MARK KIRK-IL **November 18, 2015**

Written Testimony for the Record
before the Senate Veterans Affairs Committee
S. 2291 VA Patient Protection Act of 2015
Senator Mark Kirk (IL)
November 18, 2015

Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee:

Thank you for allowing me to submit testimony for the record for this legislative hearing on behalf of my bill S. 2291, VA Patient Protection Act. I wrote this legislation after hearing harrowing stories of retaliation and intimidation from VA whistleblowers from across the country. Sadly a consistent theme emerged from these accounts: the VA does not hold those who retaliate against whistleblowers accountable for their actions and continues to fail to combat the culture of corruption and intimidation within the VA.

Dr. Lisa Nee first came to me in the spring of 2014 and shared her story of corruption and intimidation from her time as a cardiologist at the Edward Hines Jr. VA Hospital in Hines, Illinois. Upon arrival at Hines, Dr. Nee was given several bankers boxes full of unread echo cardiograms to begin reading and assessing. She was understandably concerned by such a backlog but was horrified to find that some of the tests were left unread for over a year, in which some patients had died. When Dr. Nee voiced her concerns she experienced retaliation from Hines administration. As if this was not enough, Dr. Nee observed another cardiologist, Dr. Robert Dieter, fraudulently inflating his productivity by entering service codes that he did not perform. This allegation was substantiated by the VA Office of Medical Inspection, which found that this conduct may be in violation of criminal statutes. I am unhappy to state that Dr. Dieter is still employed at Hines VHA and has not been disciplined for this egregious misconduct nor has the VA turned these findings over to the Justice Department to explore criminal allegations. Unfortunately, the VA turned its focus and resources on trying to discredit Dr. Nee in a response letter to my office, which included blatantly false explanations concerning the Inspector General's handling of Dr. Nee's allegations. I am fortunate to work closely with Ms. Germaine Clarno, a social worker and local President of the American Federation of Government Employees (AFGE) at Hines VA. Ms. Clarno first disclosed wrong doing at Hines in regards to waitlist and scheduling manipulation in the spring of 2014. She works closely with other whistleblowers to protect their rights and counsel them on their options. Ms. Clarno continues to work at Hines where she observes and experiences continued retaliation from management against whistleblowers.

Dr. Nee and Ms. Clarno's stories are not isolated cases. I have heard from Mr. Shea Wilkes, who is an employee at the Shreveport VAMC and discovered secret waits lists extending for months and years. Mr. Wilkes filed complaints with the Investigator General (IG), who in turn sent criminal investigators to look into how **he** obtained the wait lists, confiscating computer equipment and asking him to submit to a lie detector test. I met with Dr. Kathryn Mitchell, an

emergency room doctor at the Phoenix VAMC, who told me how she disclosed improper staffing in the emergency department and secret waitlists. Management retaliated against Dr. Mitchell by removing **her** as the emergency department director. In addition to these stories, which I am personally familiar, the Office of Special Counsel shared several additional accounts of whistleblower retaliation to President Obama in its letter dated September 17, 2015. These stories are just as disturbing as what I have encountered in Illinois and continue to occur across the VA system where the VA focuses on the conduct of employee whistleblowers rather than the reported wrongdoing of the Department, such as when at the Department of Veterans Affairs Medical Center (VAMC) in Philadelphia, Pennsylvania, a food services employee reported improper sanitation and safety practices and was fired after being accused of eating four expired sandwiches instead of throwing them away. At the Puerto Rico VA, the Department sought to remove an employee who disclosed the hospital director's misconduct. Instead of investigating the director's misconduct, the VA claimed the employee made an unauthorized disclosure of information and then tried to remove the privacy officer, in part because she concluded that the whistleblower did not make an unauthorized disclosure. A VA employee in Wisconsin sent an email to VA privacy and compliance officers disclosing concerns about improper disclosures of veterans' health information. Again the VA targeted the employee and fired her for sending an email that contained personal information about a veteran. At the Wilmington, Delaware VAMC, a nurse disclosed improper treatment of opiate addiction and was retaliated against by receiving a 14-day suspension for minor allegations of misconduct. Ryan Honl was an employee at the Tomah VAMC in Tomah, Wisconsin and filed for whistleblower protection after being asked to falsify attendance records. Two weeks later, he resigned citing harassment and further disclosed problems with opioid over prescription at Tomah VAMC. The VA fired an employee who is a disabled veteran in Baltimore, Maryland, for pre-textual reasons after the employee petitioned Congress for assistance with the employee's own veterans benefits claim. In Kansas City, the Department fired an employee who reported improper scheduling practices, claiming for the first time after her disclosures that she was acting "too slowly" in scheduling appointments for veterans.

These stories are the reason why I crafted this bill that will protect our protectors. The VA Patient Protection Act seeks to set up a process to **PROTECT** whistleblowers while **PUNISHING** those who retaliate against whistleblowers to **ENSURE** better care for our veterans. My bill will 1) increase accountability within the VA by creating a formal process/paper trail at the VA for whistleblower complaints and responses; 2) allow employees to file complaints with the next level supervisor if the immediate supervisor fails to properly handle the complaint or is the focus of complaint; 3) ties supervisors' performance rating to how they respond to whistleblower complaints; and 4) force the VA to strongly punish those who are found to retaliate against whistleblowers: for a first offense a minimum of a 12-day suspension and for a second offense removal.

These measures will show VA employees that supervisors must pay attention to whistleblower allegations, will be held accountable for how they handle those allegations, and ultimately will be punished if found to retaliate against whistleblowers for making allegations.

Currently, the VA has no mechanism to track whistleblower complaints and how they are handled; this makes it difficult for the VA to enact change and for Congress to understand what,

if any, improvements the VA has made to improve its culture of retaliation against whistleblowers. The VA Patient Protection Act addresses this problem by creating the Central Whistleblower Office, an independent office to exclusively address whistleblower cases in the VA; requiring the VA to annually conduct in person training to all employees about whistleblower rights, Privacy Act, and HIPPA exemptions; and requiring that the VA annually report to Congress on whistleblower complaints.

Stronger whistleblower protection is needed in the VA due to the increase in whistleblower complaints and instances of retaliation. According to the Office of Special Counsel (OSC), it will receive nearly 2,000 whistleblower disclosures from federal employees in 2015 and at current levels, approximately 750 or 37.5% of these disclosures will be filed by VA employees.[1] In addition, Dr. Lisa Nee, Germaine Clarno, and Shea Wilkes provided statements for the record for this hearing, which further illustrates the need for enacting my bill and I ask that their statements be included with the record.

I am committed to ensuring our veterans receive the care they deserve from our VA hospitals and care providers, whistleblowers play an indispensable role in preventing fraud, waste, abuse, and gross misconduct at our VA facilities. I believe that the VA Patient Protection Act will start to change the culture at the VA by educating VA employees on their whistleblower protection rights and holding management accountable for their treatment of whistleblowers. Our veterans, who bravely served our country, deserve the best medical care and services available and at the very least deserve their leaders' attention to people and systems that obstruct them from receiving that care.

Thank you.

[1] Written Testimony of Carolyn Lerner, Special Counsel, OSC for US Senate Committee on Appropriations Subcommittee on Military Construction, Veterans Affairs, and Related Agencies "Review of Whistleblower Claims at the Department of Veterans Affairs", July 20, 2015.