



*The voice of career federal executives since 1980*

7918 Jones Branch Drive, Suite 300 • McLean, VA 22102 • 202.971.3300 • seniorexecs.org

July 16, 2019

The Honorable Chris Pappas  
Chairman  
Subcommittee on Oversight and Investigations  
Committee on Veterans' Affairs  
Washington, DC 20515

The Honorable Jack Bergman  
Ranking Member  
Subcommittee on Oversight and Investigations  
Committee on Veterans' Affairs  
Washington, DC 20515

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

On behalf of the Senior Executives Association (SEA) – which represents the interests of career federal executives in the Senior Executive Service (SES), those in Senior Level (SL), Scientific and Professional (ST) and equivalent positions and other senior career federal leaders, including those at the Department of Veterans Affairs – I write to provide additional information for the Subcommittee on Oversight and Investigations Oversight Hearing: Learning from Whistleblowers at the Department of Veterans Affairs.

It is SEA's firm belief that whistleblowers play a vital role in reducing waste, fraud, and abuse within the civil service, and we have supported every federal whistleblower law since the passage of the original Whistleblower Protection Act of 1989. Ensuring whistleblowers are protected from reprisal and comfortable coming forward has been a priority for this Committee, and SEA applauds this attitude.

Unfortunately, the VA office created to protect whistleblowers, the Office of Accountability and Whistleblower Protection (OAWP), has done the opposite, and laws passed to encourage whistleblowers to step forward have failed some of the Department of Veterans Affairs' most dedicated civil servants. **SEA fears that the behavior of OAWP officials highlighted by the VA senior executive whistleblower disclosures enclosed with this letter represent an endemic problem within OAWP that only Congress can remedy with appropriate oversight and statutory reform.**

As noted in the whistleblower disclosure provided to Committee leadership by SEA member Leslie Wiggins, Network Director of VISN 7, and again via this letter, OAWP conducted five investigations into Wiggins over the course of more than a year and pressured senior management to fire her. VHA Management did not agree with OAWP's recommendation to propose the termination of Ms. Wiggins.

Eventually, after failing to convince VHA management to propose the termination of Wiggins, OAWP convinced Wiggins' boss to propose a 5-day suspension. Wiggins' legal counsel then received a copy of the supporting evidence file which OAWP had provided the Proposing Official in Wiggins' case. Upon review, they realized that the file had clearly been tampered with, a federal criminal violation (18 U.S.C. § 1512, 1519) which carries a twenty-year maximum prison sentence. The tampering was that OAWP officials had removed exculpatory evidence from the evidence file it presented to the Proposing Official.

Wiggins' legal counsel provided the Deciding Official with the *complete* evidence file and informed the Deciding Official of OAWP's apparent criminal conduct. Not surprisingly, the Deciding Official found that the charges against Wiggins were unsubstantiated.

Just days after Wiggins' case was decided and Wiggins reported OAWP's criminal conduct, OAWP notified Wiggins of two more OAWP investigations.

This sequence of events show that the office designed to protect whistleblowers from retaliation acted contrary to the principle of their duty by retaliating against a civil servant who uncovered and disclosed OAWP's own unlawful conduct. OAWP has created a climate in which whistleblowers are meant to fear the office that is meant to make them feel protected.

Wiggins reported OAWP's evidence tampering to Congress on May 10, 2019. In doing so she exposed a significant flaw in the VA Accountability and Whistleblower Protection Act (P.L. 115-41). While the 2017 law extended additional whistleblower protections to career VA employees under 38 U.S.C. 714(e)(1) - (2), it also specifically excluded VA career senior executives like Wiggins, who are instead subject to 38 U.S.C. 713.

Under 38 U.S.C. 714(e)(1) -(2) non-SES employees at the VA are provided with extra protection from investigative entities like the Office of Special Counsel (OSC), OAWP, and the Office of Inspector General. These protections extend beyond the whistleblower protections enjoyed by non-VA career employees under Title 5. With the enactment in 2017 of the new accountability law, when non-SES VA employees make whistleblower disclosures to investigative entities, no adverse or disciplinary action may be taken against those employees until the investigative entity who received the disclosure approves the disciplinary action.

Notably, the 2017 statute specifically excludes all senior executives from these new whistleblower protections, creating two unequal classes of government employees. This exclusion makes VA's senior executives vulnerable to abuse.

Wiggins submitted her disclosure to Congress knowing fully that she remains unprotected under the current law but with a desire to prevent other career senior executives from being targeted and silenced by the OAWP office.

In order for Congress to truly follow through on the mission to protect *all* whistleblowers within the federal government, Congress must address the criminal conduct occurring within the OAWP office, prevent the targeted attacks against executive leadership within the VA, and extend whistleblower protections to VA career executives.

In the past, Members of Congress, and this Committee, have characterized senior executives as the sole perpetrators of corruption and abuse with the VA. This inaccurate broad-brush portrait of the many career executives who have devoted their lives to veterans and to public service denigrates the reputation of all government workers. It also undermines the very principles of public service and the rule of law our veterans fought to defend. Any federal employee can blow the whistle on abuse within their agency and all federal employees should be protected in their mission to honestly serve their agency and their country.

**It is for these reasons that we request:**

- (1) Congress amend 38 U.S.C. 713 to restore full Merit Systems Protection Board (MSPB) appeal rights to senior executives; and**
- (2) Congress amend 38 U.S.C. 714(h)(1)(A) to include individuals occupying a senior executive position in the definition of a covered employee eligible for whistleblower protection rights.**

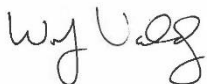
To aid in the Committee's ongoing inquiry into whistleblower issues at the VA, we have included information that provides additional details and context into Ms. Wiggins disclosures of OAWP's unlawful conduct.

1. May 10, 2019 whistleblower disclosure of Leslie Wiggins to HVAC and SVAC disclosing OAWP violations of law and abuses of authority, includes:
  - a. March 29, 2019 letter from Wiggins' counsel to VA CSEMO regarding agency unlawful tactics designed to force executives to resign or retire without any procedural due process
  - b. April 10, 2019 letter from Wiggins' counsel to OAWP Assistant Secretary disclosing OAWP's illegal evidence tampering in OAWP investigation
    - i. Identifies conflicts of interest to investigate the matter within both OAWP and the VA OIG, and requests the matter be referred to the FBI for investigation
  - c. April 26, 2019 letter from OAWP Assistant Secretary to Wiggins' counsel stating the criminal violation has been referred to VA OIG, not the FBI
  - d. May 2, 2019 letter from Wiggins' counsel to OAWP Assistant Secretary disclosing conduct by OAWP employees to interfere with Wiggins' statutory process to respond to proposed disciplinary action
2. May 17, 2019 letter from Wiggins' counsel to VA IG Missal requesting OIG recuse itself from the matter referred by OAWP Assistant Secretary due to conflict of interest within VA OIG
3. June 19, 2019 letter from Wiggins' counsel to VA IG Missal following up on complete non-responsiveness to May 17 letter
4. June 24, 2019 letter from VA IG Missal to Wiggins' counsel rejecting the referral from OAWP Assistant Secretary to investigate evidence tampering.

The information provided in this letter and its attachments demonstrates that VA career senior executives, who presumably have information about the highest stake mission breakdowns, are without any civil service protections. The enactment of the 2017 Accountability Act had the intended effect of taking VA senior executives out of the Title 5 civil service and its whistleblower protections. The 2017 Act itself intentionally excluded VA senior executives from its enhanced protections. Thus without any civil service protections, the message has been made clear to OAWP and to the OIG that VA executives are easy targets for arbitrary, political actions. They have no forum in which to independently prove their innocence and no forum that will protect them if they blow the whistle. This was made clear by VA IG's hostile rejection of the OAWP evidence tampering referral. With no legal protections, and outright hostile rejection by the IG, VA senior executives have no reason to disclose fraud, waste, abuse of authority and violations of law.

SEA looks forward to working with the VA Committees and Congress to close these egregious loopholes in the law. Please have your staff contact SEA Executive Director Jason Briefel ([jason.briefel@seniorexecs.org](mailto:jason.briefel@seniorexecs.org); 202-971-3300) for further information.

Sincerely,



BILL VALDEZ  
President

CC: The Honorable Mark Takano, Chairman, House Committee on Veterans' Affairs  
The Honorable Dr. Phil Roe, Ranking Member, House Committee on Veterans' Affairs



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May 10, 2019

VIA HAND DELIVERY

The Honorable Johnny Isakson, Chairman  
The Honorable Jon Tester, Ranking Member  
United States Senate Committee on Veterans' Affairs  
412 Russell Senate Building  
Washington, DC 20510

The Honorable Mark Takano, Chairman  
The Honorable Dr. Phil Roe, Ranking Member  
United States House Committee on Veterans' Affairs  
B234 Longworth House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

This law firm represents Leslie Wiggins, a Department of Veterans Affairs career senior executive who serves as the Network Director of Veterans Integrated Service Network (VISN) 7. VISN 7 spans three states, and services eight major local hospital networks, including dozens of community-based outpatient clinics. The network that Ms. Wiggins oversees services thousands of Veterans. We write to disclose that VA's Office of Accountability and Whistleblower Protection (OAWP) has abused its power and authorities provided to it by the Veterans Affairs Accountability and Whistleblower Protection Act,<sup>1</sup> violated Agency policy, and appear to have violated federal criminal statutes in order to target Ms. Wiggins without cause.<sup>2</sup>

Ms. Wiggins' experience highlights OAWP's broken culture of abuse that perverts the intent of Congress. OAWP's actions leverage Congress's grant of considerable investigative, analytical, and advisory authority to diminish the rights of VA employees and force otherwise effective managers to resign or retire rather than face relentless waves of frivolous allegations and investigations. Left unchecked, this culture of abuse has eventually led OAWP staff to engage in criminal conduct in order to recommend discipline against Ms. Wiggins, who would not resign or retire under pressure.

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<sup>1</sup> See 38 U.S.C. §§ 713, 323.

<sup>2</sup> See 18 U.S.C. §§ 1512(c), 1519.

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## I. BACKGROUND

Since August 2017, two months after OAWP's inception, Ms. Wiggins has been pulled from her duties as Network Director to sit for interviews in seven separate investigations conducted by OAWP investigators. The most recent of these interviews occurred just a few weeks ago. These interviews varied in length, with the longest such interview lasting three full days. In addition to interviews, Ms. Wiggins was required to spend countless hours retrieving documents for OAWP investigators, and answering follow-up questions. Despite these seven investigations, OAWP was not able to substantiate any allegations of misconduct against Ms. Wiggins. Only one of the seven investigations resulted in a proposed disciplinary action against Ms. Wiggins. In that lone case, Ms. Wiggins and several other witnesses interviewed by OAWP provided OAWP with evidence of Ms. Wiggins' innocence during the investigative process. OAWP thereafter illegally removed that evidence from the evidence file in order to conceal it from VA's Proposing and Deciding Official and recommend a disciplinary action against Ms. Wiggins.

OAWP's efforts to discipline Ms. Wiggins include illegal conduct, but also amount to a bureaucratic waste that pulls money and effort away from the VA's essential mission. OAWP's conduct distracts civil servants like Ms. Wiggins from the job they show up every morning to do: provide the best possible service to Veterans.

Ms. Wiggins has served Veterans at the VA for 26 years, beginning her career as a clinical nurse manager in July 1993. Over the years, she has always been willing to assist investigators that provide oversight to the operations of the VA, whether those investigators be from Congress, the Office of Inspector General (OIG), or any other investigative body. She remains ready and willing to assist in all such investigations today.

However, Ms. Wiggins believes you should know how the power you granted OAWP has been used since that office's establishment. She makes this disclosure to you at great risk to herself, given that 38 U.S.C. § 713 may have removed all whistleblower protections for VA's career executives. First, the additional whistleblower protections extended to career VA employees under 38 U.S.C. § 714(e)(1)-(2) were specifically not extended<sup>3</sup> to senior executives

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<sup>3</sup> 38 U.S.C. § 714(e)(1)-(2) provides non-SES employees at the Department of Veterans Affairs with extra protections from investigative entities like the Office of Special Counsel (OSC), OAWP, and the OIG. These protections extend beyond the protections enjoyed by non-VA career employees under Title 5. With the enactment of this new law, when non-SES VA employees make whistleblower disclosures to investigative entities, no adverse or disciplinary action may be taken against those employees until the investigative entity who received the disclosure approves the disciplinary action. See 38 U.S.C. § 714(e)(1)-(2). Yet, these protections are not extended to VA career executives in 38 U.S.C. § 713. Instead, the statute specifically

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like Ms. Wiggins (who are instead subject to 38 U.S.C. § 713). Second, with the enactment of 38 U.S.C. § 713 as a means to terminate VA's career executives appointed under Title 5, whistleblower protections extended to federal employees under Title 5 may no longer apply to VA's career senior executives subject to Title 38 actions.<sup>4</sup> And last, OAWP has shown that it will go to great lengths, up to and including tampering with evidence it collects during its investigations, in order to recommend a disciplinary action against Ms. Wiggins.

Despite these risks, Ms. Wiggins makes the following whistleblower disclosures regarding the conduct of the VA's Office of Accountability and Whistleblower Protection, which she previously made to VA's Assistant Secretary of Accountability and Whistleblower Protection (Assistant Secretary).

## II. DISCLOSURES TO THE COMMITTEES REGARDING OAWP VIOLATIONS OF LAW AND ABUSES OF AUTHORITY

On May 11, 2018, Ms. Wiggins was interviewed by OAWP investigators regarding an allegation made against her. By late 2018, Ms. Wiggins began to hear that OAWP officials were pressuring high-level VA Central Office officials to use its investigative results to fire her. Despite these efforts, none of those officials saw any evidence to warrant discipline against Ms. Wiggins, much less such a dramatic, career-ending action.

In a transparent attempt to scare Ms. Wiggins into retiring, Ms. Wiggins was contacted, unsolicited, by the Acting Executive Director of VA's Corporate Senior Executive Management Office (CSEMO) on February 7, 2019. This official informed Ms. Wiggins that if she retired prior to the conclusion of OAWP's investigation and the issuance of any disciplinary action, VA would not adversely mark her SF-50 to reflect the pending investigation disciplinary action.<sup>5</sup> Ms.

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excludes all senior executives from these new whistleblower protections. See 38 U.S.C. § 714(h)(1)(A).

<sup>4</sup> In at least one case that we know of, the Office of Special Counsel declined to issue a Title 5 stay on an SES Title 38 removal action, even after issuing a stay in the identical Title 5 removal action that preceded it.

<sup>5</sup> After a call with Ms. Wiggins, the Acting Executive Director of CSEMO sent Ms. Wiggins an e-mail confirming her call. Specifically, the Acting Executive Director stated that VA had yet to implement 5 U.S.C. § 3322, the December 2016 legislation. That legislation required federal agencies to mark employee SF-50s when employees retire or resign while an investigation that ultimately resulted in adverse findings was pending. We thereafter wrote to the Acting Executive Director of CSEMO about her contact with Ms. Wiggins. Therein, we contended that VA's non-implementation of the law appeared purposeful in order to preserve use of "clean record" retirements or resignations as a "carrot and stick" tactic to be used against employees under

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Wiggins did not retire, as she values her decades-long career serving Veterans. On February 15, 2019, a Proposing Official issued a proposed 5-day suspension (not a removal action) against Ms. Wiggins based on the evidence file created by OAWP. Without warning, that proposed suspension was rescinded and reissued on February 25, 2019, with identical charges against Ms. Wiggins.

In our review of the evidence file, we quickly realized that certain evidence Ms. Wiggins and multiple other witnesses provided to OAWP during the investigative process was missing from the evidence file used to support the proposed suspension. In one prominent instance, Ms. Wiggins provided OAWP with a complete copy of the record of a Senate Veterans Affairs Committee briefing conducted by Ms. Wiggins and other high-level VA officials (including the then-Executive Director of OAWP). Rather than include the entire record of that briefing as Ms. Wiggins had provided it to OAWP, OAWP tampered with the document, removing portions of the Committee briefing from the record to conceal them from the Proposing Official, but including other portions of that same briefing.

In another instance, Ms. Wiggins and multiple other witnesses provided OAWP with a highly relevant e-mail that went directly to the heart of the allegations against her. Interview transcripts reflect that OAWP officials discussed the e-mail at length with interviewees during the course of the investigation, and OAWP officials acknowledged they had possession of the e-mail. Yet OAWP removed the e-mail from the evidence file it prepared to discipline Ms. Wiggins in order to conceal it from the Proposing and Deciding Officials. The missing evidence all had one thing in common: it exonerated Ms. Wiggins of the charges OAWP recommended against her.

We submitted a lengthy written reply to the Deciding Official, and provided him with the exonerating evidence. We also informed him of OAWP's apparently criminal conduct in tampering with the evidence provided by witnesses and in concealing evidence from him. The Deciding Official issued a decision on March 18, 2019, finding that the charges were not supported by substantial evidence.

Two days after Ms. Wiggins was exonerated, Ms. Wiggins was notified that she was the subject of a new OAWP investigation. The day after that, Ms. Wiggins was notified by OAWP that she was the subject of yet another new OAWP investigation, which is her seventh since the establishment of the office. It is not a coincidence that these investigations were launched in the

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investigation. It is not clear to us how CSEMO became aware of the OAWP investigation against Ms. Wiggins, yet it did. And with that knowledge, it engaged in a charade of helpfulness by offering to Ms. Wiggins its failure to implement the law as a reason for her to forgo her federal career. If you are unaware, this letter also serves to notify you of the VA's continued failure to implement a congressional mandate codified at 5 U.S.C. § 3322 for over two years. That letter is attached. See Enclosure 1.

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days following Ms. Wiggins' disclosure of OAWP staff's criminal conduct in her written reply to the Deciding Official, and the Deciding Official's decision finding that OAWP did not substantiate its charge against Ms. Wiggins.

Congress passed federal criminal statutes to protect the integrity of federal investigations. These statutes provide for criminal penalties, including up to twenty years in prison, for individuals who conceal documents with the intent to influence a federal investigation. See 18 U.S.C. §§ 1512(c), 1519. OAWP's conduct calls into question its legitimacy as an unbiased and credible investigator of employee conduct.

We wrote to the Assistant Secretary, and disclosed to her that OAWP officials appeared to violate federal criminal statutes when they purposefully tampered with and then concealed evidence from the Proposing Official and Deciding Official in Ms. Wiggins' case. See Enclosure 2. In a letter dated April 26, 2019, the Assistant Secretary responded, stating that she had referred Ms. Wiggins' allegations against OAWP to the VA OIG for investigation. See Enclosure 3.

In addition to OAWP's tampering with the evidence file to remove all exonerating evidence, Ms. Wiggins faced non-criminal obstruction and interference with her rights by OAWP staff during her statutory reply period for the proposed 5-day suspension. This interference, coupled with an evidence file that was tampered with when issuing the proposed suspension, had a profound impact on Ms. Wiggins' ability to respond to the proposed suspension within the short statutory reply period allowed under 38 U.S.C. § 713. We described the breadth of that interference in a separate letter to the Assistant Secretary. See Enclosure 4.

### III. CONCLUSION

The Senior Executive Service ("SES") was created by the Civil Service Reform Act of 1978 ("CSRA") to address the "critical need to recruit and develop the highest quality federal executive." S. Rep. 95-969, 11, 1978 U.S.C.A.N. 2723, 2733. Congress recognized that the independence of the SES from political pressures is essential to its success and to the success of a non-political Executive Branch, as the system that pre-dated the CSRA "fail[ed] to provide adequate protection against politicization of the career service" and "political abuse" of civil servants. Id.

We do not know why Ms. Wiggins has been targeted by OAWP, or where within OAWP that animus resides. Regardless of the origin, the result is the same. Ms. Wiggins makes these disclosures to you knowing full well that she is vulnerable to retaliation by OAWP,<sup>6</sup> but believing that you should know how the law you passed has been abused to interfere with the

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<sup>6</sup> See Katz, Eric. "New Whistleblower Protection Office Is Under Investigation for Retaliating Against Whistleblowers." *GovExec*, <https://www.govexec.com/oversight/2019/04/new-whistleblower-protection-office-under-investigation-retaliating-against-whistleblowers/156314/>.



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rights of career executives and support otherwise unjustifiable personnel actions against employees who do not deserve it.

For these reasons, we attach the three letters we wrote on Ms. Wiggins' behalf to VA and OAWP officials, referenced above, as well as the correspondence we received in response from the Assistant Secretary.

Sincerely,



Debra L. Roth  
Conor D. Dirks

#### Enclosures

1. Letter from SBR to Acting Executive Director, Corporate Senior Executive Management Office, dated March 29, 2019, *with exhibits*.
2. Letter from SBR to Assistant Secretary Tamara Bonzanto, re: Whistleblower Disclosure of Illegal Evidence Tampering, dated April 10, 2019, *without enclosure*.
3. Letter from Assistant Secretary Tamara Bonzanto to SBR, dated April 26, 2019.
4. Letter from SBR to Assistant Secretary Tamara Bonzanto, re: Second Disclosure of Abuse of Authority, dated May 2, 2019, *redacted, without enclosures*.



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Washington DC 20036  
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March 29, 2019

VIA FEDERAL EXPRESS AND ELECTRONIC MAIL

Ms. Tracey Therit  
Acting Executive Director  
Corporate Senior Executive Management Office  
U.S. Department of Veterans Affairs  
1575 I Street NW, 10<sup>th</sup> Floor  
Washington, DC 20005  
Tracey.therit@va.gov

Re: Ms. Leslie Wiggins/Letter of Counseling

Dear Ms. Therit:

This law firm represents Ms. Leslie Wiggins, VISN-7 Network Director, with regard to her employment at the Department of Veterans Affairs. We write to you today to address your prior contact with Ms. Wiggins regarding annotations to Ms. Wiggins' official personnel file ("eOPF") and/or SF-50. We also write to inquire whether a Letter of Counseling, under VA policy, is placed in an employee's eOPF.

In mid-December, 2018, Ms. Wiggins filed an application for retirement benefits, and set her final date of federal employment as January 31, 2019. Ms. Wiggins withdrew her application for retirement benefits and resignation on January 20, 2019. On February 7, 2019, you sent Ms. Wiggins an unsolicited e-mail stating:

"Reaching out to see if you have time for a call. It relates to retirement/employee relations and incorrect information you may have received. Wanted to correct if that was the case."

See Ex. 1.

It is not known from that e-mail what purported misinformation you were hoping to correct, who you believed provided Ms. Wiggins with that misinformation, why you believed you had insight into Ms. Wiggins' decision to withdraw her retirement application, how you even learned about Ms. Wiggins' withdrawal of her retirement application, or on whose behalf you initiated contact to Ms. Wiggins. This alone makes the professed purpose of your contact with Ms. Wiggins dubious.

Enclosure 1

Ms. Tracey Therit  
Acting Executive Director, CSEMO  
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Ms. Wiggins called you, and you explained to her that if she retired immediately, she could avoid a negative annotation on her SF-50 and in her personnel file regarding a pending personnel action and/or investigation. Id.

You then followed up to the call with an e-mail to Ms. Wiggins, which read:

“Hi Leslie, Glad we could speak. Providing the following information. If a disciplinary action has not been proposed and you retire before one is proposed, then nothing will be annotated on your SF-50/in your official personnel file. Also, while the law is in place to annotate SF50s when someone resigns prior to resolution of a personnel investigation, VA hasn’t implemented policy<sup>1</sup> on the law so at this time nothing would be annotated. If more is needed, let me know.”

Id.

Your contacts to Ms. Wiggins can be read as a façade of assistance, when in reality you intended to induce Ms. Wiggins to voluntarily leave federal employment in lieu of receiving a yet-to-be-issued proposed termination for cause at the conclusion of a pending personnel investigation. The seriousness of the action you suggested Ms. Wiggins pursue (Ms. Wiggins’ immediate retirement) would lead any reasonable person to believe that the pending personnel action against Ms. Wiggins was a proposed removal from federal service. Your contact with Ms. Wiggins is reasonably read as a scare tactic.

However, Ms. Wiggins did not retire from federal service. Instead, on February 15, 2019, approximately one week after she spoke with you, Ms. Wiggins received a proposed five-day suspension. That proposed suspension was rescinded and reissued on February 25, 2019. We responded in writing to the proposed suspension on behalf of Ms. Wiggins, and on March 18, 2019, received the Deciding Official’s decision. According to the Deciding Official, the proposed suspension was not supported by substantial evidence and therefore not sustained. Ms. Wiggins was not suspended. Instead, the Deciding Official stated that he planned to issue a written counseling in the future.

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<sup>1</sup> Your reference to and use of VA’s non-implementation of 5 U.S.C. § 3322 can be read as a deliberate failure by VA to comply with the December 23, 2016 law passed by Congress in order to preserve and wield the prospect of a “clean” record as an inducement to scare people into resignation or retirement. Your use of this tactic against Ms. Wiggins, who is a high performer and has done nothing wrong, is inappropriate and not in the best interest of veterans or the agency. Moreover, you should know that Ms. Wiggins intends to inform the VA’s oversight committees in the House and Senate that more than two years after Congress enacted a law governing federal employee official personnel files, the VA has not yet implemented the law. Ms. Wiggins also intends to inform Congress that the VA is instead using its failure to implement the law as a weapon to coerce its employees into resigning from federal employment.

Ms. Tracey Therit  
Acting Executive Director, CSEMO  
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Because you have previously provided Ms. Wiggins with information regarding her eOPF, we therefore ask whether law, regulation, or VA policy provides for the placement of Letters of Counseling in a career senior executive's eOPF. If it does, please provide us with a copy of the law, regulation, or policy that requires such placement.

Thank you for your prompt attention to this inquiry.

Sincerely,



Debra L. Roth  
Conor D. Dirks

Enclosure  
Exhibit 1, E-mail from Tracey Therit to Leslie Wiggins, dated Feb. 7, 2019

**Conor Dirks**

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**From:** Leslie Wiggins <lwiggmom@gmail.com>  
**Sent:** Thursday, February 07, 2019 1:49 PM  
**To:** Conor Dirks; Debra Roth  
**Subject:** Fwd: FW: Call



----- Forwarded message -----  
**From:** Wiggins, Leslie <[Leslie.Wiggins2@va.gov](mailto:Leslie.Wiggins2@va.gov)>  
**Date:** Thu, Feb 7, 2019 at 1:48 PM  
**Subject:** FW: Call  
**To:** Leslie Wiggins <[lwiggmom@gmail.com](mailto:lwiggmom@gmail.com)>

Sent with BlackBerry Work  
([www.blackberry.com](http://www.blackberry.com))

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**From:** Wiggins, Leslie <[Leslie.Wiggins2@va.gov](mailto:Leslie.Wiggins2@va.gov)>  
**Date:** Thursday, Feb 07, 2019, 1:48 PM  
**To:** Therit, Tracey <[Tracey.Therit@va.gov](mailto:Tracey.Therit@va.gov)>  
**Subject:** RE: Call

Thank you this is very helpful

Sent with BlackBerry Work  
([www.blackberry.com](http://www.blackberry.com))

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**From:** Therit, Tracey <[Tracey.Therit@va.gov](mailto:Tracey.Therit@va.gov)>  
**Date:** Thursday, Feb 07, 2019, 1:08 PM  
**To:** Wiggins, Leslie <[Leslie.Wiggins2@va.gov](mailto:Leslie.Wiggins2@va.gov)>  
**Subject:** RE: Call

Hi Leslie,

Glad we could speak.

Providing the following information.

If a disciplinary action has not been proposed and you retire before one is proposed, then nothing will be annotated on your SF50/in your official personnel file.

Also, while the law is in place to annotate SF50s when someone resigns prior to resolution of a personnel investigation, VA hasn't implemented policy on the law so at this time nothing would be annotated.

If more is needed, please let me know.

Tracey Therit

Acting Executive Director

Corporate Senior Executive Management Office (CSEMO)

Department of Veterans Affairs

Office: (202) 461-0235

Mobile: (202) 359-8960

CSEMO values your feedback. Tell us how we are doing, by completing our [survey](#).



VA Core Values: Integrity Commitment Advocacy Respect Excellence

VA Core Characteristics: Trustworthy | Accessible | Quality | Innovative | Agile | Integrated

**From:** Wiggins, Leslie  
**Sent:** Thursday, February 07, 2019 12:53 PM  
**To:** Therit, Tracey <[Tracey.Therit@va.gov](mailto:Tracey.Therit@va.gov)>  
**Subject:** RE: Call

Sure, calling now

**From:** Therit, Tracey  
**Sent:** Thursday, February 7, 2019 12:36 PM  
**To:** Wiggins, Leslie <[Leslie.Wiggins2@va.gov](mailto:Leslie.Wiggins2@va.gov)>  
**Subject:** Call

Hi Leslie,

Reaching out to see if you have time for a call. It relates to retirement/employee relations and incorrect information you may have received. Wanted to correct if that was the case.

Thank you

Tracey Therit  
Acting Executive Director  
Corporate Senior Executive Management Office (CSEMO)  
Department of Veterans Affairs  
Office: (202) 461-0235  
Mobile: (202) 359-8960

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April 10, 2019

VIA FEDERAL EXPRESS AND ELECTRONIC MAIL

The Honorable Tamara Bonzanto  
Assistant Secretary  
Office of Accountability and Whistleblower Protection (OAWP)  
U.S. Department of Veterans Affairs  
810 Vermont Avenue, NW  
Washington, DC 20420  
Tamara.bonzanto@va.gov

Re: Whistleblower Disclosure of Illegal Evidence Tampering in OAWP Investigation

Dear Assistant Secretary Bonzanto:

This law firm represents Ms. Leslie Wiggins, VISN-7 Network Director, with regard to her employment at the Department of Veterans Affairs. We write to inform you of your office's role in the apparent manipulation and concealment of evidence during the course of its investigation into allegations against Ms. Wiggins. Because of the obvious conflict of interest your office would have in investigating its own role in the below-described apparent criminal misconduct, we request that you refer these allegations to the Federal Bureau of Investigation ("FBI") for investigation.<sup>1</sup> If you do not do so in the near future, Ms. Wiggins will notify the appropriate congressional oversight committees of the apparent illegal conduct by employees of your office to seek congressional action.

I. BACKGROUND

On May 11, 2018, Ms. Wiggins was interviewed by OAWP investigators Michelle Thomas and Deirdre Weiss, during the course of its investigation into an allegation that Ms. Wiggins failed to act to remove a primary care provider from clinical care after VA OIG allegedly placed the Central Alabama VA Healthcare System ("CAVHCS") and the Veterans

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<sup>1</sup> We write to you because 38 U.S.C. § 323 (c)(1)(C) identifies your office as an appropriate recipient of whistleblower disclosures. 38 U.S.C. § 323(c)(1)(D) states that your office's functions include "[r]eferring whistleblower disclosures received under subparagraph (C) for investigation to the Office of the Medical Inspector, the Office of Inspector General, or other investigative entity, as appropriate." For the reasons discussed in more detail below, we believe that you should refer Ms. Wiggins' disclosure to a separate "investigative entity," which given the nature of this disclosure is the FBI.

Enclosure 2



The Honorable Tamara Bonzanto  
Department of Veterans Affairs  
April 10, 2019  
Page 2

Integrated Service Network (“VISN”) on notice of the provider’s “compromised clinical judgment.” See Enc. 1, p. 1. On February 15, 2019, a proposed 5-day suspension was issued to Ms. Wiggins based on the evidence file created by OAWP. That proposed suspension was rescinded and reissued on February 25, 2019, based on the same evidence file created by OAWP.

We responded in writing to the proposed suspension on March 4, 2019. Our written reply included dispositive exculpatory evidence that Ms. Wiggins and other VISN officials interviewed by OAWP had provided to OAWP. Our written reply also contained a detailed assertion that OAWP officials had intentionally concealed this exculpatory evidence from the Proposing Official and Deciding Official. On March 18, 2019, the Deciding Official issued a decision. According to the Deciding Official, the charges in the proposed suspension were not supported by substantial evidence and therefore not sustained.

As noted above, Ms. Wiggins’ written reply to the proposed suspension detailed the method by which your office manipulated and concealed exculpatory evidence from the Proposing and Deciding Officials. See Enc. 1, Sec. I.A-C (pp. 3-6), Sec. II.A (pp. 7-9). We previously made this whistleblower disclosure in Ms. Wiggins’ written reply to the Deciding Official and asked that he refer it to the appropriate investigative body (Enc. 1, p. 6). Pursuant to 38 U.S.C. § 323(c)(1)(C), we now inform you of OAWP’s apparent violations of Agency policy and federal law.

## II. DISCLOSURE OF ILLEGAL CONDUCT BY OAWP

OAWP’s concealment of this evidence is a clear violation of VA’s policy implementing 38 U.S.C. § 713, CSEMO Letter No. 006-17-1, Section 7a.iii.1. That section states: “Any statement or evidence provided by the Senior Executive *will be* included in the investigative file...” Id. [emphasis added]. Under this section, OAWP was required to include all evidence provided by Ms. Wiggins in the investigative file. And yet, in order to adversely influence the Proposing Official against Ms. Wiggins, it appears obvious that OAWP officials selectively excluded dispositive exculpatory evidence provided by Ms. Wiggins from the investigative file. OAWP’s clear violation of this published policy calls into question its legitimacy as an unbiased and credible investigator. Those employees in OAWP responsible for manipulating the record evidence should be held responsible.

Moreover, in doing so, OAWP officials appear to have committed federal crimes punishable by imprisonment up to 20 years in prison. See 18 U.S.C. §§ 1512(c), 1519. If VA possesses or uncovers evidence that OAWP personnel knowingly altered, concealed, and/or covered up evidence in this official proceeding, VA should refer them to the FBI for investigation. That is because the VA OIG is likely conflicted due to the nature of the underlying investigation into the medical practice of a doctor at the Ft. Benning VA community-based outpatient clinic (“CBOC”), which was conducted by the VA OIG medical inspection group. Thus, members of the VA OIG medical inspection team are fact witnesses in this matter, and have a conflict of interest that prevents VA OIG from performing an unbiased investigation into Ms. Wiggins’ disclosure. For that reason, VA should refer the OAWP personnel for criminal

investigation by the FBI for the apparent federal criminal offenses of altering, concealing and/or covering up the exculpatory information that Ms. Wiggins and other witnesses provided to OAWP during its investigation. See 18 U.S.C. §§ 1512(c), 1519.<sup>2</sup>

Ms. Wiggins' reasonable belief that OAWP officials abused their authority to alter the investigative record thereby violating the above-cited federal criminal laws, as well as Agency policy, is described at length in her written reply to the proposed 5-day suspension. See Enc. 1, Sec. I.A-C (pp. 3-6). We summarize those events here as follows.

Following the submission of an anonymous complaint to OAWP, OAWP officials undertook a fact-finding investigation to collect evidence regarding CAVHCS and VISN-7's decision-making during the course of a VA OIG medical inspection into the clinical care of a primary care provider at the Ft. Benning CBOC. During the course of the OAWP investigation, Ms. Wiggins and several other individuals interviewed by OAWP provided OAWP with documentary evidence that directly contradicted the primary allegation under investigation. At the conclusion of their investigation, it is apparent that OAWP officials deliberately removed exculpatory documentary evidence from the investigative file in order to conceal it from the Proposing Official and Deciding Official.

It appears OAWP officials were deliberate in their actions because they carefully curated the investigative file to remove evidence that would otherwise exonerate Ms. Wiggins and other CAVHCS and VISN officials. In one example, OAWP officials removed portions of a presentation to the Senate Veterans Affairs Committee from the investigative file, removing specific attachments to the presentation while leaving others intact. In another example, OAWP officials removed two exculpatory emails from the investigative file that were provided to OAWP by multiple VISN employees. These particular e-mails were widely cited by interviewees in their interviews with OAWP as the basis of their understanding of VA OIG's underlying medical inspection.

These excisions of documentary evidence concealed the true events from the Proposing Official, who reviewed the file that OAWP officials compiled.<sup>3</sup> OAWP officials' actions perverted the fact-finding process and produced an embarrassing, untenable and easily disproved

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<sup>2</sup> Ms. Wiggins' disclosure of illegality by OAWP officials is based on her reasonable belief that the conduct of OAWP officials in manipulating and concealing evidence rises to an abuse of authority and violations of law, rule, or regulation. See 5 U.S.C. § 2302(b)(8). Therefore, retaliation against Ms. Wiggins by OAWP or Agency officials is prohibited by civil service whistleblower protection laws.

<sup>3</sup> We presented the Deciding Official with proof, including statements made by OAWP investigators, that OAWP had knowledge and possession of these documents. See Enc. 1, Sec. II.A., p. 7 ("Yes, it's included in the ones I've seen. I think I did see it in that packet, but just go ahead and resend it just so we'll have it as part of your testimony."), pp. 8-9.

The Honorable Tamara Bonzanto  
Department of Veterans Affairs  
April 10, 2019  
Page 4

charge against Ms. Wiggins, a high-performing, lifelong civil servant who has dedicated her life and career to providing better health outcomes for veterans.

Clearly, this waste of resources and abuse of authority by OAWP is not what Congress envisioned when it passed 38 U.S.C. § 713 and granted VA extraordinary power to investigate and discipline senior executives at the agency.

### III. CONCLUSION

Once you have reviewed this correspondence and the attached exhibit, please confirm with us that you have referred Ms. Wiggins' disclosure for investigation to the appropriate investigative entity. If we do not receive such confirmation from you in the near future, Ms. Wiggins will disclose to VA's congressional oversight committees the basis for her reasonable belief that OAWP violated federal criminal law as described herein. In so doing, she will ask House and Senate Oversight Committees to investigate her disclosure first made in her March 4, 2019 written reply.

Sincerely,



Debra L. Roth  
Conor D. Dirks

cc: Ms. Dierdre Weiss, Administrative Investigator, OAWP, via e-mail only  
Ms. Michelle Thomas, Administrative Investigator, OAWP, via e-mail only

#### Enclosure

1. Written Reply of Leslie Wiggins to the Proposed 5-Day Suspension, with Exhibits A-H, dated March 4, 2019

**VA****U.S. Department  
of Veterans Affairs****Assistant Secretary for Accountability and Whistleblower Protection**  
1575 I Street, NW, Ste. 325  
Washington, DC 20005

APR 26 2019

**received**  
5-1-2019

Ms. Debra L. Roth  
Mr. Conor D. Dirks  
Shaw Bransford and Roth P.C.  
1100 Connecticut Avenue NW, Suite 900  
Washington, DC 20036

Dear Ms. Roth and Mr. Dirks:

I am in receipt of your letter dated April 10, 2019, regarding what you refer to as a whistleblower disclosure of illegal evidence tampering in an Office of Accountability and Whistleblower Protection (OAWP) investigation. Thank you for bringing these concerns to my attention. In your letter, you allege potential violations of federal criminal statutes by OAWP employees. Pursuant to 38 CFR § 1.204, criminal matters involving felonies must be immediately referred to the Office of Inspector General (OIG), Office of Investigations. Additionally, under this same regulation, I have an obligation as a management official to ensure that possible criminal matters involving felonies are promptly referred to the OIG. Accordingly, I am referring your letter and the allegations you have raised to the OIG, Office of Investigations. Any further inquiries on this specific matter should be addressed to that office.

Again, I thank you for bringing your concerns to my attention. Please do not hesitate to contact me in the future should you have additional information to bring forward.

Sincerely,

Tamara Bonzanto, DNP, RN

Enclosure 3



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Tel 202.463.8400 www.shawbransford.com Fax 202.833.8082

May 2, 2019

VIA FEDERAL EXPRESS AND ELECTRONIC MAIL

The Honorable Tamara Bonzanto  
Assistant Secretary  
Office of Accountability and Whistleblower Protection (OAWP)  
U.S. Department of Veterans Affairs  
810 Vermont Avenue, NW  
Washington, DC 20420  
Tamara.bonzanto@va.gov

Re: SECOND Disclosure of Abuse of Authority by OAWP Staff During Reply Period

Dear Assistant Secretary Bonzanto:

Thank you for your letter dated April 26, 2019, informing us that Ms. Leslie Wiggins' whistleblower disclosure has been referred to the Office of Inspector General for investigation. In that letter, you wrote that we should "not hesitate to contact [you] in the future should [we] have additional information to bring forward."

We therefore write to notify you of conduct by Ms. Ruth Dow, an OAWP Employee Relations Specialist who was assigned to coordinate Ms. Wiggins' response to a proposed suspension ("Proposal"), pursuant to 38 U.S.C. § 713(b)(2)(B) and Corporate Senior Executive Management Letter No. 006-17-1 Section 7.d.

Previously, on April 10, 2019, we wrote to you and disclosed violations of federal criminal statutes and an apparent abuse of authority by OAWP officials who removed exculpatory evidence from the investigative file and misled the Proposing and Deciding Official to support a proposed disciplinary action against Ms. Wiggins. We now notify you that during the statutory seven business day reply period to that Proposal, Ms. Dow abused the authority of her position for the purpose of disadvantaging Ms. Wiggins during the limited reply period. These abuses make evident a culture of abuse in your office that appears leveraged to gain an improper advantage against VA employees subject to proceedings initiated by your office.

I. BACKGROUND

Ms. Wiggins was issued a proposed 5-day suspension on February 15, 2019, based on an evidence file and charges created by OAWP. See Encl. 1. The Proposal identified Ms. Dow as the OAWP Employee Relations Specialist assigned to the matter, and stated:

Enclosure 4

“If you have any questions or do not understand the above reason(s) why your suspension is proposed, contact Ruth P. Dow, Employee Relations Specialist, at ruth.dow@va.gov at (352)-727-9403.”

Id., at page 6.

Upon review of the Proposal, we read specifications 1 and 2 as essentially duplicative.

1. Specification 1 charged that “[f]rom on or about June 21, 2016, to on or about February 1, 2018,” Ms. Wiggins “failed to ensure that Dr. ██████’s performance deficiencies were being addressed in a timely manner by local CAVHCS leadership and clinical staff.” Encl. 1, p. 3.
2. Specification 2 charged that “[f]rom on or about June 21, 2016, to on or about February 1, 2018,” Ms. Wiggins “failed to monitor local clinical leadership’s role in addressing Dr. ██████’s performance deficiencies.” Encl. 1, p. 3.

Based on the Proposal’s instruction at page 6 to contact Ms. Dow with questions if Ms. Wiggins did not understand the reasons in the Proposal, we wrote to Ms. Dow on Tuesday, February 19, 2019, to “seek clarity from [Ms. Dow] regarding the nature of and distinction between these two Specifications.” See Encl. 2. We also entered our appearance in a separate letter to the Deciding Official, via Ms. Dow, also on Tuesday, February 19, 2019. See Encl. 3.

Between our two February 19th letters, we requested: (1) a brief extension of time (still well within the statutory reply period) to reply to the Proposal; (2) an accessible copy of the evidence file; and (3) answers to our questions about specifications 1 and 2.

We did not receive a response to either letter. Instead, Ms. Dow e-mailed the Proposing Official regarding our request for an extension and for a copy of the evidence file to suggest that the agency “wait and see what happens here,” rather than respond to us. See Encl. 4, p. 2.

Due to the limited statutory reply period, Ms. Wiggins only had until Monday, February 25, 2019, to submit her response. One business day before the statutory deadline, on Friday, February 22, 2019, we e-mailed Ms. Dow again, noting that we still had not received any response from her. See Encl. 4, p. 1. Ms. Dow finally responded to us later that day, after 4 p.m. Therein, she stated that the agency would address our extension request the following Monday, February 25, 2019, the date the reply was due. See Encl. 5. That meant that Ms. Wiggins was forced to wait until the statutory deadline to receive a response on whether she would be granted an extension. Left completely unaddressed by Ms. Dow’s brief e-mail was whether we would be provided an accessible copy of the evidence file, or whether she would answer any of Ms. Wiggins’ questions regarding the specifications.

At 3:30 p.m. on Monday, February 25, 2019 (the day of the statutory response deadline), the Proposal was rescinded and reissued to Ms. Wiggins.<sup>1</sup> See Encl. 6. The language in specifications 1 and 2 remained the same. Id. Therefore, we reissued our letter to Ms. Dow, again asking for clarity about the Proposal's specifications. See Encl. 7.

On February 26, 2019, Ms. Dow responded in an e-mail, stating:

“With regard to your request for clarification between specification 1 and specification 2 of the charge, I cannot clarify it for you because the document speaks for itself.”

See Encl. 7.<sup>2</sup>

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<sup>1</sup> Ms. Wiggins received no indication that the Proposal was to be rescinded prior to the actual rescission and reissuance of the Proposal in the mid-afternoon of Monday, February 25, 2019, the statutory deadline for her written reply. It is not clear whether Ms. Dow was aware that the Proposal would be rescinded when she emailed us on Friday, February 22, that the agency would “address” our extension request on Monday, February 25. On a practical level, this meant that Ms. Wiggins spent the entirety of the weekend, as well as the morning and early afternoon of Monday, February 25, working to collect evidence and prepare a response to the specifications. To the extent that Ms. Dow knew that the Proposal would likely be rescinded and reissued on Monday, February 25, her unwillingness to inform Ms. Wiggins of that eventuality on Friday, February 22 demonstrates bureaucratic indifference and a lack of respect for the agency's own employees.

<sup>2</sup> Ms. Dow also denied Ms. Wiggins' request for a copy of the evidence file that was accessible by her representatives. In so doing, Ms. Dow claimed that it was Ms. Wiggins' responsibility, within the seven business day response period, to convert the copy of the evidence file available to her via an agency intranet link that was only accessible at her government workstation into a physical copy that could be transmitted to her representatives. Id. The evidence file contained fifty-five (55) exhibits, spanning hundreds and hundreds of pages. Ms. Dow's inexplicable decision to refuse to provide an accessible electronic copy (i.e. available via e-mail or fileshare) of the evidence file to either Ms. Wiggins or Ms. Wiggins' representative had practical consequences for Ms. Wiggins. This decision smacks of yet another tactic employed by your office simply to create additional hurdles which VA employees must clear in order to meaningfully exercise their rights during the limited statutory response period. Despite the limited statutory timeframe, the only method available for Ms. Wiggins to provide a copy of the evidence file to her representatives was to print out the entirety of the evidence file and ship it to her representatives from Georgia to Washington, D.C. This further delayed the time when her representatives could finally review the evidence and provide her with advice based on that review.

## II. DISCLOSURE OF ABUSE OF AUTHORITY BY OAWP OFFICIAL

Ms. Dow's response created a profoundly unhelpful bureaucratic catch-22 for Ms. Wiggins. Ms. Dow's initial silence, subsequent selective response after repeated contact and under threat of judicial review, and later refusal to do the job assigned to her in the disciplinary process hindered Ms. Wiggins' exercise of her limited reply rights. As your OAWP staff were surely aware, Ms. Wiggins was already disadvantaged by a seven business day statutory response period. She was then further disadvantaged by OAWP staff who misused their authority to actively avoid providing the assistance their position required. All of this creates an appearance that OAWP improperly uses its authority to rig the process even more to favor OAWP's desired outcome. To that end, without the promised assistance from Ms. Dow, Ms. Wiggins was forced to reply to the Proposal without clarity about what the agency thought she did wrong.

It is not clear if the relevant language on page 6 of the Proposal, in which Ms. Dow's name was identified as the OAWP official to whom we should address questions if we did not understand the reasons for the Proposal, was *pro forma* bureaucratic boiler plate, or a genuine offer of assistance. Based on the initial attempts by Ms. Dow to avoid a response to our basic procedural questions, it appears that the written offer of assistance during the seven business day statutory response period was nothing more than a charade. As an OAWP Employee Relations Specialist, Ms. Dow's job is to assist, not obstruct, in the implementation of the agency's new senior executive disciplinary procedures under 38 U.S.C. § 713 and Corporate Senior Executive Management Letter No. 006-17-1.

By making a false pretense of assistance, and then actively avoiding and denying Ms. Wiggins' request for assistance, Ms. Dow abused the authority of her position. That abuse exploited the short timeframe allowed for replies to proposed disciplinary actions under 38 U.S.C. § 713. In so doing, Ms. Dow hindered Ms. Wiggins' attempt to defend herself against charges your office recommended against Ms. Wiggins, which were later found to be unsupported by evidence.

In sum, Ms. Dow's initial refusal to respond at all to Ms. Wiggins' requests demonstrate that OAWP officials, at an elemental level, see their role as one of purposeful interference with the limited rights possessed by VA employees when challenging (in this case unsubstantiated) allegations of misconduct. Ms. Dow's initial reaction to our requests was to "wait and see what happens here" rather than perform the duties of her position. That decision was made with full knowledge of the abridged statutory deadline looming over Ms. Wiggins. Indeed, it was not until we raised the specter of judicial review provided by the statute that Ms. Dow responded. See Encl. 4, p. 1. And even then, her response was meaningless. It should not take mention of litigation to compel officials in your office to perform the duties of their positions.

OAWP staff has extraordinary power over the investigative, analytical, and disciplinary procedures that impact VA employees who are subject to allegations of misconduct. In this letter and our April 10, 2019 letter, we provide you with notice that OAWP employees are abusing the



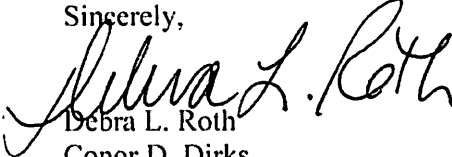
The Honorable Tamara Bonzanto  
Department of Veterans Affairs  
May 2, 2019  
Page 5

authority and power granted to them by 38 U.S.C. § 713 and 38 U.S.C. § 323 in order to gain an improper and unlawful advantage against employees they investigate and charge with misconduct.

Although we inform you of OAWP conduct specifically directed at Ms. Wiggins, the greater concern is that this behavior is indicative of a broader culture in your office. If the statutory reply period for Ms. Wiggins had not been restarted, or if Ms. Wiggins was without counsel that could navigate the hurdles described above, the outcome likely would have been different. She would not have been able to refute false charges and clear her name.

### III. CONCLUSION

We bring this to your attention and ask that you investigate what appears to be intentional conduct by OAWP staff to hinder Ms. Wiggins' exercise of the already limited rights conferred on her in the Title 38 process.

Sincerely,  
  
Debra L. Roth  
Conor D. Dirks

cc: Ruth Dow, Employee Relations Specialist, via e-mail only

#### Enclosures

1. Proposed 5-Day Suspension, dated February 15, 2019
2. Letter to Ms. Ruth P. Dow, re: Question Regarding Reasons for Proposed Discipline, dated February 19, 2019
3. Letter to Dr. Steven L. Liberman, c/o Ruth P. Dow, re: Notice of Appearance, dated February 19, 2019
4. E-mail from Debra Roth to Ruth Dow, FW: Did you hear back?, dated February 22, 2019
5. E-mail from Debra Roth to Ruth Dow, RE: Proposed Action ND VISN 7 – CONFIDENTIAL
6. Proposed 5-Day Suspension, dated February 25, 2019
7. E-mail from Ruth Dow to Debra Roth, RE: Leslie Wiggins – Letter re Questions Concerning Proposal



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May 17, 2019

VIA FEDERAL EXPRESS AND ELECTRONIC MAIL

The Honorable Michael J. Missal  
Inspector General  
Office of Inspector General (OIG)  
U.S. Department of Veterans Affairs  
810 Vermont Avenue, NW  
Washington, DC 20420  
michael.missal@va.gov

**Re: OIG Recusal from Case No. 2019-18162**

Dear Inspector General Missal:

We understand that Assistant Secretary of Accountability and Whistleblower Protection (Assistant Secretary) Tamara Bonzanto referred to you a whistleblower disclosure of potential criminal conduct made by us on behalf of our client, Ms. Leslie Wiggins, VISN 7 Network Director. Because of your office's conflict of interest, the above referenced case number 2019-18162 must be referred to the FBI.

I. BACKGROUND

On January 30, 2018, your office issued a report labeled *Healthcare Inspection: Primary Care Provider's Clinical Practice Deficiencies and Security Concerns, Fort Benning VA Clinic, Fort Benning, Georgia* (Report). That Report detailed your office's findings from a healthcare inspection it conducted in 2016 "in response to allegations of clinical practice concerns and a lack of security at the Fort Benning VA Clinic." See Report at page 1, Executive Summary.

A. OIG's Involvement in Case No. 2019-18162

Prior to the issuance of the January 30, 2018 Report, your office issued a draft report on October 16, 2017. A few days later, a dispute arose between the VISN and VA OIG inspection staff regarding what OIG inspection staff had communicated to VISN and CAVHCS staff during the OIG exit briefing on June 21, 2016. Your office then issued a memorandum on October 24, 2017, labeled "OIG Prior Notification to VHA Leadership of Concerns Identified...." That memorandum claimed that "[o]n June 21, 2016, the OIG team held an exit briefing" with VISN 7 and Central Alabama VA Healthcare System (CAVHCS) leadership in which OIG purportedly identified its concerns with the primary care provider's performance, including a concern regarding the primary care provider's "compromised clinical judgment."

On January 23, 2018, between the issuance of the draft report and the final report, a member of the healthcare inspection team (VA OIG's Consulting Physician) scheduled a conference call with Ms. Wiggins. VISN 7 and VA OIG staff participated in this call on January 25, 2018. During that call, the OIG's Consulting Physician made a series of allegations to Ms. Wiggins about her conduct. Witnesses to that call testified to OAWP that the Consulting Physician was "aggressive," "yelling," "sarcastic in tone," and "laughed" at information that contradicted his incorrect determinations about the case. Witnesses testified that when Ms. Wiggins provided the OIG Consulting Physician with a list of actions taken by VISN 7 and CAVHCS to address the concerns raised by VA OIG, the Consulting Physician could not identify any additional action that should have been taken, but nevertheless expressed vehement dissatisfaction. One witness testified to OAWP that the OIG Consulting Physician's behavior on the call still bothered the witness, months later.

On April 17, 2018, OAWP investigators contacted Ms. Wiggins to schedule an interview regarding an anonymous allegation that "the Network Director and other Senior Leaders failed to take appropriate administrative/disciplinary actions against a Physician to address findings and deficiencies uncovered during an OIG investigation." That interview took place on May 11, 2018.

Following Ms. Wiggins' interview, she provided OAWP investigators with documentary evidence that contradicted OAWP's assertion that VA OIG shared a serious concern during the June 21, 2016 exit briefing necessitating immediate action against the provider. It was Ms. Wiggins' right to submit that evidence to OAWP. And, pursuant to VA policy, OAWP was required to include it in the evidence file presented to the Proposing Official. See CSEMO Letter No. 006-17-1, Section 7a.iii.1.

On February 15, 2019, Ms. Renee Oshinski spoke telephonically with Ms. Wiggins to issue her a proposed 5-day suspension. In that telephone conversation, Ms. Oshinski, who was the Proposing Official, stated to Ms. Wiggins that the action had originally been proposed as a removal from OAWP, but that she could not support a proposed removal based on the evidence given to her by OAWP. Instead, Ms. Oshinski decided to issue Ms. Wiggins a proposed suspension.<sup>1</sup> The factual underpinning for the proposed discipline accepted as true OAWP's charge that VA OIG's medical inspection team briefed VISN and CAVHCS leadership on June 21, 2016 regarding serious concerns necessitating immediate action against a primary care provider based on the primary care provider's compromised clinical judgment.

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<sup>1</sup> Per the Proposing Official, OAWP's recommended penalty against Ms. Wiggins was removal. Had OAWP's recommendation been accepted by the Proposing and Deciding Officials, Ms. Wiggins would have been fired based on OAWP's unlawful concealment of evidence. It should be presumed that OAWP employees who concealed this material exculpatory evidence in order to obtain a removal of Ms. Wiggins did so knowing she had a statutory right to appeal such a removal to federal court for judicial review. See 38 U.S.C. § 713(b)(5). Had OAWP's criminal scheme played out, the VA would have submitted an administrative record that was unlawfully tampered with, causing a fraud on that forum as well.

However, a review of the testimony of witnesses interviewed by OAWP showed that multiple individuals interviewed by OAWP, including Ms. Wiggins, contradicted the contention made in VA OIG's October 24, 2017 memorandum. The testimony also showed that multiple witnesses, including Ms. Wiggins, provided OAWP with contemporaneous evidence of the contents of the June 21, 2016 exit briefing that contradicted the contention made by VA OIG over a year after the exit briefing in its October 24, 2017 memorandum. But that documentary evidence that controverted the VA OIG and OAWP's contention was not included in the evidence file provided to the Proposing Official, Deciding Official, or Ms. Wiggins. We provided this controverting evidence in Ms. Wiggins' written reply. The Deciding Official determined that the charges against Ms. Wiggins were not supported by substantial evidence, and rejected the proposed 5-day suspension.

#### B. Ms. Wiggins' Disclosure to OAWP

After the VA Deciding Official determined that the charge in the proposed suspension was not supported by substantial evidence, we reported to Assistant Secretary Bonzanto that OAWP tampered with and concealed exculpatory evidence to bring an unjustified charge of misconduct. We alleged, on behalf of Ms. Wiggins, that OAWP employees violated federal criminal statutes. Our letter asked that the Assistant Secretary refer the disclosure to the Federal Bureau of Investigation, because your office has a conflict of interest.

On April 30, 2019, an OAWP Triage Case Manager notified us that Ms. Wiggins' disclosure was referred to the VA OIG, and was accepted for investigation. On May 1, 2019, we received a letter from Assistant Secretary Bonzanto confirming that she referred Ms. Wiggins' disclosure to VA OIG's Office of Investigations, rather than the FBI.

#### II. VA OIG's CONFLICT OF INTEREST REQUIRES RECUSAL.

The VA OIG has a conflict of interest. First, VA OIG employees performed the medical inspection at the Ft. Benning CBOC, beginning in June 2016 and ending with the publication of the OIG Report on January 30, 2018.

Second, VA OIG employees prepared the October 24, 2017 memorandum that was distributed to VISN 7. That memorandum inaccurately claimed that VA OIG employees informed VISN 7 and CAVHCS leadership about the primary care provider's "compromised clinical judgment" on June 21, 2016, during an OIG exit briefing. Witness testimony and documentary evidence controverted VA OIG's contention during the OAWP investigation. OAWP then concealed this controverting evidence provided by Ms. Wiggins and others. OAWP's concealment of material evidence that contradicted statements by employees of your office forms the crux of Ms. Wiggins' disclosure. It also violated the law and VA policy. Thus, the VA OIG, if it investigated Ms. Wiggins' disclosure, could be biased to favor OAWP because it accepted OIG's inaccurate contention.

Third, during a January 25, 2018 call with Ms. Wiggins, a VA OIG Consulting Physician made allegations against Ms. Wiggins which were nearly identical to allegations later received and investigated by OAWP. While OAWP stated during its investigation that it received an anonymous allegation, it may be that a VA OIG employee was the source of the allegation under

The Honorable Michael J. Missal  
Department of Veterans Affairs  
May 17, 2019  
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investigation by OAWP. Regardless of whether he made the anonymous allegation to OAWP about the results of his own investigation, he did make the same contentions in the January 25, 2018 call. It is impermissible for VA OIG to investigate a matter involving allegations made by its own employee, given the obvious temptation for VA OIG to rehabilitate its own employee.

Fourth, in any investigation of Case No. 2019-18162, investigators will likely interview fact witnesses. VA OIG employees are fact witnesses. There is too great a risk that VA OIG investigators will give undue weight to the testimony of their colleagues when investigating Ms. Wiggins' disclosure of evidence tampering by OAWP employees.

VA OIG must therefore recuse itself from Case No. 2019-18162, and refer the investigation to the Federal Bureau of Investigation to ensure an unbiased investigation into Ms. Wiggins' disclosure. If VA OIG retains this investigation, it will, at the very least, create the appearance of bias that casts doubt on the objectivity of the investigation and any conclusions your office reaches. For these reasons, VA OIG must recuse itself from this investigation and refer Case No. 2019-18162 to the FBI.<sup>2</sup>

Sincerely,



Debra L. Roth  
Conor D. Dirks

cc:  
Mr. Joseph E. Oliver  
Assistant Inspector General (Acting)  
Office of Investigations  
joseph.oliver@va.gov  
via e-mail only

The Honorable Johnny Isakson, Chairman  
The Honorable Jon Tester, Ranking Member  
United States Senate Committee on Veterans' Affairs

The Honorable Mark Takano, Chairman  
The Honorable Dr. Phil Roe, Ranking Member  
United States House Committee on Veterans' Affairs

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<sup>2</sup> There is recent precedent for VA OIG to cede its jurisdiction to the FBI to investigate VA employee conduct that was otherwise within VA OIG's jurisdiction.



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*Attorneys at Law*  
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June 19, 2019

VIA FEDERAL EXPRESS AND ELECTRONIC MAIL

The Honorable Michael J. Missal  
Inspector General  
Office of Inspector General (OIG)  
U.S. Department of Veterans Affairs  
810 Vermont Avenue, NW  
Washington, DC 20420  
michael.missal@va.gov

**Re: OIG Recusal from Case No. 2019-18162**

Dear Inspector General Missal:

On May 17, 2019, we wrote to inform you of your office's conflict of interest in the investigation of Case No. 2019-18162. Our letter further informed you that your office must recuse itself from this investigation and refer Case No. 2019-18162 to the Federal Bureau of Investigation. Since that date, you have not acknowledged receipt or otherwise responded to our letter. We take your complete silence on this matter to mean that you will not recuse yourself from Case No. 2019-18162.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Debra L. Roth', is written over a faint, larger version of the same signature.

Debra L. Roth  
Conor D. Dirks

cc:

Mr. Joseph E. Oliver  
Assistant Inspector General (Acting)  
Office of Investigations  
joseph.oliver@va.gov  
via e-mail only

Mr. Christopher A. Wilber, Esq.  
Counselor to the Inspector General  
Office of the Inspector General  
chris.wilber@va.gov  
via e-mail only



DEPARTMENT OF VETERANS AFFAIRS  
INSPECTOR GENERAL  
WASHINGTON, DC 20420



June 24, 2019

*By Email*

Debra L. Roth, Esq.  
Shaw Bransford & Roth, P.C.  
1100 Connecticut Avenue NW, Suite 900  
Washington, DC 20036

Dear Ms. Roth:

The Department of Veterans Affairs (VA), Office of Inspector General (OIG) does not take direction from VA employees or their counsel about which matters it may or may not investigate. The OIG exercises discretionary jurisdiction over matters within its investigative authority. The OIG is an independent office and makes decisions about which matters it will investigate based on a variety of factors, including the significance of the case to VA operations, veterans, employees, and other stakeholders and its assessment of the OIG's legal and ethical responsibilities. Further, the OIG does not typically refer employment disputes for investigation by the Federal Bureau of Investigation.

We received a referral from the Office of Accountability and Whistleblower Protection (OAWP) concerning Ms. Wiggins's allegations that two OAWP employees improperly handled an OAWP investigation and disciplinary referral against Ms. Wiggins. We understand that you believe the OIG has a conflict and cannot conduct an impartial investigation into OAWP's alleged conduct. We disagree. However, after evaluating the referral from OAWP, we have elected for two reasons not to investigate this matter. First, the OIG has been conducting an oversight review of the establishment and early operations of OAWP, including the period at issue in Ms. Wiggins's complaint. The OIG will soon issue a report of that review that will address in part OAWP's investigation of complaints and handling of disciplinary matters during that time. Second, Ms. Wiggins was not ultimately subject to discipline in the matter addressed in your complaint.

While we recognize going through a disciplinary process can be emotionally and financially burdensome, in Ms. Wiggins's case, there was not an adverse outcome resulting from the alleged

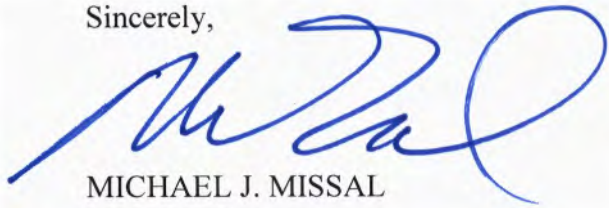
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To: Debra L. Roth, Esq.

misconduct that can be remedied through an OIG investigation. The OIG will take no further action with respect to your complaint.

I thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael J. Missal", is written over a light blue rectangular background. The signature is fluid and cursive.

MICHAEL J. MISSAL

Copy to:       The Honorable Tamara Bonzanto  
                  Assistant Secretary, OAWP