

Department of Veterans Affairs

Memorandum

Date: November 5, 2012

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation, Appearance of a Conflict of Interest, Overton Brooks VA Medical Center, Shreveport, LA (2011-02766-IQ-0113)

To: (b) (7)(C)

1. The VA Office of Inspector General Administrative Investigations Division investigated an allegation that (b) (7)(C) and (b) (7)(C), both at the Overton Brooks VA Medical Center, engaged in a conflict of interest when they referred VA patients to a private dental practice (the Dentist) in which they were both affiliated. To assess these allegations, we interviewed (b) (7)(C), (b) (7)(C) and other VA employees. We also reviewed fee-for-service, billing, and email records, as well as Federal regulations and VA policy. We investigated and did not substantiate another allegation, and it will not be addressed further in this memorandum.

2. We found that although (b) (7)(C) engaged in conduct that created the appearance of a conflict of interest, we found no actual conflict of interest or a misuse of his position. (b) (7)(C) was related to the Dentist by marriage, and (b) (7)(C) went to the Dentist for his personal dental care. Based on their personal relationships to the Dentist, we suggest that you ensure that both (b) (7)(C) and (b) (7)(C) have no involvement whatsoever in referring VA patients to the Dentist to avoid even the appearance of a misuse of their positions or conflict of interest. We also found records associated with referrals to the Dentist's practice were incomplete and lacked sufficient data to determine the exact number of VA patients referred to or payments made to the Dentist. The Dentist's records reflected that over a 22-month time period (b) (7)(C) referred 20 VA patients to the Dentist's practice, but to the contrary, Medical Center outpatient referral records reflected that he referred only 14. VA dental fee-for-service payment records reflected that VA made payments for only 5 patients treated by the Dentist. We further suggest that the Medical Center evaluate their recordkeeping for fee-for-service referrals to ensure that they accurately reflect the number of VA patients referred and payments made. We are providing this memorandum to you for your information, official use, and whatever action you deem appropriate. **No response is necessary.**

3. Standards of Ethical Conduct for Employees of the Executive Branch state that an employee shall not use his public office for his own private gain or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity. 5 CFR § 2635.702. They further state that an employee is prohibited by criminal statute from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest. 18 USC § 208; 5 CFR § 2635.402(a).

4. Personnel records reflected that (b) (7)(C) began her VA career as a (b) (7)(C). She told us that she was married to the Dentist, who had a local dental practice and that there were times that VA practitioners referred VA patients to her husband's practice. (b) (7)(C) said that he supervised (b) (7)(C) and that her husband, the Dentist, was also his private dentist. He said that he has known the Dentist for about 10 years and that he never had any financial connection to the Dentist's private practice. The Dentist's private practice records reflected that (b) (7)(C) had no financial interest in the business. (b) (7)(C) told us that she did not, and could not, work for the Dentist, as she was licensed in (b) (7)(C) and not Louisiana.

5. The Dentist's records reflected that between October 2009 and August 2011, (b) (7)(C) authorized 20 VA patients be referred to the Dentist; however, Medical Center records reflected that (b) (7)(C) referred 6 VA patients by name to the Dentist, in addition to 8 VA patients who asked him to refer them to the Dentist by name. Neither set of records reflected the number of VA patients that the Dentist actually treated. Medical Center dental fee-for-service payment records reflected that during that time period, the Medical Center initiated 2,752 dental referrals, with some patients referred more than once to non-VA dental practitioners, and that the Medical Center made payments for only 5 VA patients treated by the Dentist. We found that all sets of records appeared to be incomplete and lacked sufficient data to determine the exact number of VA patients referred and/or treated by the Dentist or payments made to the Dentist.

6. (b) (7)(C) told us that there were two types of referrals, specialty and general dentist referrals. He said that for specialty referrals, such as for an oral surgeon or endodontist, a staff dentist would submit a "consult to refer" and he (b) (7)(C) would approve it. He further said that general dentist referrals occurred when the VA could not perform a general procedure in a timely manner. He said that in the past a staff dentist entered the consult for a general dentist, but due to the volume of referrals, his dental assistant now entered the consults for his approval. Request for outpatient services records reflected that (b) (7)(C) made all referral requests for non-VA dental services and that (b) (7)(C) approved them. (b) (7)(C) told us that the Dentist "built a reputation in Shreveport" as a general dentist who restored implants after a surgeon placed them. He said there might be other dentist in the area that did the same type of restorative work, but he said that he had not found one that spent time like the Dentist did to properly research implant system repairs.

7. (b) (7)(C) told us that she did not refer patients to the Dentist, as it would "be a conflict of interest." (b) (7)(C) told us that (b) (7)(C) did not refer VA patients to the Dentist and that he told her that "she could not specifically refer [her husband] any patients whatsoever." (b) (7)(C) told us that, in the past, VA patients opted to go to the Dentist; however, she said that she did not tell them to go to her husband's practice. She further said that she no longer suggested outside dentists to patients, because the Medical Center created a referral vendor list. (b) (7)(C) gave us a copy of the vendor list reflecting names and addresses of area practicing dentists. He said that dental staff gave the list to VA patients needing a referral and let the patient select a dentist from the list.

Request for outpatient services records reflected that (b) (7)(C) referred patients for outpatient services with (b) (7)(C) approval. Since (b) (7)(D), (b) (7)(C) did not refer any VA patients to her husband's dental practice, the financial interests of which are imputed to her by statute, she did not engage in an actual conflict of interest. Since (b) (7)(C) did not have any financial interests in the Dentist's practice, we also concluded his referrals of VA patients to the Dentist did not violate the conflict of interest criminal statute.

8. In a March 7, 2012, email, (b) (7)(C) VA Office of General Counsel, told us that (b) (7)(C) did not violate any ethics regulations unless he received a discount or free services from the Dentist based on the referrals. However, he stated that "it may be a best practice from the standpoint of appearance under the 'Washington Post' test not to refer business to your personal dentist as people might think the Chief was getting more than free floss and tooth brushes from his personal dentist." In an email, (b) (7)(C) told us:

The Standard of Conduct provision governing impartiality, or what we refer to as an appearance of a conflict, provides that employees should not participate in particular matters where a person with whom they have a covered relationship is, or represents, a party, where a reasonable person with knowledge of all the relevant facts would question their impartiality in the matter. 5 CFR § 2635.502. I do not believe that a doctor-patient relationship would constitute a "covered relationship" for the purposes of this regulation. There are several categories of "covered relationships" the closest to a doctor-patient relationship being a person with whom the employee has or seeks, a business, contractual or other financial relationship that involves other than a routine consumer transaction. This may be a gut reaction, but I do not believe that the doctor-patient relationship is viewed as a financial one.

(b) (7)(C) told us that he did not receive any free or discounted services from the Dentist, and the Dentist's records did not reflect any gifts, gratuities or anything of monetary value exchanged between (b) (7)(C) and the Dentist.

9. We found that although (b) (7)(C) engaged in conduct that created the appearance of a conflict of interest, we found no actual conflict of interest. (b) (7)(C) was related to the Dentist by marriage, and (b) (7)(C) went to the Dentist for his personal dental care. Based on their personal relationships to the Dentist, we suggest that you ensure that both (b) (7)(C) and (b) (5), (b) (7)(C) have no involvement whatsoever in referring VA patients to the Dentist to avoid even the appearance of a misuse of their positions or conflict of interest. We also found records associated with referrals to the Dentist's practice were incomplete and lacked sufficient data to determine the exact number of VA patients referred to or payments made to the Dentist. The Dentist's records reflected that over a 22-month time period (b) (7)(C) referred 20 VA patients to the Dentist's practice, but to the contrary, Medical Center outpatient referral records reflected that he referred only 14. VA dental fee-for-service payment records reflected that VA made payments for only 5 patients treated by the Dentist. We further suggest that the Medical Center evaluate their

recordkeeping for fee-for-service referrals to ensure that they accurately reflect the number of VA patients referred and payments made.

10. We are providing this memorandum to you for your information and official use and whatever action you deem appropriate. **No response is necessary.** It is subject to the provisions of the Privacy Act of 1974 (5 U.S.C. § 552a). You may discuss the contents of this memorandum with [REDACTED] and [REDACTED] within the bounds of the Privacy Act; however, it may not be released to them. If you have any questions, please call

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WARNING
5 U.S.C. §552A, PRIVACY ACT STATEMENT

This memorandum contains information subject to the provisions of the Privacy Act of 1974 (5 U.S.C. §552a). Such information may be disclosed only as authorized by this statute. Questions concerning release of this memorandum should be coordinated with the Department of Veterans Affairs, Office of Inspector General. The contents of this memorandum must be safeguarded from unauthorized disclosure and may be shared within the Department of Veterans Affairs on a need-to-know basis only.