

STATE OF OHIO  
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF  
INVESTIGATION



AGENCY: OHIO DEPARTMENT OF VETERANS SERVICES  
FILE ID NO.: 2014-CA00049  
DATE OF REPORT: MARCH 17, 2016

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Randall J. Meyer  
Ohio Inspector General



STATE OF OHIO

# OFFICE OF THE INSPECTOR GENERAL

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RANDALL J. MEYER, INSPECTOR GENERAL

## REPORT OF INVESTIGATION

<b>FILE ID NUMBER:</b>	2014-CA00049
<b>SUBJECT NAME:</b>	Ohio Veterans Homes; Stein Hospice
<b>AGENCY:</b>	Ohio Department of Veterans Services
<b>BASIS FOR INVESTIGATION:</b>	Agency Referral
<b>ALLEGATIONS:</b>	Conflict of Interest/Contracts Violations
<b>INITIATED:</b>	June 20, 2014
<b>DATE OF REPORT:</b>	March 17, 2016

## **INITIAL ALLEGATION AND COMPLAINT SUMMARY**

On March 10, 2014, the Office of the Ohio Inspector General received a memorandum containing allegations of wrongdoing from Fred Stratmann, chief legal counsel for the Ohio Department of Veterans Services. Stratmann suspected doctors employed or contracted by the Ohio Veterans Homes (OVH) had a conflict of interest because they were serving as physicians to OVH at the two Ohio veterans homes, and were also employed as medical directors by Stein Hospice, a hospice care service provider under contract with OVH. Stratmann also expressed concern Stein Hospice appeared to be operating free of charge out of an unused wing of the veterans home located in Georgetown, without a lease agreement or payment of rent and other fees.

Stratmann further raised issue with the relationship between the Ohio Veterans Homes and Stein Hospice, specifically targeting three areas of greatest concern:

- Possible federal anti-kickback violations including self-dealing<sup>1</sup> and false claims violations;
- Failure to delineate responsibilities between Stein Hospice and the Ohio Veterans Homes, in possible violation of federal regulations;
- Possible violation of patients' and beneficiaries' right of provider choice.

## **BACKGROUND**

### *Ohio Department of Veterans Services*

The Ohio Department of Veterans Services (ODVS) was established as a state agency on August 31, 2008. The purpose of the department is to identify veterans in need of assistance, connect veterans with services and programs, and to advocate for veterans and their families. The director of ODVS is appointed by the governor and confirmed by the Ohio Senate. Funding for ODVS is provided through general revenue funds, federal funding, and fees assessed for those at the Ohio Veterans Homes.<sup>2</sup> ODVS is also responsible for awarding monetary bonuses to eligible veterans with funding received through bond sales.

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<sup>1</sup> Merriam Webster Online: Self-dealing is “financial dealing that is not at arm’s length; especially, borrowing from or lending to a company by a controlling individual primarily to the individual’s own advantage.”

<sup>2</sup> Source: Biennial budget documents.

The Ohio Veterans Homes (OVH) is a division of the Ohio Department of Veterans Services (ODVS). There are two veterans' homes in Ohio; the first was created in Sandusky County in 1888, and a second home was opened in Georgetown (Brown County) in November 2003. The facilities are funded through a combination of funds from the Ohio General Revenue Fund and the U.S. Department of Veterans Affairs, as well as the residents, based on their own ability to pay. The Sandusky facility is licensed for 427 nursing beds, plus 300 independent living beds. The Georgetown facility is licensed for 168 nursing beds.<sup>3</sup>

The Ohio Veterans Homes have a full time medical director, and full-time staff physicians. However, due to the large number of residents, the two veterans' homes also contract with a number of local physicians to provide independent living and nursing home services to qualified veterans. The Ohio Veterans Homes contracts with medical service providers to provide hospice care to patients requiring these services. Stein Hospice is a certified Medicaid/Medicare hospice provider who contracts with the OVH to provide routine and acute hospice services.

### **INVESTIGATIVE SUMMARY**

The Office of the Ohio Inspector General conducted a review of OVH records, and determined that professional relationships existed among several doctors at the facilities. Dr. Larry Robinson, Dr. Dennis Furlong, and Dr. James Preston are all contract physicians for the Ohio Veterans Homes at the Sandusky facility. These doctors are also listed as "Medical Directors" for Stein Hospice on the Stein website. Dr. Todd Williams and Dr. Michael McHenry are employees of the OVH facility located in Georgetown. A third doctor, Dr. Andrew Ache, is a contract physician at the Georgetown facility. These three doctors are also listed as "Medical Directors" for Stein Hospice on the Stein website.

On March 31, 2014, a meeting was held between the Ohio Department of Veterans Services and the Office of the Ohio Inspector General, to discuss the self-reporting process that the Office of Inspector General for the U.S. Department of Health and Human Services established for potential violations of federally regulated nursing care facilities.

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<sup>3</sup> 2014 Annual Report, Ohio Department of Veterans Services.

In June 2013, the ODVS created a Compliance and Ethics Department within the Ohio Veterans Homes division, in compliance with the Patient Protection and Affordable Care Act (PPACA). This compliance program adopted a code of conduct and provides training for all OVH employees in both veterans' home locations. The program began a review of all contractual relationships, and the compliance officer concluded that there were significant problems with the relationship between Stein Hospice and the Ohio Veterans Homes.

The problems specifically targeted by the compliance officer included the employment status of doctors Williams and McHenry at the Georgetown facility, the delineation of responsibilities and resources between Stein Hospice and the Georgetown facility, self-referrals by physicians, and deprivation of beneficiary right of choice at both the Sandusky and Georgetown facilities. The compliance officer recognized these issues as possible violations of federal laws, including HIPPA violations.

*Employment Status of Dr. Todd Williams and Dr. Michael McHenry*

Dr. Todd Williams and Dr. Michael McHenry are classified as intermittent employees of the State of Ohio. Both are classified as physician administrator 2, and are assigned to the Georgetown facility. The description for the position states, in part, that a physician administrator 2 "... participates in resident care management to assure provision of adequate care" and various other duties relating to the administration of healthcare and supervision of the staff at the facility. Intermittent employees are generally required to work less than 1,000 hours per fiscal year, are allowed to contribute to the Ohio Public Employees Retirement System pension plan, and are eligible for other benefits offered to state employees.

In addition to being intermittent employees of the State of Ohio, Williams and McHenry are also independent contractors, with yearly contracts to provide services to the Ohio Veterans Homes. According to the terms of their contract, the doctors shall each be paid a monthly fee of \$1,200 to provide "... services as a physician." The contract also provides for an additional \$800 a month for services as "co-medical director" of the Georgetown facility. The contract covering the period of July 1, 2014, to June 30, 2015 increases the payment amount for physician services to \$1,435 per month.

“Physician Services” are defined in the services contract exhibit A as directing the “... medical/health care services to assigned residents on an ‘on-call’ basis;” coordinate rehabilitation treatment and progress in patients; and assist “... agency supervisors in monitoring and evaluating quality” of medical services.

“Medical Director Services” are defined as determining “... the adequacy and appropriateness of medical care for all residents ...;” assisting with the development “... of policies and procedures ...;” and “... monitor other medical staff ...” for “... accountability and professionalism.”

The descriptions indicate possible overlap between the doctors’ duties as employees, and at the same time, independent contractors for the State of Ohio. The hourly wage set for both Williams and McHenry is \$59.06 per hour. A review of the state employee timekeeping system (OAKS) shows that since 2011, Williams claimed 203.07 work hours under the terms of his state employment. The per year hours breakdown for Williams is as follows:

<b>Year</b>	<b>Hours Claimed</b>	<b>Compensation</b>
2011	38.37	\$2,266.13
2012	61.40	\$3,626.28
2013	63.30	\$3,738.49
2014	40.00	\$2,362.40
<b>Totals</b>	<b>203.07</b>	<b>\$11,993.30</b>

Since 2011, McHenry has claimed a total of 254 hours worked under the terms of his state employment. The yearly breakdown for McHenry is as follows:

<b>Year</b>	<b>Hours Claimed</b>	<b>Compensation</b>
2011	39.00	\$2,303.34
2012	75.50	\$4,459.03
2013	82.90	\$4,896.07
2014	56.60	\$3,342.79
Totals	254	\$15,001.23

Under the terms of the independent contractor agreements signed by Williams and McHenry, each doctor is to receive a flat monthly rate for services provided. The monthly rate is divided into two figures, one for the services provided as a physician, and another rate for services as a co-medical director. An increase in the compensation for physician services was included in the 2014 contract, which went into effect on July 1, 2014.

<b>Year</b>	<b>Monthly Rate-Physician</b>	<b>Monthly Rate-Co-Medical Director</b>	<b>Total Monthly Compensation</b>
2011	\$1,200	\$800	\$2,000
2012	\$1,200	\$800	\$2,000
2013	\$1,200	\$800	\$2,000
2014	\$1,435	\$800	\$2,235

*Ohio Ethics Law and Conflict of Interest*

Ohio Revised Code (ORC) §102.04(B) prohibits state employees from entering into service contracts with state agencies, unless the contracts are competitively bid. Ohio Revised Code §102.04(D) offers exceptions, namely if the employee is selling services to an agency other than the one for which they work, and a statement is filed with the Ohio Ethics Commission (OEC).

The exception would not apply in this situation because the doctors are contracting for the agency that employs them.

Ohio Revised Code §2921.42(A)(4) states that no public employee shall have an interest in the profits or benefits of a public contract. ORC Section 2921.42(C) provides the exception, with four requirements that must be met for a public employee to have an interest in a public contract, namely that:

- 1) The subject of the public contract is [for] necessary supplies or services ...;
- 2) The supplies or services are unobtainable elsewhere for the same or lower cost, or are being furnished ... as part of a continuing course of [business] dealing established prior to the [employee's hiring] ...;
- 3) The treatment [of the state] ... is either preferential to or the same as that accorded other customers or clients in similar transactions; and
- 4) The entire transaction is conducted at an arm's length,<sup>4</sup> with full knowledge by the [state] ... of the [employee's] interest ..., and the [employee] ... takes no part in the [state's decision-making process] ... .

All four of these requirements must be met for a doctor to be permitted to provide services as both an employee and a contractor.

*Ohio Ethics Commission Staff Attorney Advisory Opinion*

Prior to hiring Williams and McHenry, former ODVS Chief Legal Counsel Gregory Kowalski asked for an opinion from the Ohio Ethics Commission regarding the employment arrangement. In a staff advisory opinion issued on August 17, 2010, OEC Staff Advisory Attorney Karen King stated that the doctors' part-time employment as state officers, and their continued use as independent contractors did not violate state ethics laws. ([Exhibit 1](#))

In the determination that the arrangement did not violate ORC §102.04(B), OEC relied on Ohio Ethics Commission Advisory Opinion 88-001, which states that "medical services" provided by

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<sup>4</sup> An "arm's length" transaction is one where both parties act voluntarily without compulsion or duress; occurs in the open market; and both parties act in their own self-interest.

licensed physicians do not fall under the definition of “services” for purposes of that statute. Thus, ORC §102.04(B) would not apply to any physician or medical service provider. OEC provided further analysis of the applicability of ORC §2921.42, and the four requirements noted above to fit the exception. It was determined that the medical services being provided were necessary services, since the Ohio Veterans Home is statutorily required to provide those types of medical services. In regard to this fact, OVH met the requirement specified in 2921.42(C)(1). It was also determined that the OVH would be unable to secure the same level of services from other doctors, due to the concept of “continuity of care.” “Continuity of care” refers to the idea that these doctors, as employees, are more familiar with the medical needs of their individual patients, and are therefore able to provide a level of care no other doctor could provide on an “on-call” basis, again relying on OEC Advisory Opinion 88-001. Furthermore, since the doctors were contracted to provide services prior to their hiring as employees, the contracted services would be part of a continuing course of doing business, provided that the contract automatically renews and the contract terms or conditions do not change after hiring. In regard to these facts, OVH met the requirement specified in 2921.42(C)(2). However, the determination of whether the requirements were met for both ORC §2921.42(C)(3) and §2921.42(C)(4) was left to OVH to determine.

The OEC advisory letter did identify other ethics concerns with the contract arrangement. ORC §2921.42(A)(1) would prohibit the doctors from participating in any matter that would affect their personal service contract or their private practice. Furthermore, since the physicians maintain outside employment, ethics laws would prohibit the doctors from referring residents for which they are acting as a physician, to any program the doctor is associated with, or using their position within the Ohio veterans’ homes to acquire patients for any private practice in which they maintain an interest. Both Williams and McHenry are listed as medical directors for Stein Hospice on the Stein website. King concluded that physicians providing care to residents of the OVH would be in violation of state ethics laws if they made referrals to medical service programs where they held a financial stake.

Four other doctors who provide contract services with the OVH are also listed as medical directors for Stein Hospice: Preston, Ache, Furlong, and Robinson. While these doctors are not

state employees, they provide regular physician care to OVH residents, and have the ability to make referrals to other programs, such as Stein Hospice, if further care is deemed necessary.

#### *Contract Services with Stein Hospice*

The Georgetown veteran's facility has had an empty wing, which OVH provided to Stein Hospice at no cost or other consideration since 2009. Stein operates a 22-bed hospice service out of this location, which Stein advertises as a "partnership" with the OVH.<sup>5</sup> Stein prominently advertises its connection to the OVH, in both the Sandusky and Georgetown locations.

The OVH compliance officer also found that 100 percent of all hospice referrals at OVH go to Stein Hospice. Accepted medical guidelines recommend that a patient or the patient's family be given a choice as to where they may obtain hospice services, and are required to sign a "Hospice Election Form" which is included in a patient's medical record. Internal investigations by ODVS concluded that the majority of hospice patients were never presented this form, and were instead just transferred to Stein Hospice without being offered another option.

The internal investigation also concluded that the OVH doctors may be overprescribing hospice services, in a manner to transfer more patients to Stein Hospice. ODVS claims the national average for hospice stay is 101 days. The compliance officer found that the average stay for a Stein Hospice patient was 472 days, with at least one patient being in the care of Stein for over 1,700 days.

Stratmann stated the OVH receives money from the U.S. Department of Veterans Affairs, allocated as a certain dollar value per patient per day. When a patient is in hospice, the OVH still receives its money from the U.S. Department of Veterans Affairs; however, the hospice also receives money from Medicare, set at a certain dollar value per patient per day. The hospice then provides a percentage back to the OVH. In this way, both the OVH and the hospice benefit from a patient being placed in hospice care.

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<sup>5</sup> Stein website, <https://www.steinhospice.org/services/veterans/ohio-veterans-homes/>

### *Use of State Facilities and Equipment*

The Ohio Ethics Commission letter does identify other ethics concerns with the contract arrangement. ORC §2921.42(A)(1) would prohibit doctors employed by the state from participating in any matter that would affect their personal service contract or the private practice. ORC §102.03(D) and (E) prohibit a state employee from soliciting, accepting, or using the authority or influence of their position to secure anything of value for their private business. This includes using access to staff and resources to benefit outside employment.

Both Williams and McHenry are listed as medical directors for Stein Hospice, which is uniquely situated in the Georgetown facility and has been using space and resources of the state of Ohio for free. This has created a potential ethical conflict with the doctors who have received special treatment for their private business. Robinson, Furlong, and Preston are also contract physicians with the OVH, at the Sandusky location. These doctors also serve as Stein Hospice medical directors, even though they are not state employees.

Since 2009, Stein Hospice has had a physical location at both the Georgetown and Sandusky facilities. Stein Hospice office operations were conducted at the Sandusky facility, with Stein utilizing approximately 1,950 square feet of office space. Hospice Unit services were run out of the Georgetown facility, totaling about 12,110 square feet of medical use space. At the time of the agency referral, the Stein Hospice Unit at the Georgetown facility housed 15 patients, 13 of which were OVH residents. Stein used these spaces without a contract or lease, and provided no monetary payment for their use. Other state assets used by Stein Hospice included seven computers and monitors, two printers, two laptop computers, and the information technology infrastructure.

Stein employees were fully integrated with OVH staff, manning nursing stations outside Stein Hospice, and were being treated as part of the OVH staff, with full access to OVH computer systems. There is a monetary benefit to Stein Hospice by the free access to facilities and equipment. The uncompensated use of state property, facilities, and staff represent a loss of revenue to the state.

### *Self-dealing*

OEC Advisory Opinion 88-001 states that state-employed physicians who maintain outside employment are prohibited from referring patients seen in their public practice to their private practice. Ohio ethics laws prohibit the doctors from referring residents for which he or she is acting as a physician to any program the doctor is associated with, or using the doctor's position within the veterans home to acquire patients for any private practice in which they maintain an interest.

An analysis of the patients at the Sandusky facility revealed that 58 residents were placed in hospice care, all under the supervision of Stein Hospice. Of those 58, 36 were referred to Stein by contract doctors Preston, Furling, or Robinson. All three are contract doctors with the OVH and are employees of Stein Hospice. The other 22 patients in hospice care were referred by doctors not affiliated with Stein Hospice. At the OVH Georgetown facility, 15 patients were in hospice care directed by Stein. All 15 of those patients were referred to Stein Hospice by doctors Williams, McHenry, or Ache, who are all employees of Stein.

Both Williams and McHenry are listed as medical directors for Stein Hospice on the Stein website. Physicians providing care to residents of the OVH could be in violation of state ethics laws if they made referrals to medical service programs where they held a financial stake.

These referrals also represent possible violations of the Stark Act, anti-self-dealing laws found in 42 U.S.C. 1395nn. The federal law prohibits physicians from referring Medicare and Medicaid patients to designated health services where the physician has a financial relationship. Financial relationships can include ownership, investment interest, and compensation agreements. Stein Hospice receives Medicare payments for the patients in its care. ODVS has referred these possible violations to the Office of Inspector General for the U.S. Department of Health and Human Services, the federal agency with jurisdiction in these matters.

Williams and McHenry are also state employees, and the referral of patients to Stein Hospice by these doctors potentially violated the OEC staff advisory opinion issued prior to those doctors being hired.

### *False Claims*

31 U.S.C. §§ 3729–3733, also called the “False Claims Act” imposes liability on people or corporations who defraud government programs. A person who submits a claim they know to be false is liable for treble damages<sup>6</sup> and up to a fine of \$2,000 per claim. A claim is any demand for money or property made directly to the federal government or to a contractor, grantee, or other recipient if the money is to be spent on the government’s behalf and if the federal government provides any of the money demanded, or if the federal government will reimburse the contractor or grantee.<sup>7</sup> Since OVH residents are Medicare/Medicaid recipients, any false claim submitted in order to fraudulently get Medicare or Medicaid payments would be contrary to the False Claims Act.

Hospice services are end-of-life services for terminally ill patients. Terminally ill patients are those patients with a prognosis of a short period of life expectancy. A patient who elects hospice care waives the right to have curative care related to his or her terminal illness.

To be eligible for hospice services under Medicare, a doctor must certify a prognosis of six months or less of life expectancy for an initial 90-day period. After the initial 90-day period, a doctor must recertify the patient as hospice appropriate every 60 days. The 2015 report, “NHPCO’s Facts and Figures on Hospice” by the National Hospice and Palliative Care Organization stated that the national average for patients in hospice care in 2014 was 71 days, with only 10.3 percent of patients receiving hospice services exceeding 180 days. The overall trend in hospice stay was toward shorter stay durations, with 63.2 percent of hospice patients receiving services for 30 days or less.

However, an internal OVH compliance review found that the average OVH resident referred to hospice care received hospice services for 472 days, far in excess of the national average. The review found one resident who had received hospice services for over 1,700 days, or over four years.

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<sup>6</sup> Treble damages - Certain statutes require that after the jury has determined the amount of the plaintiff’s actual damages, the court must award three times that amount. Cornell University Law School, Legal Information Institute.

<sup>7</sup> The “False Claims Act”: A Primer United States Department of Justice Publication.

After the initial 90-day referral period, a Stein Hospice doctor must recertify every 60 days that each of these patients has a life expectancy of six months or less. Each recertification has the potential to be a violation of the False Claims Act. ODVS has referred these possible violations to the Office of Inspector General for the U.S. Department of Health and Human Services, the federal agency with jurisdiction in these matters.

#### *Patient Freedom of Choice of Providers*

According to the Patient Bill of Rights created in 1998, patients have the right to choice in service providers. A healthcare provider cannot limit patient access to one specific provider. The ODVS internal review found that patients who needed hospice care were directly admitted to Stein Hospice, and the patient, or patient's representative, was not given the proper forms to waive their right to choose a specific healthcare provider, or being presented with alternative care providers. In order to correct this issue, OVH has implemented a Provider Choice Policy and Authorization form,<sup>8</sup> which will be presented to each patient prior to referral to outside provider care.

#### *Possible State Law Violations Concerning Nursing Hours*

During the course of self-reporting, ODVS also raised the issue that the OVH Georgetown facility may be in violation of state laws regarding the mandatory minimum hours of nursing care being provided to residents. The Ohio Administrative Code Section 3701-17-08 requires nursing homes to staff the home with adequate nursing aides, registered nurses, and licensed practical nurses, including those nurses who perform administrative or supervisory duties, to provide a minimum of two and a half hours of direct care and services per resident per day. ODVS reported that there was a possibility that the Georgetown facility was including Stein Hospice nursing staff in their formula for meeting the minimum nursing hours standard, despite Stein nurses not providing direct care to nursing home residents.

The Office of the Ohio Inspector General conducted an analysis of hours reportedly worked by nursing staff at the Georgetown Veterans Home and compared that number to the state-required minimum. The Georgetown Veterans Home has a maximum bed occupancy of 168 residents. If

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<sup>8</sup> Ohio Department of Veterans Services Nursing Form #1286A (2 pages).

the facility were at full capacity, state law would require a total of 420 nursing hours of direct care per day.

The Office of the Ohio Inspector General compiled the hours worked by nursing staff at the Georgetown facility beginning in February 2011 and continuing through 2013. Stein Hospice began their onsite care in 2011, therefore no Stein nursing staff would have been on site prior to that year.

The following table shows the findings of the Office of the Ohio Inspector General regarding the hours worked by OVH Georgetown facility state nursing staff:

<b>Year</b>	<b>Date of Lowest Nursing Hours Provided/ Amount of Nursing Hours Provided</b>	<b>Date of Highest Nursing Hours Provided/ Amount of Nursing Hours Provided</b>	<b>Daily Average of Nursing Hours Provided</b>
Feb. 2011-Dec. 2011	July 24, 2011 / 513 Nursing Hours	November 11, 2011 / 997.9 Nursing Hours	697.415 Nursing Hours
2012	January 8, 2012 / 573.8 Nursing Hours	February 20, 2012 / 1,016.1 Nursing Hours	736.67 Nursing Hours
2013	June 8, 2013 / 592.7 Nursing Hours	May 27, 2013 / 997.3 Nursing Hours	750.9 Nursing Hours

This chart illustrates that, based on maximum bed numbers, the Georgetown Veterans Home facility, if adequately staffed, is providing direct care nursing hours to its residents well in excess of the state-required minimums.

*Process for Self Reporting Potential Violations*

The Office of Inspector General for the U.S. Department of Health and Human Services has issued a Provider Self-Disclosure Protocol, last updated on April 17, 2013. This protocol lays out the manner that healthcare providers can self-disclose federal violations to regulatory authorities.

The protocol states that all necessary corrective action could be complete and effective at the time of disclosure, except in the case of improper kickback arrangements, which should have corrective actions taken and will be terminated within 90 days of disclosure. On September 8, 2014, the Ohio Department of Veterans Services Chief Legal Counsel Fred Stratmann began the self-reporting process with the Office of Inspector General for the U.S. Department of Health and Human Services. As part of the self-reporting process, ODVS provided the Office of Inspector General for the U.S. Department of Health and Human Services a breakdown of the possible damages incurred by the state, or potential liabilities incurred by the state for federal violations, totaling a potential liability to the State of Ohio of \$5,339,101.96.

The following is a table showing the breakdown of the potential liabilities per facility:

	<b>Sandusky Facility</b>	<b>Georgetown Facility</b>
General Inpatient Revenue Received after 8/26/2013	\$47,246.85	\$450.00
Routine and Continuous Care Per Diem received after 3/23/2010	\$1,765,099.71	\$201,865.21
Lost Equipment and Space Rental Revenue	\$78,000.00	\$645,866.67
Staffing Provided Free of Charge	-----	\$2,647,820.37
<b>Total Liability</b>	<b>\$1,843,099.71</b>	<b>\$3,496,002.25</b>

While the Office of the Ohio Inspector General was monitoring the self-reporting process, and was anticipating incorporating any federal recommendations, a staffing change occurred within ODVS. In December 2015, Chief Legal Counsel Fred Stratmann stepped down, and was replaced with Sean McCarthy. In an attempt to bring himself current on the self-reporting procedure, McCarthy engaged the services of outside counsel at Ice Miller LLP. Through their discussions, the position of ODVS changed and the legal determination was made that the relationship between Stein Hospice and the OVH did not constitute any possible breach of

federal law. Under this new analysis, on February 26, 2016, ODVS voluntarily withdrew from the self-reporting process. ([Exhibit 2](#))

## **CONCLUSION**

On March 10, 2014, the Office of the Ohio Inspector General received a memorandum containing allegations of wrongdoing from Fred Stratmann, chief legal counsel for the Ohio Department of Veterans Services. ODVS suspected doctors employed or contracted by the Ohio Veterans Homes (OVH) had a conflict of interest because they were serving both as physicians to OVH and employed as medical directors by Stein Hospice, a hospice care service provider under contract with OVH. ODVS also expressed concern Stein Hospice appeared to be operating free of charge out of an unused wing of the veterans home located in Georgetown, without a lease agreement or payment of rent and other fees.

ODVS further raised issue with the relationship between the Ohio Veterans Homes and Stein Hospice, specifically targeting three areas of greatest concern:

- Possible federal anti-kickback violations including self-dealing and false claims violations;
- Failure to delineate responsibilities between Stein Hospice and the Ohio Veterans Homes, in possible violation of federal regulations;
- Possible violation of patients' and beneficiaries' right of provider choice.

Based on the requirements of the Affordable Healthcare Act, the Ohio Veterans Homes hired a compliance officer and conducted an in-depth compliance review. The results of that review found the possibility of multiple violations of both federal law and state ethics laws.

The Office of the Ohio Inspector General found that two of the physicians at the Ohio Veterans Homes held dual contracts with the state of Ohio, as both employees of the state and also independent contractors for providing the same services to the Ohio Veterans Homes.

The Office of the Ohio Inspector General reviewed a staff advisory opinion from the Ohio Ethics Commission which outlined how these doctors could be both employed by the state and have an

interest in a state contract as an independent contractor. The Office of the Ohio Inspector General found that the relationship between the Ohio Veterans Homes and the two doctors potentially did not meet what was specified in the OEC staff advisory opinion.

**Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe that a wrongful act or omission occurred in this instance.**

The Office of the Ohio Inspector General further found that Stein Hospice, a private medical provider, was being supplied with operational space without a lease contract, in violation of state policy. Stein Hospice, a private medical provider, was also supplied with state resources and equipment free of charge. This misuse of state resources and equipment was for the financial benefit of Stein Hospice.

**Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe that a wrongful act or omission occurred in this instance.**

The Ohio Department of Health and state laws require a nursing home facility to provide an adequate number of nursing staff for each resident. A concern was raised involving the Georgetown facility using Stein Hospice employees in addition to state-employed nurses in determining how many nurses to staff for each shift. An analysis of nursing hours claimed by state employees showed that the Georgetown facility was adequately staffed with state-employed nurses at all times.

**Accordingly, the Office of the Ohio Inspector General finds no reasonable cause to believe a wrongful act or omission occurred in this instance.**

The potential federal law violations, including anti-kickback violations, Stark Act violations, failure to delineate responsibility, and violations of patients' rights to choose healthcare providers were referred by the ODVS to the Office of Inspector General for the U.S. Department of Health and Human Services in accordance with the federal agency's self-disclosure protocol.

A different legal analysis by ODVS and outside counsel asserted that no possible violations had occurred, and ODVS voluntarily withdrew from the self-reporting process.

It is not known at this time whether the U.S. Department of Health and Human Services will take further action.

### **RECOMMENDATION(S)**

The Office of the Ohio Inspector General makes the following recommendation(s) and asks the director of the Ohio Department of Veterans Services to respond within 60 days with a plan detailing how the recommendation(s) will be implemented.

The Ohio Department of Veterans Services should:

- 1) Re-evaluate the dual employment/contractor status of doctors Williams and McHenry, and bring the relationship into compliance with the Ohio Ethics Commission staff advisory opinion.
- 2) Enter into a lease agreement and services agreement with Stein Hospice to ensure that Ohio Veterans Homes receives proper reimbursements for space and equipment.
- 3) Consider implementing safeguards that will prevent physician self-referrals.

### **REFERRAL(S)**

This report of investigation will be provided to the Office of Inspector General for the U.S. Department of Health and Human Services and the Ohio Ethics Commission for consideration.



STATE OF OHIO  
**OFFICE OF THE INSPECTOR GENERAL**

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RANDALL J. MEYER, INSPECTOR GENERAL

**NAME OF REPORT: Ohio Department of Veterans Services**

**FILE ID #: 2014-CA00049**

**KEEPER OF RECORDS CERTIFICATION**

**This is a true and correct copy of the report which is required to be prepared by the Office of the Ohio Inspector General pursuant to Section 121.42 of the Ohio Revised Code.**

**Jill Jones**  
**KEEPER OF RECORDS**

**CERTIFIED**  
**March 17, 2016**

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