

**Memorandum to the File
Case Closure**

**Alleged Misuse of Official Time
El Paso VA Health Care System, Texas
(2011-00084-IQ-0008)**

The VA Office of Inspector General (OIG) Administrative Investigations Division investigated an allegation that Dr. Cynthia Rivera, Chief of Staff, El Paso VA Health Care System, misused her official time by engaging in outside employment for remuneration while on duty at the VA and without taking leave. To assess this allegation, we reviewed VA time and attendance records, outside employment records, and previous inquiries related to this allegation. We also reviewed applicable Federal laws, regulations, and VA policies.

Federal law requires that full-time VA physicians who engage in outside professional activities for remuneration fulfill a minimum 80-hour biweekly VA tour of duty, and it specifically prohibits physicians from performing professional services that generate money for the benefit of the physician or an affiliated institution while on VA duty. 38 USC § 7423. Standards of Ethical Conduct for Employees of the Executive Branch require that employees use their official time in an honest effort to perform official duties. 5 CFR § 2635.705. VA policy states that the minimum charge for leave shall be 1 day for full-time physicians and that they be charged a full day's leave when absent for 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 is to 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, Paragraphs 4b(3) and 9b(1) (January 26, 2006).

Records reflected that on August 1, 2010, the Medical Center Director completed a "fact-finding" inquiry into allegations that Dr. Rivera, who had a private business as a forensic psychiatrist, misused official time by testifying as an expert witness and being paid for such testimony during her official VA time. Records also reflected that the Director found that on May 21, 2008, Dr. Rivera requested a half day of annual leave to testify in court as part of her outside employment; however no leave was posted to her time and attendance for that day. Dr. Rivera, therefore, received VA pay for the time she spent in outside employment for remuneration. The inquiry also found evidence that Dr. Rivera engaged in a conflict of interest by evaluating a veteran referred to her by Adult Protective Services, evaluated a non-veteran during her VA duty hours, and misused Government resources by receiving telephone calls, faxes, and deliveries related to her outside employment at her VA duty station.

Records reflected that the Director forwarded the results of her inquiry to VHA Human Resources Management (VHA HRM) for review and further action, and VHA HRM referred the matter to VA OIG. A memorandum dated March 28, 2011, reflected that VHA HRM also convened an Administrative Investigation Board (AIB) to look into additional allegations of misconduct by Dr. Rivera related to a conflict of interest and

medical credentialing issues and that VHA HRM substantiated those allegations against Dr. Rivera.

Personnel records reflected that on March 28, 2011, Dr. Rivera submitted her resignation from VA, effective April 15, 2011.

Conclusion

We determined that on one occasion (May 21, 2008), Dr. Rivera engaged in outside employment for remuneration while on duty at the VA and without taking leave. As Dr. Rivera is no longer employed by the VA, we did not pursue this investigation further and closed the case without issuing a formal report or memorandum.

Prepared by:

[Redacted]

5/10/11
Date

Approved by:

[Redacted]

5/10/11
Date