

# United States Senate

WASHINGTON, DC 20510

February 16, 2016

## VIA ELECTRONIC TRANSMISSION

The Honorable Robert A. McDonald  
Secretary  
U.S. Department of Veterans Affairs  
810 Vermont Avenue NW  
Washington, DC 20420

Dear Secretary McDonald:

We write to request that the Department of Veterans Affairs (VA) immediately cease its continued retaliation of whistleblower Brandon Coleman and grant him a transfer to a VA facility that is not managed by the Phoenix VA Health Care System. As founding members of the Senate Whistleblower Protection Caucus, we are committed to ensuring that federal whistleblowers are treated fairly and that whistleblower retaliation is not tolerated within the federal government. Whistleblowers are some of the most patriotic people we know—men and women who labor, often anonymously, to let Congress and the American people know when government isn't working so we can fix it. While Mr. Coleman's case is just one example, his treatment is indicative of the many hardships federal whistleblowers—including those within the VA—face when they take the courageous step to come forward and report wrongdoing.

On December 6, 2014, Mr. Coleman disclosed to the Office of Special Counsel the alleged illegal accessing of his medical records and the Phoenix VA's failure to properly care for suicidal veterans.<sup>1</sup> On January 12, 2015, a local Phoenix media outlet ran a news story about Mr. Coleman's allegations and disclosures.<sup>2</sup> According to a sworn affidavit signed by the acting human resources officer for the Phoenix VA, on January 13, 2015, the hospital's interim director, Glen Grippen, met with the facility's senior leadership and VA regional counsel to inquire whether "it were possible to remove Coleman from employment."<sup>3</sup> The VA attorney present explained that under federal whistleblower statutes, Mr. Coleman could not be disciplined for publicly discussing his concerns about veteran care; however Mr. Coleman could be removed for "unrelated misconduct."<sup>4</sup> Shortly after the meeting, Mr. Coleman was accused of having an

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<sup>1</sup> *Improving VA Accountability: Examining First-Hand Accounts of Department of Veterans Affairs Whistleblowers*, Hearing Before the S. Comm. on Homeland Sec. and Governmental Affairs, 114th Cong. (2015) (statement of Brandon Coleman) (herein after Coleman Testimony).

<sup>2</sup> Sara Goldenberg, *Phoenix VA employee alleges suicides mishandled at hospital*, ABC 15 News (Jan. 12, 2015). Available at <http://www.abc15.com/news/region-phoenix-metro/central-phoenix/phoenix-va-employee-alleges-suicides-mishandled-at-hospital>

<sup>3</sup> Affidavit of Laurie Angela Butler, *In re Brandon Coleman*, (Aug. 1, 2015) at 5, <https://www.scribd.com/doc/273846172/Affidavit>.

<sup>4</sup> *Id.*

altercation with a colleague. He has been on administrative leave since February 2, 2015.<sup>5</sup> Mr. Grippen retired from VA service in November 2015.

On September 22, 2015, Mr. Coleman testified before the Senate Committee on Homeland Security and Governmental Affairs in an effort to improve accountability in the VA.<sup>6</sup> Mr. Coleman's testimony illustrated the hardships he has faced at the VA as well as the hardships other employees have experienced. For example, his medical records were illegally accessed as a means of retaliation after he disclosed wrongdoing to his superiors. Unfortunately, his experience is not unique as other VA employees, many of whom are veterans, have also had their medical records illegally accessed as a means of retaliation.<sup>7</sup> The Department of Health and Human Services Office of Civil Rights has opened an investigation into alleged violations of the Health Insurance Portability and Accountability Act (HIPAA) in relation to Mr. Coleman's co-workers accessing his medical records.<sup>8</sup>

Although he has not worked at the facility since early February 2015, Mr. Coleman yet again became a target of the Phoenix VA at the facility's Halloween party in October 2015. A Phoenix VA social worker, Jeremy Pottle, mimicked Mr. Coleman's appearance, wearing a blond wig with a ponytail, a fake beard, fake Marine Corps tattoos on his arm, a fake pot belly, and a cane to the party.<sup>9</sup> Mr. Pottle's supervisor apparently allowed Mr. Pottle to wear the costume all day. The VA has initiated a review of this incident; however, it is unclear whether and how the issue has been resolved.

The imitation of a disabled veteran is not only wholly inappropriate and incredibly insensitive, but it is yet another example of intimidation and retaliation that VA whistleblowers face after they come forward to report wrongdoing. Whistleblowers already face enough scrutiny from their management for blowing the whistle. When whistleblowers are ridiculed by their colleagues, there is a strong chilling effect on future whistleblowing, which inevitably results in problems within an agency going unaddressed.

Not only has the VA's treatment of Mr. Coleman been unacceptable, his ordeal with the VA has placed veterans' health and safety at risk. Mr. Coleman has designed and built a 52-week outpatient program to help veterans in their battle with addiction. Mr. Coleman works tirelessly to keep veterans out of jail. To date, 71 veterans have graduated from Mr. Coleman's program.<sup>10</sup> Since Mr. Coleman has been on administrative leave, his program has been shut

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<sup>5</sup> Dennis Wagner, *VA retaliation alleged in sworn statement*, THE ARIZONA REPUBLIC, (Aug. 6, 2015). Available at <http://www.azcentral.com/story/news/arizona/investigations/2015/08/06/va-whistleblower-retaliation-allegation-sworn-statement/31224653>.

<sup>6</sup> Coleman Testimony, *supra* at note 1.

<sup>7</sup> Tori Richards, *VA officials used whistleblower medical records for smear campaign, lawmakers told*, The Washington Times (September 22, 2015). Available at <http://www.washingtontimes.com/news/2015/sep/22/va-officials-used-whistleblower-medical-records-fof?page=all>

<sup>8</sup> Letter from Sarah C. Brown, Interim Assoc. Director for Regional Operations, Department of Health and Human Services, Office of Civil Rights, to Brandon Coleman (May 1, 2014).

<sup>9</sup> Lisa Rein, *The VA counselor who thought it would be funny to dress up as a disabled marine for Halloween*, WASHINGTON POST (Nov. 19, 2015). Available at <https://www.washingtonpost.com/news/federal-eye/wp/2015/11/19/the-va-counselor-who-thought-it-would-be-funny-to-dress-up-as-a-disabled-marine-for-halloween>.

<sup>10</sup> Coleman Testimony.

down and veterans previously under his care have been forced to seek care for addiction via other means. As such, the VA employees who have treated Mr. Coleman so terribly have negatively affected the many dozens of struggling veterans who were receiving help from him. This is a prime illustration of the wide-ranging negative effects caused by retaliation—it is often more than the target who is harmed.

Mr. Coleman seeks a simple, fair, and equitable remedy. That remedy is not, as the Department seems to believe, to continue to force him to languish on extended administrative leave at significant unnecessary cost to the taxpayers and with no ability, under current law, to challenge his leave status. He seeks only to return to his work of helping veterans get clean and sober, free of the toxic environment within the Phoenix VA Health Care system, and to ensure that those who retaliated against him are held accountable. Accordingly, we ask that the VA stop avoiding responsibility in this case by keeping Mr. Coleman in the indefinite limbo of administrative leave and let him go back to work. In addition, we also request that VA staff please provide a briefing to our staffs about how the VA is addressing its record with VA whistleblowers. In advance of this briefing, please provide the following material:

1. All documents and communications referring or relating to the Administrative Investigation Board inquiry into Jeremy Pottle and Lisa Benner in connection to the incident where Mr. Pottle dressed as Mr. Coleman for Halloween.
2. All documents and communications referring or relating to the Office of Accountability Review's inquiry into the allegations that the Action Phoenix VA Health Care System Director Glen Grippen retaliated against Mr. Coleman.
3. All documents and communications referring or relating to the VA's decision to place Mr. Coleman on administrative leave, including but not limited to any evaluation of whether Mr. Coleman posed a threat to safety, the agency mission, or to government property.

Please provide this material as soon as possible but no later than 5:00 p.m. on March 1, 2016.

If you have any questions about this request, please contact Kyle Brosnan of Chairman Johnson's staff at (202) 224-4751 or Josh Flynn-Brown of Chairman Grassley's staff at (202) 224-5225. Thank you again for your assistance in this matter.



Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs

Sincerely,



Charles E. Grassley  
Chairman  
Committee on the Judiciary

The Honorable Robert A. McDonald  
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cc: The Honorable Thomas R. Carper  
Ranking Member  
Committee on Homeland Security  
and Governmental Affairs

The Honorable Patrick J. Leahy  
Ranking Member  
Committee on the Judiciary

The Honorable Carolyn Lerner  
Special Counsel  
Office of Special Counsel