



**THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON**

May 7, 2014

The Honorable Jeff Miller
Chairman
Committee on Veterans' Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your letter about patient scheduling and document retention practices within the Department of Veterans Affairs (VA) Phoenix VA Health Care System (PVAHCS). Since these allegations surfaced, VA has been conducting robust internal reviews to evaluate appointment scheduling procedures and patient care in Phoenix. We have also invited the independent VA Office of the Inspector General (OIG) to complete a comprehensive investigation and have stated clearly that if the investigation substantiates allegations of employee misconduct, appropriate action will be taken. In the interim, at the request of the OIG, several leaders at PVAHCS were placed on administrative leave pending the conclusion of the investigation.

As you note in your correspondence, Assistant Deputy Under Secretary for Health for Clinical Operations, Thomas G. Lynch, M.D., provided a briefing to congressional staff on April 24, 2014, during which he reportedly used the term "interim list" while speculating on the origins of the allegations. Dr. Lynch's comments referred generally to the transition to the Electronic Wait List (EWL), which is the official Veterans Health Administration (VHA) new patient appointment wait list. The OIG investigation should provide additional information regarding this transitory process and the effect, if any, it may have had on patient care.

As is VHA's policy, new patients who cannot be provided clinical appointments within 90 days of the date of request should be placed on the EWL. At this juncture, it does not appear that PVAHCS patients who were not able to be seen within 90 days were handled consistently prior to the arrival of the current leadership team in 2012. Patients appear to have been scheduled beyond 90 days and not placed on the EWL, contrary to VHA policy for new patients. When the existing leadership came on board in 2012, they initiated VHA's current national standard policy and use of the EWL.

As you may know, independent of a litigation hold, VA employees are required to retain federal records in accordance with record retention schedules as required by the Federal Records Act, the regulations implemented by the National Archives and Records Administration (NARA) and VA Handbook 6300. Specifically, VA employees must preserve records containing adequate and proper documentation of the organization, function, policies, decisions, procedures, and essential transactions of the

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agency. NARA guidelines require the immediate destruction of transitory documents when the agency determines that they are no longer needed for reference purposes.

Our best information currently indicates that, at that time, transitory or interim notes may have been used by PVAHCS personnel for reference purposes as the newly established EWL was populated. Any transitory notes should have been destroyed in accordance with NARA guidelines.

In your April 9, 2014 letter, you stated that consult and appointment delays were of concern and requested that all records, documents, emails, and other material related to appointment wait times and consult delays in Phoenix should be preserved. A litigation hold (also referred to as a preservation order) is a temporary suspension of document retention policies, issued when litigation is reasonably anticipated, to preserve all information that may be relevant to a potential law suit.

Upon receiving your request, the Office of General Counsel (OGC) worked diligently to issue a litigation hold to the Phoenix facility. VA was unclear as to the specific information that you referenced at the April 9, 2014 hearing, despite requests to the Committee. Nevertheless, OGC staff reviewed your letter requesting a preservation order, and determined the scope of the order, to whom it should be directed, the covered time period and the type of documents that should be preserved. A litigation hold must be appropriately tailored so that those receiving it have clear and helpful guidance on the specific records that must be retained. On April 17, 2014, OGC issued a litigation hold, six business days after your April 9, 2014 letter. We believe this issuance was appropriate and timely in light of the seriousness of the allegations and the best information available to OGC at the time.

We trust that you agree the independent review of the OIG should be allowed to proceed and determine the facts. VA is fully cooperating with that review. We appreciate your continued support of our mission.

Sincerely,



Eric K. Shinseki