



APR 30 2019

Indian Health Service
Rockville, MD 20857

The Honorable Steve Daines
United States Senate
Washington, DC 20510

Dear Senator Daines:

Thank you for sharing your concerns about the Indian Health Service's (IHS) response to allegations against Stanley Patrick Weber. I appreciate the opportunity to respond to your questions and discuss efforts to address this serious issue.

Our mission to provide quality health care requires a safe environment for our patients. IHS considers patient security and protection a crucial responsibility, especially when it involves children. We are committed to continuously improving our health care delivery system to uphold this important responsibility.

I am also personally committed to ensuring that any allegations of sexual abuse or misconduct by IHS staff are immediately reviewed, and that appropriate actions are taken to ensure patient safety. In the event of such allegations, IHS notifies the Department of Health and Human Services Office of Inspector General (OIG). We are working closely with the OIG during its investigation to address any necessary and immediate actions, such as removing the suspected employee from the facility. The IHS and OIG have a strong partnership and work collaboratively to ensure disciplinary or other actions against employees, where applicable, are taken in an expedient manner.

In addition, the IHS is organizing an intensive review of internal IHS past actions related to this provider through a Request for Proposal (RFP) for an external reviewer. This external review of IHS internal past actions is an important step for identifying system failures and root causes, and to delineate what is necessary to reduce the potential for this to occur again. Specifically, the external reviewer will perform a patient safety medical quality assurance (QA) review of policies and procedures regarding the reporting of allegations of sexual abuse of IHS patients by IHS clinical staff. The IHS is assessing both a retrospective and current state of the Agency's compliance with existing laws, regulations, and policies regarding patient safety and protection of patients from sexual abuse and assault.

The RFP for this contract work was published on February 22, 2019. The final report from the contractor will: (a) identify facts relating to IHS's policies and procedures regarding the reporting of allegations of sexual abuse of IHS patients by clinical staff, (b) identify past process or system failures and their causes, and (c) make recommendations for improvement and employee accountability.

Additionally, we will seek recommendations from the contractor on methods to effectively improve and implement new standardized operating procedures. The IHS will review the contractor's recommendations and will determine which of them to implement in order to increase accountability for all staff, reduce risk of reprisal against people reporting misconduct and whistleblowers, and provide for more timely and useful reporting of suspected abuse of patients.

Questions involving historical issues and facts will be fully addressed through the QA review. The IHS will provide you with updated information pertaining to system improvements once we have time to review and implement policies and practices as recommended in the contractor's report.

The IHS is committed to working with Congress, Tribal partners, and other stakeholders to ensure that patients, especially youth and children, are protected from abuse when receiving care at our facilities. Enclosed are our responses to your questions. I trust this information is helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "M. D. Weahkee". The signature is stylized with a wavy line for the first name and a shorter, more direct line for the last name.

RADM Michael D. Weahkee, MBA, MHSA
Assistant Surgeon General, U.S. Public Health Service
Principal Deputy Director

Enclosure: Indian Health Service Response Regarding the Protection of Patients

Indian Health Service Response Regarding the Protection of Patients

1. When will the IHS internal investigation be concluded?

IHS Response:

The IHS posted a solicitation for a contractor on February 22, 2019, for a medical quality assurance review of IHS policies and procedures regarding the reporting of allegations of sexual abuse of IHS patients by IHS clinical staff. The deadline for prospective contractors to submit their proposals was March 22, 2019. The IHS will require the contractor to submit a final written report to IHS with recommendations for improvement within 180 days of the contract award date.

2. Once the investigation is concluded, will you commit to briefing relevant Congressional committees on your findings?

IHS Response:

Federal law (25 U.S.C. § 1675) requires IHS medical quality assurance program activities and related testimony be kept confidential. To the extent authorized by Federal law, IHS will share information pertaining to system improvements it will take pursuant to the internal review.

3. What actions will be taken to hold individuals accountable who covered up or turned a blind eye to the repeated concerns raised by Mr. Weber's behavior?

IHS Response:

The IHS intends to obtain more information about any such individuals through the medical quality assurance review. We want to find out where the failures may have occurred and we are committed to finding out as much as we can in order to identify any additional safeguards to prevent this from happening again.

The IHS health care providers are Federal employees and therefore required to adhere to all Federal laws, regulations, rules, and standards of conduct. When established standards of conduct are violated, or the rules of the workplace are disregarded, corrective action is warranted to motivate employees to conform to acceptable behavioral standards and prevent prohibited and/or unsafe activities. Depending on the level of misconduct, the preponderance of evidence to support the misconduct, and the nexus between the misconduct and the employee's job and the IHS mission, we will remove a health care provider that has committed any egregious and/or abusive misconduct.

4. What steps will IHS take to determine any past or current reported suspicions are appropriately addressed?

IHS Response:

On February 20, 2019, the IHS issued a new policy, "Protecting Children from Sexual Abuse by Health Care Providers" (available at <https://www.ihs.gov/ihs/pc/part-3/p3c20/>), that expands and reiterates existing policy to require any IHS staff member to report any incident or reasonable suspicion of sexual abuse of a child by a health care provider directly to the proper child protective and/or law enforcement authorities, and to report any incident or reasonable suspicion of sexual abuse of a child directly to their supervisor, the Chief Executive Officer, or alert the

next supervisor in the chain of command if the first line supervisor is the one suspected of child sexual abuse. The new policy specifically outlines a supervisor's responsibilities for protecting children from sexual abuse by health care providers. Additionally, the section also directs all IHS staff to document a report they make in the IHS Incident Reporting System within five business days. In short, this requires all IHS employees to report any incident or reasonable suspicion of sexual abuse of a child by a health care provider that they observe or reasonably suspect.

Allegations brought to the attention of the medical staff are recorded in the provider's credentialing file, then evaluated and managed in accordance with the facility's bylaws, which adhere to the Centers for Medicare and Medicaid Services Conditions of Participation. 42 CFR § 482.22 (a)(2) states that the medical staff must examine the credentials of all eligible candidates for medical staff membership and make recommendations to the governing body on the appointment of these candidates in accordance with State law, including scope-of-practice laws, and the medical staff bylaws, rules, and regulations. A candidate who has been recommended by the medical staff and who has been appointed by the governing body is subject to all medical staff bylaws, rules, and regulations, in addition to the requirements contained in this section. The assignment of responsibility for organization and conduct of the medical staff is also defined in this section.

The IHS reports any allegations of criminal misconduct to the Department of Health and Human Services (HHS) Office of Inspector General (OIG) and cooperates during any investigation initiated by the OIG. The IHS works in partnership with the OIG to ensure Area and Service Unit leaders are informed of any allegations of criminal misconduct and take any immediate actions necessary, such as removing an employee from the facility while an investigation is conducted. The IHS follows HHS policy Chapter 5-10: Responsibility and Procedure for Reporting Misconduct and Criminal Offenses, which outlines policies, procedures, and assignments of responsibility for reporting allegations of criminal offenses committed at any location within IHS.

5. What is the course of action to prevent systemic failure of this nature from occurring in the future?

IHS Response:

The IHS reviews processes and protocols to identify health care provider misconduct as part of a continuous certification and accreditation review process. This includes a review of the governance processes, human resources processes, medical staff processes, and quality assurance and patient safety. External review is provided by certifying and accrediting bodies.

The internal patient safety medical quality assurance review will assess both a retrospective and current state of the agency's compliance with existing laws, regulations, and policies regarding the reporting of allegations of sexual abuse of IHS patients by IHS clinical staff. The quality review will provide recommendations for improvement to ensure all proper processes and protocols are in place to prevent anything of this nature occurring in the future.

6. What steps will IHS take to create a culture where employees and patients can report inappropriate behavior without fear of retribution?

IHS Response:

In 2016, IHS implemented quality related priorities to provide safe, high quality health care to American Indians and Alaska Natives. One of the priorities focused on patient safety with the objective of promoting a culture of patient safety. Through this focused priority, the IHS adopted and implemented the accountability model “Just Culture” to promote a culture of safety in our facilities. The principles of “Just Culture” have been identified to create a non-punitive error reporting system that can lead to early identification of risk and prevention of adverse events, making patient care safer. The IHS uses the “Just Culture” model to promote patient safety by educating and encouraging staff to value continuous quality improvement and developing expertise at all levels in patient safety with a focus on high reliability, event investigation and management, teamwork principles, and critical communication.

The IHS leadership requires employees to report any reasonable suspicion of wrongdoing, misconduct, waste, or abuse, particularly when it involves the safety and wellbeing of children and youth. Employees also can report suspicions directly to the HHS OIG. The mandatory reporting requirements are included in the IHS policy approved on February 6, 2019. See Indian Health Manual, Chapter 20, Part 3, Protecting Children from Sexual Abuse by Health Care Providers (<https://www.ihs.gov/ihtm/pc/part-3/p3c20/>).

In March 2018, the IHS Chief Medical Officer sent guidance to all IHS staff stating that the IHS has a zero tolerance policy for sexual abuse or exploitation of children. The following direction was provided:

- Staff will not engage in a romantic, sexual, or intimate physical relationship with any patient, any member of a current patient's family, or any former patient under the age of 18 years old.
- Questions or concerns regarding the appropriateness of relationships with patients and families will be directed to the immediate supervisor or anyone in the supervisory chain of command.
- Failure to maintain a professional relationship with patients and families shall lead to corrective action, up to, and including dismissal.

The IHS is committed to making significant investments to prevent and report sexual abuse. Such investments include training for Federal employees and contractors on how to identify and report suspicions of potential abuse and ensuring that reporting responsibilities are clearly understood and enforced. The training is required in the IHS policy, Protecting Children from Sexual Abuse by Health Care Providers, and covers the requirements of the IHS policy and each respective facility’s policy. We are dedicated to ensuring we serve our patients in a safe and healthy environment.

All IHS employees are required to complete the Notification and Federal Employee Antidiscrimination and Retaliation Act (No FEAR Act) training. The mandatory training provides notice to Federal employees of the rights and protections available to them under Federal antidiscrimination, whistleblower protection, and retaliation laws. The course is available to all employees, online, through the HHS Learning Management System. The No FEAR Act of 2002 requires that each Federal agency be accountable for violations of antidiscrimination and whistleblower protection laws. The IHS provides mandatory training to employees every two years and within ninety days of entering on duty for new employees regarding their rights under the law.