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17th Surgeon General of the United States (2002-2006)

April 17, 2017

The Hon. Jeff Sessions
Attorney General of the United States
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Sessions:

As you may recall, we worked together when you were in the Senate and I was the U.S. Surgeon General and Commander of the United States Public Health Service. I have left that position, but Public Health Service officers still reach out to me as a mentor and their former leader. The reason I am contacting you today is because almost 900 Public Health Service officers are assigned to the Federal Bureau of Prisons (BOP), where they provide clinical care to inmates there. These officers comprise about 25 percent of the clinical workforce in federal prisons, the other 75 percent being civilians who are represented by the American Federation of Government Employees (AFGE). It appears that the union has gotten the ear of the BOP leadership, and as a result, the uniformed officers of the USPHS—one of the seven federal uniformed services of the U.S. government—are being discriminated against to the point where many of them are leaving their positions for other places to serve.

As I understand it, twenty-eight members of The Military Coalition (TMC) sent a letter about this situation to your predecessor, Attorney General Lynch. She may never have seen the letter, as the response to TMC came from the Bureau of Prisons. They, of course, denied that there was anything wrong with the way PHS officers were being treated and that their hands were tied by collective bargaining agreements into which BOP had entered with the union.

I am not an attorney, but I reject the notion that arbitrators and federal civilian unions can override clear provisions in federal law.

I am attaching the letter that TMC sent to Attorney General Lynch on November 17 of last year, as the conditions described in the letter and the reasons we believe BOP actions violate federal law yet remain. The reason that TMC took on this issue is that the Commissioned Corps of the U.S. Public Health Service, which has been in existence since 1889, is one of seven federal uniformed services, along with the Army, Navy, Air Force, Marine Corps, Coast Guard, and National Oceanic and Atmospheric Administration. Its members wear Navy uniforms, carry Uniformed Services (CAC) ID cards, receive military pay and allowances, have commissary and PX privileges, and deploy in uniform to the scene of natural and manmade disasters. They provide the medical care to members of the U.S. Coast Guard. Almost 900 of them have deployed with US forces in Iraq and Afghanistan, several thousand of them deployed after Hurricanes Katrina and Rita and Super Storm Sandy, and 300 of them deployed to Liberia to fight Ebola. They are veterans under federal law.

TMC believes that actions taken by the BOP violate provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA), which protects uniformed service personnel against workplace discrimination. The attached law review article, prepared by Navy JAG CAPT (ret.) Samuel Wright, explains the legal rationale behind our belief. You may recall CAPT Wright as the officer who wrote the law review pieces for the Reserve Officers Association.

Current BOP leadership has allowed the American Federation of Government Employees (AFGE) to dictate terms for determining shift selection for all prison employees. The union, which represents only civilians, has established a system wherein PHS officers working in the prisons have no rights whatsoever when it comes to selecting shifts. Using nurses as an example, there might be 20 nurses at a given prison: 15 civilians and 5 PHS officers. Under the current system, all of the civilian nurses—no matter their seniority—are allowed to pick their shifts in seniority order. Whatever shifts are leftover go to the PHS nurse officers. This means that PHS officers invariably get the weekend and night shifts. This happens even if a PHS officer has been at the prison for 18 years and the least senior civilian nurse has been there for six months. USERRA states that no member of a uniformed service can be denied a “benefit of employment” as a result of being in one of the uniformed services, and as the law review article states, selection of shifts is most definitely a “benefit of employment.”

In addition, health professional personnel such as nurses have been ordered to act as guards and transporters of inmates due to the shortage of corrections officers. These health officers are therefore placed in positions of potential harm and forced to work outside of their job description. This also presents a potential significant liability to the U. S. government.

USPHS officers currently see no way to resolve this issue other than by leaving the BOP system, and that exodus is happening even as I draft this letter. What you will find, if you do not already know it, is that BOP has great trouble hiring healthcare personnel. If PHS officers were to leave the BOP, where they have worked since the early 1930s, the entire federal prison system would come to a halt since there would no longer be the ability to provide the federally mandated health care to inmates.

I am not asking for privilege or favor, Attorney General Sessions. I am asking for equity and fairness for PHS officers working at BOP facilities, which is what the law requires and which would also reflect good management practices.

On behalf of our USPHS officers, thank you in advance for reviewing these egregious illegal practices and correcting this injustice.

Sincerely,



VADM Richard H. Carmona, USPHS (Ret.)
17th Surgeon General of the United States

Enclosures (2)

cc: The Honorable Tom Price
Secretary of HHS