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

April 1993

VA HEALTH CARE

Inadequate Enforcement of Federal Ethics Requirements at VA Medical Centers

149178

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

Human Resources Division

B-244341

April 30, 1993

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

Dear Mr. Chairman:

The Department of Veterans Affairs (VA) operates 158 medical centers, many of which purchase specialized medical services from nearby medical schools. These medical schools often offer part-time employment to managers of VA medical centers, including the chiefs of staff or chiefs of major medical services. You questioned whether such situations comply with federal ethics laws and regulations. Specifically, you asked us to assess (1) whether VA managers, who are receiving incomes from medical schools, are participating in VA management activities involving the medical schools and (2) the conflict-of-interest implications for these managers.

Results in Brief

Senior managers at nearly one-third of VA's medical centers reported receiving part-time employment incomes, averaging thousands of dollars, from medical schools that receive millions of dollars through VA contracts. Nevertheless, VA has permitted these managers to participate in the award or administration of the contracts. Such activities are prohibited under federal conflict-of-interest regulations and may violate federal criminal statutes. These activities, therefore, not only subject managers to possible prosecution, but also significantly impair the integrity of VA's procurement process. A fundamental change in VA's operating practices will be needed to eliminate managers' involvement in prohibited activities.

Background

All VA's medical centers have similar management structures. The principal managers include a director, a chief of staff, and chiefs of major medical services. The director is responsible for the overall operation of the medical center. The chief of staff reports to the center director and is the ranking medical official; in this capacity, he or she oversees the quality of care and utilization of health care resources. The chief of staff supervises the service chiefs, who are responsible for the daily operations of such medical service areas as anesthesiology or radiology. The service chiefs supervise (1) full- and part-time staff who perform health care services in

VA medical centers and (2) residents who are involved in education and training programs.

In 1966, the Congress authorized VA to purchase specialized medical services from outside health care providers when VA determines that it is necessary to do so. VA medical center officials use this authority, they said, when they cannot recruit needed medical specialists because of federal salaries that are not competitive or the lack of available medical school graduates in some needed specialties. Medical centers contract for specialty services primarily with affiliated medical schools,[1] which use faculty or other staff to perform services in the centers.

In 1991, over 100 VA medical centers contracted for medical specialists. Contracting costs have increased from $17 million in fiscal year 1985 to over $80 million in fiscal year 1991. Most contract costs are for radiology and anesthesiology services provided by medical school faculty. These contracts are generally negotiated and not competitive.

Federal Ethics Requirements Restrict VA Employees' Outside Employment

Federal statutes place limitations on federal employees' activities outside the government that conflict with an employee's official duties. One of the principal ethics requirements is that federal employees are prohibited from participating personally and substantially in any particular matter in which the employee has a financial interest or in which an organization that employs the employee has a financial interest. A waiver of this requirement may be obtained if the employee, in advance, obtains a ruling that the interest is not so substantial as to affect the integrity of his or her government performance.

Federal procurement officials are required to comply with additional ethics requirements, but waivers are not available for them. These officials are prohibited from accepting money or anything of value from a contractor. Employees are procurement officials if they participate personally and substantially in (1) drafting, reviewing, or approving a specification or (2) negotiating, extending, or approving a contract. In addition, VA's standards-of-conduct regulations require that employees avoid any action that might create the appearance of a conflict of interest, such as losing complete independence or impartiality. (See app. I for additional information on these restrictions.)

[1]Most VA medical centers affiliate with public or private medical schools for the purpose of cooperatively teaching and training medical residents in VA facilities, as well as sharing of medical expertise.

Management of Federal Ethics Requirements

The Office of Government Ethics (OGE), an independent agency, is responsible for providing the overall direction for executive branch policies regarding conflicts of interest of officers and employees in executive agencies. OGE conducts periodic reviews of executive agencies' compliance with ethics laws and regulations and recommends corrective actions, when necessary.

Within VA, the Veterans Health Administration and Office of General Counsel share responsibility for implementing federal ethics requirements. The Veterans Health Administration, which is headed by the Under Secretary for Health (formerly the Chief Medical Director), operates VA's health care system. The Under Secretary is responsible for implementing policies and procedures governing managers' ethics requirements. VA's ethics officer, who is in the Office of General Counsel, is responsible for educating medical managers about federal ethics requirements to ensure that they appropriately carry out their ethics responsibilities; he is assisted by district ethics counselors who are responsible for providing guidance to VA medical center employees.

VA has recognized outside employment of VA physicians as an area of concern for many years. In 1980, the Chief Medical Director established a committee to review the issue of full-time physicians' receiving substantial amounts of outside income. The committee concluded, in July 1981, that the amount of these physicians' outside income could create the appearance of conflict of interest, questionable loyalty to VA, impairment of VA responsibilities, and possible violations of VA regulations. The committee did not make any recommendations to the Chief Medical Director and VA's ethics officer said that no actions were taken as a result of the committee's work.

Because of concerns about potential conflicts of interest, VA policy prohibits medical center directors from receiving remuneration, for teaching or consulting, from institutions with which a VA medical center has a contractual relationship. In addition, VA policy requires chiefs of staff and service chiefs who work full-time for VA to request permission for outside employment before engaging in such employment. However, VA permits part-time employees, such as service chiefs, to engage in outside employment with medical schools without obtaining approval. These service chiefs are, nonetheless, subject to the same ethics requirements as full-time staff.

The Under Secretary for Health and the ethics officer are responsible for reviewing and approving requests submitted by chiefs of staff. Medical center directors are responsible for approving requests made by service chiefs.

Scope and Methodology

We reviewed federal ethics laws and VA regulations that set the standards of official government conduct for VA employees. We discussed VA's criteria for outside employment, standards of ethical conduct, and related responsibilities with VA's Under Secretary for Health, the ethics officer, and officials from VA's Offices of Personnel and General Counsel. In addition, we interviewed officials from the Office of Government Ethics.

We reviewed the 1990 outside employment activities of chiefs of staff at the 126 VA medical centers that had scarce medical specialist contracts. Our review included all requests that chiefs had submitted for approval of outside employment and reports of their outside income. We also reviewed these chiefs' responses to a December 1990 VA survey, which gathered information on the nature and amount of outside income. Finally, we looked at files and documents on VA's reviews of conflict-of-interest questions related to medical specialist contracts, as well as VA's policies and procedures for managing these contracts.

To assess how federal ethics requirements were implemented for managers involved in contracting activities, we visited VA medical centers in Durham, North Carolina; San Antonio, Texas; and Palo Alto, California. These medical centers had contracted for medical specialist services with Duke University, the University of Texas, and Stanford University, respectively. During our visits, we met with the medical center directors, chiefs of staff, chiefs of radiology and anesthesiology services, and other officials to discuss contracting for medical specialists. At the medical schools, we discussed contracting activities with the chairmen of the departments responsible for providing contract medical services to the VA centers. We also met with other medical school officials who were involved in contract activities.

We carried out our work between August 1991 and September 1992 in accordance with generally accepted government auditing standards.

Chiefs of Staff Frequently Participated in Activities Involving Medical Schools

VA records show that chiefs of staff at 45 VA medical centers received income from medical schools that had VA contracts to provide medical specialist services. About one-third received approval before engaging in such employment. The chiefs of staff at the 3 centers we visited participated in VA contract-related activities involving the medical schools that employed them.

Many Chiefs of Staff Employed by Medical Schools Without Approval

Of the 45 chiefs of staff who received income from contracting medical schools, only 14 received approval for employment with the schools; the rest accepted employment without requesting approval. None had received waivers exempting them from federal ethics requirements. Most reported that they did teaching or consulting at the medical schools.

The 45 chiefs of staff generally received substantial incomes from the medical schools. VA chiefs of staff had average salaries of about $100,000 in 1990. Of the 45 chiefs of staff, 39 had incomes of $10,000 or more from medical schools (see table 1); overall, incomes from the medical schools ranged between $200 and $101,000.

Table 1: Income That Chiefs of Staff Received From Medical Schools (1990)

Medical school income paid to chiefs of staff	Chiefs of staff
Less than $10,000	6
$10,000 to $19,999	12
$20,000 to 39,999	13
$40,000 to 59,999	6
More than $60,000	8
Total	**45**

The 14 chiefs of staff who received employment approvals provided all requested information to VA's reviewing officials. However, the reviewing officials rarely requested, and the chiefs seldom provided, information needed to determine whether medical school employment activities cause conflicts of interest. For example, requests did not include information on the chief of staff's involvement in contract-related activities with the medical school. In addition, the chiefs did not always include information on the nature and extent of the work to be provided at the medical school. Without such information, VA reviewing officials would have great difficulty identifying situations in which chiefs of staff might violate ethics requirements.

Chiefs of Staff Participated in Activities Involving Medical Schools

Chiefs of staff are responsible for the development, organization, implementation, and support of VA patient care, education, and research activities. These duties include ensuring that VA employees and contractors are providing quality medical care and that needed corrective actions are initiated when warranted. Chiefs of staff are also responsible for recruiting certified and licensed professional staff. These activities can directly affect the amount of contract services needed. For example, if a chief of staff was to recruit more anesthesiologists, the amount of services needed from the medical school would be reduced.

At one of the medical centers we visited, the chief of staff received $42,000 from a medical school at the same time that he represented VA in contract negotiations with the school. The chief of staff served as a technical representative for contracts for anesthesiology and pathology services, totalling about $1.2 million a year. In this capacity, he had responsibility for decisions that would affect both of his employers. His responsibilities included

- notifying the VA contracting officer if the medical school's performance was not proceeding satisfactorily or if problems were anticipated,
- monitoring the medical school's performance to ensure compliance with technical requirements of the contract, and
- developing a record-keeping system to ensure that VA only paid for contract services that the medical school performed.

The chiefs of staff at the other two medical centers we visited also participated in VA activities involving medical schools at the same time they had part-time employment with the schools. One chief of staff participated in developing a justification for an $820,000 anesthesiology contract and reviewing a $745,000 radiology contract, while receiving $21,000 from the school as compensation for part-time employment. The other chief participated in the review and approval process for a $940,000 anesthesiology contract with a medical school that paid him $75,000 for part-time employment.

Service Chiefs Also Participated in Activities Involving Medical Schools

Chiefs of anesthesiology at the three centers we visited and the chiefs of radiology at two centers had part-time employment at medical schools that had contracts to provide medical specialist services in VA medical centers. Medical center directors were required to approve this employment for chiefs who were full-time VA employees; part-time VA chiefs were not required to request approval for outside employment. As VA managers, the

chiefs participated in contract-related activities involving the medical schools that employed them. But, as of May 1992, no service chiefs at the centers we visited had received waivers exempting them from federal ethics requirements.

Chiefs of Anesthesiology Had Medical School Employment

The three chiefs of anesthesiology at the medical centers we visited spent five-eighths of their time directing VA's anesthesiology services. For the other three-eighths, they worked for the medical school. The service chiefs did teaching and consulting at the medical schools, as well as performing anesthesiology services under the medical school's contract with the VA medical center. Two of the three service chiefs said there was little difference in the anesthesiology services they performed as VA employees or as employees of the contracting medical school.

Chiefs of Radiology Had Medical School Employment

Two medical centers we visited contracted with medical schools to provide radiology services. The chiefs of radiology at these centers were full-time VA employees who also had part-time employment at the medical schools. The service chiefs did teaching and consulting at the medical schools. The medical schools did not use the radiology chiefs to do contract services.

Service Chiefs Participated in Activities Involving Medical Schools

Like chiefs of staff, the chiefs of anesthesiology and radiology have responsibility for medical care that would include monitoring the quality of the services provided under contract with medical schools. For example, radiology chiefs at two of the centers we visited supervised contract radiologists. Supervisory responsibilities included scheduling work and managing the service to ensure that professional work was completed. As part of their management functions, the radiology chiefs reviewed the quality of the radiological work done by the contract radiologists, including such professional judgements as proper positioning of patients, clarity of the developed film, and the accuracy of radiological diagnoses made.

The chiefs of anesthesiology at the medical centers we visited had oversight responsibility for a contract under which they performed services. In addition, two chiefs of anesthesiology provided information as to the amount of services to be purchased from the medical school, which is also their employer; one said he advised the medical center director to increase the amount of contracted services.

Three service chiefs who had part-time medical school employment approved contract payments that were made to the medical school. In so doing, two anesthesiology chiefs used time and attendance records that included their own charges for time when they worked under the contracts. One radiology chief approved contract payments to medical schools without maintaining time and attendance records.

VA's Management of Federal Ethics Requirements

VA's ethics officer has provided written guidelines on ethics requirements to all VA employees and discussed the requirements, including conflicts of interest, during numerous training sessions, staff meetings, and conferences during the 1980s. However, he has not provided specific written guidance to medical center directors, chiefs of staff, and service chiefs on the special conflict-of- interest problems inherent in dual-employment situations involving medical schools. As a result, medical center managers may be unaware of the relevant ethics requirements.

VA Ethics Officer's Efforts to Address Possible Ethics Violations

VA's ethics officer identified and acted on potential conflicts of interest during the 1980s. He raised conflict-of-interest objections or concerns, he said, in at least 16 written opinions involving dual employment and contracts with medical schools. In some cases, district counsels or medical center directors asked for his opinion on particular situations. In other cases, he identified possible ethics violations during his review of contract proposals. On at least four occasions, he said, he referred cases to the Department of Justice for potential criminal prosecution.

The ethics officer's opinions were provided directly to the managers involved, but were not summarized and circulated to all similarly situated managers in other medical centers. Instead, the opinions were provided to district ethics counselors who were expected to use them to provide ethics guidance to any managers requesting assistance. Some of these opinions addressed situations comparable with those we found during our work at the three medical centers we visited, as the following examples show:

First, in 1980, the ethics officer commented on whether a chief of radiology could provide advice during contract negotiations with a medical school or supervise the work under contract if the chief was a part-time employee of the contracting medical school. The medical center director advised the ethics officer that the chief's supervisory

responsibilities included reviewing the quality of interpretive film readings made by the contract radiologists.

After discussing the chief's role during contract negotiations with the center's director, the ethics officer concluded that the chief's advice was very important to the nature and extent of the services to be rendered by the contractor. The ethics officer decided that the chief's actions during contract negotiations would amount to personal and substantial participation in the contract and would constitute a conflict of interest. He also found that the chief should not supervise his fellow medical school employees because his loyalty would be divided and compromised and he would be unable to perform his VA duties with complete independence and impartiality.

The ethics officer referred this case to the Department of Justice for further review. Justice did not initiate criminal prosecution for reasons unrelated to the facts involved, he said. A Department official, however, instructed VA to ensure that the chief was either given a waiver, if appropriate, or was recused from participating in any matters in which his private employer had a financial interest.

Second, in 1982, VA's ethics officer addressed whether an individual could be appointed to a position as chief of radiology if he was a part-time employee of a medical school's radiology group that had a contract to provide radiology services to the medical center. The ethics officer concluded that such an appointment would create a conflict of interest in that the physician would be required to participate to a substantial degree in matters in which the physician had a financial interest. For example, as the chief of radiology, the physician would be required to evaluate the medical school's performance under the contract as well as supervise medical school contract workers.

Third, in 1986 and 1987, the ethics officer examined whether a chief of anesthesiology could evaluate and supervise a medical school's contract if the chief was a part-time employee of the contracting medical school. The ethics officer noted that the financial interest from employment relationships frequently create stronger and more personal ties than ordinary investment relationships, such as stock ownership. In his opinion, the anesthesiology service chief should not perform certain activities, which are normally his responsibilities, because they would involve a particular matter in which the contractor has an "interest" and

would, therefore, violate federal ethics requirements. These activities included

- personally evaluating the services provided by the medical school for the express purpose of considering a contract renewal,
- making any determination of the need for further medical school services,
- conducting or assisting in the preparation of any cost analysis relating to medical school services, and
- participating in negotiating for medical school services.

The ethics officer concluded that day-to-day oversight activities would not pose conflict-of-interest concerns. For example, he pointed out that the chief could (1) review patient records for quality assurance purposes or (2) otherwise ensure that the medical school contract workers provide appropriate professional anesthesiology services to the extent required to facilitate the effective and efficient delivery of health care at the VA medical center.

Fourth, in 1989, the ethics officer addressed the question of whether a chief of staff could participate in contract negotiations between a medical center and a medical school at which the chief was employed. The ethics officer stated that the chief could not participate in negotiations or take any other official actions relating to the contract. The ethics officer cited possible solutions to this situation, which included allowing physicians from other medical centers, who are not involved with the medical school, to negotiate the contracts.

VA Under Secretary for Health's Efforts to Address Ethics Requirements

Beginning in 1990, the staff of the Under Secretary for Health advised chiefs of staff, when approving service chiefs' requests for outside activities, that without a waiver of the conflict-of-interest prohibition, it would be unlawful for chiefs to participate in any contract, claim, or other government matter in which the medical school has a financial interest. VA's ethics officer informed us that this change of procedure was initiated at his request. In July 1992, the Under Secretary's staff informed all medical centers that VA physicians should not participate in contract negotiations with medical schools that also employ them. However, the staff noted that these physicians may provide advice to the contracting officers.

The directors of the three medical centers we visited acknowledged that potential conflicts of interest may arise when VA managers have part-time

employment at medical schools. However, the directors did not believe it was necessary to remove the VA managers from all activities that involve them with the medical schools. The directors provided the following general observations concerning federal ethics responsibilities:

- One director acts as the sole negotiator for the contract, she said, so that no medical center manager who is employed by the medical school would be in a potential conflict-of-interest situation. However, she involves these managers in the day-to-day oversight and direction of the contract activities and does not consider such involvement to present conflict-of-interest concerns. Further, she did not know how managers could avoid such involvement and effectively carry out their responsibilities.
- A second director does not have concerns about possible ethics violations, he said, when managers participate in activities involving medical schools. His primary mission, he said, was to provide medical services to veterans and he received the contract services at a cost below the local rates. Numerous reviews of the medical center, he added, have not identified any inappropriate behavior pertaining to the contract.
- A third director acknowledged possible conflict-of-interest concerns about a chief of staff's and chief of services' (who are also employed by the medical school) certifying and reviewing time and attendance records, as well as reviewing quality of care provided under the contract. VA cannot have medical specialist contracts with a medical school, he said, without these types of situations. VA and the medical school are partners in providing care to veterans, and this cannot occur without tradeoffs.

In 1992, a task force, established by the Under Secretary for Health, assessed a wide range of issues relating to medical centers' contracts for scarce medical specialists.[2] The task force concluded that policies and procedures governing all aspects of contract negotiations should be clarified. The Under Secretary approved a plan to provide medical centers with clarifying guidance and implementing procedures on conflict-of-interest requirements that must be followed during contract negotiations. The plan also called for a multidisciplinary survey team to assess compliance with the new policy guidance during 1993.

[2]This task force assessed a wide range of issues raised during an August 5, 1992, hearing before the House of Representatives, Committee on Veterans Affairs, Subcommittee on Oversight and Investigations. It also addressed our July 1992 report recommendations for stronger oversight of these contracting activities. See VA Health Care: Inadequate Controls Over Scarce Medical Specialist Contracts (GAO/HRD-92-114, July 28, 1992).

Office of Government Ethics Reported Weaknesses in VA's Management of Ethics Requirements

OGE, on several occasions over the past 10 years, has reported on VA's implementation of ethics laws. In 1982, OGE reported that VA ethics officials needed to play an active leadership role in recognizing and addressing such issues as outside income of VA physicians. In 1986, OGE reported that VA should amend its regulations to stress that medical center directors need to be concerned about real or apparent conflicts of interest in approving requests from full-time VA physicians to engage in outside activities for remuneration. It also noted that VA's policy manuals did not provide sufficient guidance to medical center directors on how to assess conflicts of interest in reviewing requests for outside employment.

In a June 1991 report, OGE concluded that weaknesses in VA's management of federal ethics requirements have been longstanding and pervasive. OGE reported VA had not revised policy manuals to provide guidance to directors on assessing conflicts of interest, as noted in earlier OGE reports. Other deficiencies included these:

- VA physicians did not always file public financial disclosure statements.
- Written procedures to guide managers' reviews of disclosure statements for potential conflict-of-interest situations were lacking.
- The vast majority of VA physicians had not received ethics training.

In March 1992, VA increased the staff assigned to the ethics officer to strengthen management of matters involving employee standards of conduct and ethics. VA has addressed physicians' financial disclosure requirements, the ethics officer said; all required disclosure forms were received in 1992. In addition, the ethics officer said, his staff and district counsels have often provided formal and informal ethics advice. For example, he said, during several teleconferences with medical center directors and chiefs of staff, he had stated that conflict-of-interest laws prohibit personal and substantial participation on behalf of VA in negotiating, approving, or evaluating a contract between VA and a medical school if the chiefs have part-time employment at the medical school. During recent seminars, the staff has provided ethics counseling to about 2,600 officials and employees at all levels in the Department.

Potential conflict-of-interest situations were highlighted during these seminars, the ethics officer said, but no written guidance was provided to those attending the seminars or to the hundreds of other VA managers who did not attend such seminars. In general, he said, when questions arise regarding the appropriateness of actions performed under medical specialist contracts, he tries to determine how directly the actions affect

the contract. For example, he considers inappropriate a manager's assessment of the services under a contract for the purpose of deciding whether to renew the contract; this is because the assessment may be viewed as a potential conflict of interest. However, he does not consider it to be inappropriate, during a time when the chiefs also have part-time employment with the contractor, for chiefs to supervise contract employees or review the quality and the sufficiency of contract services provided.

The ethics officer has offered directors and chiefs of staff specific alternative methods in which appropriate VA expertise could be brought into the contracting process without violating the ethics rules, he said. For example, he said, the process could involve only VA employees who (1) were not paid by or "affiliated" with the medical school, such as the regional chief of staff; (2) are employed at an academic institution that is not the subject of the contract at issue, such as a chief of radiology from another VA medical center who is "affiliated" with a medical school that is not involved in the contract he participates in on behalf of VA; or (3) are not VA health care professionals, such as contracting officers or consultants.

Conclusions

VA permits senior managers to engage in activities that are prohibited under federal standards-of-conduct regulations. Chiefs of staff and service chiefs at the three medical centers we visited are involved in awarding or administering VA contracts with medical schools while employed by those schools at substantial salaries. Their dual employment creates divided loyalties and at least the appearance of a conflict of interest; it may also violate federal criminal statutes. Routinely, these senior managers participate in activities that affect the financial interests of their two employers, such as providing advice on contract specifications or negotiations and supervising or reviewing contract employees' performances. Given that managers at over 40 medical centers have dual employment, it is likely that many of them, too, are involved in prohibited activities because they have similar VA management responsibilities as the chiefs at the centers we visited.

VA has not adequately addressed the conflict that arises from managers' dual employment relationships, despite warnings from an internal review committee in 1981. VA has not provided adequate written guidance to managers on the legal and ethical issues involving dual employment, nor has it effectively monitored managers' compliance with ethics

requirements. For example, only about one-third of the chiefs of staff had received dual-employment permission, as VA policy requires. Moreover, VA does not require part-time service chiefs to obtain approval for outside employment, even though they perform the same VA management functions as full-time employees and are as likely to be involved in similar types of prohibited activities.

Under VA's current operating practices, managers are unable to carry out their VA responsibilities without involvement in activities prohibited by current standards-of-conduct regulations. In certain situations, VA has the authority to waive one of the statutory requirements for individual managers. However, no managers currently have waivers and it seems unlikely that waivers could be granted, given most managers' substantial incomes and heavy involvement in contract activities. We believe that for VA to continue operating as it does now impairs not only the integrity of VA's management process, but also subjects managers to risking possible violation of criminal conflict-of-interest laws and ethics regulations. Therefore, VA will need to pursue other options, such as (1) barring managers from dual employment involving VA contractors or (2) restructuring managers' responsibilities to avoid contract activities.

Recommendations to the Secretary of Veterans Affairs

We recommend that the Secretary of Veterans Affairs, after consultation with the Office of Government Ethics, direct the VA ethics officer to revise VA's policies governing the types of dual employment activities that medical center managers may engage in under federal ethics laws and regulations.

We also recommend that the Under Secretary for Health establish procedures to enforce the revised policies developed by the ethics officer, including those for reviewing and approving managers' outside employment. These procedures should require part-time managers, as well as full-time managers, to receive VA approval for outside employment before engaging in such employment.

As part of each outside employment request, the Under Secretary for Health should require that each manager include information on (1) the extent and nature of the medical centers' contracting relationship with prospective outside employers and (2) the manager's involvement with any VA contract-related activities that may have an impact on the medical school.

Agency Comments

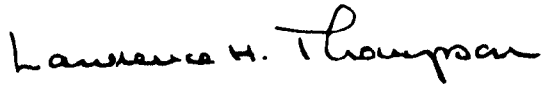
We requested written comments on a draft of this report from the Secretary of Veterans Affairs and the Director of the Office of Government Ethics, but none were received from VA in time to be included in this report. The OGE director provided comments in a letter dated December 31, 1992 (see app. II) and indicated that OGE generally agreed with our conclusions and recommendations. Appropriate changes were made to the report based on comments received from responsible VA officials, including the Under Secretary for Health and the ethics officer, at an exit conference held to discuss our findings, conclusions, and recommendations.

The director of the Office of Government Ethics agreed that the issues raised in this report need to be addressed—not only at the medical centers we visited but at all other medical centers in which similar situations may exist. He added that OGE staff would be glad to meet with the Secretary of Veterans Affairs or his representatives to (1) discuss the types of situations discussed in the report, especially those that raise questions about possible conflicts of interest, and (2) assist VA officials in developing revised outside employment policies.

The director pointed out that VA may address outside employment in supplemental regulations that it may develop in response to OGE's new standards of conduct regulations (5 C.F.R. part 2635), which took effect February 3, 1992; any supplemental regulations must be submitted to OGE for approval. Finally, the director noted, OGE, as part of its oversight activities, will review VA's implementation of the report's recommendations during its next regularly scheduled VA ethics review in 1993.

Unless you publicly announce its contents earlier, we plan no further distribution of this report for 30 days. At that time, we will send copies to the Secretary of Veterans Affairs and interested congressional committees. We will make copies available to others upon request. If you have any questions concerning this report, please call David P. Baine, Director, Federal Health Care Delivery Issues, on (202) 512-7101. Other major contributors to this report are listed in appendix III.

Sincerely yours,



Lawrence H. Thompson
Assistant Comptroller General

Contents

Letter 1

Appendix I Federal Conflict-of-Interest Laws and Regulations 20

Appendix II Comments From the Office Of Government Ethics 22

Appendix III Major Contributors to This Report 23

Table

Table 1: Income That Chiefs of Staff Received From Medical Schools 5

Abbreviations

OGE	Office of Government Ethics
VA	Department of Verterans Affairs

Federal Conflict-of-Interest Laws and Regulations

Federal statutes, executive orders, and agency regulations place limitations on outside activities of federal employees. The principal statutes governing conflict of interest (18 U.S.C. 201 et seq.) restrict employees' outside activities and establish criminal penalties for various violations. Under these laws, employees are not allowed to participate personally and substantially as government employees in any particular matter in which the employee has a financial interest or in which an organization that employs the government official has a financial interest. An employee may receive a waiver from the appointing official if he or she makes full disclosure of his or her interest and obtains a written determination in advance that the interest in the matter is not so substantial as to be deemed likely to affect the integrity of the employee's service to the VA. An employee is also prohibited from receiving any supplementation of salary, from any source other than the United States, as compensation for services as a government employee.

Another statute that limits the activities of federal employees is the Procurement Integrity Act (41 U.S.C. 423). This act prohibits procurement officials from accepting any money or anything of value from a contractor during the conduct of a procurement. "Procurement official" is defined broadly in the act to include any employee who has participated personally and substantially in drafting, reviewing, or approving a specification; preparing or issuing a solicitation; or negotiating, extending, or approving a contract. Waivers are not available under the Procurement Integrity Act.

Federal employees are also subject to standards of conduct that restrict outside activities. The VA's regulation (38 C.F.R. 0.735-1) requires employees to maintain the highest possible standards of honesty, integrity, impartiality, and conduct. They are not permitted to engage in outside employment not compatible with the full and proper discharge of their government duties, including accepting compensation that may result in, or create the appearance of, a conflict of interest. Nor are full-time employees generally permitted to perform service for a contractor engaged in a contract with the VA. Written exceptions to this provision can be made by the facility head concerned if, in his or her judgement, the performance of such service will not involve a conflict of interest.

In April 1989, the President issued Executive Order 12674 (as modified by Executive Order 12731 of Oct. 1990), which prescribes principles of ethical conduct for government officers and employees. The order listed 14 fundamental principles of ethical service that each executive branch

employee is to respect and follow, including some that deal with employees' outside activities. For example, employees are not to use public office for private gain, give preferential treatment to any private organization or individual, or engage in outside employment activities that conflict with official government duties and responsibilities.

New governmentwide regulations to implement Executive Order 12731 became effective as of February 1993. These regulations include the requirement that employees endeavor to avoid actions that may create the appearance of violating the ethical standards. Employees are also prohibited from engaging in outside employment that conflicts with official government duties and responsibilities.

Comments From the Office Of Government Ethics

United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

December 31, 1992

David P. Baine
Director, Federal Health Care
Delivery Systems
Human Resources Division
U.S. General Accounting Office
441 G Street NW.
Washington, DC 20548

Dear Mr. Baine:

This is in response to you letter of November 23, 1992, in which you asked for comments on the draft report entitled "VA Health Care: Inadequate Enforcement of Federal Ethics Requirements at VA Medical Centers" (GAO/HRD-93-39). We have reviewed the draft report and recommendations you have made to the Secretary of Veterans' Affairs (VA).

You ask that the Secretary consult with our Office before directing the VA ethics officer to revise VA's policies governing the types of dual employment activities that medical center managers may engage in under Federal ethics laws and regulations. We would be glad to meet with the Secretary or his representatives to discuss the types of situations presented in the report, especially those which give rise to questions under 18 U.S.C. § 208, and to assist them in developing revised outside employment policies. Such policies must, of course, be consistent with OGE's new standards of conduct regulations at 5 C.F.R. Part 2635 which take effect February 3, 1992. Outside employment is a subject which agencies may address in their supplemental regulations which must be submitted to OGE for approval. We agree that the issues presented by GAO in the report need to be addressed not only at the VA facilities visited but at all other VA facilities where similar situations may exist.

As part of our oversight activities, our Program Review Division will review VA's implementation of the recommendations in GAO's final report on these matters in our next regularly scheduled ethics program review of the Department in 1993. We thank you for the opportunity to review and provide comments on this report. Should you wish to discuss these comments please contact Jack Covaleski at (202) 523-5757 ext. 1120.

Sincerely,

Stephen D. Potts
Director

OGE - 106
August 1992

Major Contributors to This Report

Human Resources Division, Washington, D.C.

David P. Baine, Director, Federal Health Care Delivery Issues, (202) 512-7101
Paul R. Reynolds, Assistant Director, (202) 512-7116
William R. Stanco, Evaluator-in-Charge
John A. Borrelli, Evaluator

Office of the General Counsel

Barry R. Bedrick, Associate General Counsel
Susan A. Poling, Senior Attorney

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