

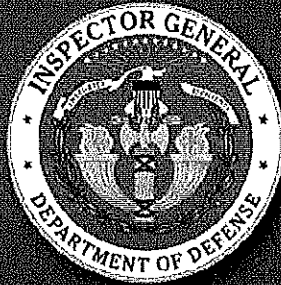
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Report No. 20131129-017456

July 28, 2014

Inspector General

United States
Department of Defense



REPORT OF INVESTIGATION:

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

WHISTLEBLOWER REPRISAL INVESTIGATION

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REPORT OF INVESTIGATION:

(b)(6), (b)(7)(C)

**NATO TRAINING MISSION AFGHANISTAN
KABUL, AFGHANISTAN**

I. EXECUTIVE SUMMARY

We conducted this investigation in response to an allegation that on February 21, 2011, Major General (MG) Gary S. Patton, U.S. Army, while serving as Deputy Commander-Army, North Atlantic Treaty Organization (NATO) Training Mission-Afghanistan (NTM-A)/Combined Security Transition Command-Afghanistan (CTSC-A), Afghanistan, restricted (b)(6), (b)(7)(C)

Complainant alleged that during a break in his presentation to a Department of Defense Inspector General (DoD IG) Special Plans and Operations (SPO) assessment team on its tour of the Dawood National Military Hospital (NMH), MG Patton twice told Complainant, "Stay in your [f---ing] lane" and also told him "if you don't know about bones, don't talk about bones." Complainant further alleged that MG Patton failed to treat him with dignity and respect when he jabbed his finger into Complainant's chest during this conversation.

By a letter dated May 23, 2014, we provided MG Patton the opportunity to comment on the preliminary report of investigation. We received MG Patton's response, together with his attorney's response, on June 19, 2014. In his memorandum dated June 19, 2014, MG Patton responded to our preliminary report, disagreeing with our conclusions and requesting that we revise our report and conclusion to be consistent with his response. His attorney's memorandum, dated June 18, 2014, argued that our interpretation of the statutory language was incorrect and that we had applied the incorrect standard of liability. After carefully considering both responses, we amended various sections of the report, but did not alter our original conclusion.²

We substantiated the allegation that MG Patton restricted Complainant from communicating with the DoD IG SPO assessment team when he told Complainant "stay in your [f---ing] lane" and "if you don't know about bones, don't talk about bones" between segments of a presentation Complainant was giving to the DoD IG SPO assessment team. We conclude based on a preponderance of the evidence that MG Patton's restrictive remarks violated Title 10, United States Code, Section 1034 (10 U.S.C. 1034), "Protected communication; prohibition of retaliatory personnel actions" and DoD Directive 7050.06, "Military Whistleblower Protection."

¹ At the time Complainant was (b)(6), (b)(7)(C) He was promoted to (b)(6), (b)(7)(C)

² While we have included what we believe is a reasonable synopsis of MG Patton's responses, we recognize that any attempt to summarize risks oversimplification and omission. Accordingly, we incorporated his comments where appropriate throughout this report and provided a copy of his full responses to the cognizant management officials together with this report.

We did not substantiate the allegation that MG Patton failed to treat Complainant with dignity and respect. Witnesses testified that MG Patton became frustrated during Complainant's presentation to the DoD IG SPO assessment team and later had a short conversation with Complainant in the hospital hallway. Complainant testified MG Patton poked him in the chest several times during the conversation. Although one witness stated years later for the first time she observed MG Patton touch Complainant during the conversation, no other witness testified to observing physical contact and MG Patton denied touching Complainant. MG Patton further testified he did not have a confrontational interaction with Complainant. No witness heard MG Patton yell or scream at Complainant or publicly berate him. Several other witnesses saw the conversation between MG Patton and Complainant, and none described the conversation as confrontational or inappropriate. One witness heard MG Patton tell Complainant "stay in your [f---ing] lane," and another witness overheard MG Patton make a similar comment. After weighing all the evidence, we conclude there is insufficient evidence that MG Patton touched the Complainant during their discussion and that MG Patton's single instance of use of an expletive did not constitute misconduct or failure to treat a subordinate with dignity and respect.

We recommend that the Secretary of the Army take appropriate action against MG Patton.

II. BACKGROUND

NTM-A was activated in November 2009 and charged with training the Afghan Ministry of Defense (MoD) and Ministry of Interior to take over defense of their nation in 2014 when NATO transfers responsibility for security to Afghan forces. NTM-A officials were involved in all training aspects for Afghanistan's national defense apparatus and police forces, including building legal systems, creating a viable medical system to support the Afghan National Army (ANA) and police, and developing the ANA.

NTM-A started with a small number of personnel, but grew to almost 5,000 U.S. and coalition forces. NTM-A advisors embedded with their Afghan counterparts, built relationships, directed funding, and trained Afghan personnel to assume greater responsibility over the nation's resources. NTM-A was divided into functional areas, each of which was led by a colonel or general officer. The NTM-A Command Surgeon headed the Medical Training Advisory Group (MTAG) and was responsible for training and advising Afghan military medical system personnel. MTAG provided mentors and training to the ANA Medical Corps as they progressed toward medical self-sufficiency.

Most of Afghanistan's military medical systems essentially started from scratch. Historically, Afghanistan's national medical system has been ranked as one of the worst in the world. The military medical system, centered on the NMH, was considered insufficient to support those involved in daily combat operations.

In November 2009, Lieutenant General (LTG) William B. Caldwell, U.S. Army, assumed command of NTM-A and CSTC-A. LTG Caldwell's immediate supervisor was General (GEN) David H. Petraeus, U.S. Army, Commander, International Security Assistance

Force and U.S. Forces Afghanistan. MG Garry S. Patton, U.S. Army, was the NTM-A Deputy Commanding General-Army, and LTG Caldwell was his immediate supervisor.

(b) (6), (b) (7)(C),³ U.S. Air Force, was the Command Surgeon and head of MTAG. (b) (6), (b) (7)(C), U.S. Navy, was the METT Director and Complainant's supervisor. Complainant, (b) (6), (b) (7)(C)

On November 10, 2010, LTG Caldwell requested that DoD IG SPO assess the Afghan Ministry of Defense medical logistics system. A team from DoD IG SPO that was embedded in Afghanistan conducted the assessment from December 1-16, 2010. The assessment included issues at the NMH.

On February 1, 2011, (b) (6), (b) (7)(C), NTM-A Inspector General, U.S. Army, delivered a follow-up assessment report to the DoD IG. (b) (6), (b) (7)(C) prepared that report on his own initiative by conducting a follow-up assessment visit of the NMH with the Afghan MoD IG and the Afghan Vice Chief of Staff. The assessment report, co-authored by (b) (6), (b) (7)(C) and his Afghan IG counterpart, contained numerous findings and recommendations.

On February 18, 2011, DoD IG SPO personnel coordinated directly with NTM-A personnel to plan a second "follow-up" assessment, called a "quick-look," of the NMH that focused on patient health care. On February 19, 2011, LTG Caldwell and MG Patton learned about the DoD IG's desire to visit NMH. On February 20, 2011, LTG Caldwell assigned MG Patton to lead the DoD IG SPO assessment team visit to the NMH. As a result, a six-member team, comprised of DoD IG SPO and Audit personnel already in Afghanistan, was scheduled to tour NMH February 21-23, 2012, to evaluate patient health care at the hospital.

On February 21, 2011, the NTM-A leadership briefed the DoD IG SPO assessment team on patient care, mentoring, and transition of the NMH medical and healthcare systems to the ANA. MG Patton and other senior members of the NTM-A and MTAG staffs attended the briefing along with Afghan physicians and Afghan leadership. Complainant was not present for this briefing. Upon completion of the briefing, the DoD IG SPO assessment team traveled to NMH. The tour began in the patient wards where Complainant briefed on the medical condition of a few patients. MG Patton and (b) (6), (b) (7)(C) guided the party through the hospital. The party toured various sections of the hospital, including the patient ward, pharmacy, intensive care unit, an operating room, a "very important person" patient room, and the sterilization department. Despite an itinerary for the tour, DoD IG SPO personnel controlled the places they wanted to see at the hospital.

³ (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) supervisor until late February 2011 when (b) (6), (b) (7)(C), U.S. Army, assumed her responsibilities as the Command Surgeon.

(b) (6), (b) (7)(C) could not remember the date he sent this report to DoD IG SPO and stated that he informed only (b) (6), (b) (7)(C) Assistant Commanding General of Army Development, NTM-A/CSTC-A, of his report.

III. SCOPE

On November 29 and December 2, 2013, Complainant filed complaints with the Department of Defense (DoD) Hotline alleging MG Patton restricted him from communicating with the DoD IG SPO assessment team on February 21, 2011.⁵ Additionally, Complainant alleged that at one point during the tour while away from the DoD IG SPO assessment team, MG Patton jabbed him in the chest with his finger while using profanity.

We interviewed Complainant, MG Patton, and 22 witnesses. We also reviewed reports, memoranda, and testimony of eight officials interviewed during two previous investigations involving the NMH.⁶

IV. FINDINGS AND ANALYSIS

In assessing the allegations, we provide a recitation of the common facts followed by a discussion of the respective allegations and issues framed by applicable standards and findings.

A. Findings of Fact

Complainant's Preparation for Briefing the DoD IG SPO Assessment Team

No one in Complainant's chain of command told Complainant what specific information he should convey to the DoD IG SPO assessment team nor did anyone tell MG Patton what Complainant was going to present.

MG Patton testified:

I assigned (b) (6), (b) (7)(C), our command IG, the task of developing and coordinating the NMH inspection itinerary in conjunction with the NTM-A Medical Training and Advisory Group, which I'll refer to as M-T-A-G or MTAG. And also this itinerary should be coordinated with the requirements of the visiting DoD IG team.

I stressed to (b) (6), (b) (7)(C) that we wanted Afghan leader involvement in the NMH inspection but we did not want to detail every step of the itinerary to them in advance so as to ensure we saw the hospital in as-is conditions.

MG Patton said that he did not want the Afghans to "sanitize" the areas that the DoD IG SPO assessment team was going to tour in the hospital.

⁵ We recognized the delay in the filing of the complaint and considered the explanation provided by Complainant in assessing credibility prior to reaching our findings and conclusions.

⁶ DoD IG's Whistleblower Reprisal Investigations Directorate (WRI) previously conducted reprisal and restriction investigations concerning allegations involving other U.S. personnel at the NMH during the same period of time of the events.

Complainant received minimal guidance from his chain of command about what to brief the DoD IG SPO assessment team other than to “tell the truth,” and he did not tell anyone what he planned to brief beforehand. (b)(6), (b)(7)(C) testified that (b)(6), (b)(7)(C) notified her of the DoD IG SPO visit and tour and told her to bring somebody on the tour “who would be able to explain some of the clinical issues of the patients, the Afghan patients.” (b)(6), (b)(7)(C) stated that she chose Complainant to give the tour of the hospital and to show the DoD IG SPO assessment team “what was going on because he worked on the patient ward and knew the staff and the patients.” (b)(6), (b)(7)(C) testified that she told Complainant to select a few patients, but did not “give him any parameters” because she herself had not received any special instructions. (b)(6), (b)(7)(C) also testified he did not choose the patients for Complainant’s presentation and that it was left entirely up to the METT team.

Based on the nominal guidance he received, Complainant prepared the information he briefed to the DoD IG SPO assessment team on his own. Complainant testified that he took it upon himself to review the December 2010 and February 1, 2011, IG reports⁸ to prepare for the tour and selected five patients who “would exemplify” the different aspects shown in those reports. Complainant said he identified “significant issues regarding [Afghan] healthcare,” including “grossly substandard” care, “inability to procure medication and supplies,” and patients “treated incorrectly” due to lack of knowledge or “possibly from some negligent decision.” Complainant said that the DoD IG SPO assessment team “needed to be able to see that things at the hospital were not better at all” after its December 2010 visit.

MG Patton’s Conversation with (b)(6), (b)(7)(C), and (b)(6), (b)(7)(C), (b)(6), (b)(7)(C) Assistant Commanding General of Army Development, NTM-A/CSTC-A

When the NTM-A, ANA, and DoD IG SPO officials arrived at the NMH, Complainant was the first METT team member to brief them. Complainant started his presentation on the fourth floor. In the first patient room, Complainant said he presented a patient who had problems associated with “procurement of supplies.” Complainant explained that the “logistic [sic] supply chain required numerous signatures” in order to procure “relatively inexpensive” medical supplies. Complainant said that MG Patton asked him, “What are you trying to say?” and that MG Patton appeared “uncomfortable.” Complainant replied that “the medical staff here [at the NMH] is still unable to get supplies in what we [United States] would consider a reasonable amount of time.”

Complainant planned to present a second patient but could not find him, either because he was in surgery or had been moved. Complainant nonetheless discussed the patient’s medical condition with the assessment team before moving on.⁹ By this point, (b)(6), (b)(7)(C),

⁷ Complainant was one of several METT team members selected to brief specific areas of the NMH.

⁸ Complainant reviewed two previous IG reports addressing issues at the NMH.

⁹ (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C), both DoD IG SPO assessment team members, prepared written accounts of the tour. Those accounts demonstrate that although Complainant could not find the second patient, he

DoD IG SPO assessment team member, recalled MG Patton was “getting a little irritated, I think, that (b)(6), (b)(7)(C) was just divulging so much information so freely without us having to ask so many questions, or ask open-ended questions. We were just being provided the information.” He also described Complainant as “starting to get a little agitated... possibly because of the way GEN Patton was actually looking at him.”

Complainant then led the tour to the sixth floor. In the third patient’s room, Complainant briefed the DoD IG SPO assessment team about the patient’s broken femur. Complainant showed an x-ray to illustrate his point that the Afghan physician did not do a good job on the surgery of the patient’s leg. MG Patton testified that he recalled becoming “a little frustrated,” because “[t]he Afghan doctors who were also standing by were not allowed or given the opportunity [to] comment on their patients.” MG Patton believed Complainant was misrepresenting his duty position by referring to the patients as “my patients,” thereby confusing the audience.¹⁰

MG Patton testified he stepped out into the hallway without interrupting Complainant, and said to either (b)(6), (b)(7)(C), “We need to make sure the IG team recognizes that [Complainant] is not a doctor. He doesn’t have any patients.” MG Patton said, “We’re not credentialed by our nurses or doctors to provide medical care to Afghan patients. ... His job is to advise Afghan (b)(6), (b)(7)(C) and I didn’t get that from what he was just expressing to the IG team.”

MG Patton additionally testified he told (b)(6), (b)(7)(C) that he should “reduce the number of people during the patient room visits in order to reduce the congestion” and also that (b)(6), (b)(7)(C) needed to “clarify the DoD IG team on Complainant’s authorities and credentials as an NTM-A (b)(6), (b)(7)(C) advisor.” MG Patton said:

In this conversation with (b)(6), (b)(7)(C) I commented that [Complainant] should speak to his areas of expertise and clearly identify his patient authorities and (b)(6), (b)(7)(C) credentials. It was not within the coalition advisory authorities to treat Afghan patients. Treatment of the patients was the sole authority of the Afghan nurses and doctors.

(b)(6), (b)(7)(C) corroborated that MG Patton spoke with him during Complainant’s presentation of the third patient. (b)(6), (b)(7)(C) testified that MG Patton “came storming out of the room,” approached him and others waiting in the hallway and said, “We have to stop [Complainant] from briefing DoDIG on this.” (b)(6), (b)(7)(C) testified that during Complainant’s

discussed that patient’s medical conditions, after which he took the tour to the sixth floor and presented the third patient.

¹⁰ BG John Ferrari, former NTM-A Deputy Commander of Army Programs, said that Complainant gave the impression that he was a doctor because of “the way he was kind of talking about the setting of the bones.” (b)(6), (b)(7)(C) referred to Complainant as “doctor” on multiple occasions in the NMH SPO report she wrote. (b)(6), (b)(7)(C) said that Complainant referred to the Afghan patients as “his patients,” and if she wrote that Complainant was a “doctor,” she assumed that Complainant gave the impression that he was a doctor.

briefing regarding this patient, Complainant was “pretty graphic and pretty passionate to the point where he [Complainant] began to weep.”

(b)(6), (b)(7)(C) testified that he could not remember the exact context of MG Patton’s and Complainant’s discussion, but “there was a little bit of disagreement on the perspective that [Complainant] was providing compared to what GEN Patton’s perspective was.” (b)(6), (b)(7)(C) testified that a 2-star general¹¹ approached her and, although he did not appear angry:

[H]e pulled me aside and said, “I think we have (b)(6), (b)(7)(C) who would like to be an orthopedic surgeon and it’s a little concerning because he just embarrassed the Afghan military surgeons and the Afghan Hospital commander and the Afghan Surgeon General in front of this large crowd by criticizing the surgical technique used on this patient.”

MG Patton originally testified that he “could not recall” the specifics of thousands of conversations he had in the course of his time in Afghanistan. About speaking with Complainant, he stated, “I cannot recall a one-on-one direct confrontational engagement with [Complainant], but I can’t rule out the possibility that I had a conversation with him.” When we asked MG Patton if he might have used the phrase “stay in your lane” with Complainant, he said, “may have been a 15 to 30-second conversation” and that he “could not recall the specifics, verbatim use of words, in that conversation.” In his memorandum dated June 19, 2014, MG Patton asserts specifically that he told (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) the phrase “stay in your lane” out of concern that the DoD IG may not have understood Complainant’s role as a (b)(6), (b)(7)(C) advisor and that he “did not intend to restrict Complainant’s access to the IG when I uttered this phrase.” No other testimony confirms his statement that he told “stay in your lane” to (b)(6), (b)(7)(C) or (b)(6), (b)(7)(C).¹²

The evidence established that MG Patton exited the room during Complainant’s briefing without interrupting Complainant and spoke with his staff about what Complainant was briefing to the DoD IG SPO assessment team. Testimony from (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) conflicted on MG Patton’s exact words. However, all of them corroborated that MG Patton expressed concern about the information Complainant was presenting to the DoD IG SPO assessment team.

MG Patton’s Conversation with Complainant

Sometime during Complainant’s briefing on the third patient, the DoD IG SPO assessment team requested all CSTC-A and MTAG personnel leave the room so they could

¹¹ MG Patton was the only American 2-star general present during the tour.

¹² We also note the standard usage of the second person possessive, rather than the third, clearly indicates the intended recipient, i.e., the statement was not “stay in his lane,” but rather “stay in your lane,” language confirmed by a member of the DoD IG SPO assessment team and which MG Patton in his memorandum stated he made.

speak with the patient alone. Complainant stated he exited to the hallway and MG Patton approached him. According to Complainant:

So we left the room, and we walked into the hallway, and I sort of ended up on the backside. And that's when General Patton approached me, and he came up, got pretty much right in my face, and he said, (b)(6), (b)(7)(C) -- and he had his finger out at me. He said, "You need to stay in your f[---]ing lane." And I was pretty much caught off guard by that statement, and I looked at him and I said, "Sir, what do you mean?" And he said, "If you don't know about bones, don't talk about bones." And I said, "Okay, sir. But I'm the only one here who knows any of it." And that's when he put his finger in my chest, and he said, "I don't give a shit, (b)(6), (b)(7)(C) If you don't know about bones, don't talk about bones. You need to stay in your [f---ing] lane."

Complainant said as MG Patton began walking away, he started to respond but (b)(6), (b)(7)(C) approached him and told him to "just walk away." Complainant said:

So at that point in time, as I was going to start asking some more questions of the general, because I wasn't really sure what he wanted from me now -- you ask me to lead this tour, you ask me to talk to the IG, you're asking me to tell the truth about what's going on in the hospital -- (b)(6), (b)(7)(C) came up behind me and sort of put his hand on my shoulder, and he said, "Don't -- just walk away." And that's what I did then.

Complainant testified that during the conversation, MG Patton was "inside that comfortable personal space area," leaned downward, and slightly raised his voice. He said MG Patton used his right "pointer finger" to jab him five to six times in the chest near his rank tab.¹³

MG Patton "unequivocally reject[ed]" the allegation that he jabbed his finger into Complainant's chest. MG Patton stated he did not recall a "confrontational, abusive conversation" with Complainant. MG Patton testified that he did not recall "a one-on-one interaction with [Complainant]." He added, "I can't say that I didn't ever talk to [Complainant]." Further, MG Patton said:

And I did not give any language that would lead anybody to believe that I was restricting his -- he was still talking in the room. He was -- my understanding was the (b)(6), (b)(7)(C) advisor (b)(6), (b)(7)(C), so it was -- he was part of the thing. But again, I thought it important at that point to clarify, not restrict, but clarify his role because I

¹³ Complainant testified he was wearing his (b)(6), (b)(7)(C) Uniform at the time.

didn't hear it. It may have been said, but I didn't hear it in the noise and congestion and discussion of -- of the room, and I thought it was important to clarify his role as (b) (6), (b) (7) (C) advisor and also clarify that for the people who didn't understand, I mean, a fairly technical point but that our advisors were not attending physicians. They were not attending nurses in the sense that they had direct responsibilities for Afghan patients. That responsibility lied -- lay with the Afghan medical officials. And so those were things that I thought required clarification. It's not something you might know walking into a hospital in a foreign country and -- and maybe not knowing that those were the ground rules and who you have in front of you talking. So I thought it very important that those clarifications be made in the context of this discussion about patients and everything else going on.

One witness, (b) (6), (b) (7) (C), testified she saw MG Patton and the Complainant engaged in a conversation in the hallway and saw MG Patton poke the Complainant. (b) (6), (b) (7) (C) said:

I looked in the doorway, [my] back [was] to the wall again. I feel like they're taking forever, and then they finally came out and General [MG] Patton and [Complainant] were walking together, and then all of us sort of just kind of follow[ed]. They walked past us down the hallway again, and it was there that I seen him [MG Patton] poke him [Complainant] into the chest with his finger and kind of -- his [MG Patton's] mouth moved. I, again, wasn't close enough to be able to hear, but I was able to see it. And then so [Complainant] kind of like leaned back or stepped back, and I thought, well, that was weird, you know.

The evidence established that an interaction occurred in which MG Patton told Complainant to stay in his lane. Multiple other witnesses testified that they saw Complainant and MG Patton interact during the tour. One witness, (b) (6), (b) (7) (C), DoDIG SPO assessment team, testified he overheard MG Patton say "stay in your [f---ing] lane" when he exited a patient's room, and he recognized MG Patton's voice. He then looked over and saw MG Patton facing Complainant.¹⁴ (b) (6), (b) (7) (C) stated that while he did not see MG Patton physically touch Complainant:

I may have seen him, a finger retracting or something like that. ... I might have seen a finger retract, but I mean, it was right when we came out [of the patient's room].

¹⁴ (b) (6), (b) (7) (C) said that MG Patton's comment did not raise any concern for him because he thought perhaps MG Patton was referring to something other than what Complainant was briefing to the DoD IG SPO assessment team.

Additionally, (b)(6), (b)(7)(C), a member of the DoD IG SPO assessment team; and (b)(6), (b)(7)(C), METT team member,¹⁵ testified that they saw MG Patton speaking with Complainant. They each testified that they could not hear what was being said.

(b)(6), (b)(7)(C) testified he was approximately 10-15 feet from MG Patton and Complainant as they spoke in the hallway. He stated that MG Patton “about-faced at one point and just started to go off towards where the entourage was going.” (b)(6), (b)(7)(C) added he went over to Complainant and that Complainant told him MG Patton had said to Complainant, “Hey, you better stay in your lane.” (b)(6), (b)(7)(C) added Complainant wanted to follow and challenge MG Patton, at which time he told him, “[Complainant’s first name], stay focused. It’s not worth it right now.”

(b)(6), (b)(7)(C) testified that she saw MG Patton talking to Complainant but could not hear what he was saying. (b)(6), (b)(7)(C) also testified she saw MG Patton and Complainant talking in the hallway and described the exchange as a general conversation and not confrontational. She stated she saw no physical contact between MG Patton and Complainant during the conversation and added that MG Patton frequently used his hands during conversations. (b)(6), (b)(7)(C) said she did not hear the phrases, “stay in your lane,” “stay in your [f--ing] lane,” or any comments about bones during the tour.

(b)(6), (b)(7)(C) described the interaction as non-confrontational. He recalled seeing MG Patton “extended his hand out and pointed his finger”; however, he believed MG Patton was giving Complainant a “pep talk.”

(b)(6), (b)(7)(C), DoD IG SPO assessment team leader, testified she saw MG Patton and Complainant having a discussion in either the patient’s room or hallway; however, she did not see MG Patton “finger poking” Complainant or making any hand gestures. Further, (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) both testified that they did not see MG Patton poke or touch Complainant.

Following MG Patton’s discussion with Complainant, Complainant told (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) former NTM-A (b)(6), (b)(7)(C) Advisor, that MG Patton told him to stay in his lane. (b)(6), (b)(7)(C) testified that either on their way (b)(6), (b)(7)(C) or while in (b)(6), (b)(7)(C) Complainant told him that MG Patton told him to stay in his lane. (b)(6), (b)(7)(C) testified that right after the group headed off the ward Complainant asked her “do you want to know what he said to me?” Complainant then told her MG Patton told him “you need to stay in your lane. You don’t need to be talking about that. We’re done.” (b)(6), (b)(7)(C) testified that she spoke at length about this with (b)(6), (b)(7)(C) and other METT team members, and it became a joke among the METT team members to poke someone in the chest and tell them to stay in their lane.

The only witness who testified to witnessing MG Patton “poke” Complainant in the chest was Complainant’s (b)(6), (b)(7)(C). However,

¹⁵ (b)(6), (b)(7)(C) was also (b)(6), (b)(7)(C).

she did not inform Complainant that she saw this until November or December 2013, after it was announced that MG Patton would be retiring from the DoD Sexual Assault and Prevention Office. We determined that this witness' testimony was not sufficiently credible on its own to conclude that MG Patton poked Complainant during this conversation. Nonetheless, based on a preponderance of all the evidence, we determined that there was a verbal interaction between MG Patton and Complainant.

The Meaning and Impact of "Stay in Your Lane" and Use of Profanity

The phrase "stay in your lane" is commonly used in the U.S. Military, but MG Patton's use of it in this instance served only to limit the information Complainant communicated to the DoD IG SPO assessment team. Complainant said MG Patton was "pissed" and "upset" because MG Patton did not want him "talking about bones." Complainant described his reaction to MG Patton's direction this way: "Again, you have to understand my confusion at the time of the initial conversation with him about staying in your lane because, again, as far as the U.S. Command is concerned, I'm your only clinical person. So this is my lane." That is, by virtue of being the (b) (6), (b) (7)(C) knew the conditions of all of the patients. Complainant further stated:

I was really blown away by the whole experience at that moment in time. I was very confused. I mean here on one hand my command is telling me to take them on this tour with an IG investigation, so the expectation is that you tell the truth, right? So -- and as IG inspectors, you would expect that if you're going to go look into something, that the people you're talking to are telling you the truth. So then I'm telling the truth, and all of the sudden, it's not well received by my commander and telling me to stay in my lane. Which is -- I mean what General Patton was telling me to do was stop talking. And I didn't know what to do with that. I'm (b) (6), (b) (7)(C). He's a general. He's telling me to stop talking, I mean you can get into that right through left, but he will win every time.

MG Patton described the context for using the phrase "stay in your lane" in the U.S. military:

Yeah, I think it's a fairly common term, and the way I would describe it is that -- speak to your areas of expertise and identify those areas, and speak to those areas that you have the credentials and expertise to speak on. You know, speak to your area of expertise. You know, I think as a younger officer being instructed, you know, before a media interview to stay in your lane.

They ask you about presidential election, you know, stay in your lane. You're a company commander. You're a lieutenant colonel on a -- an Army staff. You're whatever you are. You're an NTM-

A. I'm the deputy commander of NTM-A, you know? I meant stay in your lane. Don't talk about the Afghan police. I mean, I didn't have expert knowledge in that day-to-day interaction. Stay in your lane is a common reference, and speak to the areas that you have -- that you have expertise in.

When asked if Complainant, as (b)(6), (b)(7)(C), was staying in his lane when presenting information related to a surgical procedure, MG Patton testified:

Well, I think -- I think as (b)(6), (b)(7)(C), that within their expertise as (b)(6), (b)(7)(C), should speak to the -- those procedures that they're familiar with, and I would not consider (b)(6), (b)(7)(C) an authority on surgery... And I believe the discussion -- my -- my sense is that the discussion of surgical procedures is one that a medical doctor is more expert on (b)(6), (b)(7)(C).

However, according to Complainant, as the (b)(6), (b)(7)(C), "I'm one person in this hospital. So my lane could be wound management. My lane could be orthopedic (b)(6), (b)(7)(C). My lane could be working in the ICU, working with the anesthesia providers." As a result, his and other personnel's "quote, unquote, lanes were all over the place."

(b)(6), (b)(7)(C) U.S. Army, who worked directly for MG Patton as the former NTM-A Executive Officer, testified MG Patton did not regularly use profanity. He described MG Patton as being very direct and said it was not unusual if MG Patton was angry, to "drop the F-bomb." (b)(6), (b)(7)(C) also said he had worked for MG Patton during multiple tours of duty and had never known him to "convey anything other than a respectful and professional demeanor." (b)(6), (b)(7)(C) stated that MG Patton used the phrases "stay in your lane" and "stay in your [f---ing] lane" as "one and the same" and said they were "fairly typical" phrases. He defined them as Army "catch-phrase[s]" and said they were "more of an organizational term than it was one of 'don't say anything.'"

However, (b)(6), (b)(7)(C) testified that he recalled "MG Patton mentioning something about bones when speaking with someone after [Complainant]'s briefing." (b)(6), (b)(7)(C) said he heard MG Patton discussing "the need to talk about what you know rather than discuss an area outside of your duties," but he did not see to whom MG Patton was talking. (b)(6), (b)(7)(C) also said that MG Patton has a background in Public Affairs and that MG Patton had on several occasions used "stay in your lane" as a teaching point to officers. (b)(6), (b)(7)(C) testified:

I don't know if he [MG Patton] said it to (b)(6), (b)(7)(C) or (b)(6), (b)(7)(C) or to [Complainant], but he said -- that's like -- essentially, like, "You stay in your lane. If you don't know about bones, don't talk about bones," and the context is he's scolding the (b)(6), (b)(7)(C) for conflating all these different subjects into one

(b)(6), (b)(7)(C) testified that he heard MG Patton say this while still in the last patient's room with (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C).

briefing. So he's saying if you don't know what you're talking about, don't talk about it.

Complainant stated, "MG Patton was intimidating me, putting his finger in my chest, getting in my face. It was very clear that he did not want me to talk anymore." Complainant testified that he decided to end his presentation without briefing the two additional patients he had intended to brief:

And then the exchange between General Patton and I took place. His ramming his finger into my chest and getting in my face and telling me to stay in my lane, it was very clear that what I was saying was not acceptable. And I wasn't sure what was going on, so when the IG exited the room and said where we'd like to go to next, I had two more patients that I wanted to show. And I said, "We're done." ... He [MG Patton] never said the words, "Don't speak to the IG," but it was very clear with his behavior and his words that the information being passed to the IG was unacceptable.

In his June 19, 2014, memorandum MG Patton wrote that he disagreed with the DoD IG's conclusion that his comments "had the effect of limiting information" Complainant provided to the IG. Other witnesses, however, corroborate that MG Patton's statement had a restrictive effect.

(b)(6), (b)(7)(C) approached Complainant after his brief to tell him "if he needed to provide us any additional information that we did not get, then he could contact me." (b)(6), (b)(7)(C) said that Complainant told him then that someone told him to "stay in his lane." Complainant corroborated this exchange and provided a copy of his notes containing (b)(6), (b)(7)(C) contact information.

(b)(6), (b)(7)(C) testimony corroborated that Complainant intended to present more patients to the DoD IG SPO assessment team that he did not talk about. (b)(6), (b)(7)(C) said that she knew in advance that Complainant had four or five patients he wanted to talk about. However, the DoD IG SPO assessment team did not have a written agenda of the specific information they would receive during their visit to NMH, so they could not have known in advance how many patients they were going to be shown.

(b)(6), (b)(7)(C) also testified that Complainant told her he stopped his portion of the tour due to MG Patton's interaction. (b)(6), (b)(7)(C) said,

But after the general spoke to him, then the general [MG Patton] basically said, "Okay. We're going to head here now," and then he took the tour and, you know, off they went, and we just tailed along in the end, and then that's when he [Complainant] said -- do you want to know what he said to me?... so I said, "Yes, tell me what he said." And so then it was sort of -- and then we both sort

of felt like, oh, maybe we had the wrong impression about what this tour was for.

Lastly, Complainant's contemporaneous February 14, 2011, notes contained the information he intended to present during the NMH tour. This evidence clearly demonstrates that Complainant did not provide all the information he planned to tell the DoD IG SPO assessment team and that he stopped his briefing after MG Patton's interaction.

MG Patton strongly disagreed with our conclusion that his comments "had the effect of limiting information" Complainant provided to the IG. MG Patton maintained that (b)(6), (b)(7)(C) stated that after Complainant completed his portion of the tour in the patient ward, Complainant spoke to the IG about an orthopedic table. (b)(6), (b)(7)(C) confirmed that Complainant briefed about the orthopedic table in December 2010 and that there were questions about it during the February 21, 2011, NMH tour. Complainant stated that he "might" have referred to that particular orthopedic table, that the table was located in the main operating room, and that he did not recall a conversation about that piece of equipment during the tour. (b)(6), (b)(7)(C) stated that (b)(6), (b)(7)(C) was the person that talked about the orthopedic table after the entourage moved to the operating room.

MG Patton also contends that Complainant communicated with the DoD IG on frequent occasions on NMH issues and that Complainant continued to engage the DoD IG following their departure. Complainant may have had opportunities for additional interactions with the DoD IG SPO assessment during other portions of the visit. However, this does not change the fact that MG Patton's interaction with Complainant restricted the information he had intended to provide to the DoD IG SPO assessment team during the February 21, 2011, hospital tour. As a result, the DoD IG SPO assessment team did not receive the full benefit of the additional information about patient care that Complainant intended to provide on-site during the inspection when the DoD IG SPO assessment team members would have had the opportunity to see the concerns in person.

Character Witnesses

We interviewed three of the witnesses specifically suggested by MG Patton and another witness identified during the investigation. None of those witnesses were present during the NMH tour. Two of the four witnesses said that while MG Patton occasionally used profanity, he never did so in an abusive manner or toward subordinates. One witness testified MG Patton never used profanity in her presence. The witnesses also said MG Patton was very direct in his guidance when established standards were not met.

A fourth witness stated MG Patton could have a "short fuse" and "elevate his voice" when upset or angry and responding to a subordinate; however, MG Patton would quickly refocus. Three of the four witnesses described MG Patton as very professional and an exceptional leader.

We reviewed and considered four "eye witness" statements provided by MG Patton. Importantly, none of those four witnesses stated definitively that the conversation between

MG Patton and Complainant did not happen. Instead they state that they did not see or hear it and that they do not believe Complainant was restricted in his communications with the DoD IG SPO assessment team. However, as stated above, because they did not know specifically what Complainant had planned to brief it is reasonable that they would conclude he had provided all the information he planned to. Further, none of those four statements refuted the testimony of (b)(6), (b)(7)(C) and the other witnesses.

B. Analysis of Restriction Allegation and Findings

Did MG Patton restrict Complainant on February 21, 2011, from communicating with an Inspector General? Yes

We found that MG Patton restricted Complainant from communicating with the DoD IG SPO assessment team by telling him to stay in his lane during his presentation on February 21, 2011.

Statutory Authority

Title 10, United States Code, Section 1034, "Protected communication; prohibition of retaliatory personnel actions,"

The Department of Defense Inspector General (DoD IG) conducted this military restriction investigation pursuant to Title 10, United States Code, Section 1034 (10 U.S.C. 1034), "Protected communications; prohibition of retaliatory personnel actions," which is implemented by DoD Directive 7050.06, "Military Whistleblower Protection."

Title 10 U.S.C. 1034(a)(1) states "(a) Restricting communications with Members of Congress and Inspector General prohibited.—(1) No person may restrict a member of the armed forces in communicating with a Member of Congress or an Inspector General."¹⁷

¹⁷ MG Patton and his counsel assert that a restriction under 10 USC 1034(a) requires an intentional, affirmative act of bad faith and MG Patton denies he committed such an act. First, as quoted above, the language of the statute does not require a specific intent. Further, as demonstrated by the evidence outlined and the analysis provided in our report, MG Patton did both intend to and did actually utter the words which were reasonably interpreted to restrict the information to be provided by Complainant. In addition, counsel asserts that 10 USC 1034 must be read in its entirety and proposes we consider the language in 1034(b) in our review of cases under 1034(a). Counsel's argument is misplaced; the two sections address, as they were drafted to do, entirely different activities. 10 USC 1034(a) contains a blanket prohibition on restricting lawful communications to Member of Congress or an Inspector General, while 10 USC 1034(b) prohibits reprisals for those specific categories of communications which qualify for protection. While 10 USC 1034(b) requires Complainant to have a reasonable belief that the information being disclosed demonstrates a qualifying violation, there is no requirement in 10 USC 1034(a) for a "reasonable belief" to protect a service member from restriction. Accordingly, even if MG Patton perceived that Complainant did not have the necessary expertise to possess a reasonable belief to brief on the subjects he was presenting, nevertheless 10 USC 1034(a) protects Complainant from restriction.

**Department of Defense Directive 7050.06, "Military Whistleblower Protection,"
dated July 23, 2007**

DoD Directive 7050.06, 4.2. directs that "No person shall restrict a member of the Armed Forces from making lawful communications to a Member of Congress or an Inspector General (IG)." DoD Directive 7050.06, E2.11., defines restriction as "preventing or attempting to prevent members of the Armed Forces from making or preparing to make lawful communications to Members of Congress and/or an IG."

While we do not conclude necessarily that all command guidance on briefings to an IG constitutes restriction, under the circumstances in this case and considering the following factors, we found that MG Patton's directing Complainant to stay in his lane was restrictive:

- a) Complainant's communications to the IG team met the requirement under 10 U.S.C. 1034 and DoDD 7050.06 that his communications be lawful.
- b) Complainant was not presenting a standardized command briefing. Complainant was given complete latitude with the only guidance being "to tell the truth." Further, MG Patton's directive was based on content and not for any non-content based purposes, such as scheduling issues.
- c) Telling Complainant to stay in his lane had the effect of limiting the information Complainant communicated to the DoD IG SPO assessment team. Complainant was selected to explain the clinical issues of Afghan patients and was addressing matters within the scope of the experience and background upon which he was chosen to brief. Because he was reasonably already "in his lane," MG Patton's directive was so amorphous as to be all-inclusive. This is evidenced by Complainant's decision not to brief the DoD IG SPO assessment team on the last two patients he had planned.
- d) MG Patton had other non-restrictive options available to address any concerns that the DoD IG SPO assessment team may not have understood Complainant's position or credentials. For example, either then or later he could have informed the DoD IG SPO assessment team himself of Complainant's position or credentials.
- e) Complainant was ^{(b)(6), (b)(7)(C)} [REDACTED], being given a directive by a two-star general officer. Given that background and disparity, it is reasonable to expect that Complainant would err on the side of caution and obey a very senior officer's order by ceasing all communication. As a direct result of MG Patton's directive, Complainant decided not to present information that he had planned to present to the assessment team. Specifically, he planned to brief on two additional patients.

Accordingly, we determined that MG Patton restricted Complainant when he told him to "stay in your lane" during the DoD IG SPO assessment team visit to NMH. The fact that members of his command may have later communicated with the DoD IG SPO assessment team does not negate the restrictive nature of MG Patton's action.

C. Analysis of Dignity and Respect Allegation and Findings

Did MG Patton fail to treat a subordinate with dignity and respect in violation of the Joint Ethics Regulation (JER) and AR 600-100? No.

We did not substantiate the allegation that MG Patton failed to treat Complainant with dignity and respect.

Standards

DoD 5500.07-R, Joint Ethics Regulation, August 30, 1993, including changes 1-7 (November 17, 2011)

The JER provides a single source of standards of ethical conduct and ethics guidance for DoD employees.

Chapter 2 of the JER, "Standards of Ethical Conduct," incorporates Title 5, Code of Federal Regulations (CFR), Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," in its entirety.

Subpart A, "General Provisions," Section 2635.101, "Basic obligation of public service," requires all DoD employees to act impartially.

Chapter 12, "Ethical Conduct," states in Section 4, "Ethical Values," that ethics are standards by which one should act based on values. Values are core beliefs such as duty, honor, and integrity that motivate attitudes and actions. Ethical values relate to what is right and wrong and thus take precedence over non-ethical values when making ethical decisions. DoD employees should carefully consider ethical values, including "accountability," "fairness," "caring," and "respect," when making decisions as part of official duties.

Section 4, Paragraph 12-401, "Primary Ethical Values," elaborates as follows:

- Accountability includes avoiding even the appearance of impropriety because appearances affect public confidence.
- Fairness requires that individuals be treated equally and with tolerance.
- Caring provides for courtesy and kindness, both to those we serve and to those we work with, to help ensure that individuals are not treated solely as a means to an end. Caring for others is the counterbalance against the temptation to pursue the mission at any cost.
- Respect involves treating people with dignity, honoring privacy, and allowing self-determination. Respect is critical in a government of diverse people. Lack of respect leads to a breakdown of loyalty and honesty within a government and brings chaos to the international community.

Army Regulation (AR) 600-100, "Army Leadership," dated March 8, 2007

AR 600-100 establishes Army policy for leadership, which is defined as "influencing people by providing purpose, direction, and motivation, while operating to accomplish the mission and improve organization."

Chapter 2, Section 2-1, requires every Army leader to:

- Ensure the physical, moral, personal, and professional wellbeing of subordinates;
- Build cohesive teams and empower subordinates;
- Build discipline while inspiring motivation, confidence, enthusiasm, and trust in subordinates;
- Treat subordinates with dignity, respect, fairness, and consistency; and
- Foster a healthy command climate.

Discussion

We conclude that MG Patton did not touch or poke Complainant in the chest or otherwise fail to treat him with dignity and respect. MG Patton was the senior U.S. Army member participating in the DoD IG SPO tour of the NMH. We found MG Patton had concerns about Complainant's portion of the Command briefing, and in particular about the impression Complainant's comments could have on the DoD IG SPO assessment team and the senior ANA leaders present on the tour.

We also found that MG Patton started becoming uncomfortable prior to Complainant's briefing of the third patient; during Complainant's briefing of the third patient, MG Patton left the patient's room to speak with the NTM-A/CSTC-A senior leaders in the hallway. MG Patton did not interrupt the briefing but expressed to those senior leaders his concern that Complainant was commenting on medical issues, which he was not qualified to critique.

Following the third patient briefing concerning the broken femur, witnesses observed MG Patton speaking with Complainant in the hallway. One witness testified he heard MG Patton tell Complainant to "stay in his [f---ing] lane" but did not describe the statement or conversation as abusive or inappropriate. No witness testified that MG Patton yelled or screamed at Complainant or berated him publicly. Although one witness stated years later for the first time she observed MG Patton touch Complainant during the conversation, no other witness testified to observing physical contact and MG Patton denied touching Complainant. MG Patton further testified he did not have a confrontational interaction with Complainant.

Further, we found MG Patton disengaged from the conversation to rejoin the tour. Complainant wanted to pursue MG Patton after their exchange ended, but (b)(6), (b)(7)(C) stopped him from doing so and told him to "stay focused" and that pursuing MG Patton to continue the exchange would not be worth it. Complainant confirmed (b)(6), (b)(7)(C) description of this part of the exchange.

The JER emphasizes primary ethical values for all DoD employees, including accountability, caring, and treating others with dignity and respect. AR 600-100 requires leaders to treat subordinates with dignity, respect, fairness, and consistency, empower subordinates, inspire confidence, and foster a healthy command climate.

We determined there was insufficient evidence to conclude MG Patton failed to treat Complainant with dignity and respect. The evidence supports that there was a short discussion following Complainant's briefing about the third patient. MG Patton was clearly concerned about the manner and content of the Complainant's briefing to the DoD IG SPO assessment team and senior ANA officials. However, there is insufficient evidence that MG Patton touched the Complainant during their discussion and that MG Patton's single instance of use of an expletive constituted misconduct or failure to treat a subordinate with dignity and respect. Accordingly, we did not substantiate the allegation against MG Patton.

V. CONCLUSION(S)

We conclude, based on a preponderance of the evidence, that MG Patton's comments restricted Complainant's communication with an IG in violation of 10 U.S.C. 1034.

We conclude MG Patton did not fail to treat Complainant with dignity and respect contrary to the JER and AR 600-100.

VI. RECOMMENDATION(S)

We recommend that the Secretary of the Army take appropriate corrective action against MG Patton.

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Inspector General
Department of Defense

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