

June 25, 2019

The Honorable Chris Pappas
Chairman

Subcommittee on Oversight and Investigations
Committee on Veterans' Affairs
House of Representatives
B234 Longworth House Office Building
Washington, DC 20515

The Honorable Jack Bergman
Ranking Member

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Washington, DC 20515

Dear Chairman Pappas, Ranking Member Bergman, and Members of the Committee:

Thank you for the opportunity to submit comments in support of today's House Committee on Veterans' Affairs' Subcommittee on Oversight and Investigations Hearing: "Learning from Whistleblowers at the Department of Veterans Affairs." Public Citizen is a national, nonprofit public interest organization with more than 500,000 members and supporters. Since our founding in 1971, whistleblowers have been integral to our mission to protect the public interest. They serve as our eyes and ears to root out government and corporate misconduct.

Within the Department of Veterans Affairs (VA), whistleblowers take grave professional and personal risks to expose breakdowns in patient care and other misconduct. These courageous individuals should be rewarded for helping the agency to perform its mission. Yet, they are often treated as if they have committed a crime for simply exposing the truth. During the 2018 annual Whistleblower Summit for Civil

and Human Rights on Capitol Hill, VA employees gathered from across the country to speak about their efforts to defend veterans: . Brandon Coleman, who exposed breakdowns within VA suicide prevention efforts, spoke about his

role helping to run a mentoring program within the VA's Office of Accountability and Whistleblower Protection (OAWP). The primary complaint he hears is that employees have difficulty finding work after they blow the whistle. He explained that he tries to help them by discussing his own whistleblowing, the process for making a whistleblower complaint to the Office of Special Counsel, how to work with the media, and the importance of self-care. All those steps are fundamental to seeking resolution in the whistleblowing process.

Kuauhtemoc Rodriguez, former chief of specialty care clinics in Phoenix and an Iraq veteran, blew the whistle by reporting VA delays in providing mental health care and a list of 116 veterans who died before receiving care. He explained, "Veterans receiving care is an issue that transcends politics – they deserve the health care that they earned." Rodriguez described the retaliation he experienced for coming forward, including government surveillance, death threats, and denial of paid leave for a cardiac injury.¹

1 Richard Sisk, Lawmakers Back VA Whistleblower Who Claims He Was Harassed, Demoted, MILITARY.COM (June 15, 2018) <https://bit.ly/2LeagEi>.

2 Melissa Quinn, VA Whistleblower Argues Hospital Officials Retaliated Against Him for Raising Concerns About Doctor, WASHINGTON EXAMINER (July 19, 2017), <https://washex.am/31Uov6P>.

3 Id.

4 U.S. GOVERNMENT ACCOUNTABILITY OFFICE, DEPARTMENT OF VETERANS AFFAIRS: ACTIONS NEEDED TO ADDRESS EMPLOYEE MISCONDUCT PROCESS AND ENSURE ACCOUNTABILITY (July 18, 2018), <https://bit.ly/2NsZ5Fm>.

. Daniel Martin, Chief Engineer for the VA Northern Indiana Health Care System, explained that for more than 500 days he had been stripped of his job duties and relocated to a room contaminated with silica and asbestos after he internally reported gross misuse of taxpayer dollars. Last June, OSHA issued a Notice of Unsafe or Unhealthful Working Conditions at the facility due to the presence of silica, lead and asbestos. Despite the threats to his health, Martin explained that he remains at the VA because he wants to continue to support veterans.

. James DeNofrio worked as an administrative officer at the Altoona, Pennsylvania VA Medical Center, and he put his career on the line when he reported concerns about the quality of care that patients were receiving under the hands of an aging physician who was making life-threatening mistakes.² In response, he reported that he was denied promotions and overtime, threatened with lower performance ratings, and his medical records were shared with unauthorized recipients.³

VA whistleblowers should be honored for exposing harm to our veterans so that it can be rectified, not exiled from their workplaces or otherwise punished for looking out for others. This will require a cultural shift in how whistleblowers are perceived within the agency, in addition to stronger legal protections. Although the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017 and the Dr. Chris Kirkpatrick Act Whistleblower Protection Act of 2017 sought to improve VA whistleblower protections, ongoing retaliation at the VA demonstrates the need for enforcement of existing rights as well as implementing additional reforms.

Public Citizen, in partnership with other leadership of the Make It Safe Coalition – a nonpartisan whistleblower advocacy coalition – has recommended a menu of policy reforms to better protect VA whistleblowers from retaliation. They incorporate several recommendations made by the Government Accountability Office in July 2018 regarding actions needed to address the employee misconduct process and ensure accountability at the VA.⁴ Proposed reforms include, but are not limited to:

- . Create enforcement measures to challenge retaliatory investigations as prohibited personal practices;
- . Reform the structure of the VA’s Administrative Investigation Board to conform to Administrative Procedures Act standards;
- . Restore gutted due process for internal agency personnel rights, which have been exploited against whistleblowers;
- . Allow whistleblowers temporary relief after an initial finding by the Office of Special Counsel, Inspector General, or Merit Systems Protection Board that an adverse action was taken because of the employee’s whistleblowing;

Provide whistleblowers with access to a jury trial to challenge retaliation, if they do not receive a legal decision within 180 days;

- . Implement mandatory confidentiality best practices, including privacy protections for disclosures with increased alerts and notifications to employees when their personnel or medical records have been accessed; and
- . The VA Secretary should develop oversight measures to ensure all whistleblower investigations referred to facility and program offices are consistent with policy and reviewed by an official independent of and at least one level above the individual involved in the allegation.

OAWP-specific proposals include:

- . Develop a process to inform employees of how their information may be processed, used and shared when they make a disclosure;
- . Establish a General Counsel position that reports directly to the VA Secretary;
- . Grant authority to enforce stays and other corrective actions in response to findings of retaliation;
- . Implement mandatory annual staff training on whistleblower rights and a mentoring program aimed at reducing workplace traumatic stress;
- . Write regulations to develop an internal process to monitor cases referred to facility and program offices, including dataset definitions to provide better tracking and consistency; and
- . Ensure better coordination between the OAWP and the Office of Special Counsel to avoid duplication.

Thank you for holding today's oversight hearing to develop a record on the vital role that whistleblowers play in maintaining the integrity of the VA, and to examine the reforms that are needed to protect them in the process. We look forward to continuing to work with your committee to achieve these goals.

Sincerely,

Shanna Devine Electronic Signature

Shanna Devine

Worker Health and Safety Advocate

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