

Statement of Dale J. Klein, M.D.

Before the House Veterans Affairs Committee (HVAC)

RE: The VA Accountability and Whistleblower Protection Act: One Year Later

July 17, 2018

Chairman Roe and Ranking Member Walz,

Thank you for the opportunity to provide a statement of record for this hearing about the implementation of the VA Accountability and Whistleblower Protection Act of 2017. I am submitting a statement in hope that this hearing will give a voice to those who blew the whistle on fraud, waste, abuse, substandard care and criminal activity at the Department of Veterans Affairs (VA), and were retaliated against without the perpetrators being held accountable.

I started work as a physician employee at the John J. Pershing VA Medical Center in Poplar Bluff, Missouri in May 2015. This rural VA facility was built in the 1940's and had never had a pain management clinic. I was hired to start a medical clinic from scratch, that would provide much needed comprehensive and interventional pain management care to the more than 20,000 veterans in the catchment area.

While I initially viewed employment at the VA as an opportunity to create a first-class pain management clinic, I eventually realized there was no actionable path forward toward this goal because of a perpetual lack of support from the agency which was shrouded in corruption.

The VA's history is replete with stories of retaliation against employees who blew the whistle and a pervasive lack of accountability.¹ Because I followed ethical standards and reported misconduct; i.e.: secret wait lists, manipulations of wait times, opioid mis-management, forgery, etc., to the Office of Inspector General (OIG), Office of Special Counsel (OSC) and Joint Commission, I lit an emotional fuse with my chain of command which they viewed as disrespectful. VA administration seemed unable, or unwilling, to separate truth from falsehood. They did not like conflicting views.

After the VA discovered I had made disclosures, I experienced systematic and repetitious bullying, discrimination, harassment, intimidation and retaliation. These toxic tactics made my workplace hostile. Initially, I was marginalized and eventually, I was placed in solitary confinement. The VA threats included reporting me to the State Medical Board and the National Practitioner Data Base.² I also survived the threat of physical harm.

¹ "VA Attorneys Can't Fire or Punish VA Executives Correctly – The Case Of 'Dirty D' And Other Agency Misfits" by Benjamin Krause, J.D., December 6, 2017, *DisabledVeterans.org*

² The Pennsylvania Supreme Court in *Hayes v. Mercy Health Corp.*, 559 Pa. 21, 739 A.2d 114 (1999) stated that a physician's National Practitioner Data Bank entry may have a deleterious effect on the physician's medical career.

My personal medical records on the VA's electronic medical record system were accessed by agency employees who did not provide medical care to me nor had any legitimate reason to enter and read my restricted files. One employee who inappropriately accessed my confidential medical records, works in Washington DC. While unrepeatable happenings might be considered a coincidence; habitual and premeditated actions are revenge.

On January 25, 2017, Senator Ron Johnson, Chairman, Homeland Security and Governmental Affairs Committee (HSGAC), sent the VA Secretary a letter on my behalf. In that letter, Senator Johnson wrote the VA should, "cease all retaliatory actions" against Dr. Klein.

On May 3, 2017, Senator Johnson sent a second letter, cosigned by HSGAC ranking member Senator Claire McCaskill, to the VA Secretary, which included the following excerpt.

"request that you direct all VA employees to cease any retaliation against Dr. Klein and to cooperate fully and promptly with investigations by the VA OIG and OSC."

The VA tried to prevent me from making additional patient care disclosures and remarkably, closed the entire pain management clinic to silence me. The conclusion is inescapable, the motive of the agency, was to use me as a camouflage to disguise and distract from their own institutional failures. The fury ignited by my disclosures and their prodigious effort to silence me, certainly underscores the significance of the problems and outwardly the direction of administrators' moral compass.

Unfortunately, the VA terminated my employment in August 2017 without even finding a logical replacement to care for the many veterans with chronic and complex pain conditions.

To date, there have been three independent federal investigations that have each ruled in my favor. OIG substantiated all my disclosures that they investigated.³ OSC declared I am a whistleblower and the VA retaliated against me⁴ and determined I was wrongfully terminated.

The first day the VA's Office of Accountability and Whistleblower Protection (OAWP) officially opened, my whistleblower case was submitted. For many reasons, it was daunting and demoralizing dealing with OAWP.

³ https://www.va.gov/oig/pubs/VAOIG-16-01077_255.pdf

⁴ "On May 11, 2017, OSC issued a prohibited personnel practice report finding that VA officials violated sections 2302(b)(8) and (b)(9) by terminating Dr. Klein's employment during his probationary period in retaliation for making protected disclosures and engaging in protected activity. OSC requested that the VA respond to its request that the VA take corrective and disciplinary action by May 22, 2017."

After much time and effort on my part, I was finally allowed to speak via telephone with the OAWP case manager assigned to my complaint. He informed me the evaluation of my grievance was winding down to conclusion. The case manager said he had not planned to interview me during the fact-finding portion of the process. And during this telephone call, he did not ask questions regarding my situation. The case manager stated he had read some undisclosed documents which explained my circumstances and that was good enough for him to complete the inquiry.

Just as the above telephone conversation was ending, I queried if he was aware of OIG's report regarding my disclosures. Astonishingly, the case manager responded he was oblivious to OIG's findings and recommendations. The OIG investigation, report and associated recommendations are some of the key elements of my case, which provides objective evidence substantiating my claims.

After speaking with the case manager (who doubles as a Human Resources employee), I was left with questions of his qualifications to perform a comprehensive and detailed investigation involving whistleblower retaliation. I questioned if this was even an investigation at all. The case manager made it sound more like a cursory review of the occurrences. Although the VA appears to have the resources available to conduct an in-depth investigation, it appeared he lacked the motivation to uncover the truth.

Obviously, OAWP did not safeguard me because I was eventually fired. OAWP's lack of protection is in contradistinction to OSC's findings of whistleblower retaliation and unfair termination.

During my employment, the VA engaged in a pattern of calculated acts, unbounded by governing laws and practice, and obviously motivated by personal gain and vindictive desires. VA administrators have and continue to put their own personal interests above the veterans' wellbeing, which has left a cloud of undue suspicion above the current leadership regarding accountability and whistleblower protection. The false accusations against me were premised on a mischaracterization of the underlying facts and made use of erroneous analysis to draw inferences that are otherwise inaccurate or taken out of context.

The allegations against me were fabricated and patently false. Vicious insinuations, unsupported by scrutiny, failing to confirm a conclusive result, should not be included in an objective report to justify termination of an employee. Likewise, speculation and unsubstantiated opinions, are inappropriate in an investigative statement. I am disgusted and devastated. And I am the victim. The extent to which the VA has gone to harm me is truly unfathomable. It strains credulity to conclude that VA Central Office was not involved with the termination of my employment.

Moreover, and noteworthy, a recording has been attained which verifies an upper level VA administrator making a statement that negates the one and only reason the agency gave for termination of my employment.

After the VA's bias, retaliation and self-interests were all effectuated, basically, they became irrelevant since all those evils can be covered-up by subjecting the physician to a sham Professional Standards Board.⁵

I was not only unlawfully terminated from my job, but the VA has destroyed my career. Even though I'm a Yale alumnus, Board Certified in Anesthesiology and fellowship trained and Board Certified in Pain Medicine, at 54 years old, I'm unable to attain gainful employment as a physician secondary to what the VA has done to me.

Accountability of VA management responsible for my retaliation appears to have been minimal. Regrettably, punitive actions fell short of reasonable expectations for violations of federal statutes. Transferring an administrator to another VA facility is not holding the offender appropriately responsible. And encouraging/allowing another administrator (who possibly committed criminal activity) to retire, (one year earlier than he was planning too), is not a deterrent to prevent other administrators at the VA from retaliating against whistleblowers.

The bottom line to all of this is, if the VA would simply place veterans first and follow established rules and protect the whistleblowers who find these infractions – the VA would and could be an outstanding federal department. Continuing to hide the truth or pretend otherwise is simply disingenuous.

My experience with the VA was like participating in war. The shrapnel of these traumatic experiences are embedded in my mind. My confidence in the federal government is shaken, but not broken. I look forward to Congressional oversight of VA wrongdoings, so management at the VA will be held accountable for violations of laws and whistleblowers will be protected. The reason to terminate my employment was baseless and unfounded.

This HVAC hearing is where the airfoil meets the relative wind. The VA is in legal jeopardy. The agency forced me to squander a year of employment in solitary confinement, without assigned duties. The VA has repeatedly exclaimed that forcing me to sit in a small room, staring at the walls, without assigned duties was not retaliation. If that is not reprisal, then what was it? And where is the whistleblower protection? And where is the accountability?

⁵ *Scandals: Unmasking the Underbelly of the VA*, by Dale J. Klein, M.D., Chapter 6: "Professional Standards Board Debacle", Copyright: January 16, 2018, CreateSpace Publishing