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The Special Counsel

May 17, 2012

The President  
The White House  
Washington, D.C. 20500

Re: OSC File No. DI-11-1650

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), enclosed please find agency reports based on disclosures made by Lisa Gregoire, a whistleblower from the Department of Veterans Affairs, Raymond G. Murphy VA Medical Center (VAMC), Albuquerque, New Mexico. Ms. Gregoire, a former Registered Nurse in the Home Based Primary Care (HBPC) Department of the VAMC, disclosed that a HBPC employee was engaging in conduct that constitutes a violation of law, rule, or regulation and an abuse of authority. Ms. Gregoire consented to the release of her name.

Ms. Gregoire disclosed that Karen Modjeska-Oravec, HBPC Department Nurse Manager, routinely misused official time and government property in violation of 5 C.F.R. § 2635.704 (Use of Government Property), 5 C.F.R. § 2635.705 (Use of Official Time), and VA Directive 6001 (Limited Personal Use of Government Office Equipment Including Information Technology). Specifically, Ms. Gregoire reported that Ms. Modjeska-Oravec spent approximately three to four hours per workday from March 2010 through March 2011 completing schoolwork for a Master of Science in Nursing degree from the University of Phoenix. Ms. Gregoire also disclosed that she witnessed Ms. Modjeska-Oravec use a VA printer to print up to 150-page packets related to her coursework approximately two to three times per week during that time period. Ms. Gregoire alleged she reported Ms. Modjeska-Oravec's activities to supervisors, yet no action was taken.

On March 25, 2011, the Office of Special Counsel (OSC) referred Ms. Gregoire's allegations to the Honorable Eric K. Shinseki, Secretary of Veterans Affairs, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). Secretary Shinseki delegated the authority to conduct the investigation to the New Mexico VA Health Care System and the

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fact finding was conducted by Pamela S. Crowell, MPA, Health System Specialist at the VAMC. OSC received a report dated July 22, 2011, and a supplemental report dated January 11, 2012, from the VA. Ms. Gregoire provided comments on the original agency report and supplemental report. As required by law, 5 U.S.C. § 1213(e)(3), OSC is now transmitting the agency reports and whistleblower comments to you.

The initial agency investigation did not substantiate Ms. Gregoire's allegations. However, in her comments, Ms. Gregoire indicated she had identified four eyewitnesses to Ms. Modjeska-Oravec's wrongdoing who were not interviewed in the course of Ms. Crowell's investigation. She also indicated that it was improper for an employee of the VAMC to conduct the investigation because Ms. Crowell was a colleague of Ms. Modjeska-Oravec, and it caused witnesses to fear retaliation for reporting Ms. Modjeska-Oravec's wrongdoing. Based on these comments, OSC requested a supplemental investigation be conducted to include interviews of Ms. Gregoire's named eyewitnesses.

While the agency's supplemental investigation also did not fully substantiate Ms. Gregoire's allegations, the investigation established that the four eyewitnesses had observed Ms. Modjeska-Oravec using a VA printer to print school-related documents that, in some cases, interfered with staff work. Based on these findings, Ms. Modjeska-Oravec was counseled concerning the proper use of government time and equipment and her responsibility as a supervisor to avoid the perception that she was inappropriately using government resources.

Ms. Gregoire submitted comments on the supplemental report. She disagreed with the agency's conclusion that her allegations had not been substantiated. She maintained that Ms. Crowell was not an impartial investigator, and that she had not included all of the information provided by the eyewitnesses. She reiterated her assertion that the witnesses feared retaliation for reporting Ms. Modjeska-Oravec's wrongdoing.

I have reviewed the original disclosure, the agency reports, and Ms. Gregoire's comments. Based on that review, I have determined that the agency reports contain all of the information required by statute and that its findings appear to be reasonable.

As required by law, 5 U.S.C. § 1213(e)(3), I have sent a copy of the unredacted agency reports and whistleblower's comments to the Chairmen and Ranking Members of the Senate Committee on Veterans' Affairs and the House Committee on Veterans' Affairs. I have also

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filed a redacted copy of the reports and comments in our public file which is now available at [www.osc.gov](http://www.osc.gov), and closed the matter.<sup>1</sup>

Respectfully,



Carolyn N. Lerner

Enclosures

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<sup>1</sup>The VA provided OSC with a revised report, which redacted the names of individuals referenced therein, excluding the whistleblower. The VA cited the Privacy Act of 1974 (Privacy Act) (5 U.S.C. § 552a) as the basis for this revision to the report produced in response to 5 U.S.C. § 1213. OSC objects to the VA's use of the Privacy Act to remove the name of each VA employee on the basis that the application of the Privacy Act in this manner is overly broad. OSC does not agree that the names of employees associated with an investigation of whistleblower disclosures and/or potentially subject to discipline are protected from public release by the Privacy Act. OSC maintains that the public interest mandated by 5 U.S.C. Sections 1213 and 1219 outweighs any asserted individual privacy interests of such witnesses and subjects. Moreover, the legislative history of the statute indicates that the identification of wrongdoers is particularly appropriate and intended.