2013-02649-IQ-0154

Memorandum to the File
Case Closure

Alleged Improper Management Directive
Southeast Louisiana Veterans Health Care System, New Orleans, LA
(2013-02649-IQ-0154)

The VA OIG Administrative Investigations Division investigated an allegation that Ms. (b) (7)(C), Southeast Louisiana Veterans Health Care System (SLVHCS), improperly directed Ms. (b) (7)(C), to obtain an employee's consent for the release of Reasonable Accommodation (RA) medical information, after its unauthorized disclosure, and that the employee's supervisor objected to the unauthorized disclosure during a morning meeting. To assess the allegation, we interviewed Ms. (b) (7)(C) Ms. (b) (7) a VA Regional Counsel attorney, and other VHA managers and employees. We also reviewed email, personnel, Privacy Office, Office of Resolution Management, and EEO records, as well as Federal laws, regulations, guidelines, and VA and local policy. We investigated other allegations which we discussed in another report, and we will not discuss them further in this memorandum.

Federal Regulations that implemented the Equal Employment Provisions of the Americans with Disabilities Act state that once obtained medical documents must remain confidential. 29 CFR § 1630.14c. VA policy states that under the Rehabilitation Act medical information obtained in the RA process or otherwise, must be kept confidential and that confidentiality rules regarding disability status apply to all employees. It further states that processors of RA medical information shall not share the information or the accommodation with the requesting employee's coworkers or with other employees, and, that under certain circumstances, if direct contact is needed with the employee's own doctor, VA must obtain a signed medical release from the employee. VA Handbook 5975.1, Paragraph 12(5)d (September 17, 2010). SLVHCS local policy states that LRACs must maintain the confidentiality of medical information obtained from an employee, in a locked file cabinet, and treat it as a confidential medical record. SLVHCS Numbered Memorandum 00-7, 3a(3), 11 (March 1, 2012).

In a March 15, 2013 email, a SLVHCS employee requested an RA to help her continue working during an identified medical complication. RA records reflected that the employee supplied SLVHCS management four separate sets of medical documentation that her personal physicians provided to support her request. The documentation contained doctor recommended accommodations suitable for the employee's workplace. Ms. (b) (7)(C) told us that she met daily, in person, and by phone with various "key clinical players" to discuss the previous day's events, at "morning meetings." She said that three segments comprised the morning meeting: (1) the morning "huddle;" (2) the 8:15 a.m. meeting after the huddle, and; (3) the second call which resolved lingering issues.

Ms. (b) (7)(C) told us that she and Ms. (b) (7) first discussed the employee's request for an RA during the March 22, 2013, morning huddle. Ms. (b) (7)(C) and Ms. (b) (7) said

that during the huddle, they decided to consult the medical center's (b) (7)(C) and a VHA physician specialist for opinions on the employee's medical condition and RA request.

Ms. (b) (7)(C) told us that after the huddle she held the 8:15 a.m. morning meeting with medical center managers, and then conducted the second call. She said that during the second call she contacted the (b) (7)(C) by phone, described the employee's condition and asked the (b) (7)(C) for her medical opinion as to whether the employee could remain at work. Ms. (b) (7)(C) told us that the (b) (7)(C) told her that she would consult the medical center's physician specialist and call Ms. (b) (7) with the results. Ms. (b) (7)(C) said that, after she heard the (b) (7)(C) response, she concluded that there was not enough medical information, so she decided to ask the employee for additional medical documentation. She told us that anyone else in the room, outside the door, or still on the telephone could have heard the conversation. She said, "It could have been a mistake we made." Ms. (b) (7)(C) told us that during the RA process, the employee dealt directly with her physicians; therefore, no employee consent was needed or provided. Ms. (b) (7)(C) recollections of her discussions with the (b) (7)(C) during the call, or with Ms. (b) (7) after the call, gave no indication she directed either party to obtain consent from the employee.

Ms. (b) (7) who Ms. (b) (7)(C) allegedly directed to obtain the employee's consent for release of medical information, told us that she did not attend the March 22, 2013, 8:15 a.m. meeting where the alleged disclosure occurred; however, Ms. (b) (7) told us that she and the employee's supervisor briefly spoke with Ms. (b) (7)(C) about the employee's RA request prior to the meeting. Ms. (b) (7) stated that Ms. (b) (7)(C) later told her that there was a breach of privacy allegation related to the March 22 morning meeting disclosure, and Ms. (b) (7)(C) asked her to write an account of events that day.

The employee's supervisor, who during the March 22 morning meeting allegedly objected to Ms. (b) (7)(C) directive to obtain subsequent employee consent, told us that she met with Ms. (b) (7)(C) and Ms. (b) (7) at the March 22, 2013 "pre-meeting." She said that they discussed the employee's RA request, the employee's medical condition and diagnosis, and decided to discuss the matter during the second call. She further said that she suspected others remained on the teleconference lines after the 8:15 a.m. meeting and potentially overheard the second call.

The employee's supervisor told us that during the second call, Ms. (b) (7)(C) asked the (b) (7)(C) if the employee could still work with the identified medical condition, referring to the employee by position title. The employee's supervisor said that she did not verbally object to Ms. (b) (7)(C) unauthorized disclosure during the call, nor did anyone else, and that Ms. (b) (7)(C) later informed the employee of the alleged breach of medical information. The employee's supervisor said that Ms. (b) (7)(C) did not direct anyone to obtain the employee's consent for release of the medical information.

Conclusion

We did not substantiate that Ms. (b) (7)(C) improperly directed Ms. (b) (7) to obtain employee consent for release of RA medical information after its unauthorized disclosure on March 22, 2013. Ms. (b) (7) and the employee's supervisor both said that Ms. (b) (7) did not attend the March 22, 2013, morning meeting or second call after she met with Ms. (b) (7)(C) during the earlier morning huddle. Further, the employee's supervisor said that she did not verbally object to Ms. (b) (7)(C) unauthorized disclosure during the meeting or that any protest by her led to Ms. (b) (7)(C) ordering Ms. (b) (7) to secure the employee's consent, in the face of the supervisor's protest.

This allegation is being closed without issuing a formal report or memorandum.

Prepared By: (b) (7)(C) [redacted]

2/25/2014
Date

Approved By: [redacted]

2/24/2014
Date