

DAVID A. SHALLER, M.D.
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ATTENTION: MS. CHRISTINA BAUMGARDNER

December 8, 2008

Senator Robert P. Casey Jr.
383 Russell Senate Office Building
Washington, DC 20510

RE: DAVID A. SHALLER, MD

SUBJ: REQUEST FOR A PRIVATE BILL FOR THE PURPOSE OF RESTITUTION
[Re-Instatement and Back Pay] FOR A WRONGFULLY FIRED
WHISTLEBLOWER.

Dear Senator Casey:

This confirms my discussion with Ms. Christina Baumgardner on December 3, 2008 regarding the above request.

- (1) I was fired from the Wilkes-Barre VA Hospital after writing a letter to the VA's IG complaining of mismanagement and malpractice which caused preventable deaths. Subsequently, the widows were paid six and seven figure sums to settle.
- (2) I exhausted ALL administrative remedies. For example, when I was assigned nursing duties, the Office of Special Counsel found that this was NOT a prohibited personnel practice, because I continued my physician's salary. The VA actually hired an outside rheumatologist to see my patients! So then, this is an example of Waste Fraud and Abuse; the matter was dismissed. [Subsequently, OSC claimed 'no jurisdiction'].

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- (3) I testified before Congress which found I WAS FIRED IN RETALIATION FOR WHISTLEBLOWING. [HR 102-1062. November 9, 1992. pg 15-16].
- (4) I was told to seek my remedy in Federal Court. I filed and was dismissed: 'no subject matter jurisdiction'. This was affirmed by the US Supreme Court in December, 2003. I spent 13 years in Court to learn that the Court will not provide statutory judicial review.
- (5) In July, 2004, I discussed this with David Rapallo, Esq., Congressman Waxman's Chief Counsel for the House Oversight Committee (my earlier testimony was before his subcommittee), and the matter was transferred to Dr. Josh Sharfstein. He pursued this, but I learned that he moved on and the matter was "lost".
- (6) Therefore, my ONLY remedy lies in a Private Bill.

There remains a high level of FEAR in the VA because of retaliation; witness my case and many others. This results in INDIFFERENCE to patient care, and contributes to increasing levels of paid malpractice claims. [References: see page 4 of this letter].

Retaliation of VA employees was featured in ABC's PRIMETIME, April 8, 2004; with a demonstrated link to negligence and malpractice.

Also, see VAWBC.com. [VA Whistleblower Coalition].

If Congress REALLY wants federal employees to report Waste Fraud and Abuse, it MUST PROTECT those who report!

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To date, Congress has FAILED. It lacks Credibility and Accountability, in protecting Whistleblowers, even FOR THOSE INDIVIDUALS IT DETERMINED to be whistleblowers.

You have an opportunity to take corrective action. My case demonstrates that the present scheme FAILED. Current proposals also fail to address my situation, and others like me.

I am requesting a Private Bill for restitution; here re-instatement and back pay. Enactment of this bill would send a clear message that Congress is SERIOUS in protecting VA whistleblowers.

Thank you.

Sincerely,



DAVID A SHALLER, MD

Board Certified:

- (1) Rheumatology
- (2) Internal Medicine
- (3) Geriatric Medicine (1994-2004)
- (4) Certified Clinical Densitometrist. ISCD (2001-2009)

Enclosures:

- (1) My handout from a lecture given at the Semmelweis Society International meeting, held in Washington DC [May, 2006].
- (2) Pittsburgh Post Gazette, October 29, 2003 from its series "The Cost of Courage".

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RELEVANT (For the Time Period) PATIENT CARE DATA AND
MALPRACTICE CLAIMS PAID

"From fiscal year 1990 to fiscal year 1994, malpractice claims against VAMC's have steadily increased from 678 to 978 with payments made to claimants totalling over \$200 million dollars." [The U.S. General Accounting Office. December 21, 1995. GAO/HEHS-96-24].

"The study shows that in 1997 there was a higher mortality rate among VA patients after a heart attack at 30 days, one year, two years, and three years. The same was true in 1998 and 1999 for the points for which there was follow-up data..." [U.S. Medicine. Vol.39 No.5. May 2003].

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SEMMELWEIS SOCIETY INTERNATIONAL, INC.

www.Semmelweis.Org

Washington, D.C. May 7-9, 2006

I was fired by the Secretary, Department of Veterans' Affairs on January 17, 1991 because I wrote a letter to the VA's Inspector General. This letter documented mismanagement and malpractice which caused preventable deaths. [YES, I WAS REALLY FIRED FOR WRITING A LETTER!].

I testified before a subcommittee of the U.S. House Government Reform Committee which found:

"THE DVA DISCOURAGES THE REPORTING OF POOR QUALITY CARE BY HARASSING WHISTLEBLOWERS OR FIRING THEM." ¹

That subcommittee determined my case was:

"...typical of treatment received by DVA whistleblowers." ²

I WAS DENIED DUE PROCESS. The Federal Courts DENIED statutory judicial review and dismissed, claiming "no subject matter jurisdiction." This was affirmed by the U.S. Supreme Court (2003). [see "Physician's Cases" in www.Semmelweis.Org] ³

The Pennsylvania Unemployment Board found my firing was "not for cause" and ordered the VA to pay unemployment compensation (which it did) despite a vigorous challenge. I was wrongly fired and then paid tax dollars not to work!

Congress' INDIFFERENCE and FAILURE to take corrective action in my case and others like it has contributed to more preventable deaths. [ABC's PRIMETIME. April 8, 2004]

¹

Continuing Deficiencies In The Department Of Veterans' Affairs Medical Quality Assurance Program. Thirty-Eighth Report By The Committee On Government Operations. HR 102-1062. The U.S. House Of Representatives. November 9, 1992.

²

Id. at 1. page 16.

³

David A Shaller v United States. U.S. Supreme Court. No:03-70.

THE COST OF COURAGE

Doctors who spoke out



All over the nation, physicians who have spoken out about dangerous hospital practices or poor performance

by colleagues have been punished. Here are a few examples.

Dr. David Shaller, Wilkes-Barre, Pa.

Shaller, 52, was fired from the Veterans Affairs Medical Center at Wilkes-Barre after trying to expose poor patient care, and his legal attempts to regain his position continue 13 years later. Shaller, chief of rheumatology and chief physician for the hospital's nursing home care unit, complained in 1988 when his hospital began transferring seriously ill patients from the facility's hospital to an adjacent nursing home. A hospital committee, which included the physician who ordered the patient transfers, decided Shaller's complaint had no validity. Afterward, he was transferred to lower level jobs, threatened with a sexual misconduct charge and eventually fired after he had complained about patient care to the VA inspector general's office. A congressional subcommittee looking at VA medical care later cited Shaller as one example of how "honest employees have had their jobs eliminated and their lives destroyed because they attempted to expose poor patient care." He has filed several lawsuits trying to get his job back, but has not been able to get a hearing on them.

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