

144209

GAO

Testimony

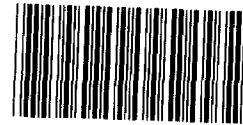
Before the Subcommittee on Oversight and Investigations,
Committee on Veterans' Affairs
House of Representatives

For Release
on Delivery
Expected at
8:30 a.m. EST
Wednesday,
May 19, 1993

VA HEALTH CARE

Enforcement of Federal
Ethics Requirements
at VA Medical Centers

Statement of Lawrence H. Thompson
Assistant Comptroller General,
Human Resources Programs



149209

057188/149209

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today, as the Subcommittee continues its examination of the Department of Veterans Affairs' (VA) use of contracts to purchase scarce medical specialists' services from medical schools.

During your August 1992 hearing, we reported that VA had not sufficiently improved its management controls to avoid serious contracting problems,¹ which were initially addressed during a July 1987 hearing. These problems included VA medical centers' purchasing of unneeded services or paying unnecessarily high prices. During the 1987 hearing, VA witnesses assured you that adequate controls were in place to meet federal ethics requirements.

At your request, we examined whether VA managers who are receiving incomes from medical schools are participating in VA contracting activities involving the medical schools and, if so, the conflict-of-interest implications for these managers. To do this, we reviewed federal ethics laws and regulations and discussed them with officials of the Office of Government Ethics. We also assessed VA's policies and procedures for implementing federal requirements and had discussions with the Under Secretary for Health and the ethics officer. In addition, we reviewed the 1990 outside employment activities of senior managers at 126 medical centers that had scarce medical specialist contracts. Finally, during visits to three VA medical centers and their affiliated medical schools, we discussed contracting procedures and observed operating practices.

Mr. Chairman, I wish that I could report today that we agree with VA's enforcement of federal ethics requirements, but regrettably, that is not the case. VA's operating practices give rise to situations at medical centers which, at a minimum, create the appearance of a conflict of interest and, at worst, place senior managers at risk of criminal prosecution.

As you know, having confidence in the integrity of federal employees is essential to the American public. Toward this end, presidents have issued several executive orders establishing standards of ethical conduct for federal employees. In addition, the Congress enacted the Ethics in Government Act of 1978, which, among other things, created the Office of Government Ethics to provide overall policy direction related to preventing conflicts of interest by employees in executive agencies. In 1989, the Procurement Integrity Act further limited certain federal employees' outside activities.

¹VA HEALTH CARE: Inadequate Controls Over Scarce Medical Specialists Contracts (GAO/HRD-92-114; July 29, 1992) and (GAO/T-HRD-92-50; Aug. 5, 1992).

Federal ethics requirements place limitations on activities of government employees who have dual employment. These employees are prohibited from participating personally and substantially on behalf of the government in particular matters in which they or their outside employers have financial interests. In addition, VA's standards-of-conduct specify that employees should avoid any actions, that may lead to or create the appearance of conflicts of interest.

As we reported to you last month,² senior managers at nearly one-third of VA's 158 medical centers receive part-time employment incomes--in many cases, exceeding \$40,000 a year--from affiliated medical schools, generally for teaching or consulting activities. The medical centers contract with the same medical schools for scarce medical specialist services. These contracts total millions of dollars and generally are negotiated without competition.

At the VA centers we visited, managers received substantial salaries from medical schools and also participated on VA's behalf in the award or administration of contracts--activities that are prohibited by federal conflict-of-interest regulations. For example, they

- developed or participated in the development of contract justifications,
- reviewed or participated in the review of contract proposals,
- negotiated or participated in contract negotiations, and
- supervised contract employees' activities.

The potential conflict-of-interest situations we found raise serious questions about the ability of VA's managers to maintain their independence and impartiality. Assessing the legalities of such situations is complex and generally done on a case-by-case basis. However, at a minimum, the appearance of conflicts of interest exists involving VA managers' participation in contract award and administration activities with the medical schools that also employ them.

We believe that the Secretary of Veterans Affairs should move quickly to address potential conflicts of interest. To do this, we recommended in our April 1993 report that VA's policies be revised to clearly show the types of dual employment activities that medical center managers may engage in under federal ethics requirements. Stronger procedures also need to be established to

²VA Health Care: Inadequate Enforcement of Federal Ethics Requirements at VA Medical Centers (GAO/HRD-93-39; Apr. 30, 1993).

enforce the revised policies, including procedures for reviewing and approving managers' outside employment. Finally, we believe it is essential that VA work closely with the Office of Government Ethics to develop appropriate guidance to help medical center managers avoid conflict-of-interest situations.

The Secretary of Veterans Affairs commented, in a March 23, 1993 letter, on a draft of our report. He generally agreed that VA has problems enforcing federal ethics requirements in some situations involving dual employment of medical center managers. While acknowledging that conflict-of-interest situations may have occurred, he said that the Under Secretary for Health and the ethics officer are taking steps to implement our recommendations.

As we discuss in a supplement to our April report,³ 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 strengthen VA's enforcement. However, we are troubled by some of the Secretary's views regarding the appropriateness of VA managers' involvement with contract activities of medical schools who employ those managers. We believe that VA managers' supervision of contract physicians leaves these managers at risk of violating conflict-of-interest laws or regulations.

Now, I would like to describe, in more detail, potential conflict-of-interest situations and highlight major weaknesses in VA's efforts to implement federal ethics requirements. I will also discuss the Secretary's response to our recommendations.

POTENTIAL CONFLICT-OF-INTEREST SITUATIONS

Two types of managers face great risk of potential conflicts of interest in carrying out their duties at VA medical centers while also employed by medical schools; namely, chiefs of staff and chiefs of individual medical services, such as anesthesiology or radiology. These managers are generally the highest ranking physicians at medical centers and, as such, share primary responsibilities for all clinical aspects of the development, organization, implementation, and support of VA patient care, education, and research activities. Let me explain how potential conflict-of-interest situations may arise.

Chiefs of Staff

A chief of staff's responsibilities include ensuring that physicians, whether VA or contract employees, are providing high-

³Supplement to VA Health Care: Inadequate Enforcement of Federal Ethics Requirements at VA Medical Centers (GAO/HRD-93-39S; May 12, 1993).

quality medical care and that corrective actions are initiated when warranted. At one medical center we visited, a 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, his responsibilities included:

- monitoring the medical school's performance and notifying VA's contracting officer if contract activities are not proceeding satisfactorily or if problems are anticipated and
- developing a record-keeping system to assure that VA pays only for contract services that the medical school performs.

The chief of staff's responsibilities also included recruiting certified and licensed professional staff. These activities can directly affect the amount of contract services purchased from a medical school. For example, the amount of contract services needed would be reduced if more VA anesthesiologists were recruited directly by VA medical centers rather than to continue to rely on medical schools for those services.

This chief received more than \$40,000 from a medical school at the same time that he was participating on VA's behalf in these contract activities involving the school. He reported to VA that his duties, as a medical school employee, included non-clinical consultations and teaching at the school.

Chiefs of Service

Like chiefs of staff, chiefs of various medical services are responsible for monitoring the quality of medical services provided under contract with medical schools and taking corrective actions where warranted. For example, at one medical center we visited, a full-time service chief supervised daily activities of physicians working under a contract valued at over \$800,000 a year. His responsibilities included scheduling work and managing the service to ensure that contract physicians appropriately completed their work. He also approved contract physicians' time and attendance records that were used to certify contract payments made to the medical school.

This service chief received over \$40,000 from a medical school for teaching at the same time that he participated on VA's behalf in activities involving the administration of the contract, making decisions that could affect both of his employers.

Also, some service chiefs at the centers we visited worked part-time for both VA and medical schools. The chiefs' part-time employment for medical schools consisted of performing services under the schools' contracts with the VA centers. Thus, as VA

service chiefs, these managers were responsible for overseeing the same contracts under which they worked for the medical schools.

MANAGERS ACCEPT MEDICAL
SCHOOL EMPLOYMENT WITHOUT
REQUESTING VA APPROVAL

VA policy requires all full-time employees to request approval before engaging in outside employment, in part, so that potential conflicts of interest may be identified. This critical management control, however, was not achieving the intended results. First, most chiefs of staff did not comply. Second, even when they did comply no one in VA's headquarters offices dealing with ethics-related issues required them to provide sufficient information so that potential conflicts of interest could be adequately assessed.

Of VA's 158 medical centers, 45 had chiefs of staff who received income from contracting medical schools in 1990. Of these chiefs, only 14 received approval for employment with the schools; the rest accepted employment without requesting authorization. When reviewing outside employment requests, VA headquarters officials rarely requested, and chiefs seldom provided, information concerning VA management responsibilities involving medical schools.

For example, requests did not include information on the medical center's contracting activities with medical schools or the chief's potential activities involving the medical school. Frequently, requests did not include information on the nature and extent of the work to be provided at the medical school. Without such information, VA reviewing officials will have great difficulty identifying potential ethics violations.

Like chiefs of staff, full-time chiefs of service are also required to request approval for outside employment. However, VA policy does not require part-time chiefs to seek approval for outside employment. We believe such approval is needed because many service chiefs are part-time VA employees and they have the same VA management responsibilities as full-time employees. As such, they face the same exposure to potential conflict-of-interest situations.

The Under Secretary for Health has made procedural changes to resolve the weaknesses we identified in VA's outside employment review process, including revised reporting requirements. These changes, when fully implemented, should help identify potential conflict-of-interest situations, assuming they are applied uniformly to full- and part-time managers.

ENFORCEMENT ALONE IS NOT THE SOLUTION

In his March letter, the Secretary stated, and we agree, that vigorous enforcement of federal ethics rules is needed to address problems we found. He believes that VA has provided ample, clear guidance. The fact that an employee does not obey the rules, he said, does not necessarily mean that the employee does not know the rules. We disagree that VA has provided adequate guidance to medical center managers on what activities are permissible and impermissible. Our discussions with senior managers indicated that while they were aware of some fundamental ethics requirements, they were either unaware of or unclear about how these requirements affected their own activities.

The Secretary contends that managers can supervise a contract between a medical center and affiliated medical school when they are employed by both, if the purpose of the supervision is related to quality of care. Using this interpretation, it is permissible for managers to supervise the day-to-day activities of medical school contract physicians. This includes determining the quantities of contract medical services needed and whether an appropriate quantity and quality of services are received. The Secretary contends that such supervision is focused on the level of health care being rendered by individual contract physicians as opposed to analyzing the medical school's performance under the contract.

We find the Secretary's interpretation troubling, because it appears that such a distinction is impractical. We believe that individual managers' assessments for quality-of-care purposes, might become the basis for measuring the medical school's contract performance. This is especially true if the contracts are not rigorously evaluated as was the case at the centers we visited. Without such assessments, medical centers would more likely have to rely on individual manager's assessments in determining whether contracts should be renewed or revised.

The Secretary contends that individual manager's clinical oversight would not have any effect on the center's contract. He said, for example, that if a service chief was dissatisfied with a contract physician's performance, the 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 challenge the medical schools which employ them or raise their concerns to chiefs of staff who may also be employed by the schools?

At one medical center we visited, the service 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? In addition, a myriad of daily decisions affect the contract. Who certifies contract physicians' time and attendance records? If it is not the service chief, who provides the information upon which certification is based? We believe that if chiefs are doing their jobs appropriately and are responsible for overseeing the delivery of medical services, they would, of necessity, make daily decisions affecting the contract.

In our April report, we recommended that the Secretary consult with the Office of Government Ethics in developing better guidance to help managers avoid situations that place them at risk of violating ethics requirements. The director of the Office Government of Ethics agrees that the issues we raise need to be resolved and he expressed interest in working with VA to do this. However, the Secretary has not indicated whether he plans to work with the Office of Government Ethics. The differing opinions over interpretation of the ethics requirements further highlights the need for VA to consult with the Office of Government Ethics to alleviate any questions regarding medical center managers' ethics requirements.

- - - - -

In summary, Mr. Chairman, ethics laws and regulations are intended to prevent placing employees in situations where their loyalties are divided; that is, situations in which managers, in discharging their obligations to one employer--a medical school--may be acting against the interests of their other employer, the VA medical center. We recognize that managers may determine, in the utmost good faith, that they will not be influenced by either relationship. Nonetheless, we believe that it is difficult to guarantee that loyalty to one employer will not be an unconscious factor in making decisions for another employer. By accepting dual employment with contract medical schools, managers currently face situations in which such divided loyalties inevitably and unavoidably arise.

- - - - -

This concludes my prepared statement. We will be glad to answer any questions you and members of the Subcommittee may have.

Ordering Information

The first copy of each GAO report and testimony is free. Additional copies are \$2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

Orders by mail:

**U.S. General Accounting Office
P.O. Box 6015
Gaithersburg, MD 20884-6015**

or visit:

**Room 1000
700 4th St. NW (corner of 4th and G Sts. NW)
U.S. General Accounting Office
Washington, DC**

**Orders may also be placed by calling (202) 512-6000
or by using fax number (301) 258-4066.**

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

**Official Business
Penalty for Private Use \$300**

**First-Class Mail
Postage & Fees Paid
GAO
Permit No. G100**
