United States General Accounting Office

GAO

Supplement to Report to the Chairman, Subcommittee on Oversight and Investigations, Committee on Veterans' Affairs, House of Representatives

May 1993

VA HEALTH CARE

Inadequate Enforcement of Federal Ethics Requirements at VA Medical Centers

149223

GAO/HRD-93-39S

GAO

United States
General Accounting Office
Washington, D.C. 20548

Human Resources Division

B-244341

May 12, 1993

The Honorable Lane Evans
Chairman, Subcommittee on Oversight
and Investigations
Committee on Veterans' Affairs
House of Representatives

Dear Mr. Chairman:

Recently, we reported to you that potential conflict-of-interest situations were occurring at Department of Veterans Affairs (VA) medical centers.[1] These situations involved senior managers who received part-time employment income from affiliated medical schools that provide contract medical services to the VA centers. We recommended that the Secretary of Veterans Affairs take appropriate actions to enforce federal ethics requirements, which generally prohibit managers' participation in the award or administration of such contracts. This letter assesses the Secretary's response to our recommendations.[2]

In general, the Secretary acknowledged that conflict-of-interest situations may have occurred and that there had been problems enforcing ethics rules in some situations involving dual employment of VA employees. He characterized VA medical centers' affiliations with medical schools as unique public-private arrangements that work well. He described several actions that VA had recently taken or planned to take to address problems cited in the report.

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[1]VA Health Care: Inadequate Enforcement of Federal Ethics Requirements at VA Medical Centers (GAO/HRD-93-39, Apr. 30, 1993)

[2]We asked the Secretary of Veterans Affairs, on November 23, 1992, to review a draft of our report and comment, in writing, on our findings and recommendations. The Secretary's written comments were not received in time to be printed in our report, which is our usual practice. A copy of his March 23, 1993 letter is attached.

We are encouraged by the Secretary's response and believe that VA is moving in the right direction. VA's actions, when fully implemented, should improve enforcement of federal ethics requirements. However, we are troubled by the Secretary's view that supervision of contract physicians for quality of care purposes by VA managers who are also employed by medical schools is not a conflict-of-interest. We believe that a VA manager exercising this kind of responsibility in relation to a contractor that employs him or her is inappropriate. VA's interpretation leaves its managers at risk of violating conflict-of-interest laws.

MEDICAL CENTER MANAGERS MUST COMPLY WITH FEDERAL ETHICS REQUIREMENTS

The Secretary agrees that medical center managers must comply with federal ethics requirements when performing activities associated with medical school affiliation arrangements. He asserts, however, that the nature of VA's affiliation arrangements is unique. He pointed out, for example, that the Congress authorized VA to negotiate contracts for scarce medical specialist services with affiliated medical schools, rather than use competitive bidding, in order to enhance the affiliation relationships. He also noted that ethics rules run contrary to the professional instincts of many VA physicians, inasmuch as they are encouraged through law, policy, and tradition to foster a "symbiotic union" with affiliated medical schools. Nonetheless, the Secretary acknowledged such factors are not an excuse for noncompliance with federal ethics requirements.

We agree with the Secretary that affiliation agreements should have no effect on the need to comply with federal ethics requirements. We are unaware of any legal distinction concerning how federal ethics requirements are to be applied when contracting with affiliated medical schools as opposed to contracting with other entities. In fact, our assessment of laws and regulations indicates that ethics requirements are to be applied consistently to both types of contracting situations.

VA IS TAKING STEPS TO STRENGTHEN ETHICS ENFORCEMENT

The Secretary stated that vigorous enforcement of the rules is the solution to the problems cited in our report. The Under Secretary for Health is personally committed to strengthening enforcement efforts, the Secretary said, and will hold

managers personally accountable for compliance with federal ethics requirements.

Towards this end, the Under Secretary convened a task force to deal with conflict-of-interest situations arising from dual employment in the context of a medical center's contracting with affiliated medical schools for scarce medical specialist services. This task force, the Secretary said, has produced a number of procedural recommendations for improving enforcement of conflict-of-interest rules. In addition, multidisciplinary teams are to assess managers' compliance with ethics rules at selected medical centers.

The Secretary noted that the Under Secretary recently established a separate office to oversee scarce medical specialist contracts and prepared a new manual for administering contracts. Additional guidance detailing procedural changes in centers' contracting processes is also being developed. The new guidance will, as recommended in our report, require that each manager's request for outside employment include information on both the managers' involvement in contract-related activities with the prospective employer, and the extent and nature of those contracts.

These changes, when fully implemented, should help avoid conflict-of-interest situations. In our report, we recommended that VA's ethics enforcement efforts be expanded to include the same kind of reviews of part-time managers' outside employment as are conducted for full-time managers. Although we assume that changes are to be applied to part-time managers, the Secretary's response did not specifically address part-time managers. Part-time managers have the same VA responsibilities as full-time managers and have the same exposure to potential conflict-of-interest situations. As such we believe it is essential that VA assess potential conflict-of-interest situations when these managers engage in outside employment.

VA DISAGREES THAT ETHICS REQUIREMENTS PROHIBIT MANAGERS' SUPERVISION OF CONTRACTORS' ACTIVITIES

The Secretary agrees, in principle, that it is a clear violation of federal ethics regulations for VA medical center managers, such as chiefs of staff or individual medical services, to be employed by a medical school and participate personally and substantially on behalf of VA in negotiations leading to a contract with the school or to similarly participate in a contract's administration. The Secretary contends, however, that VA managers can supervise medical

specialists providing services in a medical center under a contract with an affiliated medical school, when both the center and the school employ the manager. Such supervision, he said, is not prohibited by ethics requirements if it is for quality of care purposes, as opposed to analyzing performance under the contract.

We disagree with the Secretary's assessment of VA managers' ethics requirements. Using this interpretation, it is permissible for managers to supervise the day-to-day activities of medical school contract physicians, including such responsibilities as assessing what quantities of medical services are needed and whether an appropriate quantity and quality of services are being received. The Secretary contends that such supervision is focused on the level of health care being rendered by individual physicians, as opposed to analyzing performance of the contract by the school. In practice, it appears that such a distinction is impractical.

Chiefs of service are responsible for medical care in their areas, including the quality and quantity of services provided under contract with medical schools. At one medical center we visited, the chief was the only VA employee in the service. What if the contractor does not send physicians with the requisite experience in accordance with the contract? Who is in a position to know? There are also a myriad of daily decisions affecting the contract. Who certifies contract payments, including contract physicians' time and attendance records? If it is not the service chief, who provides the information upon which such certification is based?

Moreover, the individual manager's quality of care assessments might form the basis for measuring a medical school's performance under the contract, especially if there are no formal evaluations of the contracts as was true at the medical centers we visited. Without such assessments, it is likely that the medical centers would have to primarily rely on the individual manager's assessments in determining whether a contract should be renewed or revised.

We believe that if chiefs are doing their jobs appropriately and are responsible for overseeing the medical care in their service, they would necessarily make daily decisions that affect the contracts. Ethics laws and regulations were intended to prevent placing employees in situations where their loyalties are divided; that is, situations in which employees, in discharging their obligations to VA, may be acting against the interests of their other employers, the medical schools. We recognize that managers may determine, in

utmost good faith, that they will not be influenced by either relationship. Nonetheless, we believe it is difficult, in such situations, to guarantee that loyalty to one employer will have no effect on making decisions for another employer.

The Secretary contends that an individual manager's professional clinical oversight would not have any effect on the center's contracting, because of the nature of the affiliations. He said, for example, that if a service chief was dissatisfied with the services provided by a contract physician, a medical school would provide another physician without affecting contract terms or price. Although some problems may be dealt with this simply, more complicated situations could arise if the medical school does not want to replace a contract physician. In these situations, are service chiefs expected to raise their concerns to the chief of staff, who may also be employed by the medical school?

By accepting dual employment with contract medical schools, managers face situations in which such divided loyalties, called conflicts of interest, inevitably and unavoidably arise. We believe that there is, at a minimum, the appearance of a conflict of interest when VA service chiefs supervise contracts between VA and an affiliated medical school when the VA managers are employed by both parties to the contracts. We believe further that an even greater problem exists when managers also return to VA centers to work under the contracts that they usually supervise.

VA SHOULD IMPROVE POLICY GUIDANCE

The Secretary believes that VA's implementing guidelines are sound and do not need to be revised. The fact that an employee does not obey federal ethics requirements, he said, does not necessarily mean that the employee does not know the requirements. He believes that VA, through various means, has provided ample, clear guidance to medical center managers. We disagree that VA has provided adequate guidance to medical center managers on what activities are permissible and impermissible.

In our report, we recommended that the Secretary work with the Office of Government Ethics to develop better guidance and help managers avoid situations that place them at risk of violating ethics requirements. In his response, the Secretary did not indicate whether he plans to do so. In commenting on a draft of our report, the director of the Office of Government Ethics agreed that it raises important issues that need to be resolved and he expressed interest in working with VA to address them. We believe that our disagreement with

VA's interpretation of the ethics requirements further highlights the need for VA to work with the Office of Government Ethics to develop appropriate guidance to alleviate any questions regarding ethics requirements for medical center managers.

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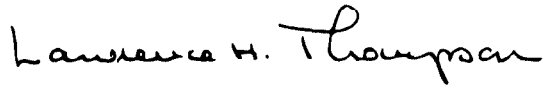
If you have any questions, please contact David P. Baine, Director, Federal Health Care Delivery Issues, on (202) 512-7101.

Sincerely yours,



Lawrence H. Thompson
Assistant Comptroller General

Enclosure

COMMENTS FROM THE DEPARTMENT OF VETERANS AFFAIRS

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

MAR 23 1993

Mr. David P. Baine
Director, Federal Health Care
Delivery Issues
U.S. General Accounting Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Baine:

This is in response to your draft report, VA HEALTH CARE: Inadequate Enforcement of Federal Ethics Requirements at VA Medical Centers (GAO/HRD-93-39). This report deals with potential conflict of interest conditions that arise with Veterans Health Administration (VHA) medical center employees who also receive part-time incomes from affiliated medical schools. I agree with GAO that conflict of interest situations may have occurred at some VA medical centers in the past. We are taking corrective action.

VA's partnership with affiliated medical schools is a unique public-private arrangement which has worked well for almost a half-century. Working together in a mutually-beneficial relationship, VA and the schools have furthered their common missions of health care, education and research. The medical school affiliation enhances quality of care, education and research through access to professional talent and resources which VA could not otherwise afford. The medical schools benefit by training their students in VA medical centers, which serve as primary teaching hospitals. Congress has long endorsed the affiliation system through law and, in fact, enacted scarce medical specialist contracting authority to enhance the relationship between VA and medical schools.

I acknowledge that there has been a problem of enforcement of the conflict of interest rules in some situations which involve dual employment of VA employees by the medical school. The current focus on these specific problems must, however, not distort the essential nature of the affiliation relationship in the overall VA health-care picture. Inasmuch as VA physicians and other employees are encouraged through law, policies and tradition to foster a symbiotic union between medical school and hospital in all other areas, the conflict of interest laws rules run contrary to the professional instincts of many VA physicians.

Scarce Medical Contracting is Unique as a Matter of Law

The process under which VA obtains scarce medical services from its affiliation partner differs from other Government procurements involving outside contractors and suppliers, which as a matter of law require competitive bidding. The fact that the law allows these scarce medical contractual relationships to be negotiated rather than submitted to competitive bidding is not an excuse for noncompliance with conflict of interest rules, but it is an important distinction which should be kept in mind when reviewing VA and medical school contracting.

It is clear that it violates section 208 of title 18, the criminal prohibition against conflicts of interest, for a VA physician who is employed by the medical school to participate personally and substantially on behalf of VA in the negotiations leading to a contract with the school, or for him or her to similarly participate in the administration of the resulting contract.

Supervising to Ensure Quality Care Is Not a Conflict

That participation in direct contract negotiation or administration must be distinguished from the type of supervision of health care services that arises from physicians' duties relating to the practice of medicine. We expect, and professionalism requires, that each service chief ensure that medical services being rendered in his or her service meet the high standard we need for veterans. This supervision, dictated by quality of care and quality assurance purposes, is focused on the level of health care being rendered by individual physicians as opposed to analyzing performance of the contract by the school. We believe this supervision, in the environment of the affiliation, does not give rise to a conflict of interest. In light of the symbiotic affiliation between the Department and the medical school, the interest of the medical school in the process of providing those services is precisely the interest of the VA. The interest of each is in high quality care: the school for purposes of the training being provided its students in its teaching hospital, the medical center, and VA in order to ensure the care is consistent with our commitment to provide the highest quality of care to veterans.

Further, the quality assurance and professional clinical oversight a service chief would typically be providing as a function of his or her role as a supervisor of health care, given the nature of scarce medical services contracts, would not have any effect on the contract itself. For example, if the service chief became dissatisfied with the services being rendered by a physician under the

agreement, the remedy would be to substitute a new physician-provider. This would not affect the contract terms or the amount VA would be paying, which is normally calculated based on the number of "full-time equivalent" physicians being assigned to the affected VA clinical service.

Ethics Rules Do Not Need Changing

The report contains the fundamental error of criticizing the ethics rules applicable to VA physicians and VHA managers. These ethics laws are longstanding: The conflict of interest statute alone has existed in substantially current form for over three decades and has been on the books in some form for a century. The rules are sound and do not need revisions. Even if the rules needed revising, VA and VA's ethics officer have no legal authority to revise them. That is a matter for the Congress, the President, or the Office of Government Ethics.

The report also emphasizes an alleged lack of guidance on the applicable rules. This emphasis confuses behavior with knowledge. The fact that an employee does not obey the rules does not necessarily mean that the employee does not know the rules. VA, through various means, has provided ample, clear guidance. Dozens of written opinions and papers, scores of live training sessions and teleconference reminders aimed at every level of VA physicians and managers, and thousands of pieces of informal advice rendered nationwide have made the substance of the ethics rules known to all VHA employees.

Any claim that a VA physician does not know or cannot follow ethics rules, in light of saturation exposure to these rules over the last decade -- stems from either dangerous simplicity or calculated disregard. Neither problem will be overcome by simply requiring blanket dissemination of ethics opinions, as the report proposes. Any need to distribute individual, fact-specific ethics advisory opinions as a form of guidance for solving general programmatic problems can only be properly determined by reviewing the breadth of the specific problem addressed in each unique opinion. Ethics advice is properly disseminated in the same manner as other legal advice through the Office of General Counsel to field attorneys in the Offices of District Counsel as well as to the component of VA seeking advice. As all employees are encouraged to seek legal advice on ethics questions, employees will obtain the benefit of all current VA ethics opinions through their District Counsel.

The Solution is Enforcement

4.

Mr. David P. Baine

We believe vigorous management of the scarce medical and sharing contract programs and enforcement of the rules is the solution to the problems cited in the report. Characteristic of the management approach that is necessary are the initiatives the Under Secretary for Health has taken in recent years with respect to scarce medical services contracting. They include establishing a separate office within VHA to oversee the contracts, headed by a senior executive and staffed by more than a dozen persons, equipped with computer-based systems for tracking contract submission and review. He has developed a new manual for administering contracting authority that enhances accountability and imposes tightened contract formats to improve contract compliance.

The Under Secretary for Health also convened a task force to deal with conflicts of interest arising from dual employment in the context of contracting for scarce medical services. The ethics officer and the Acting Assistant Secretary for Human Resources and Administration both participated, and the task force has yielded a number of procedural recommendations for improving enforcement of conflict of interest rules, particularly by preventing them from occurring. Additional guidance on the entire contracting process will be promulgated in the second quarter of the fiscal year. The new guidance will, consistent with the draft report recommendation, require that each request for approval of outside employment include information on both the requestor's involvement in VA contracts with the prospective employer and the extent and nature of those contracts.

He will be addressing enforcement directly through the surveys that his new multidisciplinary team will conduct at selected medical centers to assess at first hand their compliance with ethics rules.

Beyond these specific measures and equally important in my view is the personal commitment of the Under Secretary to eliminating this problem once and for all by holding VHA employees and managers personally accountable for compliance with conflict of interest rules.

Sincerely yours,

Jesse Brown

JB/jmv

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