviewed email, (7)(c)

telephone, time and attendance, [REDACTED] and [REDACTED] records, as well as other relevant documents. We also reviewed Federal laws, regulations, and VA policy. (7)(c)

Results

Issue 1: Whether [REDACTED] Engaged in a Conflict of Interest and Improperly Accepted Gratuities

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

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 she 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 her impartiality in the matter, the employee should not participate in the matter unless she 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 or seeks a business, contractual, or other financial relationship that involves other than a routine consumer transaction. 5 CFR § 2635.502(a).

Background

Personnel records reflected that [REDACTED] earned an Associate of Science in [REDACTED], a Bachelor of Science in [REDACTED] and a Master of Science in [REDACTED] with the two latter being from the University of [REDACTED]). [REDACTED] told us that in the past [REDACTED] was also an [REDACTED] at [REDACTED]. [REDACTED] said that the program was affiliated with VA and that [REDACTED] paid [REDACTED] to teach two acute care online classes in the program. [REDACTED] said that [REDACTED] was also a [REDACTED].

Personnel records reflected that [REDACTED] began working at VA in [REDACTED]. [REDACTED] told us that [REDACTED] supervised a multifaceted pre-op program and that within that program [REDACTED] supervised [REDACTED]. [REDACTED] said that [REDACTED] ran a pre- and post-operation program and a [REDACTED] and other health-related matters. [REDACTED] further said that [REDACTED] was responsible for making internal and external referrals as part of [REDACTED] job duties. [REDACTED] said that in 2006 VA entered into a business relationship with [REDACTED] an outpatient radiology service for VA to refer VA patients on a fee basis for radiology services that

VA could not provide. [REDACTED] said that the fee-basis relationship with [REDACTED] continued to the present. (7)(c)

[REDACTED] business records reflected that [REDACTED] incorporated [REDACTED] a [REDACTED] on December 31, 2008. Records further reflected that [REDACTED], as the [REDACTED] owner, entered into a business relationship with [REDACTED] via a lease agreement on March 26, 2009. Although the lease agreement with [REDACTED] expired in March 2010, [REDACTED] told us that [REDACTED] still functioned as an incorporated entity. Records also reflected that on July 29, 2010, [REDACTED] entered into a contract with [REDACTED] for the development of [REDACTED], an [REDACTED] app that offered a [REDACTED]. [REDACTED] records reflected that once it was developed, the [REDACTED]

[REDACTED] told us that [REDACTED] participated in VA ethics training; [REDACTED] would “never slack on that;” and [REDACTED] had an understanding and knowledge of the concepts involved in the ethics training. [REDACTED] also said that [REDACTED] was familiar with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and that [REDACTED] stayed current with that training. Records of VA Learning University (VALU), Talent Management System (TMS), reflected that [REDACTED] completed the following privacy and ethics training:

- Privacy and HIPAA on [REDACTED]
- VA Privacy and Information Security Awareness and Rules of Behavior on [REDACTED] (7)(c)
- Ethical Leadership on [REDACTED]
- VHA CO Compliance and Business Integrity Awareness on [REDACTED]
- Integrated Ethics – Ethics in Health Care on [REDACTED]
- VA Privacy Awareness on [REDACTED]
- General Employee Privacy Awareness on [REDACTED]
- Information Security 201 for Research and Development Personnel on [REDACTED]

Conflict of Interest

[REDACTED] told us that one of [REDACTED] responsibilities as a VA employee was to refer VA patients to [REDACTED] for their “state-of-the-art” radiology equipment and for services that the VA Medical Center could not provide. [REDACTED] said that [REDACTED] referred more patients to [REDACTED] than to other fee-basis providers because of their close location and available patient

transportation. [REDACTED] further said that [REDACTED] submitted fee-for-service requests from [REDACTED] VA unit and that [REDACTED] name appeared on all referrals to [REDACTED] as the requestor. [REDACTED] records reflected that within a 2-year time period, between January 1, 2009, and January 25, 2011, [REDACTED] name appeared on requests referring 183 VA patients to [REDACTED]. (7)(c)

[REDACTED] told us that [REDACTED] started [REDACTED] as a private endeavor to provide [REDACTED] for non-VA patients. [REDACTED] said that [REDACTED] also started a private business relationship with [REDACTED] when [REDACTED] leased office space within their facility for [REDACTED]. [REDACTED] further said that [REDACTED] did not seek guidance or approval from [REDACTED] supervisor or VA Regional Counsel concerning [REDACTED] or [REDACTED] private relationship with [REDACTED], because [REDACTED] said that [REDACTED] was “ignorant” of any regulations concerning these matters. [REDACTED] told us that [REDACTED] never consulted VA patients at [REDACTED] and that the last time [REDACTED] consulted a patient, under the auspices of [REDACTED] was in the fall of 2010. However, [REDACTED] said that [REDACTED] was still an incorporated entity and that [REDACTED] “...still [had] full 100 percent goals of providing risk assessment outside of the VA.”

Records reflected that [REDACTED] as the owner of [REDACTED], signed a lease agreement with [REDACTED] on March 31, 2009, to lease 125 square feet of [REDACTED] office space at a cost of \$25 for each time [REDACTED] used the office space and that the agreement terminated on March 26, 2010. [REDACTED] told us that [REDACTED] paid the office usage fee once or twice, and [REDACTED] billing records reflected that [REDACTED] made one \$25 payment on November 10, 2009, for the office space. [REDACTED] records reflected that [REDACTED] referred 86 VA patients to [REDACTED] between March 31, 2009, and March 26, 2010, the dates of the lease agreement.) (7)(c)

We found numerous emails between [REDACTED] representing [REDACTED] and [REDACTED] employees. For example:

- In a July 10, 2009, email sent to a [REDACTED] employee with a copy to [REDACTED] email account, [REDACTED] thanked the employee for referring a patient to [REDACTED]. [REDACTED] records reflected that [REDACTED] as a VA employee, referred 10 VA patients to [REDACTED] during the month of July 2009.)
- In a July 28, 2009, email sent to a [REDACTED] employee from [REDACTED] personal email account, [REDACTED] told the employee, in reference to another patient referral, “Hey there. I just left her a message!!! Thank you!”
- In an August 11, 2009, email sent to a [REDACTED] employee from [REDACTED] email account, [REDACTED] told the employee, in reference to another patient referral, “Hey there. I’ll give her a call! Thank you!” [REDACTED] records reflected that [REDACTED] as a VA employee, referred 7 VA patients to [REDACTED] during the month of August 2009.) (7)(c)
- In a September 3, 2009, email sent to a [REDACTED] employee from [REDACTED] email account, [REDACTED] provided the employee an [REDACTED] “referral report for May-

August 2009” reflecting 10 patients referred to [REDACTED] and told him that it was “baby steps but positive steps nonetheless!”

- In a November 3, 2009, email sent to a [REDACTED] employee from [REDACTED] [REDACTED] email account, [REDACTED] offered the employee baby furniture and then asked him for two invoices for consults that [REDACTED] did. [REDACTED] then said that [REDACTED] had “6 calls out” and a patient scheduled for November 12. (7)(c)
- In a November 9, 2009, email sent to a [REDACTED] employee from [REDACTED] email account, [REDACTED] told the employee that [REDACTED] would be at [REDACTED] “Wednesday [November 11] seeing a patient at 830am” and that [REDACTED] sent a check “via bill pay for the 14th :-).” (November 11 was [REDACTED] scheduled VA workday and VA records reflected that [REDACTED] did not take leave that day.)
- In a December 10, 2009, email sent to a [REDACTED] employee from [REDACTED] email account, [REDACTED] told the employee that [REDACTED] was meeting a patient the next day at 9:00 a.m.; [REDACTED] was “marketing [REDACTED];” and [REDACTED] got “a fair amount of inquiries.” [REDACTED] also told the employee that the “[REDACTED] agreement” was up for renewal in March. (December 11, 2009, was not a VA workday for [REDACTED])
- In a December 14, 2009, email sent to a [REDACTED] employee from [REDACTED] email account, [REDACTED] asked the employee if [REDACTED] could “offer HALO through [REDACTED]” The next day, the employee responded “no problem,” and [REDACTED] replied, “Outstanding!!!!”
- In a January 27, 2010, email sent by a [REDACTED] employee to [REDACTED] email account, the employee “wanted to touch base regarding our mutual patient...” (7)(c)
- In a February 27, 2010, email sent to a [REDACTED] employee from [REDACTED] email account, [REDACTED] said that [REDACTED] wanted to speak to him about the status of [REDACTED] and that [REDACTED] “expanded to Clearwater, Miami and Orlando.”
- In a March 3, 2010, email sent to undisclosed recipients from [REDACTED] email account, [REDACTED] said, “Good evening everyone! Please update my contact information with my new email address.” The email is signed with [REDACTED] name and position as [REDACTED]
- In a May 24, 2010, email sent to a [REDACTED] employee from [REDACTED] email account, [REDACTED] asked the employee what he thought about “[REDACTED] program and rolling it out at [REDACTED]?” He responded that “it seems like a lot of effort.” [REDACTED] replied that it was “minimal especially given the potential return on investment [REDACTED] will see...increased revenues... [REDACTED] is going to explode, I’d like [REDACTED] to be a part of that explosion.”

- In a June 1, 2010, email sent to a [REDACTED] employee from [REDACTED] email account, [REDACTED] thanked the employee for referring another patient to [REDACTED] [REDACTED] records reflected that [REDACTED] as a VA employee, referred 4 VA patients to [REDACTED] in the month of June 2010.) (7)(c)
- In a July 12, 2010, email sent from a [REDACTED] employee to seven recipients, the employee told them that [REDACTED] “an area [REDACTED] and [REDACTED] that [REDACTED] is available to provide the counseling at [REDACTED].” [REDACTED] records reflected that [REDACTED], as a VA employee, referred 8 VA patients to [REDACTED] in the month of July 2010.)
- In an October 5, 2010, email sent to a [REDACTED] employee from [REDACTED] personal email account, [REDACTED] replied “Awesome!” in reference to another [REDACTED] patient referral and said that [REDACTED] “mainly” used [REDACTED] email account. [REDACTED] further said that [REDACTED] stayed “live on it for the most part.” [REDACTED] records reflected that [REDACTED], as a VA employee, referred 7 VA patients to [REDACTED] in the month of October 2010.)
- In a November 16, 2010, email sent to a [REDACTED] employee from [REDACTED] email account, [REDACTED] told the employee that [REDACTED] “contacted [patient] to arrange for [REDACTED] post counseling.” [REDACTED] records reflected that [REDACTED] as a VA employee, referred 10 VA patients to [REDACTED] in the month of November 2010.)

Improper Acceptance of Gratuities

Standards of Ethical Conduct for Employees of the Executive Branch prohibit an employee from soliciting or accepting any gift or other item of monetary value from any person or entity doing business with the employee's agency or whose interests may be substantially affected by the performance or nonperformance of the employee's duties. 5 CFR § 2635.101(b)(4). Standards state that an employee shall not, directly or indirectly, solicit or accept a gift from a prohibited source. A gift is defined as any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value, and a prohibited source is any person who is seeking official action by the employee's agency or does business or seeks to do business with the employee's agency. 5 CFR § 2635.202(a) and .203(b) and (d).

Federal acquisition regulations state that no Government employee may solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, or anything of monetary value from anyone who has or is seeking to obtain Government business with the employee's agency or has interests that may be substantially affected by the performance or nonperformance of the employee's official duties. 48 CFR § 3.101-2.

[REDACTED] records reflected that they received an invoice, dated May 12, 2009, to pay \$600 for the production of two-sided palm cards that marketed [REDACTED] on one side and [REDACTED] on the other. [REDACTED] records also reflected that they received two invoices, dated May 29, 2009, (7)(c)

and July 17, 2009, to pay a total of \$772.17 for two-sided rack cards to market [REDACTED]. The backside of the cards reflected the [REDACTED] logo and stated that “consultations provided by [REDACTED] (7)(c) [REDACTED], at: [REDACTED]” and listing [REDACTED] address.

[REDACTED] records also reflected that they entered into a 1-year lease agreement with [REDACTED] and that [REDACTED] signed the agreement on March 26, 2009, to lease 125 square feet of office space to [REDACTED] at a nominal cost of \$25 per usage. [REDACTED] told us that the leased office space was “very cheap” for [REDACTED]. [REDACTED] said that [REDACTED] assumed all costs and they also provided professionally printed items to promote [REDACTED]. [REDACTED] further said that [REDACTED] told patients of [REDACTED] services but that [REDACTED] did not consider them referrals, since the patients had an option to select another provider.

Internet records, dated November 8, 2010, reflected that [REDACTED] advertised and promoted [REDACTED] on the [REDACTED] website “Network Partners” section and posted the [REDACTED] company logo with a link to their website. Internet records, dated February 17, 2010, reflected that [REDACTED] advertised and promoted [REDACTED] in the “Patient Resources” section of the [REDACTED] website with a description of [REDACTED] and a link to the [REDACTED] website. The [REDACTED] website further listed [REDACTED] in the “Specialized Imaging Services” section and stated that [REDACTED] was a provider of Genetic Counseling.

[REDACTED] said that [REDACTED] appreciated [REDACTED] marketing [REDACTED] however, [REDACTED] said that [REDACTED] did (7)(c) not know that [REDACTED] partnering with [REDACTED] was improper. [REDACTED] also said that [REDACTED] attended a [REDACTED] Christmas party as an [REDACTED] representative and that [REDACTED] attended a hockey game in which [REDACTED] provided [REDACTED] tickets at no cost. [REDACTED] later said that in reference to the free marketing by [REDACTED] that [REDACTED] should not have accepted it.

Conclusion

We concluded that [REDACTED] engaged in a conflict of interest when [REDACTED] as a VA employee with the authority to refer VA patients to [REDACTED] on a fee-for-service basis, began a private working relationship with them for personal financial gain. Federal law and regulations prohibited [REDACTED] from participating personally and substantially in a particular matter that directly affected [REDACTED] financial interest or that of [REDACTED] general partner and required that [REDACTED] not participate in the matter unless [REDACTED] received authorization from VA’s designee. [REDACTED] incorporated [REDACTED] in December 2008, and in March 2009, [REDACTED] entered into a business arrangement with [REDACTED] to rent office space within their facility at a reduced cost. While in this private business arrangement, [REDACTED] referred VA patients to [REDACTED] and in turn, [REDACTED] referred patients to [REDACTED] private company, [REDACTED]. Additionally, while [REDACTED] promoted [REDACTED] on their internet website, [REDACTED] in turn, promoted [REDACTED] on theirs. We also found that [REDACTED] as a VA employee responsible for referring VA patients to [REDACTED] on a fee-for-service basis, improperly accepted \$1,372.17 in gratuities from [REDACTED] in the form of [REDACTED] marketing products and free tickets to a

hockey game for [REDACTED] own personal gain. We found no evidence that [REDACTED] or [REDACTED] referred any VA patients to [REDACTED]

Recommendation 1. We recommend that the Director, JAHVH, 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. (7)(c)

Recommendation 2. We recommend that the Director, JAHVH, ensure that [REDACTED] reimburses [REDACTED] the \$1,372.17 in costs they paid for [REDACTED] marketing products plus determine the value of the hockey tickets and ensure that [REDACTED] also repays that amount.

Issue 2: Whether [REDACTED] Misused Official Time and Resources

Misuse of Official Time for [REDACTED]

Standards of Ethical Conduct for Employees of the Executive Branch state that 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. They further state that an employee is required to use official time in an honest effort to perform official duties. 5 CFR § 2635.704 and .705. VA policy requires employees to be on duty during the full period of their tours of duty unless absent on approved leave. VA Directive 5011, Part III, Paragraph 2(c). VA policy permits limited personal use of Government office equipment, if the use does not interfere with official business and involves minimal expense; however it prohibits the use of this equipment for commercial purposes or in support of “for profit” activities. VA Directive 6001, Paragraph 2.

[REDACTED] and [REDACTED] timekeeper told us that [REDACTED] worked a compressed work schedule. They said that [REDACTED] worked Monday through Friday from 7:00 a.m. to 4:30 p.m., taking the first Friday of each 2-week pay period as [REDACTED] day off and working from 7:00 a.m. to 3:30 p.m. on the second Friday of each pay period. (7)(c)

VA time and attendance records from January 1, 2010, to February 18, 2011, compared against records for [REDACTED] private email accounts, personal cellular telephone, as well as [REDACTED] VA-issued email account and equipment, reflected a significant number of times that either [REDACTED] made contact or attempts were made to contact [REDACTED] by non-VA entities regarding [REDACTED] private business endeavors during [REDACTED] VA tours of duty. Records reflected over 8,240 instances of contacts or attempts, to include telephone calls, emails, text messages, and social network updates, while on [REDACTED] official VA time. Time and attendance records reflected that [REDACTED] worked 214 days during this 14-month time period and that on average there were 39 contacts or attempts each workday.

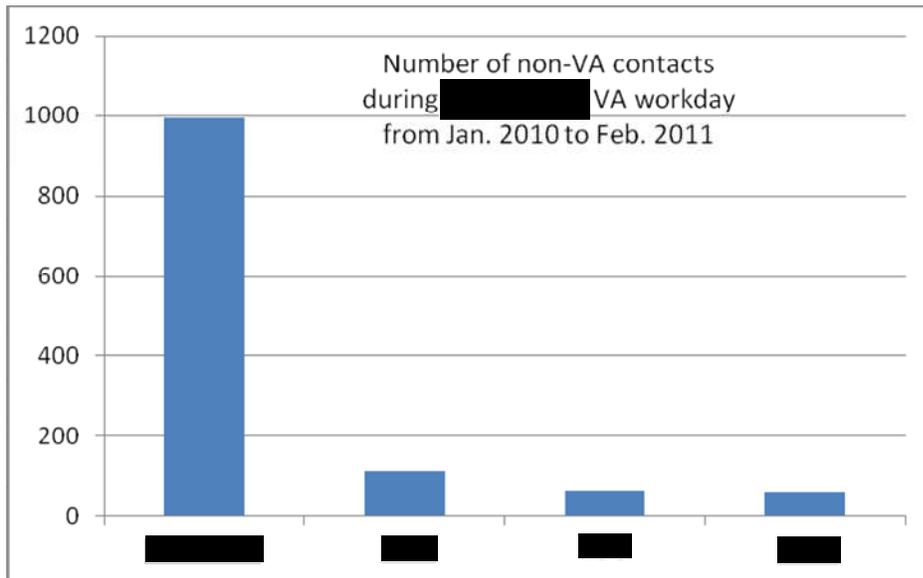
[REDACTED] told us that [REDACTED] partner also used [REDACTED] cellular telephone at times to conduct [REDACTED] business; however, [REDACTED] could not give us any definitive dates of when [REDACTED] partner may have been in possession of the telephone, stating that [REDACTED]

partner “did not have the [REDACTED] telephone all the time.” When asked if [REDACTED] had the telephone while working at VA, [REDACTED] said, “Yeah. But I couldn’t tell you what days.” When told that the telephone calls associated with [REDACTED] reflected that [REDACTED] conducted [REDACTED] business on [REDACTED] VA time, [REDACTED] stated, “One hundred percent. Yes, on my part, one hundred percent.” (7)(c)

[REDACTED] said that [REDACTED] also called friends, [REDACTED] partner for the [REDACTED] app; family members; and [REDACTED] employees as an [REDACTED] representative during [REDACTED] VA workday. [REDACTED] said, “So were these done while I was at the VA? Sure. I’d have to—and I don’t clock in or out from a lunch time standpoint.” [REDACTED] further said that [REDACTED] used [REDACTED] personal Apple iPhone to “text, write, do whatever,” such as posting to the [REDACTED] Facebook social networking page, while “walking somewhere” during [REDACTED] VA tour of duty. The [REDACTED] [REDACTED], who shared an office with [REDACTED] told us that in the past [REDACTED] received telephone calls “regularly throughout the day” on [REDACTED] personal cellular telephone concerning [REDACTED] private business. [REDACTED] said that [REDACTED] knew the calls were about [REDACTED] business, because [REDACTED] said that [REDACTED] either overheard the conversations or [REDACTED] made comments to [REDACTED] after ending the call. However, the [REDACTED] said that more recently, the calls were less frequent.

Figure 1 reflects the 1,229 contacts or attempts, to include emails, telephone calls, and text messages [REDACTED] sent and received during [REDACTED] VA workday for [REDACTED] business and the creation of the [REDACTED] app, averaging 6 each workday. (7)(c)

Figure 1



In addition to the 1,229 contacts relating to [REDACTED] private business endeavors, records reflected another 7,013 personal contacts or attempts to contact made during [REDACTED] VA (7)(c) tours of duty, averaging 33 each workday. VA Medical Center telephone records were

not available to determine if [REDACTED] also used [REDACTED] VA-assigned telephone for [REDACTED] private business.

Misuse of Official Time and Resources to Develop [REDACTED] Application

Federal regulations prescribe the procedure to be followed in determining and protecting the respective rights of the United States Government and of Department of Veterans Affairs employees who make inventions. It defines invention as any art, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, and it defines employee or Government employee as any officer or employee of the Department of Veterans Affairs. 38 CFR § 1.650 and 1.651. Regulations state that the determination of rights to an invention as between the Government and the employee where there is no cooperative research and development agreement shall be made by the General Counsel, Deputy General Counsel or the Assistant General Counsel for Professional Staff Group IV. *Id.*, at 1.653. They further state that the provisions of the regulations concerning inventions by employees of the Department of Veterans Affairs shall be a condition of employment of all employees. *Id.*, at 1.662.

In a General Counsel Memorandum, dated July 21, 2004, concerning “Ethics and Intellectual Property Concerns,” the General Counsel wrote:

In all cases involving inventions made by VA employees (individually, or jointly with others), the following procedures are required. The inventor, as an employee of VA, has a duty to disclose the invention to VA’s Technology Transfer Office. That office reviews the file, decides whether VA should develop the invention, makes a recommendation regarding ownership of the invention, and sends it to OGC [Office of General Counsel]. OGC must review the facts in light of the criteria set forth in Executive Order (EO) 10096, as interpreted by the decisions of the Department of Commerce. The factors considered are whether the invention was made during the employee’s official tour of duty; whether a contribution was made by the VA, to include such things as space, equipment and materials; or whether the invention bears a direct relation to or was made in consequence of the employee’s official research duties. If VA has provided substantial support under the EO, then VA may assert an ownership right in the invention.

Email records reflected that [REDACTED] used official VA time and [REDACTED] VA-assigned email account to develop an [REDACTED] app for [REDACTED] private business. [REDACTED] records reflected that on July 29, 2010, [REDACTED] and [REDACTED] partner entered into a contract with [REDACTED] to develop a “[REDACTED].” [REDACTED] signed the contract on July 31, 2010. The contract reflected that the project was to develop two [REDACTED] apps with the goal and function of both apps to “[REDACTED]” [REDACTED]

██████████ (referrals from app).” The ██████████ app download website reflected ██████████ as the Principal/Owner with a link to the ██████████ website. ██████████ told us that ██████████ did not tell ██████████ supervisor or seek guidance from Regional Counsel concerning the development of the ██████████ apps. (7)(c)

On August 2, 2010, at 2:19 p.m., ██████████ sent, from ██████████ VA-assigned email account, an email to ██████████ personal email account, and at 2:36 p.m., ██████████ sent a second to ██████████ email account. These emails contained extensive development plans for the ██████████ app. In addition, on August 4, 2010, at 7:15 a.m., ██████████ sent another email from ██████████ VA email account to ██████████ partner’s private email saying that they should start an ██████████ blog.

Email records between ██████████ partner, and the ██████████ app developer ██████████ reflected numerous communications that ██████████ sent during ██████████ VA duty hours concerning the development of the ██████████ app. For example:

- In a September 2, 2010, email ██████████ sent at 8:24 a.m. from an unknown email account to three ██████████ employees, with a copy to ██████████ partner, ██████████ wrote, “Awesome...what about uniformly [sic] having a statement like... ██████████ At the bottom of the email, ██████████ wrote, “BTW: The by the # bottom pink verbiage present should be in black.”
- In a September 2, 2010, email ██████████ sent at 11:49 a.m. from ██████████ email account to three ██████████ employees, with a copy to ██████████ partner, ██████████ wrote, “How do I edit the intro?” (7)(c)
- In a September 9, 2010, email ██████████ sent at 12:49 p.m. from ██████████ email account to a ██████████ employee, ██████████ wrote, “Thanks [Name], the one with the black background is hot!” This was in response to his email sent about 30 minutes earlier in which he said, “Two logo files have been attached, one on a white background and one on black.”
- In a September 23, 2010, email ██████████ sent at 10:43 a.m. from ██████████ email account to two ██████████ employees, with a copy to ██████████ partner, ██████████ wrote, “This is truly great news! We know developing the RA proved challenging and labor intensive. ██████████ and I so appreciate all your attentiveness and professionalism!!!... ██████████ and I are compiling our ‘punch item list’... We would like to meet one final time before we submit to ██████████, are you guys avail Monday, Tuesday or Thursday? [██████████ employee] would you please send me your logo with your permission we would like to include you two as our our [sic] partners??? Here we go!!!!” (7)(c)
- In a September 23, 2010, email ██████████ sent at 12:51 p.m. from ██████████ email account to a ██████████ employee and ██████████ partner, which was categorized as

“IMPORTANT Business,” [REDACTED] wrote, “The name of the RA has changed. Below is the same homepage blurb [sic] I sent you previously, however it now reflects the new name... The BRA model!” (7)(c)

- In an October 4, 2010, email [REDACTED] sent at 8:32 a.m. from [REDACTED] email account to two [REDACTED] employees, with a copy to [REDACTED] partner, which was categorized as “IMPORTANT Business,” [REDACTED] wrote, “Morning everyone! There may be another way to accomplish what I want too. The [REDACTED] app with the RA will reach those with [REDACTED]. We want to be able to offer the RA to those who do not have [REDACTED]. I’m just thinking out loud here so... Below are two processes, the 1st one obviously is doable, but is the 2nd one?” The email consists of four paragraphs discussing [REDACTED] and [REDACTED] developments, and [REDACTED] closes the email with “Please let me know your thoughts.”
- In an October 27, 2010, email [REDACTED] sent at 7:15 a.m. from [REDACTED] email account to a [REDACTED] employee, [REDACTED] wrote, “With this last beta, should we be able to see both the basic and global versions of the app?”
- In a January 4, 2011, email [REDACTED] sent at 8:38 a.m. from [REDACTED] email account to a [REDACTED] employee, with a copy to [REDACTED] partner and a subject line of “Finished Last Round of Edits,” [REDACTED] wrote, “Morning! I will go through in great detail after clinic today. Can you please advise as to the status of me importing images into the app? I really have to visualize how they fit into the pages. Thanks!” This was in response to a [REDACTED] employee telling [REDACTED] in an email that he finished the corrections [REDACTED] requested “over the last couple of days” and that he “attached one more test version of the program” for [REDACTED] to review. He also said that he did not reply to all of [REDACTED] emails, “as there have been so many of them.” (7)(c)
- In a January 20, 2011, email [REDACTED] sent at 7:29 a.m. from [REDACTED] email account to a [REDACTED] employee, [REDACTED] wrote, “That’s weird b/c it was in the app, but was gone when you swapped out the 3rd image. Looks like: standing w hand near axilla Aka underarm. Let me see if I can find it, I’m at the hospital now. I’ll write the blurb for the contact page and text it to ya. Thanks!”

[REDACTED] told us that as of January 12, 2011, the [REDACTED] app was available for purchase and download from the [REDACTED] app store at the cost of \$1.99 and of that amount, \$1.33 went to [REDACTED] and [REDACTED] partner. [REDACTED] said that [REDACTED] invested \$23,000 of [REDACTED] personal funds into the development of the [REDACTED] app and that [REDACTED] thus far, received a negligible return on [REDACTED] investment. (7)(c)

Conclusion

We concluded that [REDACTED] misused [REDACTED] official time when [REDACTED] participated in telephone calls, text messages, emails, and social networking updates, both personal and

for [REDACTED] private company [REDACTED] during [REDACTED] VA tours of duty. Although making limited personal calls or contacts during official VA time is permitted, [REDACTED] went beyond a *de minimis* use of time. Records reflected that in about a 14-month period, there were over 8,200 instances of contacts or attempts to contact, to include emails, telephone calls, text messages, and social network updates, while on [REDACTED] official VA time, or on average 39 times each workday with 6 each day directly related to [REDACTED] private company and the development of the [REDACTED] app for personal gain. Although [REDACTED] asserted that [REDACTED] made many of these while “walking somewhere” during [REDACTED] workday, [REDACTED] officemate (7)(c) told us that [REDACTED] received telephone calls “regularly throughout the day” on [REDACTED] personal cellular telephone concerning [REDACTED] private business.

Records reflected that between August 2010 and January 2011, [REDACTED] not only used [REDACTED] VA-assigned email account but [REDACTED] official VA time to coordinate the development and launch of the [REDACTED] app with [REDACTED] partner and the developers [REDACTED]. Although VA policy permits limited personal use of Government office equipment, it prohibits the use of the equipment for commercial purposes. Further, [REDACTED] as a VA employee, had a duty to disclose the [REDACTED] app to VA’s Technology Transfer Office so that OGC could determine the rights to the invention ownership; however, [REDACTED] did not disclose [REDACTED] development of the [REDACTED] app or seek guidance from VA Counsel.

Recommendation 3. We recommend that the Director, JAHVH, confer with OHR and OGC to determine the appropriate administrative action to take against [REDACTED] and ensure that action is taken.

Recommendation 4. We recommend that the Director, JAHVH, confer with OGC and (7)(c) VA’s Technology Transfer Office to determine ownership of the [REDACTED] app, and if determined to be VA, assert the VA ownership right to the application and all monies generated from it.

Issue 3: Whether [REDACTED] Failed to Follow VA Security Policy

The Privacy Act of 1974 states that no agency shall disclose any record which is contained in a system of records by any means of communication to any person, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains. 5 USC § 552(a)(b)(5). Federal regulations state that covered entities must ensure the confidentiality, integrity, and availability of all electronic protected health information the covered entity creates, receives, maintains, or transmits, and a covered entity may not use or disclose protected health information, except as permitted. 45 CFR § 164.306 and .502. VHA is a covered entity for VHA healthcare records for the purposes of these rules.

VA policy states that users of VA information and information systems are responsible for complying with all Department information security program policies, procedures, and practices. VA Directive 6500, Paragraph 3f (August 4, 2006). VA policy further

states that all VA employees and any person who has access to and stores VA sensitive information must have permission from a supervisor and ISO [Information Security Officer] to use removable storage media/devices to store sensitive information or remove it from VA facilities/operating units and that it must be in a VA-protected environment at all times or be encrypted. Further, VA policy states that electronic mail shall be used for authorized Government purposes and shall contain only non-sensitive information unless the information is encrypted. VA Handbook 6500, Paragraph 6c (September 18, 2007).

VHA policy states that all VHA personnel are responsible for complying with all Federal laws and regulations, VA regulations and policies, and VHA policies relating to privacy. It defines individually-identifiable information as any information, including health information maintained by VHA, pertaining to an individual that also identifies the individual and, except for individually-identifiable health information, is retrieved by the individual's name or other unique identifier. VHA Directive 1605, Paragraphs 4f and 6b (March 17, 2005). VHA policy defines VA sensitive information as all VA data, on any storage media, or in any form or format, which requires protection from inadvertent or deliberate disclosure, alteration, or destruction of the information. The term includes records about individuals requiring protection under various confidentiality provisions, such as the Privacy Act, the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, and information that can be withheld under the Freedom of Information Act, such as individually-identifiable medical and personal information. VHA policy further states that the privacy and security of patient information stored in any media must be protected in accordance with, but not limited to, the Privacy Act of 1974, HIPAA, Title 45 Code of Federal Regulations (CFR) Parts 160 and 164. VHA Handbook 1907.01, Paragraphs 4 and 5 (August 25, 2006).

Improper Transfer of VA Patient Images

Email records reflected that ██████ sent unencrypted radiology and photograph images of VA patients from her VA-assigned email to ██████ private email accounts, and in one instance, requested and received VA patient radiology images from a VA fee-for-service contractor. On September 10, 2008, a ██████ employee sent an email from a private email account to ██████ VA-assigned and ██████ private email account. In the email, the ██████ employee said, "These are the cases that you requested I took some more pictures, some of the better ones I think. They are in a JPEG (regular picture file) format. So you should just be able to throw them into power point or anything like that..." The subject line of the email stated, "Cases from ██████ ██████," and the attached images were titled with three different patient names and a date. ██████ told us that the images were "absolutely" of VA patients, and ██████ said that ██████ believed the images were for a conference presentation on ██████ that ██████ prepared for VA. ██████ told us that ██████ had difficulty doing the presentation on ██████ VA-issued computer, so ██████ said that ██████ emailed the images to ██████ private email account so that ██████ could do the presentation on ██████ personal laptop computer. (7)(c)

██████████ said that ██████████ supervisor, ██████████ and ██████████ ██████████ knew that ██████████ used ██████████ personal laptop to work on the presentation. (7)(c)
However, ██████████ told us that ██████████ did not authorize nor was ██████████ aware that ██████████ sent VA patient images to ██████████ private email account to work on the presentation. ██████████ said that ██████████ authorized ██████████ to do the presentation on VA equipment and that ██████████ thought ██████████ did it on a VA computer. ██████████ told us that in creating the presentation, ██████████ sent the VA patient images to ██████████ two private email accounts; transferred and saved the images to ██████████ personal laptop; and ██████████ may have saved the final presentation to ██████████ personal thumb drive. ██████████ said that ██████████ did not encrypt the images and that the VA patients did not know how their images were being used. ██████████ said that VA patients sign a surgical informed consent form that tells them that their information may be used in publications without patient identifiers.

We found the following emails that ██████████ sent to ██████████ private email accounts which contained VA patient images:

- On August 26, 2010, ██████████ sent an unencrypted email from ██████████ VA-assigned email account to ██████████ private ██████████ email account. The email contained an attached image with no identifiers, and ██████████ identified the image as a VA patient.
- On September 23, 2010, at 8:17 a.m., ██████████ sent an email from ██████████ VA email account to a VA physician. ██████████ said, “Can you please pull for me an image or two from each of the following pts? Are you able to either put them all on one disk or jpeg them? I have been developing this presentation for the Oct lecture at home, too many interruptions here spawning my ADD!” The physician responded at 9:17 a.m. to ██████████ VA email account, and at 10:48 a.m., ██████████ forwarded an unencrypted email containing six images to ██████████ private email account. The email contained the last name of three patients with four numbers next to their names. ██████████ identified the images as being VA patients. (7)(c)
- On September 23, 2010, at 12:02 p.m., ██████████ sent an unencrypted email from ██████████ VA email to ██████████ private email with eight images attached with no identifiers. ██████████ identified the images as being VA patients.
- On September 23, 2010, at 12:02 p.m., ██████████ sent an unencrypted email from ██████████ VA email to ██████████ private email with six images attached with no identifiers. ██████████ identified the images as being VA patients. (7)(c)
- On October 4, 2010, at 2:56 p.m., ██████████ sent an unencrypted email from ██████████ VA email to ██████████ private email with an attached photograph of a post mastectomy female patient in a state of undress. (The photograph did not include the patient’s face.) ██████████ identified the photograph as being a VA patient.

- On October 4, 2010, at 2:56 p.m., [REDACTED] sent an unencrypted email from [REDACTED] VA email to [REDACTED] private email with an attached photograph of a post reconstructive surgery female patient in a state of undress. (The photograph did not include the patient's face.) [REDACTED] identified the photograph as being a VA patient. (7)(c)

[REDACTED] told us that [REDACTED] VA computer did not have the software program "Serenity," which [REDACTED] needed to insert images into a VA presentation and that [REDACTED] was under a time constraint to get the presentation done. [REDACTED] said that once the images were sent to [REDACTED] private email accounts, [REDACTED] accessed them on [REDACTED] personal cellular telephone and personal computer and that [REDACTED] may have saved the final presentation to [REDACTED] personal thumb drive. [REDACTED] also said that [REDACTED] did not encrypt the images, because [REDACTED] said that [REDACTED] did not know how to encrypt the images and did not know that there was a requirement to do so. [REDACTED] told us that [REDACTED] may or may not have deleted the images from [REDACTED] personal email and equipment but that [REDACTED] was unsure. We found no evidence that the images were further misused or that there was a compromise to VA patient privacy beyond that described in this section.

[REDACTED] told us that [REDACTED] was willing to have the VA facility ISO access and sanitize [REDACTED] private email accounts and [REDACTED] privately-owned equipment to ensure that any VA privacy protected information was properly removed. We notified the VA facility ISO, (7)(c) and [REDACTED] said that [REDACTED] would coordinate with information technology personnel to evaluate [REDACTED] devices and then notify us once completing their evaluation.

Failure to Follow VA Security Policy

VA policy states that to ensure accountability, use of individual access codes and passwords are mandatory for all VA information systems; only the individual to whom the codes were assigned will use their assigned codes; and the use of shared and generic accounts on VA information systems is prohibited. VA Directive 6500, Paragraph 6c (September 18, 2007).

The [REDACTED] told us that [REDACTED] asked [REDACTED] on one occasion to "cover" for [REDACTED] by logging onto a VA computer with [REDACTED] personal login information when [REDACTED] was not present at the facility. The [REDACTED] said that [REDACTED] believed that [REDACTED] wanted [REDACTED] to do this so that it would appear as if [REDACTED] was at the facility when [REDACTED] was not. The [REDACTED] told us that [REDACTED] refused to sign onto the computer for [REDACTED] (7)(c)

The [REDACTED] told us that [REDACTED] also asked [REDACTED] to log onto the VA network with [REDACTED] personal login information when [REDACTED] was absent from the facility, due to either [REDACTED] obligations or illness. [REDACTED] said that there was a period of time in 2010, between spring and fall, when [REDACTED] was absent from work more often and that [REDACTED] would call and ask [REDACTED] to log onto the VA network with [REDACTED] user name and password to give the appearance that

██████████ was present at the facility. The ██████████ told us that ██████████ refused to sign on using ██████████ personal login information, because ██████████ said that ██████████ “won’t do that for anybody.” (7)(c)

██████████ denied sharing ██████████ VA username or passwords and denied asking anyone to log onto the VA network with ██████████ information to give the appearance that ██████████ was at work when ██████████ was not.

Conclusion

We concluded that ██████████ failed to follow VA policy when ██████████ sent unencrypted VA patient health information in the form of photographs and radiology images to ██████████ private email accounts and accessed and stored those images on ██████████ personal equipment. Contrary to ██████████ assertion that ██████████ supervisor authorized ██████████ to work on a VA presentation on ██████████ personal computer, ██████████ told us that ██████████ authorized ██████████ to work on it using a VA-issued, not personal, computer. Moreover, even given a supervisor’s approval would not preclude ██████████ from following VA privacy policy. Additionally, ██████████ had sufficient Privacy, HIPAA, and Information Security Awareness training to know that ██████████ actions were improper. ██████████ with total disregard for VA policy and patient privacy, asked a fee-basis contractor, to send ██████████ images of VA patients, which ██████████ sent to ██████████ private email, and on numerous other occasions, ██████████ sent unencrypted VA patient images to ██████████ private email accounts. In all instances, ██████████ identified the images as being VA patients. (7)(c)

██████████ asserted that ██████████ did not know that there was a requirement to protect patient records and that because the patients signed a surgical informed consent form ██████████ was free to do with them what ██████████ wanted, as long as ██████████ removed the identifiers. We do not find ██████████ assertions plausible, as ██████████ is a highly-educated and skilled medical professional with many years of experience working as a ██████████, to include ██████████. Moreover, ██████████ told us that ██████████ kept current on ██████████ required ethics and HIPAA training. Federal law requires written consent of a patient before disclosure of their records; Federal regulations prohibit improper disclosure of protected health information; VHA policy requires that patient information stored in any media be protected; and VA policy requires VA sensitive information be in a VA protected environment at all times or be encrypted.

We also concluded that ██████████ violated VA security policy when ██████████ asked ██████████ colleagues to log onto the VA network using ██████████ username and password so that it would appear that ██████████ was at ██████████ VA duty station when ██████████ was not. We commend the VA employees for recognizing that ██████████ request was improper and for refusing to participate. (7)(c)

Recommendation 5. We recommend that the Director, JAHVH, confer with OHR and OGC to determine the appropriate administrative action to take against [REDACTED] and ensure that action is taken.

Recommendation 6. We recommend that the Director, JAHVH, ensure that the facility ISO completes an assessment of [REDACTED] personal email accounts, computer, cellular telephone, and thumb drive to ensure VA privacy protected data was properly removed. (7)(c)

Recommendation 7. We recommend that the Director, JAHVH, inform [REDACTED] as a VA fee-for-service provider, of their responsibility to follow Federal laws, regulations, and VA security policy in regards to VA privacy protected patient data.

Comments

The Director of James A. Haley Veterans' Hospital was responsive, and her comments are in Appendix A. We will follow up to ensure that the recommendations are fully implemented.



JAMES J. O'NEILL
Assistant Inspector General for
Investigations

Director Comments

**Department of
Veterans Affairs**

Memorandum

Date: January 20, 2012

From: Director, James A. Haley Veterans' Hospital

Subject: **Administrative Investigation, Conflict of Interest, Misuse of Resources, Gratuities, and Failure to Follow Policy James A. Haley Veterans' Hospital, Tampa, Florida**

To: Assistant Inspector General for Investigations (51)

See attached.

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, JAHVH, 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. (7)(c)

Comments:

Based on guidance from OHR and Regional Counsel, facility will either take appropriate administrative action or provide rationale why this is not possible by March 30, 2012.

Recommendation 2. We recommend that the Director, JAHVH, ensure that [REDACTED] reimburses [REDACTED] the \$1,372.17 in costs they paid for [REDACTED] marketing products plus determine the value of the hockey tickets and ensure that [REDACTED] also repays that amount.

Comments:

A bill of collection will be issued to [REDACTED] for \$1,435.57 (\$1,372.17 for the marketing products paid by [REDACTED] and [REDACTED] and \$63.40, the minimum value of hockey tickets) by March 30, 2012. (7)(c)

Recommendation 3. We recommend that the Director, JAHVH, confer with OHR and OGC to determine the appropriate administrative action to take against [REDACTED] and ensure that action is taken. (7)(c)

Comments:

Based on guidance from OHR and Regional Counsel, facility will either take appropriate administrative action or provide rationale why this is not possible by March 30, 3012.

Recommendation 4. We recommend that the Director, JAHVH, confer with OGC and VA's Technology Transfer Office to determine ownership of the [REDACTED] app, and if determined to be VA, assert the VA ownership right to the application and all monies generated from it.

Comments:

The facility will confer with Regional Counsel and the VA's Technology Transfer Office to facilitate a seamless transfer of documents by March 30, 2012, in order to determine ownership of the [REDACTED] App. If ownership is determined to be VA, the facility will collaborate with the proper VA office in the assertion of ownership rights and the collection of monies in a timeline to be established in consultation with Regional Counsel and VA's Technology Transfer Office (7)(c)

Recommendation 5. We recommend that the Director, JAHVH, confer with OHR and OGC to determine the appropriate administrative action to take against [REDACTED] and ensure that action is taken.

Comments:

Based on guidance from OHR and Regional Counsel, facility will either take appropriate administrative action or provide rationale why this is not possible by March 30, 2012. If VA ownership rights are confirmed, the facility will ensure that action is taken within 30 days to assert those rights.

Recommendation 6. We recommend that the Director, JAHVH, ensure that the facility ISO completes an assessment of [REDACTED] personal email accounts, computer, cellular telephone, and thumb drive to ensure VA privacy protected data was properly removed. (7)(c)

Comments:

The facility will ensure that the facility Information Security Officer (ISO), in coordination with proper authorities, completes an assessment of [REDACTED] personal e-mail accounts, computer, cellular telephone, and thumb drive to ensure that VA privacy-protected data was properly removed. This will be done within 30 days of the issuance of the OIG's Final Report.

Recommendation 7. We recommend that the Director, JAHVH, inform [REDACTED] as a VA fee-for-service provider, of their responsibility to follow Federal laws, regulations, and VA security policy in regards to VA privacy protected patient data.

Comments:

The facility Director will send a letter to [REDACTED] to inform them of their responsibility to follow Federal Laws, regulations, and VA Security policy in regards to VA privacy-protected patient data. This will be done within 30 days of the issuance of the OIG's Final Report. (7)(c)

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	Christopher Holcombe

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