



DEPARTMENT OF HEALTH & HUMAN SERVICES

U. S. Public Health Service
Department of Health and Human Services
Aberdeen Area Indian Health Service

Date: June 25, 2012

To: CDR Michael R. Tilus, PHS# 68658

From: Candelaria Martin, MD
Clinical Director of Medical Staff

Subject: Letter of Reprimand for CDR Michael R. Tilus (PHS#68658)

This Letter of Reprimand is being issued to you for misconduct. I am taking this action under regulations contained in Book: 1, Chapter: 1, Section 1, Instruction: 02 of the Commissioned Corps Issuance System (Inst 111.02) http://dcp.psc.gov/eCCIS/documents/CCPM46_4_1.pdf.

This letter of reprimand is to document issues of misconduct, insubordination and general demeanor not becoming of an officer. Your misconduct is based on you engaging in action and behavior of a dishonorable nature which reflects discredit upon you as an officer and the PHS. Examples of this behavior are documented below:

1. On April 5, 2012 at 08:21 am, you willfully performed acts of misconduct by going outside of your direct chain of command in releasing a letter to multiple individuals and agencies outside of the Indian Health Service. This was done after being directed to send any concerns you may have regarding the Tribal Social Service program through the appropriate chain of command within the Indian Health Service to include your direct supervisor and the Aberdeen Area Behavioral Health Director. You issued a letter to multiple agencies on Indian Health Service letter head, signing your name as both the Director of an Indian Health Service program and as a United States Public Health Service officer concerning Tribal Program management concerns. This action is considered misconduct by disobeying the lawful order of official supervisors to be notified and allowed review of all outside correspondence regarding operations. Your conduct has been found to be engaging in actions and behavior that is of a dishonorable nature, which reflects discredit upon yourself as an officer and the PHS. These actions have severely damaged relationships between the Indian Health Service, Bureau of Indian Affairs, the Spirit Lake Tribe and the patients we are here to provide services to and are in direct violation of the PHS Disciplinary Action Policy.

2. You released a "Case Study" as an attachment to the letter that was widely distributed. This "Case Study" had names redacted, but due to the small community and the fact that this case study has been made available through the internet and newspaper distribution, patients and Tribal members are concerned as to the privacy of their protected information. Even with the

redactions, within the close community many are aware of who the specific patient cited is, which makes the protection of confidential information a large concern.

3. On June 16, 2012, you willfully performed an act of misconduct by going outside of your direct chain of command in forwarding a letter to the offices of Senators Hoven and Conrad. This was done without following the appropriate chain of command to secure approval for this communication.

I have deemed these infractions as misconduct. Please be advised that your conduct as outlined above is unacceptable. Therefore, I am hereby advising you that any future breeches in the chain of command structure will result in further action(s) being taken against you. I strongly suggest that you review and reflect upon your conduct as well as your commitment to this program. To that extent, any factor which adversely impacts upon / interferes with the timely, efficient, and professional operation of our program requires my immediate attention and must be expeditiously resolved.

Your continued unprofessional and inappropriate conduct toward the OPDIV, line authority, and fellow colleagues is a violation of the standards of conduct. You have created a work environment that has reduced effectiveness and resulted in a negative environment in which direct line authority are reluctant and hesitant to trust you with daily provider activities. These actions diminish your ability to provide patient care in a manner suitable to the OPDIV. Current line authority has lost all trust in your ability to practice in your current facility in a manner that will have a positive impact. Your unprofessional conduct documented above is prejudicial to organizational morale and negatively impacts the overall mission of our program.

The issuance of the Letter of Reprimand does not preclude the U.S. Public Health Service (USPHS) from taking additional administrative actions due to this misconduct. Additionally, repeated misconduct will subject you to further and possibly more severe disciplinary action under the applicable USPHS policies.

In view of the seriousness of the charges, I am taking the following action:

A copy of this LOR will be forwarded to the Director, Office of Commissioned Corps Operations for inclusion in your electronic Official Personnel File (eOPF) for a period of two years from the date of issue. This LOR will be removed from your eOPF at that time.

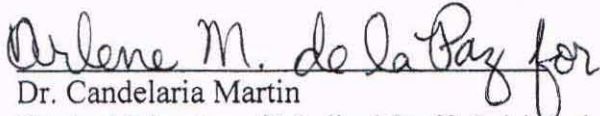
While the LOR remains actively managed in your eOPF you will not be eligible for any promotions, PHS awards, PHS recruitment activities, or PHS deployments. Additionally, your records may be reviewed by a category special pay review board. If any action is taken against your provider license, you will need to provide documentation of the latest action taken against your license by the appropriate State Board of Licensure and to your direct supervisor and also submit any actions to the PHS licensure project officer at 240-453-6037. If you have any further questions, please contact the PHS licensure project officer for further licensure instructions.

If you have evidence to show that this reprimand is based on erroneous information, you may

submit such evidence for my consideration. If you wish, you may write a rebuttal to this reprimand for inclusion in your eOPF. You may also file a grievance to the reprimand. Procedures for filing a grievance can be found in Inst 211.04. If you believe this action was taken for discriminatory reasons, you may also file an Equal Opportunity discrimination complaint. The policy for filing a discrimination complaint may be found in Inst 211.03. Please note that the Commissioned Corps Instructions cited in the letter, can be downloaded from the PHS Website at <http://dcp.psc.gov.eccis/>. If you have any questions whatsoever regarding this matter, do not hesitate to contact me personally.

I would also like to take this opportunity to inform you of the Employee Assistance Program (EAP). The EAP is a government resource available to assist employees and their families who may be experiencing personal and work-related difficulties. Consults are free and confidential. If you choose to avail yourself of this service, please contact a counselor at 1-800-222-0364, 24 hours a day, 7 days a week.

Your signature acknowledges receipt of this Letter of Reprimand. It does not necessarily indicate agreement with the contents.

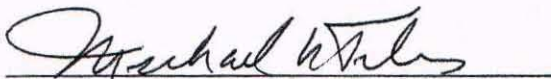


Dr. Candelaria Martin
Clinical Director of Medical Staff, Spirit Lake Health Center

Date

07/13/12

Your signature acknowledges receipt of this Letter of Reprimand. It does not necessarily indicate agreement with the contents.



Michael R. Tilus
CDR, USPHS

Date

7/13/2012



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Service Unit Director
PHS, IHS Health Center
P.O. Box 309
Fort Totten, ND 58335
(701) 766-1600

July 18, 2012

To: Dr. Tilus

From: Arlene M. de la Paz, CEO

RE: Temporary Detail – Aberdeen Area Office

This serves as official notification that you will be on temporary duty status effective July 18, 2012, for non-patient services and unclassified duties at the Aberdeen Area Office, Aberdeen, SD for a period not to exceed 120 days.

During this time you will be supervised by Dr. Vickie Claymore, Deputy Area Director, Behavioral Health Services.

Please acknowledge receipt of this letter in the space provided. Your signature does not mean that you agree with this letter but merely shows that you received it.

Sincerely,

Arlene M. de la Paz
Arlene M. de la Paz, CEO

CC: Vickie Claymore
CDR Emily Williams

Receipt Copy: This is to acknowledge receipt of this letter.

Michael W. Tilus

7/18/2012

Signature/Date

7/19/2012

MEMORANDUM

To: Ms. Arlene de la Paz
Chief Executive Officer
Primary Reviewer

From: Michael R. Tilus, PsyD

Subject: Grievance for "Letter of Reprimand"

1. This grievance is filed in response to the Letter of Reprimand for CDR Michael R. Tilus (PHS #68658) dated 25 June 2012 and given to me on 13 July 2012. I respectfully submit this for your review and consideration.
2. The Mission of the U.S. Public Health Service Commissioned Corps is protecting, promoting, and advancing the health and safety of the Nation. USPHS Officers and the Spirit Lake Health Center are on the front line of defense in the practice of public health improvement, safety, and emergency response to Spirit Lake Reservation public health epidemics. The well-known and ongoing problems with Tribal Social Services positioned the most vulnerable and abused children into increased opportunities for further violation, neglect, depression, and for some, suicidal behavior. This public health crisis was embedded within layers of agency stagnation that unfortunately kept the children's safety and health at great risk. This deliberate ignorance allowed more children to be traumatized without sign of relief. Family and tribal loyalties clouded other agency leadership actions with a loss of professional judgment and boundaries.
3. As opposed to acting in any dishonorable nature as a PHS Officer, I believe I acted in good faith by seeking counsel and gathering consultations with my line authority, multiple other Behavioral Health Directors, Aberdeen Area Behavioral Health, and the New Mexico Board of Psychology Examiners before taking action. Rampant child abuse and the lack of #960 investigations grew over five years without any agency response. While discussing this within the Spirit Lake Health Center administration, it became clear to me that tribal and family loyalties were also significant obstacles to full disclosure and would limit my duty to report. After significant thought and with great concern for the protection of my patients, I acted as a Whistleblower and made a lawful disclosure by raising my concerns about the health and safety of these abuse children to more than just my direct supervisors, but to multiple appropriate agencies who could be intimately involved in resolving this public health crisis.
4. This was more than just doing my job. Doing my job for five years had resulted in no agency action. I had already raised the safety issues with both my Service Unit and Regional Level Supervisor. Now, I believed, due to the acute nature of this public health

disaster, the disclosure needed much broader stakeholders with direct attention given to the lead federal agency, the Chief of Social Services, BIA.

5. To date, I have never seen an IHS policy or procedure for Whistleblowers, nor have I ever been given a realistically effective channel of doing so. I have seen no IHS whistleblower directives or guidance given filing procedures, confidentiality rules, or other rules of conduct that a whistleblower must adhere to.
6. When collaborating agencies are practicing illegally, unethically, and have practice behavior that places our IHS patients at risk, even mortal risk, how are Behavioral Health providers supposed to safely report this without jeopardizing their career or position? With no protected manner or method identified in IHS, how does the average IHS employee report possible abuse or dangers? It would appear to me to be in the best interests of the IHS to establish a safe, internal, procedure for accepting and following up on whistleblower complaints.
7. My whistleblower complaint identified multiple TSS mismanagement and practice violations that endangered the public health and safety of the abused children.
8. As such, I believe I have protection afforded me under the Food and Drug Administration Safety and Innovation Act of 2012 as a Public Health Officer for this action.
9. I believe I acted in good faith and with honorable behavior befitting a PHS Officer serving in frontier, isolated, Indian country, under great duress in the midst of a public health crisis by directly reporting this to the Chief of Social Services, Bureau of Indian Affairs as the lead federal agency with law enforcement backup as well.
10. As a licensed clinical and prescribing psychologist, I discharged my professional duties and legal obligations to advocate for my patients and comply with professional standards of psychology practice and followed statutory mandates.
11. As a Public Health Service Officer, I followed the mission mandate of the USPHS and took action on the child abuse public health epidemic identifying a dangerous social service pattern of malpractice that critically exposed vulnerable children and adolescents to great safety risks.
12. Finally, as a mandated reporter, I discharged my legal and ethical duties to report child abuse to the Tribal Social Services and the FBI for their investigations.
13. Senators Conrad and Hoeven's office both called me directly and inquired about the conditions of the children at Spirit Lake Reservation after reading the press releases. As ND Senators, they were clearly very concerned about the safety of the reservation children. Both Senator's Offices requested information, documents, and updates as the situation unfolded. I respected their requests and did forward them documents and updates as the Tribal Social Services interventions began. Later I received a phone call from Acting Director of Aberdeen Area IHS Mr. Rick Sorensen concerning inquiries from the New York Times. I acknowledged that I had been contacted by both Senator's office, and did inform Ms. Sorensen that I had provided them information, documents, and updates on the children's safety and on tribal social services meetings.

14. As a Federal Officer, I found their request valid and potentially helpful in providing increased funding, staffing, or other program enhancements. I also acknowledged to Mr. Sorensen that from my previous understanding, I did not believe my actions were inappropriate or violated any policy that I was aware of, or have seen, concerning Senatorial requests. I did not initiate this action, but only responded to them per their requests, which I was hopeful would be fruitful to the situation.
15. In addition, I also believe that my whistleblower communication efforts to update and inform the ND Senators is protected communication under the Food and Drug Administration Safety and Innovation Act of 2012 for USPHS Officers and permit me to lawfully communicate with Congress on specific danger to public health and safety.
16. Following this telephone consultation with Acting Director, I have not forwarded or discussed anything with either Senator's office in my professional capacity. In ten years of working within the Indian Health Service, I do not believe I have seen a written policy on what is considered appropriate or inappropriate in responding to Senatorial inquiries about the direct population you are serving, especially in a public health crisis. In my professional opinion, it is very appropriate and timely for direct providers on reservations like Spirit Lake to be transparent, revealing, and fully cooperating with their state Senators for the safety and protection of the Indian people.
17. As a Federal Officer and mandated reporter, I believe I lawfully provided information to both ND Senator's personal inquiries and concerns. And there agency interventions have focused attention on this public health crisis and is helping all of us save lives.
18. Concerns were noted in the LOR concerning the "Case Study". There was specific Senatorial concern for the welfare of this young female, with specific inquires as to her safety and placement. As I noted in my document, this case was especially dangerous due to the ongoing suicidal ideation and attempts, inappropriate home settings, substance abuse, and pedophilia. All the agencies and individuals that received my original report have professional standards and ethics concerning confidential, mandated reporting responsibilities, and suicidal case sensitive information. Outside the patient's gender, the specifics mentioned in this case study highlighted the tragically dysfunctional practices of TSS with facts and dates of increased abuse, crisis, suicidal attempts; Behavioral Health Departments attempted interventions, and ongoing efforts of filing #960s.
19. Taking into consideration that the BHD has seen hundreds of patients over the past five years, and has an active Suicide Watch List of more than 180 patients, it is highly unlikely that the average person on Spirit Lake Reservation would be able to "guess" who my screened patient was.
20. The case study is a document about failed TSS program and their lethal patient safety concerns. It contained sufficient detailed factual statements setting forth the basis for the complaint on the Tribal Social Services Program while protecting privacy. It also potentially reported the "possible" violation that the BIA as a federal law enforcement agency could investigate if they wished.

21. The fact that this document and my original Letter of Grave Concern were released to the press or internet is beyond my control. Since we are such a small community, in general the community already knows who seeks Behavioral Health care; who attempted suicide; and who was hospitalized. As a practice, I have managed the BH Department with very conservative and strict policies in ensuring confidentiality, legal releases signed for authorizations of treatment, with such a degree that we are known for being very compliant with HIPPA standards. I do this especially because we are in such a small community with multiple agencies who operate under little to no professional practice or ethical standards.
22. The BH Office received no complaints or inquiries concerning this Case Study, outside the direct questioning from Senators Hoeven and Conrad's offices. And, I do concur with the understanding that particular family members who are intimately acquainted with the patient and her families may reasonable guess who it is. That is possible. However, given the risk benefit of submitting this document, I was very happy to report to both Senator's Offices that after my disclosures ultimately this patient was permanently relocated to a safe, stable, foster care home and is alive; multiple federal and state agencies have also identified corrective action plans with hopes of restoring Tribal Social Service function; and most importantly- the abused children of Spirit Lake Tribe are hopefully going to be fully investigated and protected.
23. However, I do acknowledge the general concern noted in the document, but wish to assure you that my longstanding practice is to protect patient privacy and comply with HIPPA guidelines wholeheartedly. In addition, I reviewed this with my licensing board as content experts and they did not believe I had violated any practice standards. If I erred on this point, I did so very carefully with the safety of this child as my immediate concern.
24. Allegations of "unprofessional and inappropriate conduct toward the OPDIV, line authority, and fellow colleagues" appear capricious and arbitrary, at best. To date, I have received no counseling statements from my Clinical Director, Administration, or Regional Administrator, ever. For the past five years, the Behavioral Health Department at Spirit Lake Health Center has consistently received excellent program evaluations; cited for being a department to emulate; cited for the "best" behavioral health carts reviewed in region; received IHS national and regional awards. As Director, I have received national and state psychological awards for leadership in providing integrated behavioral health care, suicide prevention, and disaster response in Indian country. I have a solid professional reputation as being a proficient and safe clinical psychopharmacologist as well as a practicing clinical psychologist with high customer satisfaction.
25. On the same day I received my Letter of Reprimand, one hour later, Ms. De la Paz gave me my mid-year PMAP that was originally completed by my direct supervisor, Dr. Candelaria Martin CD. Of the five elements, two were noted to be excelling, and the

other three were positively informative. There were zero negative comments- signed by Ms. De la Paz and myself. This PMAP appeared incongruent to the one-hour before LOR remarks of “unprofessional conduct” and “lost trust in my ability to practice” with “prejudicial organizational morale” judgments.

26. At noon on that same day, the Behavioral Health staff had a congratulations luncheon for my recent American Psychological Association Division 55 Major L. Eduardo Caraveo National Service Award recipient for “exemplary dedication to serving the underserved in frontier America, including within Indian country.” At this luncheon, Mr. Hyllis Dauphinas presented me with two additional individual USPHS Commendation Awards from 2011. These awards and Administration behavior do not appear to reflect what is written in the LOR as an accurate portrayal of my behavior or their professional opinion of me.
27. The charges of “misconduct and dishonorable behavior reflecting discredit upon me as a PHS Officer” are another example of an arbitrary decision that was made without regard for the facts or the circumstances presented. It also connotes a disregard for the evidence within my personnel PHS and IHS records.
28. The current Behavioral Health Department (BHD) does not have a negative environment; the BHD works hard with collaboration and support of our medical colleagues; we have actively participated in the Suicide Prevention Coalition on Spirit Lake; we have a positive working relationship with all our tribal partners, outside tribal social services. There is no evidence that supports a prejudicial organizational decline or reduced mission impact by these events within the mission of Spirit Lake Health Center. Spirit Lake Administration has worked very hard on collaborating with multiple agencies on multiple agendas during this crisis. To the contrary, physicians, nursing, patients, agencies, and even families living off the reservation have voiced their support and anticipation that the children and their grandchildren will be safer with less potential psychological and medical injury in this public health crisis.
29. The overall negative character attributions assigned me within this Letter of Reprimand is inconsistent with both my prior U.S. Army veteran service and my ten-year U.S. Public Health Service career which have been marked with National, State, and IHS awards for leadership in disaster mental health; interagency collaboration on child and adolescent suicide prevention; cross-cultural diplomacy, and psychopharmacology.

Requests:

- A. I respectfully request the Letter of Reprimand be rescinded and retracted from my PHS file as I believe this could be considered IHS agency retaliation for my Whistleblowing and Mandatory Reporting obligations.
- B. I do concur with Ms. Arlene de la Paz’s feelings that these events have created a hardship on all parties. Just days before I received the Letter of Reprimand, I accepted a new position as Director of Behavioral Health at IHS Hospital in Ft. Belknap, MT. We have

requested a release date of 1 August 2012. I respectfully request this be approved and expedited in order to ease the burden on all parties. This should also give immediate relief for Ms. Arlene de la Paz for immediate posting and hiring a psychologist replacement.

- C. Even though neither I nor my licensing board (who are considered content experts in behavioral health HIPPA matters) believe my “Case Study” I included in my original Letter of Grave Concerns violated any statute, I am more than willing to accept any remedial directives in improved HIPPA understanding and training.
- D. Dr. Susan Patchin, PhD is a very experienced, seasoned, Native American psychologist and has served as the Director of Behavioral Health at Yakima Nation recently, but is now interested in moving into an IHS position. I have provided her name and contact information to the Administrative Officer Mr. Hyllis Dauphinaus. Due to my sudden temporary detail, Spirit Lake Health Center has no back up behavioral health provider. Dr. Patchin is available immediately and could provide emergent supportive care through this transition. This would be a positive move for the behavioral health patients who currently have no provider.

Respectfully submitted,

Michael R. Tilus, PsyD
Commander, USPHS

CC: Captain Emily Williams
Aberdeen Area IHS PHS Liaison Officer