

**STATEMENT OF  
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BEFORE THE  
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS  
U.S. SENATE**

**SEPTEMBER 22, 2015**

Good afternoon, Chairman Johnson, Ranking Member Carper, and Members of the Committee. Thank you for inviting us here today to discuss ways that Congress and VA can further encourage Federal employees to come forward with their concerns regarding quality; patient safety; and waste, fraud, and abuse.

VA exists to serve Veterans. This service takes place through interactions between Veterans and front-line VA employees – physicians, nurses, and other clinicians in VA hospitals; claims processing staff in regional benefits offices; cemetery workers; and countless others – upon whom VA depends to serve Veterans with the dignity, compassion, and dedication they have earned and deserve. We depend on these employees to be vigilant about actual and potential sources of harm to patients, and to voice their concerns if a patients' safety is at risk. In fact, providing safe, high-quality health care is not possible unless caregivers voice their concerns. Within this context, the Department's responsibility to protect whistleblowers is an integral part of our obligation to provide safe, high-quality health care. Retaliation against whistleblowers who have demonstrated the moral courage to share their concerns is unacceptable and cannot be tolerated. Protecting whistleblowers from retaliation is a key component of carrying out VA's core mission in accordance with its institutional core values (integrity, commitment, advocacy, respect, excellence – I CARE). Veterans expect VA leadership to cultivate an environment that empowers our employees and demands accountability in service to our Veterans. VA is making progress, and under Secretary McDonald's leadership, we will reach our goal of ensuring that every employee feels safe in raising concerns, and is protected from any retaliation when they choose to do so.

The witnesses you are hearing from firsthand today underscore the importance of ensuring that all Veterans receive the highest quality of medical care. VA recognizes the important role that whistleblowing plays in bringing issues to light. For example, as you may know, I was and am personally invested in ensuring that the quality of care at Tomah VA Medical Center (VAMC) is of the highest order and that any and all circumstances that led to problems at the Tomah VAMC have been diagnosed and fixed. I met with whistleblowers in Tomah, as I have at other facilities throughout our system. Any health care system requires a wide array of feedback from multiple sources to ensure the best possible clinical outcome for patients. In addition to the many formal feedback mechanisms VHA has built into our system, as the Secretary has made clear, we need and want all employees and Veterans to feel empowered to provide a firsthand account of their experiences, so that we can identify and rectify any problems. It is important to keep in mind that just as in Tomah, the underlying purpose of whistleblower protection rules is to encourage the candid disclosure of information about problems, so that deficiencies are corrected and unsafe or unlawful behavior is quickly corrected. Of necessity, there are legal disciplinary options in terms of penalties for supervisors who retaliate against whistleblowers, but the penalties exist to support the primary focus on information flow and quality, safety, or process improvement. VA is fully committed to correcting deficiencies in its processes and programs, and to ensuring fair treatment for whistleblowers who bring these deficiencies to light. Secretary McDonald consistently communicates about his vision of “sustainable accountability,” which he describes as a workplace culture where VA leaders provide the guidance and resources employees need to successfully serve Veterans, and employees are empowered and encouraged to inform VA leaders when challenges hinder their ability to succeed. We need a work environment in which all participants – from front-line staff through lower-level supervisors to senior managers and top VA officials – feel safe sharing what they know, whether good news or bad, for the benefit of Veterans and as good stewards of the taxpayers’ money.

In recent months, the Department has taken several important steps to improve the way we address operational deficiencies, and to ensure that those who disclose such deficiencies are protected from retaliation. In July 2014, Secretary McDonald

reorganized and assigned new leadership to the VA Office of the Medical Inspector (OMI), the internal oversight component of VHA that reviews whistleblower disclosures related to VA health care operations. OMI moved quickly to establish clear policies that ensure that whistleblower allegations are investigated objectively, thoroughly, and promptly. Since that time, OMI has completed 30 new whistleblower investigations and prepared more than a dozen supplemental reports to follow up on earlier investigations at the request of the U.S. Office of Special Counsel (OSC), the independent office responsible for overseeing whistleblower disclosures and investigating whistleblower retaliation across the Federal government. When the investigation substantiates the whistleblower's allegations, OMI works closely with OSC and the responsible VHA officials to track the status of corrective actions to completion.

VA has also improved its collaboration with OSC in other ways. Recently the Department sent VA's Office of General Counsel and OAR personnel to OSC to attend training on investigating whistleblower retaliation cases. This training was then disseminated to all OAR investigators. Additionally, the first week of November, OAR Investigators will train a select number of Regional Counsel Attorneys and Senior Human Resources professionals from the field on how to conduct whistleblower retaliation investigations so they may expand the ranks of personnel who can be assigned to this type of investigation.

Last summer, VA negotiated with OSC a process that provides for prompt corrective action for cases where after a brief initial fact-finding effort, whistleblowers appear to have been subjected to retaliation. The process is referred to as the "expedited process" because relief is provided to whistleblowers quickly, within weeks of referral, before a thorough in-depth investigation is undertaken by either OSC or VA to make culpability determinations, which would take several months. This novel approach allows OSC and VA to work together to reduce duplicate investigations and to protect whistleblowers from retaliation in a more timely manner. As of September 9, 2015, VA had received 22 expedited cases, so far. VA has received these cases on an ongoing basis since the process was established. We have successfully resolved 11 cases, denied four, two were withdrawn by the OSC, and five are pending. For the cases that have been resolved, it has taken an average of 30 to 60 days to complete. Cases

resolved under the expedited process are then forwarded to OAR for full investigation, as are all OSC referrals. VA understands that we can improve on the timeliness on ensuring individuals found responsible for retaliation, whether brought to light through the expedited process or through traditional channels, are disciplined appropriately. One approach to ensuring that investigations into retaliation are completed more timely and in more direct correlation with OSC's charge is for Congress to fund OSC at a level that enables the office to hire more investigators to complete this work. OSC has traditionally fulfilled this charge and increasing their staffing to a level to assist VA in this endeavor would allow VA's limited investigative assets to focus more in VA's areas of expertise. Investigating allegations of wrong-doing, especially where patient care is potentially impacted, requires the preponderance of our current limited resources. It is extremely important that VA hold an individual guilty of retaliation accountable for their actions. We welcome OSC's additional assistance on this front.

In previous Congressional Testimony, the VA has highlighted several additional steps to improve how we address operational deficiencies, and to ensure that those who disclose such deficiencies are protected from retaliation. Some of these examples include:

- Completing all requirements for certification under OSC 2302(c) certification program;
- Providing formal VA leadership communication to all employees regarding the importance of whistleblower protection, emphasizing that managers and supervisors are responsible for enforcing whistleblower protection laws; and
- Requiring annual training by all senior executives (Course title: "Whistleblower Rights and Protection and Prohibited Personnel Practices").

Secretary McDonald, Deputy Secretary Gibson, and other VA Senior Leaders, including myself, have made it their practice to meet with whistleblowers when they travel to VA facilities, and to engage with those who have raised their hands and their voices to identify problems and propose solutions. VA's Senior Leadership does this to acknowledge the critical role whistleblowers play in improving the quality, safety, and effectiveness of VA programs, and to model to supervisors VA-wide the engaged, open,

and accepting behavior they expect them to exhibit when subordinates express concerns.

The Department has had problems ensuring that whistleblower disclosures receive prompt and effective attention, and that whistleblowers themselves are protected from retaliation. I acknowledge today that VA is still working toward the full culture change we must achieve to ensure that all employees feel safe disclosing problems, and that all supervisors who engage in retaliatory behavior are held promptly and meaningfully accountable. VA continues to work with whistleblowers, OSC, and Congress to resolve these issues, and we remain deeply committed to these endeavors. Again, we would welcome additional assistance from OSC in more fully conducting retaliation investigations, and hope that Congress will fund them accordingly.

Mr. Chairman, this concludes my testimony. We look forward to answering the Committee's questions.