

**Statement of
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Department of Veterans Affairs
Before the
Subcommittee on Oversight and Investigations
House Committee on Veterans Affairs
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Chairman Coffman, Ranking Member Kuster, and Members of the Subcommittee, thank you for inviting me to testify today.

You have just heard Mr. Murray provide the Department's position on the illegal purchases of billions of dollars in non-VA care over multiple years. If you are not now confused, I am surprised. I would be completely confused if I were not familiar with the facts. We obviously do not intend to admit our collective failures in leadership and stewardship of public funds. Mr. Murray stated there was and is confusion, inconsistent application, and conflicting interpretations. As VA senior leaders, we have had many years to correct these deficiencies.

Mr. Murray also stated there were conflicting interpretations of the law. Here are some facts that may help you decide if conflicting interpretations exist. In October 2012, a very senior VHA official informed me trouble was looming, as they had been violating the law on a wholesale basis with regards to purchase of non-VA care. I asked him for details about legal documents he hinted of; he declined to reveal anything.

On October 22, 2012 I began a personal inquiry into the matter. I sent this same VHA senior official and his subordinate a written statement, addressing his plight, hoping I would receive additional information from him. He declined to respond.

On December 3, 2012, I sent a note to a senior executive from Office of General Counsel, requesting a legal opinion as to whether individual authorizations for non-VA care were considered FAR-based contracts. I received no response.

Receiving no response, I followed up again on Dec 31, and for a third time on January 15, 2013.

On February 28, 2013, nearly three months after I requested the initial opinion, the Office of General Counsel provided me a legal opinion dated September 10, 2009. This opinion categorically declares procurements of non-VA, Fee Basis Care to be FAR-based. There is absolutely no confusion in this legal opinion, in spite of what you just heard to the contrary. Neither my predecessors nor myself have ever granted authority for VHA to acquire non-VA health care except by FAR-based methods.

You may wonder why, as VA's Senior Procurement Executive, I had never previously seen this legal opinion, and why there was such obvious reluctance to provide it to me. That is an enigma. Mr. Murray and myself testified under oath to this subcommittee in 2010, stating fee-basis care was not FAR based. If this legal opinion existed in 2009, why was it kept from us in preparation for the hearing?

Given the apparent recalcitrance to engage by VHA and Counsel, I submitted a Hotline Complaint to the Office of Inspector General in March 2013. The OIG initially refused my submission, questioning my motive for submitting the complaint. I stubbornly persevered, and they subsequently accepted it. I am unaware OIG ever investigated.

In April 2013, I requested senior leadership assistance from VHA and the Office of General Counsel, in conducting ratification actions for these massive violations of Federal law. I received no offer of assistance from either office.

In May 2013, Secretary Shinseki was briefed on non-VA care authority options. He was made aware of our illegal actions. I was not invited to the meeting.

In June 2013, I wrote a letter to Representative Issa, then serving as Chairman of the House Oversight and Government Reform Committee, outlining my concerns in these illegal matters and others. My letter never made it to him. Two senior officials who are apparent friends, one from the House Oversight Committee, and one from VHA, conspired to keep Chairman Issa and the American public from learning of these matters and other serious VA violations of Federal laws.

In April 2014, the VA Senior Assessment Team voted to close ongoing discussions of illegal purchases of non-VA medical care, with mine as the lone opposing vote. In that same meeting, the VA Office of Management sponsored a motion, which passed, to raise the reporting level for VA material weaknesses from approximately \$400M to \$1B. I believe this was an effort to avoid reporting emerging illegal matters to the American public through the annual statement of assurance process.

In July 2014 I was threatened and coerced on multiple occasions in a two-hour meeting headed by the VA Chief of Staff, in an effort to force me to authorize illegal actions on a major scale concerning fee-basis care.

From July to November 2014, we collaboratively developed a legally sufficient method to acquire non-VA health care. VHA's senior leadership rejected the method in November 2014. The illegal activity continues unabated.

This past Friday, Deputy Secretary Gibson elected to make my disclosure of these and other illegal acts a personal issue with me. His demeanor and actions in both an open and one-on-one meeting were clearly meant to intimidate me, and to cast a chill over me and others who might be tempted to report violations in the future.

I will allow you and the court of public opinion to decide for yourselves if what I have briefly described constitutes corruption, malfeasance or dereliction. No investigation has been conducted. No ratifications of illegal procurements have been executed. Improper payments continue. Veterans receive health care without protection of mandatory terms and conditions. No one is liable.

I believe these are two relevant questions: How can we hold subordinate VA employees accountable, if we as senior leaders selectively pick-and-choose the laws we want to observe for sake of convenience? When will VA senior leaders be held accountable? There were more than a dozen of VA's most senior leaders in the July 11, 2014 meeting. The issue of illegality was positively affirmed. Not a single leader present, save one, subsequently acted in any way to protect the Government's interests or resources.

We have lost our way. Senior leaders are required to obey and enforce Federal laws. Our actions and inactions do not fit anything I have previously experienced in over 40 years as a Military Officer and civilian public servant.

Mr. Chairman, this concludes my statement. I am prepared to answer all questions this Subcommittee may have for me.