



Washington State Auditor's Office

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Whistleblower Investigation Report

Department of Veterans Affairs

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November 14, 2016

Lourdes Alvarado-Ramos, Director
Department of Veterans Affairs

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. 16-024 at the Department of Veterans Affairs.

The State Auditor's Office received an assertion of improper governmental activity at the Department. This assertion was submitted to us under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated the assertion independently and objectively through interviews and by reviewing relevant documents. This report contains the result of our investigation.

Questions about this report should be directed to Whistleblower Manager Jim Brownell at (360) 725-5352.

Sincerely,

TROY KELLEY
STATE AUDITOR
OLYMPIA, WA

cc: Governor Jay Inslee

Heidi Audette, Communications Director

Kate Reynolds, Executive Director, Executive Ethics Board

Jennifer Wirawan, Investigator

WHISTLEBLOWER INVESTIGATION REPORT

Assertion and Results

Our Office received a whistleblower complaint asserting a manager (subject) at the Department of Veterans Affairs (Department) grossly mismanaged his responsibilities.

We found no reasonable cause to believe an improper governmental action occurred.

About the Investigation

The Department operates three long-term care facilities for veterans and their qualifying family members. One facility has a pharmacy that provides medications to all residents.

We investigated three assertions regarding the subject:

1. The subject allowed the overstocking of emergency kits and the use of kits for monthly refills for residents.
2. The subject substantially modified the refill process resulting in excessive backup and waste of medications.
3. The subject has permitted pharmacy staff to use state-owned computers for non-work-related purposes.

Emergency Kits

State rules allow each of the Department's long-term care facilities to have two medication kits, an emergency kit (e-kit) and a supplemental dose kit (s-kit), collectively referred to by staff as an "emergency kit."

E-kits are used for emergency situations when the pharmacy is closed. S-kits are used for newly admitted residents or for resident comfort, when medications are not available from the pharmacy.

The contents of the kits are determined by the pharmaceutical services committee (the committee), which consists of staff from each facility. State rule allows the committee to determine which medications will be in each kit; only the committee can change the kits' contents.

During an interview, the subject provided documents demonstrating that the contents of the e-kits and s-kits have not changed substantially since he began working for the Department. He also provided documents demonstrating that he had worked with the committee to reduce the overall contents of the kits.

Because the contents of the e-kits and the s-kits are determined by the committee, and not by the subject, we found no reasonable cause to believe an improper governmental action occurred.

Asserted Waste

In 2013, a federal law (42 CFR 423.154) was enacted that required long-term care facilities to dispense brand-name medications in quantities of 14 days or less. At that time, the subject decided to put all medications on a 14-day cycle, whether brand name or generic. Approximately one year later, the subject decided to return to the 30-day refill cycle for generic medications. Since 2014, the pharmacy has been working to put a program in place that would make ordering medications more streamlined.

Due to various federal and state programs, many of the medications in the pharmacy were obtained at no cost or at greatly reduced costs. As a result, the overall value of the medications in the pharmacy is less than \$200,000.

We reviewed destruction logs, invoices and inventory records. The pharmacy uses two companies (Company A and Company B) for medication disposal. Company A contracts with the Department for disposal of prescription medications that have been dispensed. Once a medication has been dispensed to a resident, it cannot be returned to the pharmacy. The facility is responsible for disposing of these medications when the resident no longer needs the medication. These medications are stored in a 55-gallon container, and every two months Company A collects and incinerates the containers. The pharmacy pays \$150 to \$400 every two months for this service.

Company A does not track the value of the destroyed medications because once they are dispensed they are no longer the property of the pharmacy.

Company B accepts two types of medications – expired medications, which the company destroys, and medications for return to the distributor for credit on future pharmacy orders. Both categories of medications cannot have been dispensed to a resident.

We found no evidence of excessive waste in the pharmacy. Therefore, we found no reasonable cause to believe an improper governmental action occurred.

Personal Use

The pharmacy has nine state-owned computers. Although each staff member has a workstation, they can sign in to any computer using their individual user name. Our Office obtained the hard drives of four randomly selected computers and created a report based on the data retrieved.

We examined the Internet history for each of the four computers, which had been used by many members of the pharmacy staff. State law permits the personal use of state resources as long as

that use is, among other things, of little or no cost to the state, and is brief and infrequent. We found only one staff member whose browsing history was not brief and infrequent.

During an interview, the subject denied the allegation that he has allowed staff to use the pharmacy computers for personal use. He said he always advises his staff not to do anything personal on the computers. Every year he requires his employees to sign the *Employee Affirmation of Policies and Compliance Plan* which includes acknowledgements of the Internet and email use policies, the “Ethical and Professional Standards Policy” and the “Use of State Resources Policy.” He provided documentation of this for calendar years 2015 and 2016.

We found no reasonable cause to believe an improper governmental action occurred.

State Auditor’s Office Concluding Remarks

We thank Department officials and personnel for their assistance and cooperation during the investigation.

WHISTLEBLOWER INVESTIGATION CRITERIA

We came to our determination in this investigation by evaluating the facts against the criteria below:

RCW 42.40.020 - Definitions.

(4) "Gross mismanagement" means the exercise of management responsibilities in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.

WAC 246-865-030 Emergency kit.

(1) The contents and quantity of drugs and supplies in the emergency kit shall be determined by the pharmaceutical services committee as defined in WAC 246-865-010(9) which shall consider the number of residents to be served and their potential need for emergency medications.

(2) A copy of the approved list of contents shall be conspicuously posted on or near the kit.

(3) The emergency kit shall be used only for bonafide emergencies and only when medications cannot be obtained from a pharmacy in a timely manner.

(4) Records documenting the receipt and removal of drugs in the emergency kit shall be maintained by the nursing home and the supplying pharmacy.

(5) The pharmaceutical services committee shall be responsible for ensuring proper storage, security and accountability of the emergency kit

(a) The emergency kit shall be stored in a locked area or be locked itself;

(b) Emergency kit drugs shall be accessible only to licensed nurses as defined in WAC 246-865-010(6).

(6) The contents of the emergency kit, the approved list of contents, and all related records shall be made freely available and open for inspection to representatives of the board of pharmacy and the department.

RCW 42.52.160 - Use of persons, money, or property for private gain.

(1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

WAC 292-110-010 - Use of state resources.

(1) Statement of principles. All state employees and officers are responsible for the proper use of state resources, including funds, facilities, tools, property, and their time. This section does not restrict the use of state resources as described in subsections (2) and (3) of this section.