

Tully Rinckey PLLC client Val Riviello and Cheri Cannon discuss her case with Government Executive.

Whistleblowing Can Also Put Pay and Benefits At Risk

By Kellie Lunney

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Patient care and safety is at the heart of dozens of whistleblower complaints involving the Veterans Affairs Department. But federal employees who share concerns with supervisors also could be putting their own pay and benefits at risk. That's what happened to Valerie Riviello, a nurse manager of the inpatient psychiatric unit at the Albany Stratton VA Medical Center in upstate New York. A 28-year VA employee with a good work history, Riviello faced a 30-day suspension without pay, and pressure to accept a different position within the agency, when she reported the improper use of physical restraints on a patient in November 2013. The patient, a veteran suffering from sexual trauma, was restrained for several hours – with locked wrist, waist and ankle restraints, according to Riviello – against protocol. Nurses are required to check on patients in restraints every 15 minutes to assess the situation; Riviello said the patient had calmed down after about two hours and in Riviello's professional opinion, was ready to be released. The physician disagreed, and Riviello finally called her supervisor who gave her the okay to release the patient after she had been restrained for about seven hours. The doctor tried to get Riviello ousted, she said, sparking a months-long struggle to hold onto her job. The Office of Special Counsel now is investigating Riviello's complaint of retaliation, along with more than 60 other cases of alleged retaliation against whistleblowers who reported a wide range of concerns about patient scheduling, understaffing and other patient care issues at VA facilities across the country. OSC was able to halt Riviello's pending unpaid suspension while the investigation in Albany continues. "What goes on in Albany is simply a microcosm of what goes on across the VA," said Cheri Cannon, Riviello's lawyer and a partner at Tully Rinckey, a federal sector labor and employment law firm in Washington. "It is unfortunate that the VA secretary [Eric Shinseki] had to resign on account of people in the field who were not doing their job," Cannon said, referring to the large-scale scandal that has engulfed the department after improper scheduling practices and delays in providing vets with timely medical care were uncovered at the Phoenix VA Medical Center. "We certainly hope that vets get better care, but also that more oversight [from Washington] is exerted over these hospitals," she said. Acting VA Secretary Sloan Gibson has said he will "not tolerate" retaliation or intimidation against whistleblowers, or "against any employee who raises a hand to identify a problem, make a suggestion, or report what may be a violation in law, policy, or our core values." President Obama plans to nominate Bob McDonald, a former chief executive of Procter & Gamble and graduate of West Point, to take over at VA. OSC on June 23 reported to the White House and Congress that the Veterans

Affairs Department “often admits to serious deficiencies in patient care, while implausibly denying any impact on veterans’ health.” Gibson said in response to the OSC findings that he was “disappointed not only in the substantiation of allegations raised by whistleblowers, but also in the failures within VA to take whistleblower complaints seriously.” Riviello still is receiving the same salary, but has been stripped of her clinical and nurse management duties. She has been directed instead to work on implementing a nurse residency program, which helps new nurses transition into the workplace. “I have the title but no authority on my unit,” Riviello said. She also claimed upper management tried to convince her to leave her current position – less than two years’ shy of being eligible for retirement – and take a different job, which would have affected her annuity amount because she would have been earning less money. “I refused,” Riviello said. “I asked them to put in writing why, and of course, they couldn’t.” A VA spokesman said by email that the department couldn’t comment on personnel matters under investigation. “However, we take any allegations involving patient care very seriously,” wrote Peter Potter, director of public affairs at Albany Stratton VA Medical Center. “We have an open environment for employees, one where we encourage them to come forward and utilize the venues available to raise issues and concerns. Upon invoking their right to go to the Office of Special Counsel, we feel it important that the process be fully pursued and the claim reviewed.”