

**Statement for the Record
by the Project On Government Oversight
for the House Committee on Veterans' Affairs'
Subcommittee on Oversight and Investigations Hearing on
"Addressing Continued Whistleblower Retaliation Within VA"**

April 13, 2015

Fear and Retaliation at the Department of Veterans Affairs

In the spring of 2014, the Project On Government Oversight (POGO) put out the call to whistleblowers within the Department of Veterans Affairs (VA) to provide an inside perspective on the issues the Department was facing.

In our 34-year history, POGO has never received as many submissions on a single issue. Nearly 800 current and former VA employees and veterans from 35 states and the District of Columbia contacted us. POGO reviewed each of the submissions, and found that concerns about the VA go far beyond long or falsified wait times for medical appointments; they extend to the quality of health care services veterans receive.

A recurring and fundamental theme became clear: VA employees across the country fear they will face repercussions if they dare to raise a dissenting voice.

POGO wrote a letter to Acting VA Secretary Sloan Gibson in July last year, highlighting three specific cases of current or former employees who agreed to share details about their personal experiences of retaliation.¹

In California, a VA inpatient pharmacy supervisor was placed on administrative leave and ordered not to speak out after protesting "inordinate delays" in delivering medication to patients and "refusal to comply with VHA regulations." In one case, he said, a veteran's epidural drip of pain control medication ran dry, and another veteran developed a high fever after he was administered a chemotherapy drug after its expiration point.

In Pennsylvania, a former VA doctor told POGO that he had been removed from clinical work and forced to spend his days in an office with nothing to do. This action occurred after he complained that, in medical emergencies, physicians who were supposed to be on call were failing or refusing to report to the hospital. The Office of Special Counsel (OSC) shared his concerns, writing "[w]e have concluded that there is a substantial likelihood that the information

¹ Letter from Project On Government Oversight to Sloan D. Gibson, then-Acting Secretary of the Department of Veterans Affairs, about Fear and Retaliation in the VA, July 21, 2014. <http://www.pogo.org/our-work/letters/2014/pogo-letter-to-va-secretary-about-va-employees-claims.html>

that you provided to OSC discloses a substantial and specific danger to public health and safety.”²

In Appalachia, a former VA nurse told POGO she was intimidated by management and forced out of her job after she raised concerns that patients with serious injuries were being neglected. In one case she was reprimanded for referring a patient to the VA’s patient advocate after weeks of being unable to arrange transportation for a medical test to determine if he was in danger of sudden death. “Such an upsetting thing for a nurse just to see this blatant neglect occur almost on a daily basis. It was not only overlooked but appeared to be embraced,” she said. She also pointed out that there is “a culture of bullying employees....It’s just a culture of harassment that goes on if you report wrongdoing,” she said.

That culture doesn’t appear to be limited to just one or two VA clinics. Some people, including former employees who are now beyond the reach of VA management, were willing to be interviewed by POGO and to be quoted by name, but others said they contacted us anonymously because they are still employed at the VA and are worried about retaliation. One put it this way: “Management is extremely good at keeping things quiet and employees are very afraid to come forward.”

This kind of fear and suppression of whistleblowers who report wrongdoing often culminates in the larger problems, as the VA is currently experiencing. By now it is well known that employees who recently raised concerns about veteran wait times faced reprisal. But whistleblower retaliation in the VA is nothing new. In 1992 a congressional report detailed the experiences of VA employees who were harassed or fired after reporting problems.³ Throughout the 1990s there were several congressional hearings conducted on the quality of care at VA hospitals and on reprisal against VA employees who exposed inadequate care.⁴ Despite then-Secretary Togo D. West’s declaration that such reprisals would not be tolerated, a House hearing in 1999 found that the reprisal problems still existed.⁵ A Government Accountability Report from 2000 found that many VA employees were unaware of their rights to protections against retaliation for blowing the whistle on wrongdoing.⁶ The report also found that the majority of employees feared retaliation and were therefore unwilling to report misconduct.

The Office of Special Counsel (OSC) has been working to investigate claims of retaliation and get favorable actions for many of the VA whistleblowers who have come forward. Since April 2014, the OSC has successfully obtained corrective actions for over 25 whistleblowers.⁷ But the OSC still has over 100 pending VA reprisal cases to investigate, among the highest of any

² Letter from Karen Gorman, Deputy Chief, Disclosure Unit Office of Special Counsel, to Dr. Thomas Tomasco, about Dr. Tomasco’s allegations OSC File No. DI-13-0416, March 21, 2013.

³ Eric Lichtblau, “V.A. Punished Critics on Staff, Doctors Assert,” *The New York Times*, June 15, 2014. <http://www.nytimes.com/2014/06/16/us/va-punished-critics-on-staff-doctors-assert.html> (Downloaded April 10, 2015) (Hereinafter “V.A. Punished Critics on Staff, Doctors Assert”)

⁴ Government Accountability Office, *Whistleblower Protection: VA Did Little Until Recently to Inform Employees About Their Rights*, April 14, 2000. <http://www.gao.gov/archive/2000/gg00070.pdf> (Downloaded April 10, 2015) (Hereinafter *Whistleblower Protection: VA Did Little Until Recently to Inform Employees About Their Rights*)

⁵ “V.A. Punished Critics on Staff, Doctors Assert”

⁶ *Whistleblower Protection: VA Did Little Until Recently to Inform Employees About Their Rights*

⁷ Office of the Special Counsel, “OSC Obtains Relief for More VA Whistleblowers,” January 20, 2015. <https://osc.gov/News/pr15-02.pdf> (Downloaded April 10, 2015)

government agency, according to Special Counsel Carolyn Lerner.⁸ Although the VA has been cooperative with the OSC and their recommendations, merely addressing isolated incidents is not enough.⁹ The VA has been struggling with a culture problem for decades and something more must be done.

Oversight at Its Worst

VA employees who have concerns about management or fear retaliation are supposed to be able to turn to the VA's Office of Inspector General (OIG). But whistleblowers have come to doubt the VA IG's willingness to hold wrongdoers accountable. Since 2014, the IG Office has not yet publically released any investigation into employee retaliation, making it difficult to assess how seriously the IG's office is taking this issue.

Furthermore, the VA IG's office issued an administrative subpoena to POGO in May 2014 that was little more than an invasive fishing expedition for whistleblowers. The IG demanded "All records that POGO has received from current or former employees of the Department of Veterans Affairs, and other individuals or entities."¹⁰ Though POGO did not comply with the subpoena, such an action was cause for concern for many of the whistleblowers who had shared information with us.

POGO remains concerned that there is not a permanent VA IG in place and that the position has been vacant for over a year.¹¹ Our own investigations have found that the absence of permanent leadership can have a serious impact on the effectiveness of an IG office.¹² Acting IGs do not undergo the same kind of extensive vetting process required of permanent IGs, and as a consequence usually lack the credibility of a permanent IG. Acting IGs also often seek appointment to the permanent position, which can compromise their independence by giving them an incentive to curry favor with the White House and the leadership of their agency.¹³ Perhaps most worrisome, given the significant challenges facing the VA IG, a 2009 study found that vacancies in top agency positions promote agency inaction, create confusion among career

⁸Joe Davidson, "Some VA whistleblowers get relief from retaliation," *The Washington Post*, January 20, 2015. http://www.washingtonpost.com/politics/federal_government/some-va-whistleblowers-get-relief-from-retaliation/2015/01/20/067dcd14-9da8-11e4-bcfb-059ec7a93ddc_story.html (Downloaded April 10, 2015)

⁹Matthew Daly, "VA settles more whistle-blower retaliation complaints," Associated Press, January 21, 2015. <http://www.azcentral.com/story/news/investigations/2015/01/21/va-settle-complaints-whistleblowers/22108555/> (Downloaded April 10, 2015); Chris Hubbuch, "VA to Investigate Overmedication, Retaliation Claims at Wisconsin VA," Military.com, January 16, 2015. <http://www.military.com/daily-news/2015/01/16/va-to-investigate-overmedication-retaliation-claims-at.html> (Downloaded April 10, 2015)

¹⁰Letter from the Project On Government Oversight to Richard J. Griffin, Acting Inspector General for the Department of Veterans Affairs, about the IG's subpoena for POGO records, June 9, 2014. <http://www.pogo.org/our-work/letters/2014/va-inspector-general-issues-subpoena-for-pogo.html>

¹¹Project On Government Oversight, "Where Are All the Watchdogs?" <http://www.pogo.org/tools-and-data/ig-watchdogs/go-igi-20120208-where-are-all-the-watchdogs-inspector-general-vacancies1.html>

¹²"Testimony of POGO's Jake Wiens on "Where Are All the Watchdogs? Addressing Inspector General Vacancies," May 10, 2012. <http://www.pogo.org/our-work/testimony/2012/go-ig-20120510-inspector-general-testimony.html> (Hereinafter Testimony of POGO's Jake Wiens on "Where Are All the Watchdogs?")

¹³Testimony of POGO's Jake Wiens on "Where Are All the Watchdogs?"

employees, make an agency less likely to handle controversial issues, result in fewer enforcement actions by regulatory agencies and decrease public trust in government.¹⁴

It appears the VA IG may be subject to this dangerous lack of independence. For example, the VA OIG has failed to release the results of 140 health care investigations since 2006.¹⁵ Furthermore, the Department of Treasury IG sent a letter to this Committee just last month raising concerns about another VA IG investigation. After speaking to witnesses familiar with the situation, the Treasury IG concluded that their testimony, “calls into question the integrity of the VA OIG’s actions in this particular manner.” The Treasury IG’s investigation also found that multiple witnesses stated a VA employee boasted about his ability to influence the VA OIG’s investigations.¹⁶

Recommendations

In POGO’s 2014 letter, we recommended concrete steps for incoming VA Secretary McDonald to take in order to demonstrate an agency-wide commitment to changing the VA’s culture of fear, bullying, and retaliation. Neither Acting Secretary Sloan Gibson nor Secretary McDonald have responded to our multiple requests for a meeting.

Clearly, an important first step will be for the President to nominate a permanent IG for the VA. Hopefully strong and committed leadership in that office will correct its current course. POGO recommended that Secretary McDonald make a tangible and meaningful gesture to support those whistleblowers who have been trying to fix the VA from the inside. Once the OSC has identified meritorious cases, Secretary McDonald should personally meet with those whistleblowers and elevate their status from villain to hero. These employees should be publicly celebrated for their courage, and should receive positive recognition in their personnel files, including possibly receiving the types of bonuses that have been provided to wrongdoers in the past. Retaliation against whistleblowers is already a prohibited personnel practice, but it will be up to the senior-most VA leadership to ensure that this rule is enforced by the agency. This should not be an isolated event done in response to recent criticisms but an ongoing effort. Whistleblowing must be encouraged and celebrated or wrongdoing will continue.

But it’s not just the VA Secretary who can work to fix this problem. Congress should enact legislation that codifies accountability for those who retaliate against whistleblowers. The definition of “wrongdoing” must include retaliation. The cultural shift that is required inside the Department of Veterans Affairs must be accompanied by statutory mandates that protect

¹⁴ Anne Joseph O’Connell, “Vacant Offices: Delays in Staffing Top Agency Positions,” *Southern California Law Review*, Vol. 82, 2009.

¹⁵ Donovan Slack, “VA doesn’t release 140 vet health care probe findings,” *USA Today*, March 8, 2015. <http://www.usatoday.com/story/news/politics/2015/03/08/probes-of-veterans-health-care-often-not-released-to-public/24525109/> (Downloaded April 10, 2015)

¹⁶ Letter from Eric M. Thorson, Department of the Treasury Inspector General, to the Honorable Jeff Miller and the Honorable Corrine Brown, Chairman and Ranking Member of the House Committee on Veterans Affairs, regarding the VA IG investigation, March 11, 2015. https://veterans.house.gov/sites/republicans.veterans.house.gov/files/Letter%20from%20Treasury%20Dept.%20IG_0.pdf (Downloaded April 10, 2015)

whistleblowers and witnesses inside the agency from retaliation. Legislation should ensure that whistleblowers are able to be confident that stepping forward to expose wrongdoing will not result in retaliation, and should provide a system to hold retaliators within the VA accountable.

Congress should also extend whistleblower protections to contractors and veterans who raise concerns about medical care provided by the VA. POGO's investigation found that both of these groups also fear retaliation that prevents them from coming forward.

While federal employees working at the VA enjoy whistleblower protections, contractors do not. Congress should extend the same protections to contractors in order to promote internal oversight in an increasingly contractor-heavy landscape.

In addition, a veteran who is receiving poor care should be able to speak to his or her patient advocate without fear of retaliation, including a reduction in the quality of health care. Without this reassurance, there is a disincentive to report poor care, allowing it to continue uncorrected. Congress should extend whistleblower protections to veteran whistleblowers.

The VA and Congress must work together to end this culture of fear and retaliation. Whistleblowers who report concerns that affect veteran health must be lauded, not shunned. And the law must protect them.