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Tully Rinckey PLLC Partner Cheri Cannon and client Valerie Riviello talk with Navy Times about their Whistleblower case.

**Investigators probe whistleblower retaliation claims
By Leo Shane III
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A New York nursing supervisor who objected to the use of restraints on an unstable patient by Veterans Affairs Department doctors says she has endured months of retaliation from local officials for that single act of whistleblowing. The episode offers a discouraging message to conscientious employees who see department failings and a glimpse at the hurdles new VA leadership will have to overcome if they want to uphold their promise of protecting those workers. The U.S. Office of Special Counsel has stepped in to postpone a 30-day suspension for the nursing supervisor, saying its investigation thus far indicates that administrators at the Albany Stratton VA Medical Center overstepped their authority in the punishment. But even with the reprieve, Valerie Riviello — a 28-year employee with an uncontroversial work history — doubts whether she'll ever be able to return to her job. The conflict began last November when Riviello objected to a doctor's order to keep a female veteran in restraints for several hours. The move originally was ordered because the woman presented a possible suicide risk, but Riviello said that after a few hours she had regained composure and presented no threat to herself or others. But when Riviello and other staff asked to remove restraints from the woman, doctors refused. Riviello's attorney, Cheri Cannon, said that move ran counter to VA regulations, which state doctors must perform regular checks and provide regular justification for extreme patient actions like

restraints. After consulting with her supervisors and other patient care workers, Riviello freed the woman after nearly seven hours in restraints, allowing her to use the bathroom and shower. The patient — who suffered from post-traumatic stress related to military sexual trauma — had been begging to be released, and remained calm for the rest of her stay. The move brought immediate criticism from hospital doctors, who claimed the nursing staff had no authority to make such a decision. Riviello reported her concerns about the incident to patient safety officials at the hospital. Within days, officials pressured Riviello to step down from her supervisor job, despite no previous disciplinary action. She was also asked to voluntarily take a demotion in pay, and was reassigned to work away from patients. In March, following internal hospital investigations, supervisors threatened her with a formal reprimand for the November incident. As she contacted the Office of Special Counsel to ask for intervention, that was changed to a 30-day suspension without pay. Riviello said she is horrified not only by the improper use of restraints but also the overwhelming intimidation which followed any questioning of authority at the hospital. “I had outstanding performance reviews,” she said. “This was a patient safety issue. I was trying to do the right thing for veterans.” Cannon said the moves haven’t just hurt her client. “The nurses there saw this, and are now fearful,” she said. “They’re concerned that management can take action against them if they raise any issue.” In a statement, Albany hospital officials would not respond to Riviello’s charges but said, “We take any allegations involving patient care very seriously and we have an open environment where we encourage employees to come forward with concerns.” The case is one of at least 60 involving VA whistleblower retaliation that are under investigation by the Office of Special Counsel. Most have come in the wake of the Arizona medical appointment delay scandal this spring, which prompted the resignation of VA Secretary Eric Shinsekj and other top department officials. Earlier this month, acting VA Secretary Sloan Gibson issued a memo promising that employees who report fraud or abuse in the department would be protected, and that “intimidation or retaliation against whistleblowers ... is absolutely unacceptable.” But lawmakers say they have heard of multiple cases like Riviello’s, where local supervisors have moved to silence problems at their facilities, no matter how small or isolated. Riviello is still working at a desk job that does not involve patient care, awaiting completion of the

OSC's investigation into her claims. Part of that review has revealed that the same patient was put in restraints again during a February hospital visit. That time, without Riviello there to intervene, she was left in restraints for 49 hours, per doctors' orders.