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# United States Senate

COMMITTEE ON  
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

KEITH B. ASHDOWN, STAFF DIRECTOR  
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March 27, 2015

The Honorable Robert A. McDonald  
Secretary  
U.S. Department of Veterans Affairs  
810 Vermont Avenue, NW  
Washington, DC 20420

Dear Secretary McDonald:

I write today regarding the misuse of medication prescribed by the Department of Veterans Affairs (VA). As you know, the Committee is investigating the tragedies that occurred at the VA Medical Center in Tomah, Wisconsin (Tomah VAMC).<sup>1</sup> One of the serious issues at the Tomah VAMC is the allegation that VA prescription pills were diverted and sold in the community.<sup>2</sup> From other information obtained by the Committee, it appears that the diversion of prescription pills from VA medical centers is occurring at other facilities across the country.<sup>3</sup> I request your assistance in addressing this important matter.

The Committee has been examining allegations of opioid over-prescription, substandard patient care, and a culture of retaliation at the Tomah VAMC. According to the VA's own interim review of these allegations, there are "unsafe clinical practices at the Tomah VAMC in areas such as pain management and psychiatric care."<sup>4</sup> Six of eighteen patients reviewed revealed "patient harm . . . that could be at least partially attributable to prescribing practices," and twelve of eighteen patients showed "extensive use of opioids and benzodiazepines."<sup>5</sup> The report noted that patients at the Tomah VAMC were prescribed opioids and benzodiazepines at almost double the national average.<sup>6</sup> News reports suggest prescription drugs obtained at the Tomah VAMC were diverted and sold for recreational use.<sup>7</sup>

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<sup>1</sup> See letter from Chairman Ron Johnson to Department of Veterans Affairs Secretary Robert A. McDonald. February 4, 2015.

<sup>2</sup> Mike Tobin. "Powerful pills from local Wisconsin VA showing up on the street, police say." *Fox News*. March 10, 2015. Accessed at: <http://www.foxnews.com/politics/2015/03/10/powerful-pills-from-local-wisconsin-va-showing-up-on-street-police-say/>

<sup>3</sup> See letter from the Office of the District Attorney, Sheboygan County Joe DeCecco to Chairman Ron Johnson. March 11, 2015.

<sup>4</sup> Memorandum from Interim Under Secretary of Health, Dep't of Veterans Affairs, to Secretary, Dep't of Veterans Affairs, "Summary of Phase One Clinical Review Findings, Tomah, WI (Mar. 10, 2015).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Mike Tobin. "Powerful pills from local Wisconsin VA showing up on the street, police say." *Fox News*. March 10, 2015. Accessed at: <http://www.foxnews.com/politics/2015/03/10/powerful-pills-from-local-wisconsin-va-showing-up-on-street-police-say/>

According to new information received by the Committee, this problem is not limited to just the Tomah VAMC. On March 11, 2015, I received a letter from the Sheboygan County District Attorney, Joe DeCecco, describing the District Attorney's investigation of illegal drugs being shipped from California to Sheboygan, Wisconsin.<sup>8</sup> As part of this investigation, law enforcement intercepted a shipment from Santa Cruz, California, to Sheboygan that contained 458 "commercially produced Oxycodone pills."<sup>9</sup> Law enforcement successfully arrested the supplier in California and investigators later determined that he was a patient of a VA facility in California.<sup>10</sup> According to District Attorney DeCecco, the California supplier was prescribed around 600 oxycodone pills per month by the California VA facility,<sup>11</sup> which, Mr. DeCecco noted is "a ridiculous amount of this opiate drug."<sup>12</sup> The pills that were intercepted in Wisconsin appear to have been prescribed by the California VA facility.<sup>13</sup>

This information is disturbing and suggests that the problem of drug diversion from VA facilities to illegal distribution networks is not limited to the Tomah VAMC. It appears that the VA is not properly overseeing and administering the use of prescription drugs at VA facilities. Some of these prescription drugs, it appears, have found their way into black-market drug sales. In order to better understand this problem, I ask that you please provide the following information and material:

1. Please explain the VA's policies and procedures to prevent the diversion of prescription medication.
2. Please explain whether the VA believes the diversion of prescription medication is a problem isolated to certain VA facilities or a widespread problem in the VA network.
3. Please explain when the VA became aware of the 2013 investigation involving the apparent diversion of prescription oxycodone pills from a VA facility in California to Sheboygan, Wisconsin, area, including but not limited to the following information:
  - a. Which VA facility in California prescribed the oxycodone pills intercepted in Sheboygan?
  - b. Had anyone at that California VA facility raised concerns about the potential diversion of prescription medication?
  - c. Who was the VA physician who prescribed the medication?
  - d. Is the VA aware of other patients at the California VA facility who diverted prescription medication?
  - e. Did the California VA facility follow all applicable VA policies regarding the prescription of oxycodone?

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<sup>8</sup> Letter from the Office of the District Attorney, Sheboygan County Joe DeCecco to Chairman Ron Johnson. March 11, 2015.

<sup>9</sup> *Id.*

<sup>10</sup> Phone call between U.S. Committee on Homeland Security and Governmental Affairs staff and Sheboygan County District Attorney Joe DeCecco. March 12, 2015.

<sup>11</sup> *Id.*

<sup>12</sup> See note 8, *supra*.

<sup>13</sup> See note 12, *supra*.

The Honorable Robert A. McDonald

March 27, 2015

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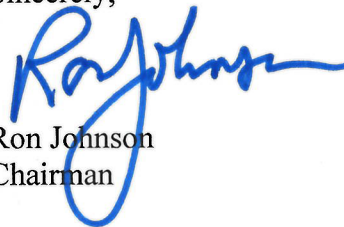
4. Please explain how the VA investigates allegations of the diversion of prescription medication.
5. Please provide the number of open or closed VA investigations that include allegations of prescription medication being diverted between 2008 and the present. Please provide this information with a breakdown as follows:
  - a. For VA facilities in the state of Wisconsin;
  - b. For VA facilities in VISN 12; and
  - c. For VA facilities nationwide.
6. Please explain how the VA collaborates with the VA Office of Inspector General, the Drug Enforcement Administration, and federal, state, and local law enforcement for investigations of alleged drug diversion at VA facilities.
7. What actions has the VA taken at the VA facility in California since 2013 to address the apparent diversion of prescription oxycodone?

Please provide this material as soon as possible but no later than 5:00 p.m. on April 17, 2015.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate “the efficiency, economy, and effectiveness of all agencies and departments of the Government.”<sup>14</sup> Additionally, S. Res. 253 (113th Congress) authorizes the Committee to examine “the efficiency and economy of all branches of the Government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption, or unethical practices . . . .”<sup>15</sup> For purposes of this request, please refer to the definitions and instructions in the enclosure.

Thank you for your prompt attention to this matter. If you have any questions regarding this letter, please contact Brian Downey with the Committee staff at (202) 224-4751.

Sincerely,



Ron Johnson  
Chairman

cc: The Honorable Thomas R. Carper  
Ranking Member

Enclosure

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<sup>14</sup> S. Rule XXV(k); *see also* S. Res. 445, 108th Cong. (2004).

<sup>15</sup> S. Res. 253 § 12, 113th Cong. (2013).

**Instructions for Responding to a Committee Request**  
Committee on Homeland Security and Governmental Affairs  
United States Senate  
114th Congress

**A. Responding to a Request for Documents**

1. In complying with the Committee's request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data, or information should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization, or person denoted in the request has been or is also known by any other name or alias than herein denoted, the request should be read also to include the alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e. CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic form should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
  - a. The production should consist of single page Tagged Image Files (".tif"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - b. Document numbers in the load file should match document Bates numbers and .tif file names.
  - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
  - d. All electronic documents produced should include the following fields of metadata specific to each document:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

## **Instructions for Responding to a Committee Request**

- e. Alternatively, if the production cannot be made in .tif format, all documents derived from word processing programs, email applications, instant message logs, spreadsheets, and wherever else practicable should be produced in text searchable Portable Document Format (“.pdf”) format. Spreadsheets should also be provided in their native form. Audio and video files should be produced in their native format, although picture files associated with email or word processing programs should be produced in .pdf format along with the document it is contained in or to which it is attached.
  - f. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), consult with the Committee staff to determine the appropriate format in which to produce the information.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
  7. Documents produced in response to the request should be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
  8. When producing documents, identify the paragraph in the Committee’s schedule to which the documents respond.
  9. Do not refuse to produce documents on the basis that any other person or entity also possesses non-identical or identical copies of the same documents.
  10. This request is continuing in nature and applies to any newly discovered information. Any record, document, compilation of data or information not produced because it has not been located or discovered by the return date, should be produced immediately upon subsequent location or discovery.
  11. All documents should be Bates-stamped sequentially and produced sequentially. Each page should bear a unique Bates number.
  12. Two sets of documents should be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets should be delivered to the Majority Staff in Room 340 of the Dirksen Senate Office Building and the Minority Staff in Room 346 of the Dirksen Senate Office Building.
  13. If compliance with the request cannot be made in full by the date specified in the request, compliance should be made to the extent possible by that date. Notify Committee staff as soon as possible if full compliance cannot be made by the date specified in the request, and provide an explanation for why full compliance is not possible by that date.



## **Instructions for Responding to a Committee Request**

14. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
15. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
16. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents which would be responsive as if the date or other descriptive detail were correct.
17. In the event a complete response requires the production of classified information, provide as much information in unclassified form as possible in your response and send all classified information under separate cover via the Office of Senate Security.
18. Unless otherwise specified, the period covered by this request is from January 1, 2009 to the present.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

### **B. Responding to Interrogatories or a Request for Information**

1. In complying with the Committee's request, answer truthfully and completely. Persons that knowingly provide false testimony could be subject to criminal prosecution for perjury or for making false statements. Persons that knowingly withhold requested information could be subject to proceedings for contempt of Congress. If you are unable to answer an interrogatory or information request fully, provide as much information as possible and explain why your answer is incomplete.
2. In the event that any entity, organization, or person denoted in the request has been or is also known by any other name or alias than herein denoted, the request should be read also to include the alternative identification.
3. Your response to the Committee's interrogatories or information requests should be made in writing and should be signed by you, your counsel, or a duly authorized designee.

## **Instructions for Responding to a Committee Request**

4. When responding to interrogatories or information requests, respond to each paragraph in the Committee's schedule separately. Clearly identify the paragraph in the Committee's schedule to which the information responds.
5. Where knowledge, information, or facts are requested, the request encompasses knowledge, information or facts in your possession, custody, or control, or in the possession, custody, or control of your staff, agents, employees, representatives, and any other person who has possession, custody, or control of your proprietary knowledge, information, or facts.
6. Do not refuse to provide knowledge, information, or facts on the basis that any other person or entity also possesses the same knowledge, information, or facts.
7. The request is continuing in nature and applies to any newly discovered knowledge, information, or facts. Any knowledge, information, or facts not provided because it was not known by the return date, should be provided immediately upon subsequent discovery.
8. Two sets of responses should be delivered, one set to the Majority Staff and one set to the Minority Staff. When responses are provided to the Committee, copies should be delivered to the Majority Staff in Room 340 of the Dirksen Senate Office Building and the Minority Staff in Room 346 of the Dirksen Senate Office Building.
9. If compliance with the request cannot be made in full by the date specified in the request, compliance should be made to the extent possible by that date. Notify Committee staff as soon as possible if full compliance cannot be made by the date specified in the request, and provide an explanation for why full compliance is not possible by that date.
10. In the event that knowledge, information, or facts are withheld on the basis of privilege, provide a privilege log containing the following information: (a) the privilege asserted; (b) the general subject matter of the knowledge, information, or facts withheld; (c) the source of the knowledge, information, or facts withheld; (d) the paragraph in the Committee's request to which the knowledge, information, or facts are responsive; and (e) each individual to whom the knowledge, information, or facts have been disclosed.
11. If a date or other descriptive detail set forth in this request is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, provide the information that would be responsive as if the date or other descriptive detail was correct.
12. In the event a complete response requires the transmission of classified information, provide as much information in unclassified form as possible in your response and send all classified information under separate cover via the Office of Senate Security.
13. Unless otherwise specified, the period covered by this request is from January 1, 2009 to the present.

## **Instructions for Responding to a Committee Request**

### **C. Definitions**

1. The term “document” in the request or the instructions means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” in the request or the instructions means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face to face, in meetings, by telephone, mail, telex, facsimile, email (desktop or mobile device), computer, text message, instant message, MMS or SMS message, regular mail, telexes, discussions, releases, delivery, or otherwise.
3. The terms “and” and “or” in the request or the instructions should be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” in the request or the instructions mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, businesses or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify” in the request or the instructions, when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; and (b) the individual’s business address and phone number.



## **Instructions for Responding to a Committee Request**

6. The terms “referring” or “relating” in the request or the instructions, when used separately or collectively, with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” in the request or the instructions means agent, borrowed employee, casual employee, consultant, contractor, de fact employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee or subcontractor.
8. The terms “you” and “your” in the request or the instructions refer to yourself; your firm, corporation, partnership, association, department, or other legal or government entity, including all subsidiaries, divisions, branches, or other units thereof; and all members, officers, employees, agents, contractors, and all other individuals acting or purporting to act on your behalf, including all present and former members, officers, employees, agents, contractors, and all other individuals exercising or purporting to exercise discretion, make policy, and/or decisions.

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