

**A FOCUSED  
RETROSPECTIVE REVIEW  
BY ICS, OF IHS RESPONSE  
TO ALLEGATIONS OF  
SEXUAL ABUSE**

*A MEDICAL QUALITY  
ASSURANCE REVIEW*

January 2020



**INTEGRITAS**  
CREATIVE SOLUTIONS

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This report is the property of the Indian Health Service. The IHS contracted with Integritas, LLC to carry out a patient safety medical quality assurance review to examine how IHS can significantly improve the identification of, and response to complaints of patient abuse, especially sexual abuse of minors. The patient safety review which resulted in this report was an IHS medical quality assurance activity and is privileged and confidential pursuant to federal law at 25 U.S.C. § 1675. The contents of the report are exempted from disclosure under the Freedom of Information Act and may not be disclosed to any person or entity, except as specifically authorized by 25 U.S.C. § 1675.

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# INTRODUCTION

## The Ultimate Questions and Contract Mission

Integritas Creative Solutions, LLC,<sup>1</sup> was retained by the Department of Health and Human Services (HHS), Indian Health Service (IHS),<sup>2</sup> to conduct an internal medical quality assurance review (review) to investigate and determine why -- using the case of Stanley Patrick Weber as a cautionary precedent -- the IHS failed to remove an employee credibly suspected of sexual abuse throughout a decades-long career.<sup>3</sup> All parties began this process with the understanding that serious failures -- systemic, organizational, and individual -- led to the endangerment and abuse of young Indian male patients of the IHS in Montana and South Dakota. The company's charge was to discover the reasons for the lack of rigorous inquiry and diligent action that allowed the danger posed by Weber to continue after suspicions of molestation had been repeatedly raised at at least two service units.

The answers to the first question necessarily raise a second. Were the failures in the Weber case the product of individual dereliction limited to this one case, or were there more fundamental reasons why Weber's sexually abusive conduct was not earlier addressed, and his employment

immediately terminated? This second question required the review and analysis of similar cases for indications of parallel causes and similar contributing factors.

**The review, it should be emphasized, is a study of historic events. It addresses what happened between 1986 and 2016 and does not evaluate, unless specifically noted otherwise, current conditions within the IHS.**

*ICS appreciates that the agency has responded to many challenges over the years, particularly in response to the Weber case, but the failures and causes that lead to the controversy nevertheless serve as warnings that should not be forgotten.*

## The Scope of the Contract

The Integritas Creative contract provided: "The objectives of the review will be to:

- a. identify facts relating to IHS's policies and procedures regarding the reporting of allegations of sexual abuse of IHS patients by clinical staff;
- b. identify any possible process or system failures and the contributing

<sup>1</sup> Integritas Creative Solutions may be referred to throughout this report as Integritas Creative, ICS, the contractor or the company.

<sup>2</sup> The Indian Health Service, as the contracting entity and subject of review, may be referred to as "the agency" but more commonly throughout the report as IHS.

<sup>3</sup> The contract with Integritas Creative was narrowly tailored and limited to 180 days for completion. The contractor has endeavored to maintain project discipline to stay within the parameters of time and topic, and therefore has not produced a more expansive product which could have addressed a broader array of management and service quality issues.

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- causes of any such process or system failures;
- c. make recommendations for improvement.”<sup>4</sup>

The independent review sought by the agency was an assessment of the effectiveness of internal policies and procedures, beginning in 1986 when Weber entered federal service as a commissioned officer with the Public Health Service (PHS), and recommendations for the possible development and/or improvement of policies and procedures that encompass these areas:

- *Timely reporting of suspected or known sexual abuse of IHS patients by IHS providers to appropriate authorities;*
- *Supervisory or other line management handling of reported suspicion of sexual abuse;*
- *Prompt action to temporarily remove a suspected abusive provider out of the work environment to facilitate an administrative or criminal investigation;*
- *Providing timely and complete information to support internal or external reviewers or investigators to promote an effective and informative investigation;*
- *Taking prompt and effective remedial action on specific*

- conclusions reached in an investigation; and*
- *Avoiding a transfer or “passing around” within the agency of problem providers or other staff.”*

## Methods of Investigation and Analysis

The ICS review, including investigation, analysis, conclusions and recommendations, took approximately eight months.<sup>5</sup> Consultants attempted to contact as many witnesses as possible who had knowledge of Weber’s conduct at his various PHS assignments and/or the administrative protocols and practices existing during the period 1986 – 2016. ICS interviewed leadership of the agency at the Headquarters level (Rockville), at the Area level (Oklahoma City, Albuquerque, Billings and Aberdeen), and at the Unit level<sup>6</sup> (Browning and Pine Ridge) regardless of whether they had specific knowledge of the Weber case. In its inquiry, ICS evaluated information about what should have been done (to deal appropriately with serious allegations of patient abuse) and what could have been done as much as what was done in the context of the Weber history.

During much of time allotted for this review, Weber was scheduled for trial in Rapid City, South Dakota on September 23, 2019. In consultation with the Office of Inspector General (OIG) and the U.S. Attorney’s

<sup>4</sup> SECTION C – DESCRIPTION/SPECIFICATIONS/PERFORMANCE WORK STATEMENT, IHS Internal Medical Quality Assurance Review, Contract Reference: 75H70419P00042

<sup>5</sup> A contract modification in September 2019 extended the original deadlines by three weeks to afford the company time to include investigation of Weber’s tenure at the University of New Mexico in Albuquerque. It allowed ICS to develop the complete history of Weber’s service in the PHS and determine whether there were any possible flags or indicators that should have been part of his employment history as he transitioned to IHS service units in Montana and South Dakota. A second contract modification in December 2019 extended the contract deadline February 28, 2020.

<sup>6</sup> ICS intended to visit the Chickasaw Nation Medical Center, formerly the Carl Albert Service Center, in Ada, Oklahoma, but were advised that our inquiry would not be welcomed and that neither the leadership of the facility nor any potential witness to the Weber’s tenure (1985-1987) would have anything to contribute.

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Office (USAO) in Rapid City, ICS consultants agreed to avoid any work that might impact the prosecution by creating additional discoverable material, unsettling witnesses, or taking any steps which might delay or interfere with their trial schedule. The interview of any potential witnesses in the South Dakota criminal case was coordinated with the OIG and the USAO. As a result of this agreement, ICS was significantly limited as to any active inquiry into Weber’s history at Pine Ridge (1995-2016), until after September 27, 2019. Prior to September 27, the South Dakota portion of the review was developed from extant documents (such as Weber’s Official Personnel File, IHS credentialing files, internal memoranda, and emails) and public record comments made by witnesses, until after the jury had returned its verdict in Rapid City. During that period of the contract, ICS focused its active investigation on Oklahoma and Montana.

or consulted. Some witnesses were approached and elected not to participate in the review. Unless anonymity was requested, witnesses are identified by name and position, either current or former. ICS consultants reviewed the available trial transcripts of the Montana trial, and an ICS consultant attended Weber’s trial in South Dakota. Media accounts included an in-depth documentary of the Weber case produced by the Wall Street Journal and the Public Broadcasting Service (PBS). This documentary – *FRONTLINE: Predator on the Reservation* – included numerous on-air interviews of percipient witnesses which ICS also used to complete the investigatory portion of the report. Many of those witnesses were re-interviewed by ICS consultants. Limited by time and access, ICS was compelled to eliminate several potential witnesses that, under different circumstances, would have been developed as sources of information.

Total Number of Interviews .....	97
Number of Witnesses .....	94
Number of Current and Former Staff and Managers at the Area Level .....	30
Number of Current and Former Members of Leadership at the Headquarters Level .....	9
Number of Locations Where Interviews Were Conducted .....	21

ICS compiled a documents file consisting of several thousand records, memoranda, emails, research sources, court records, and media accounts. The documents relied upon for factual support for the report are identified in footnotes. All sources of information constitute “statements” in the broader sense of the term and identify IHS employees by name. ICS has taken no steps to conceal identities of persons making the statement, or those that are subject of the statement made, other than those of victims or interviewed sources who requested anonymity.

Many current and former IHS employees were interviewed. Non-IHS witnesses and affected parties, such as tribal members, tribal leaders, law enforcement, and licensing authorities were also interviewed

Although this caveat appears in *Part I: Investigation*, it bears emphasis here. Media reports are generally considered less reliable in the development of a factual record because they are secondary sources – information provided to the reporter is then passed on to the consumer. Because the information does not come directly from the



original source, the chances for error, interpretation, or lack of context is increased because there is an additional interlocutor asserting the truth of the report. In many cases, however, the media report was the only source available – particularly as ICS researched related cases in its endeavor to ensure that its conclusions were not based entirely on the events of the Weber case. In evaluating this report submitted by ICS, individual factual assertions by witnesses should be appraised for possible bias or personal agenda, accuracy of recollection, and whether their information has been filtered through an intermediary. **The IHS should be assured, however, that all significant conclusions reached in the report were supported by multiple sources of information.**

Finally, ICS included in its review an assessment of agency actions and improvements to procedures adopted during and after Weber's term of service. This appraisal was necessary not only to credit the agency for taking remedial steps to respond to criticisms and inequities (and thereby offering an appropriately balanced view of the agency's performance) but also to ensure that the company's conclusions and recommendations were timely and appropriate to the current state of administrative practice. In sum, what may have been an organizational failure in 1995 would not have occurred had the same circumstances unfolded in 2019.

The background portion of this report – *Part I: Investigation* -- is not a complete narration of the agency's history with Dr. Stanley Patrick Weber. Moreover, it could not be made complete. As noted above, time and access limitations kept ICS consultants from developing witness accounts into Weber's 20-year career at Pine Ridge until after September 27, 2019. Although ICS is confident that the details included in this

report are reliable and accurate, an opportunity to be more thorough may have added factual context or weight. Secondly, and most importantly, it contains no information from a primary source – Weber himself. Because Weber has been a criminal defendant for the entire term of the contract, and will be litigating his prosecution for several years, ICS did not interview him or request any documents he may have possessed. The report therefore does not include Weber's version of events or potential rebuttal to the assertions made by other witnesses; it does not include any illumination he may have been able to provide on the process issues which are the primary interest of the agency now that the criminal proceedings have been largely concluded.

**Finally, there are significant gaps in the extant written record.** While ICS reviewed what appeared to be an extensive record of email traffic concerning Weber between 2008 and 2010, the same cannot be said of any other period of Weber's service with the Commissioned Corps or the IHS. For example, ICS had access to no emails or other relevant documents concerning Weber between July 9, 2015, when the Office of General Counsel (OGC) recommended to the Great Plains Area Director that Weber be summarily suspended from patient care, and October 30, 2015, when the Acting Deputy Area Director actually suspended Weber from patient care. It strains credulity to assume that there were no documented discussions about Weber in the intervening four months. ICS also requested emails leading up to the July 2015 exchange and received no emails for the five years prior (August 2010 - July 2015).

The absence of evidence, where these gaps occur, is not evidence that nothing material was occurring. Important parts of the administrative story – such as the

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management discussions occurring in the final months of Weber's tenure in Browning in 1995 – were either never documented or were documented and the records subsequently lost to history.

With that disclaimer, ICS can represent that the factual recitation included in this report is an accurate rendering of the reliable evidence made available to ICS, discovered by ICS, and obtained by ICS through extensive interviews of percipient witnesses.

### Construction of the Report

This report utilizes a simple progressive structure – what happened, why did it happen, and what can be done to keep it from happening again.

Following this introduction, the report is comprised of three sections:

- *Part I: Investigation* presents a factual record detailing the relevant evidence for the periods 1986 to 2016.
- *Part II: Analysis and Conclusions* uses the factual record to inform the analysis of critical issues; determining the root causes for the failures in the Weber case and using comparative analysis to establish patterns.
- *Part III: Recommendations* builds on the two previous parts to link conclusions to recommendations designed to assist the agency going forward to protect the health and safety of its tribal consumers.

# PART I: INVESTIGATION

## Chapter 1: The Case of Stanley Patrick Weber

### *Education and Pre-IHS Employment*

Stanley Patrick Weber joined the federal workforce through the Commissioned Corps of the U.S. Public Health Service (PHS) on July 9, 1986.<sup>7</sup> The United States Public Health Service Commissioned Corps (PHSCC) is the federal uniformed service of the Public Health Service (PHS). The PHSCC provides officers (Medical Officers, Dental Officers, Therapists, Environmental Health Officers, etc.) to other uniformed services, and may be detailed to other federal agencies. A mission of the PHSCC is to assist in the provision of healthcare services to medically underserved populations, such as American Indians, Alaska Natives, and to other population groups with special socio-economic needs.<sup>8</sup>

Born December 11, 1948, and raised in Dickinson, North Dakota, Weber received his medical degree from the University of North Dakota in 1982 and became a Commissioned Corps Officer after serving a surgical residency at the University of North Dakota (1982-1983) and a pediatric residency (1983-1986) at the Children's Hospital of Los Angeles. Prior to medical

school and obtaining an undergraduate degree from the University of North Dakota, Weber served in the U.S. Army from 1972 to 1977. According to his personnel file, he also earned a degree from the University of Texas in Austin in 1972.<sup>9</sup>

### *Oklahoma*



Once commissioned, Weber was assigned to the Carl Albert Service Hospital, a medical facility then operated by the IHS serving the Chickasaw Indian community in Ada, Oklahoma.<sup>10</sup> From July 9, 1986 to June 1989, Weber served as a Medical Officer/Pediatrician and from July 1987 to

<sup>7</sup> Official Personnel File (OPF), Weber *Curriculum Vitae* (CV) attached to OPF.

<sup>8</sup> Public Health Service Commissioned Corps website.

<sup>9</sup> Official Personnel File (OPF), Weber Applications and *Curriculum Vitae* (CV), dated February 13, 1989 and December 14, 1990.

<sup>10</sup> Official Personnel File (OPF), Personnel Order No. 6080.009, dated March 21, 1986.

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June 1989 was Chief of Pediatrics at the facility.<sup>11</sup>

There are few records available to ICS relating to Weber's tenure at Ada but for those from his personnel file. No relevant emails or memoranda have been preserved. Additionally, as Weber's work at Ada was over 30 years ago, there are few available witnesses to his short time in Oklahoma.

ICS determined that one potential witness was (b) (6), an (b) (6) it was believed, was one of the only physicians still available who would have worked with Weber at the facility when it was operated by the IHS as the Carl Albert Service Center.<sup>12</sup> ICS intended to ask (b) (6) in the event he had no recollection of Weber, whether he might know of others that would.<sup>13</sup>

However, the Secretary of Health for the Chickasaw Nation, (b) (6) through the Area Director, informed ICS that "under no circumstances" would the consultants be allowed to interview (b) (6). As with any potential witness, it may well have been the case that (b) (6)

would have no recollection of Weber, but a thorough investigation would require that he be asked.

ICS also requested the opportunity to interview Dr. Grim himself to learn about the protocols and processes of the tribally operated facility, which the IHS Area Director considers a premier medical provider within the Oklahoma IHS network of Public Law 93-638 facilities,<sup>14</sup> in dealing with allegations of employee misconduct. Dr. Grim would have had a unique perspective since not only has he served as the Chief Executive for the Chickasaw Nation Medical Center, but had also served as an IHS Area Director for the Oklahoma City Area and as Director of the Indian Health Service from 2002 to 2007.<sup>15</sup> However, after indicating he would give the company's request further consideration, he never indicated any willingness to assist in the IHS contracted review.

ICS had also been referred to (b) (6) an Oklahoma Board of Medical Licensure and Supervision (OBMLS) investigator identified as a person having knowledge of Weber's professional

<sup>11</sup> Id. Also see, Weber Applications dated February 13, 1989 and December 14, 1990.

<sup>12</sup> According to RADM Travis Watts, the Tribe assumed responsibility for the provision of medical services under Public Law 93-638 sometime in the mid-1990s. ICS interview of RADM Travis Watts, Area Director and Assistant Surgeon General, Oklahoma City Area, Oklahoma City, Oklahoma, August 6, 2019. P.L. 93-638 is the Indian Self Determination and Education Assistance Act (ISDEAA) which authorizes Indian Tribes and Tribal Organizations to contract for the administration and operation of certain Federal programs which provide services to Indian Tribes and their members. Under the ISDEAA, Tribes and Tribal Organizations have the option to either (1) administer programs and services the IHS would otherwise provide (referred to as Title I Self-Determination Contracting) or (2) assume control over health care programs and services that the IHS would otherwise provide (referred to as Title V Self-Governance Compacting or the TSGP). These options are not exclusive; Tribes may choose to combine them based on their individual needs and circumstances. IHS website, 2019.

<sup>13</sup> Since ICS determined that Weber engaged in predatory behaviors while in New Mexico similar to those uncovered in Montana and South Dakota, there is substantial reason to believe that someone may have observed something that could have established or at least suggested that his abuse, while serving as an IHS provider, started in 1986 in Ada rather than 1992 in Browning. This is particularly true if, as suggested, he was the subject of an OBMLS investigation.

<sup>14</sup> ICS interview of RADM Travis Watts, Area Director and Assistant Surgeon General, Oklahoma City Area Office, Oklahoma City, Oklahoma, August 6, 2019.

<sup>15</sup> "Dr. Charles Grim Appointed Secretary of Health for the Chickasaw Nation", Chickasaw Nation Media Relations Office, Chickasaw Nation New Release, dated December 13, 2018.

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conduct during his time at Ada.<sup>16</sup> ICS sought to determine whether there was an Oklahoma investigation or at least whether (b) (6) or anyone in his office, had indeed indicated to Dr. Mark Butterbrodt that Weber's professional conduct had been the subject of inquiry. According to Butterbrodt, he had contacted (b) (6) in 2008 and had later been called by someone he believed to have been another investigator from the OBMLS who said that Weber had left Ada under suspicion of being a pedophile. The caller said that there had been a separate investigation involving a different doctor suspected of sexual assault on children and that Weber's name had surfaced during that investigation.<sup>17</sup>

ICS recognized that the OBMLS would be reluctant to discuss, if not prohibited from discussing, the actual details of an investigation without a subpoena or court order but would have preferred, in the interests of diligence, to have that position stated for the record. ICS also sought (b) (6) assistance in describing the process of intake, investigation, and resolution of allegations made against licensed physicians -- those matters being useful to a determination of the extent to which the IHS, or any other employer of a physician under investigation, would be kept informed about the progress of an OBMLS inquiry. In turn, this information would assist ICS consultants in making practical recommendations to IHS about the degree to which licensing boards can be relied upon in resolving questions of professional conduct in the context of internal personnel decisions.

Although the OBMLS agreed to allow ICS to copy any publicly available documents relating to Weber -- none of which related to any "investigation" that Dr. Butterbrodt implied had occurred -- the agency did not permit an interview with (b) (6) or anyone else. The executive director, (b) (6) "did not think it was necessary."<sup>18</sup>

The refusal of persons and entities to assist in the consultants' effort to fully recreate the factual trajectory of the Weber case, and assess the process associated with claims of physician misconduct, is illustrative of the many obstacles to enforcing physician accountability in the workplace. The "process" referred to here not only includes how the IHS responds internally to claims that patient well-being is threatened by rogue actors in their organization, but the confidence the IHS puts in law enforcement, regulators, and licensing agencies to satisfactorily perform their investigatory and decision-making functions -- which the IHS may use as a justification for a personnel action. The confidentiality of individual investigations may be entirely legitimate -- whether refusal to disclose information is predicated on witness privacy concerns, liability concerns, concerns for the integrity of the inquiry, statutory or rule restrictions, concerns for reputational damage being done by a false accusation, or simply a desire to avoid getting involved in the personnel decisions of a third-party.

<sup>16</sup> See Butterbrodt complaint to the South Dakota Board of Medical and Osteopathic Examiners (SDBMOE), dated December 2, 2008. Listed under individuals with knowledge of Weber's conduct Dr. Butterbrodt wrote "contact Steve Wasburn (sic) -- Oklahoma Medical Board"...

<sup>17</sup> ICS interview of Dr. Mark Butterbrodt, former pediatrician at Pine Ridge, Rapid City, South Dakota, October 2, 2019.

<sup>18</sup> ICS contact with Larry Rhodes, Director of Investigations, OBMLS, Oklahoma City, Oklahoma, August 9, 2019.

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*Secrecy, however, frustrates the employer's fact-finding missions, makes it difficult to resolve complaints and protect patients, provides a certain degree of "cover" for the doctor engaged in abusive conduct, and discourages victims and whistleblowers who believe that nothing ever happens so disclosure is a fruitless endeavor. As will be seen in this report, any investigation without outcome can be used by managers to avoid any further involvement or disciplinary action.*

In July 1989, Weber left the Carl Albert Service Hospital to participate in an Adolescent Medicine Fellowship at the University of New Mexico in Albuquerque. Weber remained an officer in the Commissioned Corps; this was an official transfer with the PHS.<sup>19</sup>

### New Mexico



Between 1989 and 1992, Weber pursued a Fellowship in Adolescent Medicine at the University of New Mexico (UNM) School

of Medicine (SOM) in Albuquerque, New Mexico.<sup>20</sup>

ICS encountered some of the same challenges in New Mexico that it had in Oklahoma. Weber's tenure at UNM was brief – only three years – and was 30 years ago. Documents and witnesses were scant. However, due diligence required that this piece of Weber's history with the PHS be explored and included in the review regardless of whether it yielded an abundance of information.

Weber had gone through a standard vetting process prior to being accepted at the UNM SOM as a trainee. There was no apparent negative information discovered during that vetting process or, logically, he would have been denied a position as a Fellow in Pediatric Medicine. (b) (6) said that Weber would not have gone through the regular physician credentialing process, due to the restrictions on Weber's actions and authority while in an educational status. As such, there was no credentialing file created for the period of time that Weber was at the SOM. There was, however, an "educational file" created for Weber and the other trainees.<sup>21</sup> (b) (6) told ICS that access to this file is limited due to New Mexico privacy laws regarding education records. While the UNM could not release the file for review by ICS, (b) (6) advised that he and another SOM employee had reviewed the file based on the document request provided to him by ICS, through the IHS Area Office, and related that there was no negative information relating to Weber's conduct while at UNM.

On December 14, 1990, as his two-year study was ending, Weber applied for a third

<sup>19</sup> Official Personnel File (OPF), Personnel Order Number 9159.004, dated June 8, 1989.

<sup>20</sup> Id.

<sup>21</sup> ICS interview of (b) (6) University of New Mexico School of Medicine, Albuquerque, New Mexico, December 5, 2019.

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year at UNM with the Commissioned Corps.<sup>22</sup> In requesting a third year, Weber indicated in his application materials that his objectives were to “[o]btain more formal clinical training in the following areas:

- a) individual and group counseling with Native American adolescents;
- b) psychiatric evaluations of adolescents and adolescent psychiatric pharmacology;
- c) working with adolescents that have special needs such as adolescents on probation, that are physically disabled, learning disabled and interacting with schools and communities of these students;
- d) substance abuse interventions.<sup>23</sup>

While in New Mexico, Weber volunteered at two Teen Centers, a school-based health program in partnership with the Pueblos of Laguna and Acoma and the Navajo community of To’ Hajallii (Canoncito). The program was one of the first school-based health centers in the country, designed to address concerns about the rate of suicides and teen pregnancies. They were called Teen Centers to remove any perceived stigma for going to a clinic. They were operated from 1983 until 2018 with money from various grants and contracts including IHS.<sup>24</sup>

(b) (6)

After working with Weber for a period of time, (b) (6) had a “constant feeling” that Weber spent too much time with adolescent Native American boys, both individually and in groups. Weber had boys visiting his home on a regular basis. He regularly gave gifts to boys. The boys were riding around with Weber in his vehicle and even driving his vehicle. All of these issues made (b) (6) “uncomfortable.” (b) (6) stated that she had no “proof” of illegal behavior, but Weber’s contact with the adolescent boys did not “seem professional.”

(b) (6) recounted an example of one particularly egregious episode. Weber told (b) (6) that he was going to take a trip to Europe and that he planned to take a sixteen-year-old Native American boy with him on the trip in order to expose him to Europe. (b) (6) stated that she said this was a bad idea and registered her concerns with Weber's supervisor. After Weber returned from the trip, he told (b) (6) that he had told the boy that the boy could not go on the trip but he showed up at the airport when Weber was leaving and Weber felt he could not leave the boy behind so the boy accompanied Weber on the trip.

When contacted by IHS for a professional reference at the conclusion of Weber's fellowship, (b) (6) said, according to the IHS notes, that Weber "worked

<sup>22</sup> Official Personnel File (OPF), Application for Training, attachments, dated December 14, 1990.

<sup>23</sup> Id. This document was revealing for several reasons. ICS consultants concluded this was an early indication that Weber was trying to fold elements of counseling and psychiatry into his pediatric practice. Stepping outside the traditional bounds of pediatrics allowed Weber to justify more familiar and intimate relationships with young Indian males in settings other than the confines of an examination room. The pursuit of an expanded specialty – more psychologist than pediatrician – would continue throughout his career as he took steps to increase his access to vulnerable adolescents regardless of their physical health or need for medical treatment.

<sup>24</sup> ICS interview of (b) (6) (b) (6) University of New Mexico Health Sciences Center, Albuquerque, New Mexico, January 14, 2020. Also, email exchange with (b) (6) January 13, 2020.

tirelessly, ie spent evenings & weekends [with] the kids [at] the center."<sup>25</sup>

(b) (6) recalled being contacted by the IHS as a reference.<sup>26</sup> (b) (6) confirmed that she told the caller that Weber worked hard in his position and completed work at the teen centers, to include work at night and on the weekends. However, she also told the caller that she had concerns about Weber based on the amount of time that he spent with adolescent boys, and the fact that Weber had boys visiting his home, driving his car, etc. (b) (6) told the caller that Weber's behavior made her uncomfortable although she had no proof of misconduct.<sup>27</sup>

**While Weber's IHS file reflects the positive comments regarding Weber's work at nights and on the weekends, it is completely devoid of any of the critical information provided by (b) (6). As such, the concerns voiced by (b) (6) were not documented or acted upon by the agency.**

After two and a half years at UNM, Weber applied for a position in pediatrics at the Blackfeet Service Unit, also known as the Blackfeet Community Hospital, in Browning, Montana.<sup>28</sup> On May 4, 1992, Weber was assigned to the Blackfeet Community Hospital.<sup>29</sup>

## Montana



On July 1, 1992, Weber began his service as a pediatrician at the Blackfeet Community Hospital, an IHS facility serving the Blackfeet Indian Reservation and members of the Blackfeet Tribe.<sup>30</sup>

Blackfeet Community Hospital Chief Executive Officer (CEO) Mary Ellen LaFromboise welcomed Weber's enthusiasm to be more involved with Indian teenagers. Weber appeared to her to be "genuinely interested in our young people."<sup>31</sup> Weber energized the "youth outreach program" and proposed "evening clinics as a more user friendly" opportunity for the community to get health care services. "I just thought that 'Wow' here's something that the hospital can offer the

<sup>25</sup> Official Personnel File (OPF), Reference Check, handwritten notes on Weber CV, date uncertain but likely February 1992. Bracketed material reflects that symbols were used instead of the words shown here.

<sup>26</sup> These comments are found on a 1992 CV. Based on the timing, and the experience of seeking references from the most current sources, ICS concluded that the official making inquiries was likely from the Billings Area Office or the Browning Service Unit.

<sup>27</sup> Interview of (b) (6) at University of Montana.<sup>30</sup>

Quoted material taken from email correspondence with (b) (6).

<sup>28</sup> Official Personnel File (OPF), Billings Area Indian Health Service Medical Staff Application, December 12, 1991.

<sup>29</sup> Official Personnel File (OPF), Personnel Order No. 2125.028, dated May 4, 1992.

<sup>30</sup> Browning, the headquarters of the Blackfeet Tribe, is a remote community 45 miles south of the Canadian border in north central Montana. Adjacent to Glacier National Park, the Blackfeet Reservation is extremely rural. Browning, with a population of 1026 people, is 126 miles northwest of Great Falls, Montana, and 98 miles south of Lethbridge, Alberta, Canada.

<sup>31</sup> "FRONTLINE Predator on the Reservation", Public Broadcasting Service (PBS), Dan Frosch and Christopher Weaver (Correspondents), Frank Koughan (Senior Producer), Raney Aronson-Rath (Executive Producer of *Frontline*), aired February 12, 2019 (hereinafter *Frontline*). Interview of Mary Ellen LaFromboise.

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community. We'll put Dr. Weber out in the community.”<sup>32</sup>

Clinical Director (CD) and Chief Medical Officer (CMO) Randy Rottenbiller<sup>33</sup> also saw Weber's first year in Browning as very positive. There was, at the time, an emphasis on community engagement to integrate the IHS mission into a closer relationship with tribal consumers.<sup>34</sup> Although Rottenbiller saw Weber as a “loner” who did not engage socially with his colleagues, as Weber's supervisor, he gave him a good to excellent evaluation for his performance the first year in Browning.<sup>35</sup> Weber was on probation for that first year. Most employees are on their best behavior during a probationary period knowing that any misconduct or performance issues can more easily lead to dismissal.<sup>36</sup>

Weber made it known to his colleagues that he preferred to treat adolescent children, as opposed to infants and toddlers, and that he preferred to treat male patients over female patients.<sup>37</sup> In an effort to control his patient load composition, Weber “shut out” the nurse responsible for patient scheduling.<sup>38</sup> Weber was known to conduct patient visits after-hours and on at least one occasion was

seen by maintenance staff with a small pre-teen boy, after hours, dragging a couch into his office from the waiting area and shutting the door afterward<sup>39</sup>; a couch that was removed from his office after his departure.<sup>40</sup> The staff member who witnessed Weber taking the unaccompanied boy to his office after hours, (b) (6), thought that what he had witnessed was unusual and suspicious. He filed a written report regarding the incident with the Head Supervisor for the Housekeeping Department.<sup>41</sup> ICS consultants were not provided, and could not locate any memorandum authored by (b) (6)

The Director of Behavioral Health/Chief of Psychology at the Blackfeet facility, Dr. Dan Foster, became concerned about Weber's practices “within two months” of his, Foster's, arrival in 1994.<sup>42</sup> Dr. Foster had a background in criminal sexual behavior, having been a psychologist at the Bureau of Prisons facility in Rochester, Minnesota, where he took part in a program for sexual offender rehabilitation. Foster noticed that Weber maintained a list of at-risk prepubescent and adolescent males with

<sup>32</sup> Id.

<sup>33</sup> At the time, Dr. Rottenbiller's position was that of Clinical Director, but his responsibilities were those of what is now referred to as the Chief Medical Officer, and Rottenbiller generally referred to himself as Chief Medical Officer. The titles may be used interchangeably throughout this report.

<sup>34</sup> ICS interview of Dr. Randy Rottenbiller, former CMO at Blackfeet Community Hospital, Billings, Montana, September 10, 2019.

<sup>35</sup> IHS Blackfeet Service Unit, Credentialing File, Personal Reference Questionnaire, dated May 16, 1993.

<sup>36</sup> ICS interview of Dr. Randy Rottenbiller, former CMO at Blackfeet Community Hospital, Billings, Montana, September 10, 2019.

<sup>37</sup> *United States v. Weber*, CR 18-14-GF-BMM, Dk. No. 134. Testimony of Dr. Daniel Foster, September 5, 2018

<sup>38</sup> ICS interview of Dr. Randy Rottenbiller, former CMO at Blackfeet Community Hospital, Billings, Montana, September 10, 2019.

<sup>39</sup> ICS Interview of (b) (6), former housekeeper at Blackfeet Community Hospital, Browning, Montana, September 18, 2019.

<sup>40</sup> ICS Interview of Tim Davis, Tribal Chairman of the Blackfeet Tribe, Browning, Montana, July 2019. Before being elected Chairman of the Blackfeet Tribal Business Council, Davis spent his career at IHS. In 1995, Davis was in the Facilities Department of the Browning Community Hospital.

<sup>41</sup> ICS Interview of (b) (6), former housekeeper at Blackfeet Community Hospital, Browning, Montana, September 18, 2019.

<sup>42</sup> *Weber*, CR 18-14-GF-BMM, Dk. No. 134. Testimony of Dr. Daniel Foster, September 5, 2018.

whom he spent time.<sup>43</sup> He had also encountered Weber, dressed in clothes appropriate to a middle school youth, with a group of young Indian boys at a pizza restaurant in Shelby (a town off the reservation 53 miles east of Browning). No parents of the boys were present. Foster was concerned about this encounter, and the fact that Weber had taken kids shopping in Great Falls and to basketball tournaments.<sup>44</sup> According to Dr. Foster, Weber may have been trying to create “[t]he implication of parental permission;” getting the community used to seeing Weber in the company of a group of young boys so that when unsupervised activities with the Blackfeet boys continued to occur it would not appear unusual or raise concerns. **Dr. Becky Foster (PhD Psychology) described Weber’s interactions with young boys at high risk - from poverty and difficult family circumstances who are offered food, new clothes, security -- as “grooming behavior” typical of pedophiles.**<sup>45</sup>

While LaFromboise saw Weber’s willingness to have evening clinic hours and a Teen Clinic Area as a demonstration of Weber’s sincere desire to care for Blackfeet

children,<sup>46</sup> the Fosters saw the same activity as more sinister; they were concerned about the “after-hours” clinical practice because many of Weber’s adolescent male patients were being seen without any adult accompanying the child. “Normally if you bring your child to the pediatrician a parent is with them, or, if a social worker brings the child to the pediatrician, the social worker is with them ... but these boys were going in there alone.”<sup>47</sup>

Weber – not a psychologist or a licensed counselor – agreed to provide counseling sessions for middle school students who got into trouble at the local middle school. At this time, the Browning facility had professional clinical psychologists, like the Fosters, available to provide counseling and psychological care to Indian children. There was no apparent need for any other IHS physician to step into this role.

Yet Weber expanded his pediatric responsibilities to include social and psychological interactions with juveniles. He joined the Blackfeet Tribe’s Child Protection Team<sup>48</sup> and requested Continuing Medical Education (CME) that did not serve to develop professional expertise in the field

<sup>43</sup> ICS interview of Dr. Daniel Foster, former IHS psychologist at the Browning Community Hospital in Browning, Harlem, Montana, November 5, 2019. Also, *Weber*, CR 18-14-GF-BMM, Dk. No. 134. Testimony of Dr. Daniel Foster, September 5, 2018.

<sup>44</sup> *Frontline* interview of Dr. Dan Foster, aired February 12, 2019.

<sup>45</sup> *Frontline* interview of Dr. Becky Foster, aired February 12, 2019. ‘Grooming’ is the progressive process where an abuser uses manipulative behaviors to gain the confidence of a child [;] [b]efriending and establishing an emotional connection with a child or child’s family member, with the aim of lowering the child’s inhibitions and the objective of sexual abuse.[or:] [a] gradual process by which an offender draws a victim into a sexual relationship and maintains that relationship in secrecy. Not only is the targeted child manipulated in this process, but the manipulation can also include the child’s family/support system and the abuser’s co-workers and professional organizations.’ *Protecting Children from Sexual Abuse In Health Care Settings - Supporting a Culture of Community Safety*, IHS Training Materials (2019), citing Ulrich, B., & Kear, T. (2014). *Patient Safety and Patient Safety Culture: Foundations of Excellent Health Care Delivery*. *Nephrology Nursing Journal*, .41(5), 447–457.

<sup>46</sup> *Frontline* interview of Mary Ellen LaFromboise, aired February 12, 2019.

<sup>47</sup> *Frontline* interview of Dr. Becky Foster, aired February 12, 2019.

<sup>48</sup> Official Personnel File (OPF), Training Nomination and Authorization, dated September and October 1992. An Indian tribe operating a Child Protection Team designates members who are responsible (1) for the investigation of reported cases of child abuse and child neglect, (2) for the treatment and prevention of incidents of family violence, and (3) for the provision of immediate shelter and related assistance for victims of family violence and their dependents. Title 25 USC §3210(c). Indian Child Protection and Family Violence Prevention Act (1990).

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of pediatrics.<sup>49</sup> At the request of ICS consultants, a credentialing specialist in the Billings Area Office reviewed Weber's training courses and "red flagged" several as seemingly unrelated to pediatrics - namely those involving psychology or psychiatry.<sup>50</sup> She told ICS that she asked herself "is he a pediatrician or is he a psychiatrist?" Weber endeavored from the very beginning of his PHS/IHS career to maneuver himself into a position where he would have unfettered access to a particular type of patient – adolescent Indian males who display mental or emotional vulnerability.


One parent, former IHS employee (b) (6) discovered that Weber was prescribing the drug (b) (6) for her (b) (6).<sup>51</sup> (b) (6) confronted Weber that he had no authority to prescribe medicine to her son without parental consent.

*The distribution of pharmaceutical drugs by Weber to teenagers is a recurring concern that marked his IHS career. Witnesses would later disclose that Weber gave opioids, Zithromax (an STD medication), and other drugs to his teenage patients and victims without a prescription.*

In 1994, his expansion of his IHS pediatric responsibilities was formally incorporated into his job description. A January 1, 1994, Memorandum of Assignment signed by Dr. Rottenbiller clarified Weber's "special

duties" -- to be performed "in addition to official duties as described in his billet."<sup>52</sup>

**This was a memorandum designed and drafted by Weber; he selected the scope and language of his non-pediatric duties and presented them to Rottenbiller to sign.**<sup>53</sup> Weber's duties would include "counseling services which include individual and group sessions"; group counseling sessions "may involve after school, weekend or summer events" and may include "day trips (e.g., fishing or hiking trips) or overnight/ extended trips (e.g., camping trips)."<sup>54</sup>

	DEPARTMENT OF HEALTH & HUMAN SERVICES	Public Health Service Health Resources and Services Administration
		Indian Health Service Hospital Browning, Montana 59417
<b>MEMORANDUM OF ASSIGNMENT</b>		
JANUARY 1, 1994		
This memorandum is to clarify special official duties of S. Patrick Weber, M.D., while assigned to Blackfeet Community Hospital. In addition to official duties as described in his billet, Dr. Weber will also perform the following:		
1. Dr. Weber will provide school based services within the Browning and Heart Butte school districts. These duties will include:		
<ul style="list-style-type: none"> <li>*clinical services which include diagnosis and treatment of illness and injuries;</li> <li>*preventative health care services;</li> <li>*assistance with health education planning or instruction;</li> <li>*counseling services which include individual and group sessions;</li> <li>*to assist in the evaluation of such conditions as ADHD, learning disorders and other conditions which interfere with the learning process;</li> <li>*to assist the school districts in decisions which involve the health, safety and well being of their students and teachers.</li> </ul>		

Although the memo indicated that parental approval was required for both school and out-of-school activities sponsored by Weber, testimony and argument at the Montana trial made clear that Weber targeted, or appeared to target, teenage Indian males who did not have significant parental or family support.<sup>55</sup> These boys are the most likely to be deemed

<sup>49</sup> See, for example, an October 1992 training in Helena, Montana, titled "Children Who Molest Other Children"

<sup>50</sup> ICS interview of (b) (6) at Billings Area Office, Billings, Montana, July 2019.

<sup>51</sup> ICS interview of (b) (6), former IHS administrative employee at the Browning Service Unit, Browning, Montana, August 28, 2019.

<sup>52</sup> Memorandum of Assignment dated January 1, 1994.

<sup>53</sup> ICS interview of Dr. Randy Rottenbiller, former CMO at Blackfeet Community Hospital, Billings, Montana, September 10, 2019.

<sup>54</sup> Id.

<sup>55</sup> *Frontline* interview of Dr. Dan Foster, aired February 12, 2019, using the term "at-risk".

in need of “counseling” and the very adolescents whose parents or guardians would be unlikely to object to any field trips or counseling sessions organized by a physician.<sup>56</sup> During his tenure in Browning, Weber took groups of boys on overnight trips to Missoula and Kalispell (both cities over a hundred miles west of Browning), for pizza in Shelby and Cut Bank (a town 35 miles east of Browning), and on extended outings for hiking and swimming in areas around the Blackfeet Indian Reservation.<sup>57</sup>

The 1994 memorandum expanding Weber’s duties beyond pediatrics was shown to former Deputy Area Director Charles Lewis. Lewis had “never seen anything like that before” and was certain that the memorandum “never crossed my desk” but, he added, “it should have.”<sup>58</sup> Lewis insisted to ICS that it was “very unusual” to have this type of change to a provider’s duties done formally with a memorandum. Dr. Foster’s reaction to the 1994 Rottenbiller Memo was that it was “just plain nuts” for CMO Rottenbiller to authorize the activities outlined in Weber’s memo.<sup>59</sup> Dr. Foster said the memo was “completely offensive” to him and suggested that Rottenbiller’s issuance of this memo was “beyond neglect”; evidence of “impaired judgment” on the part of the CMO.

At this point, Weber was displaying a host of pedophile markers which were apparent to professionals like the Drs. Foster who were trained to identify them.

*“The pedophile often seeks out shy, handicapped, and withdrawn children, or those who come from troubled homes or underprivileged homes. He then showers them with attention, gifts, taunting them with trips to desirable places like amusement parks, zoos, concerts, the beach, and other such places.*

*Pedophiles work to master their manipulative skills and often unleash them on troubled children by first becoming their friend, building the child's self-esteem. They may refer to the child as special or mature, appealing to their need to be heard and understood, to then entice them with adult activities with sexual content like x-rated movies or pictures. Grooming like this often goes along with consumption of alcohol or drugs to hamper the ability to resist or recall events that occurred. Minor children cannot consent, and sex without consent is rape.”<sup>60</sup>*

Compare these characteristics to Weber’s Commissioned Corps application for a third year of training at UNM in which he plainly stated that his interest was in “a) individual and group counseling with Native American adolescents; b) psychiatric evaluations of adolescents and adolescent psychiatric pharmacology; c) working with adolescents that have special needs such as adolescents on probation, that are physically disabled,

<sup>56</sup> Weber, CR 18-14-GF-BMM, Dk. No. 142. Prosecution’s Closing and Rebuttal Argument, September 6, 2018. See also *Frontline* interview of (b) (6) aired February 12, 2019. “I had nothin’ and nobody”.

<sup>57</sup> Id. also see Dk. No. 132, Testimony of (b) (6), September 5, 2016, and *Frontline* interview of Dr. Dan Foster, aired February 12, 2019.

<sup>58</sup> ICS interview of Charles Lewis, former Deputy Area Director, Billings Area Office, Joliet, Montana, September 10, 2019.

<sup>59</sup> ICS interview of Dr. Daniel Foster, former IHS psychologist at the Browning Community Hospital in Browning, Harlem, Montana, November 5, 2019.

<sup>60</sup> Charles Montaldo, “Profile and Common Characteristics of a Pedophile”, Thought.com, Updated, July 6, 2019.

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learning disabled and interacting with schools and communities of these students; d) substance abuse interventions”.<sup>61</sup>

On one excursion to Missoula to attend the Kyiyo Pow Wow, a Native American celebration, Weber waited for a teenage boy to come out of a motel shower and then touched the naked boy’s penis.<sup>62</sup> A Browning law enforcement officer related that at an unidentified Missoula event, Weber was allegedly surreptitiously looking at one of the boys taking a shower at a motel. Weber was seen by a third person who told the boys’ relatives who were also attending the Missoula function. The boys’ family members confronted and assaulted Weber.<sup>63</sup> The boys then left with various family members and ultimately traveled back to Browning with those family members; leaving Weber alone. The official was not aware of any report to Missoula law enforcement regarding the “peeping tom” incident or the assault. The Browning officer knew of at least one of the family members who participated in the assault of Weber and asked if he would be willing to be interviewed to confirm the assault. Through the officer, the request for an interview was declined.<sup>64</sup> Although the facts of the incident cannot be confirmed, it is included in the report as additional evidence of Weber’s reputation in the community, and what likely contributed to his announcement, after just over 2 years in Browning, that he planned to leave. “Dr. Weber will be transferring and has accepted

another position. His file will be inactivated at the time of transfer. As a commissioned officer he will be here until we get another pediatrician hired.”<sup>65</sup>

Another incident involved Weber’s alcohol abuse. Former Administrative Officer (AO) (b) (6) recalled an incident in which Weber was visibly intoxicated at work and that this incident was documented at the time by (b) (6). Normally, incident reports such as this would have come to him as the AO, but (b) (6) believed that (b) (6) report went directly to LaFromboise.<sup>66</sup> ICS consultants were not provided, and could not locate, any memorandum authored by (b) (6).

During his tenure in Browning, Weber was part of a Child Protection Team. Just prior to his departure in 1995, Weber was called to the Emergency Room by Dr. Rottenbiller because a young boy, brought in by his grandmother, may have been a victim of abuse. Weber was off-duty and at home when he was called. During their telephone conversation, Dr. Rottenbiller suspected that Weber was intoxicated and cautioned Weber that he should not come in if he had been drinking.<sup>67</sup> But Weber, obviously inebriated and impaired, came in anyway. Soon after Weber arrived, the patient’s grandmother complained to the hospital staff that Weber was drunk and insisted that Weber not be involved in the care of her grandson. Weber became belligerent and had to be forcibly removed by hospital security.

<sup>61</sup> Official Personnel File (OPF), Application for Training, attachments, dated December 14, 1990.

<sup>62</sup> *Weber*, CR 18-14-GF-BMM, Dk. No. 170, Testimony of (b) (6) (pp. 9-10, 21), September 5, 2018.

<sup>63</sup> ICS interview of Browning Law Enforcement Officer (identity withheld at the witness’s request), Browning, Montana, July 15, 2019, and September 18, 2019. These two incidents – the assault on (b) (6) and the assault on Weber for “peeping” -- may have been separate incidents or versions of the same incident.

<sup>64</sup> *Id.*

<sup>65</sup> Minutes, Blackfeet Community Hospital Medical Staff Credentials Task Force, December 19, 1994, p. 2.

<sup>66</sup> ICS interview of (b) (6), former Administrative Officer at the Browning Service Unit, East Glacier, Montana, September 18, 2019.

<sup>67</sup> ICS interview of Dr. Randy Rottenbiller, former CMO at Blackfeet Community Hospital, Billings, Montana, September 10, 2019.

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As Weber had not been on-call, Rottenbiller made a “judgment call” and did not file a Quality of Care complaint on the incident although he would have been justified in filing the complaint as “physician impairment.”<sup>68</sup> **ICS noted that this would have been after the earlier alcohol related incident, either of which, but certainly both, would have informed future employment decisions.** In the first case, (b) (6) written report cannot be located. In the second case, Dr. Rottenbiller made no record.

A criminal investigation of Weber by the Office of Inspector General (OIG) for HHS was initiated in the fall of 2015 when agents joined a Bureau of Indian Affairs (BIA) investigation already under way in South Dakota.<sup>69</sup> The OIG investigation into allegations of abuse by Weber at the Pine Ridge IHS facility was later expanded to include possible crimes occurring during Weber’s time at Browning. Agents developed leads that led to several potential Montana victims.

At the time he was interviewed by BIA SA Fred Bennett, (b) (6) born in (b) (6) had been raised by his mother and father (b) (6)

(b) (6)<sup>70</sup> When he was 10 his parents divorced, and his mother moved to Browning.<sup>71</sup> When (b) (6) first met Weber, he, (b) (6), was staying at the Nurturing Center<sup>72</sup> because his parents were unable to care for him; he and his siblings had been removed from his mother’s custody.

During the interview, an emotional (b) (6) detailed how when he was in placement, after being removed from his parent's custody, Weber would examine him at the Nurturing Center and the hospital. (b) (6) stated that all he wanted was to be back with his parents and Weber promised him he would help but expected sexual favors.<sup>73</sup> In their early encounters Weber kissed (b) (6), touched his penis and had (b) (6) touch his.<sup>74</sup> (b) (6) told Bennett about hand to penis abuse, oral sexual abuse, and Weber's attempts to penetrate his anus. He stated it happened on "quite a few occasions" but that he did not want to guess the number of times incorrectly.<sup>75</sup> When (b) (6) wanted to stop the abuse Weber would remind him not to tell anyone. Weber would always use (b) (6)'s desire to be with his parents as motivation. “He told me he would help me to see my mom, get visits from my mom,

<sup>68</sup> Id.

<sup>69</sup> *In the Matter of the Search of 2315 5th Avenue, Spearfish, South Dakota*, 5:17 mj-20 (DSD), Search Warrant Application and Affidavit of Curt Muller, Dk. No. 2, p. 23.

<sup>70</sup> The Blackfoot Nation is a confederation of several distinct tribes, including the Piegan (or Pikuni), the Blood (or Kainai), the North Blackfoot (or Siksika). The Blood Reserve in Alberta, Canada, and the Blackfeet Reservation in Montana share a common border. Dempsey, Hugh A. "Blackfoot Confederacy". The Canadian Encyclopedia. Last edited July 18, 2019.

<sup>71</sup> *Weber*, CR 18-14-GF-BMM, Dk. No. 127. Testimony of (b) (6), September 4, 2018.

<sup>72</sup> The Blackfeet Tribe’s Nurturing Center is a short-term residential shelter and provides care to children experiencing crisis and in need of a safe, neutral, and healthy environment to alleviate the effects of the crisis. Children served include those who appear to be homeless, abused, neglected, pushed out of the home, wards of the State, Blackfeet Tribe, or courts, and those awaiting court hearings or alternative living arrangements.

<https://www.fastblackfeet.org/resources/blackfeet-nurturing-center/>

<sup>73</sup> *In the Matter of the Search of 2315 5th Avenue, Spearfish, South Dakota*, Dk. No. 2, p. 23.

<sup>74</sup> *Weber*, CR 18-14-GF-BMM, Dk. No. 127. Testimony of (b) (6), September 4-5, 2018.

<sup>75</sup> *In the Matter of the Search of 2315 5th Avenue, Spearfish, South Dakota*, Dk. No. 2, p. 23. (b) (6) testified at the Montana trial to these same details. *Weber*, CR 18-14-GF-BMM, Dk. No. 127. Testimony of (b) (6), September 4-5, 2018.

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and try to help me to get back to her so she could get custody of me again.”<sup>76</sup>

(b) (6) was (b) (6) old when his father committed suicide in (b) (6). Shortly after, (b) (6) moved off the reservation with his mother and siblings.

Under cross-examination, (b) (6) gave powerful and emotional testimony that made clear why so many victims fail to report their abuse:

*“I didn't really want to talk about it. I still don't want to talk about it. I don't want to talk about being molested. I don't want to tell everybody about that. I'm not going to volunteer no information about none of that. ...*

*I used to think about it every day. It's in my mind every day. I got molested. I got -- I was a little boy. That's not something you want to talk about and brag about. Who do I talk to about that?...*

*Honestly, the reason -- when he [the federal investigator] asked me if I remember him [Weber], I said, “No,” because I didn't know where this was going. I didn't know what was going on. And I had been saying no. ...*

*Every time somebody asked me about being molested, being touched, and sexually assaulted, I always said no. And even when I leave here and anybody ask me, I am still going to say no. That's not something I want to admit. That's not something I want to let everybody know. I got molested as a little kid. Man, I don't want to talk about that. ...*

*But when you're saying that I was [molested], I started to talk about that. All right. I'll tell you the truth. Those pieces of shit, those fucking child molesters, they deserve to be in prison. They don't deserve to be on the street. They deserve to get fucking fucked up and killed in fucking prison, and that's what's going to happen. I hope to fucking God that he comes to prison in the USP.”<sup>77</sup>*

Another witness at Weber’s Montana trial, (b) (6), testified that when he was a teenager in Browning, he and his friends would “hang-out” at Weber’s house near the hospital. “They’d go up there and play video games and stuff like that. He was taking them to eat pizza and taking them hiking and stuff like that.”<sup>78</sup> Weber kept his home stocked with snacks, ice cream, pop, alcohol, games, music, and videos. “He had a lot of wine around. Vodka. That’s what we wanted” and “It was just a place to hang out and get drunk and get what we wanted.” Weber was also a ready source for money.<sup>79</sup> Like (b) (6), (b) (6) testified that the molestation that took place at Weber’s home is “not something you talk about.” “It’s not something you talk about in Browning?” asked the prosecutor. “Anywhere” answered (b) (6).<sup>80</sup> In their first encounter of a sexual nature, an intoxicated Weber asked (b) (6) for oral sex which (b) (6) refused and left the house. On another occasion, (b) (6) fell asleep at Weber’s home after drinking. (b) (6) awoke to find Weber, naked from the waist down, rubbing his (b) (6) penis while also fondling his (Weber’s) own. At his first opportunity, (b) (6) fled the house and never returned.

<sup>76</sup> Weber, CR 18-14-GF-BMM, Dk. No. 127. Testimony of (b) (6), September 4, 2018.

<sup>77</sup> Id.

<sup>78</sup> Weber, CR 18-14-GF-BMM, Dk. No. 132. Testimony of (b) (6) September 5, 2018.

<sup>79</sup> Id. “Everybody asked him because he would give them money all of the time.”

<sup>80</sup> Id.

When interviewed in May of 2016, Weber admitted that he had allowed Indian boys that “didn’t have any place to stay” to spend the night at his home near the hospital in Browning.<sup>81</sup> Weber told agents that there had been an internal investigation into drinking at his home but insisted that the concern was not the presence of underage boys.<sup>82</sup>



During his time at Browning, Weber lived in IHS housing. Government housing was inspected on an annual or semi-annual basis to check on the condition of the house, change air filters, document damage, assess the need for repairs, etc. During a home inspection in the early part of 1995, Tim Davis, then an IHS employee from the IHS Facilities Department, was “floored;” disturbed by the amount of child or teenager related items in Weber’s basement. There was an abundance of food, candy, pop, cookies, dozens of VHS movies, kids games, and other items that suggested the basement was regularly frequented by children or adolescents.<sup>83</sup> Davis told ICS

that “you didn’t see that much stuff for kids in the homes of people that actually had kids” on the reservation. He was sufficiently concerned that he immediately told both LaFromboise and Rottenbiller of his concerns.<sup>84</sup> Davis told *Frontline* that LaFromboise did not see it as cause for “alarm.”<sup>85</sup>

Foster regularly expressed his warnings to LaFromboise and Rottenbiller.<sup>86</sup> LaFromboise was not convinced that the concerns of Foster and his wife, psychologist Becky Foster, were justified. Foster told ICS that one of his biggest frustrations was how easily some of Weber’s abuse could have been prevented by assigning a nurse to “chaperone” Weber’s examinations of teenage boys. Although Weber’s abuse of teenage boys also took place at his home, numerous victims described the first acts of abuse as occurring in examination rooms of Browning and Pine Ridge. His recommendation was never adopted.<sup>87</sup> **It seemed to Foster that the more he and his wife raised the alarm about Weber, the more ostracized they became by others on the medical staff.** They were accused of being homophobic. LaFromboise removed Foster from service on the multi-disciplinary team, ejected him from government housing for having “too

<sup>81</sup> *United States v. Weber*, CR 17-50033, (DSD, Western Division), Transcript of May 19, 2016, Interview with Patrick Weber, Dk. No. 50, p. 53.

<sup>82</sup> *Id.*, at pp. 56-57.

<sup>83</sup> *Frontline* Interview of Tim Davis, aired February 12, 2019. “Stacks of stuff. I mean stacks”... “to me this signaled that there was something wrong with this guy.”

<sup>84</sup> ICS Interview of Tim Davis, Blackfeet Tribal Offices, Browning, Montana, July 25, 2019. Davis is currently the Tribal Chairman of the Blackfeet Tribe but spent his career at IHS. In 1995, Davis was in the Facilities Department of the Browning Community Hospital.

<sup>85</sup> *Frontline* Interview of Tim Davis, aired February 12, 2019.

<sup>86</sup> ICS interview of Dr. Daniel Foster, former IHS psychologist at the Browning Community Hospital in Browning, Harlem, Montana, November 5, 2019. Also, *Weber*, CR 18-14-GF-BMM, Dk. No. 134. Testimony of Dr. Daniel Foster, September 5, 2018.

<sup>87</sup> ICS interview of Dr. Daniel Foster, former IHS psychologist at the Browning Community Hospital in Browning, Harlem, Montana, November 5, 2019.

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many pets” (December 1994)<sup>88</sup>, and relocated his office.

Dr. Foster also reported his concerns to Margene Tower, Director of Behavioral Health, and his supervisor in the Billings Area Office. Tower tried to handle the situation “diplomatically” but did nothing to address his concerns. Foster reported his allegations to the Montana Board of Medical Examiners who “wouldn’t even look into the complaint”.<sup>89</sup> In fairness to the MBME, they had no jurisdiction over Weber’s medical license because he had no Montana license.

Undeterred, Foster reported his concerns to BIA Criminal Investigator (b) (6). According to Foster, (b) (6) interviewed several teenage patients of Weber, but none disclosed any abuse. (b) (6) investigation “took forever”. (b) (6) later fell ill and to Foster’s knowledge never completed the investigation.

As soon as Dr. Foster learned that Weber was in Pine Ridge – August or September of 1995 – he made several calls to the Pine Ridge Service Unit and asked to speak to the CEO. Although Foster was never put in contact with the CEO, he did relate his concerns to the Deputy CEO on two occasions.<sup>90</sup> Some years later he also shared his concerns with Dr. Mark Butterbrodt, an

IHS pediatrician at the Pine Ridge facility.<sup>91</sup> Dr. Butterbrodt confirms that he contacted Dr. Foster in 2008, prior to filing a complaint against Weber with the South Dakota Board of Medical and Osteopathic Examiners (SDBMOE).<sup>92</sup>

LaFromboise acknowledged that there were “comments coming from maintenance” about the amount of traffic of young people coming in and out of Weber’s quarters.<sup>93</sup> She also received information about Weber’s interactions with young Indian boys from a family member of one of the boys who had stayed the night at Weber’s house. A family member of one of the boys assaulted Weber, breaking his glasses and giving him a black eye. (b) (6) told LaFromboise of seeing Weber at a Pizza Hut in Cut Bank with a group of teenage boys “with new clothes” and expressed concern over Weber’s behavior.<sup>94</sup> While at LaFromboise’s office, (b) (6) encountered Dr. Foster who was telling LaFromboise about a party at Weber’s home with young boys. She recalled Foster telling her that he and other physicians in the compound had witnessed the boys coming and going from Weber’s residence.

By this time in the timeline of events, LaFromboise was well aware young Blackfeet boys were spending nights at Weber’s home and that he was hosting

<sup>88</sup> Id. Foster had been at Browning for only five months before being ejected from government housing.

<sup>89</sup> Id. As a federally employed physician, Weber was required to have a state license (which he did in CA, OK, MN and SD) but was not required to be licensed in the state in which he practiced medicine. PHS employment as a physician requires only that the applicant have a “[c]urrent, unrestricted, and valid medical license from one of the 50 States; Washington, DC; the Commonwealth of Puerto Rico; the U.S. Virgin Islands; or Guam.” <https://www.usphs.gov/profession/physician/requirements.aspx>

<sup>90</sup> ICS interview of Dr. Daniel Foster, former IHS psychologist at the Browning Community Hospital in Browning, Harlem, Montana, November 5, 2019.

<sup>91</sup> *Frontline* interview of Dr. Dan Foster, aired February 12, 2019.

<sup>92</sup> ICS interview of Dr. Mark Butterbrodt, former pediatrician at Pine Ridge, Rapid City, South Dakota, October 2, 2019.

<sup>93</sup> ICS interview of Mary Ellen LaFromboise, former CEO of the Blackfeet Community Hospital, Browning, Montana, August 27, 2019.

<sup>94</sup> ICS interview of (b) (6), former IHS administrative employee at the Browning Service Unit, Browning, Montana, August 28, 2019.

“drinking parties”. Even though he had been at the Browning Hospital for a short time, staff had confided in Dr. Foster. A respected Blackfeet elder, (b) (6) was on the (b) (6) and told Foster that Weber had allowed young boys to spend the night inside of his house and there were rumors that the young boys were allowed to drink alcohol at Weber’s house.<sup>95</sup> Tim Davis had confirmed what Foster had been told by (b) (6) and a third employee, (b) (6) had personally witnessed the house parties at Weber’s home. All of this, Foster reported to LaFromboise and Rottenbiller, and by her own admission, LaFromboise had received much of the same information directly from the maintenance crew.

LaFromboise recalled reviewing the 1994 Rottenbiller memo giving Weber license to spend time with Blackfeet boys outside the examination room and outside the hospital.<sup>96</sup> She discussed the memo’s contents with Dr. Rottenbiller and was in favor of the extra duties being assigned to Weber. As she had told the *Frontline* reporters, LaFromboise told ICS that she was grateful that Weber was involved in the Browning community and thought the memo was consistent with the “Health Promotion / Disease Prevention” initiative then being promoted by the IHS.

**According to LaFromboise, “Doctors are next to God – was the filter within IHS.”<sup>97</sup>**

Years later, in her interview with *Frontline*, LaFromboise admitted that “[it] was on my

watch that that happened. I should have known better. But I didn’t.”<sup>98</sup>

The CEO’s previously positive impressions of Weber were now disabused by events which caused her concern over his conduct. LaFromboise said that she and the other senior medical staff received pressure from the other doctors to investigate the situation. She added there were a myriad of jurisdictional issues on the Indian reservation that required coordination with the Blackfeet Tribe, IHS, the Commissioned Corps, and the FBI whenever there were allegations that “a white man was committing a crime against a Native American.” But LaFromboise did nothing at the Unit level to either investigate internally, refer to law enforcement, or suspend or remove Weber. **“Who is the responsible person to come in and do something?”** She concluded that the Weber issue was complicated by the fact he was Commissioned Corps, because “they couldn’t be supervised or disciplined.”<sup>99</sup>

According to LaFromboise, she related these facts, and the concerns related to her by other sources, to the Area Director (AD) in Billings, Duane Jeanotte. Similarly, (b) (6) recalled that, after her meeting with LaFromboise and Foster, the three of them called the Billings Area Office and spoke to one of the two Billings Area deputy directors, Charlie Lewis or Kermit Smith. LaFromboise and Foster both assured ICS that the call was to Lewis. The three of them relayed their concerns and (b) (6) told the

<sup>95</sup> ICS interview of Dr. Daniel Foster, former IHS psychologist at the Browning Community Hospital in Browning, Harlem, Montana, November 5, 2019.

<sup>96</sup> ICS interview of Mary Ellen LaFromboise, former CEO of the Blackfeet Community Hospital, Browning, Montana, August 27, 2019.

<sup>97</sup> Id.

<sup>98</sup> *Frontline* interview of Mary Ellen LaFromboise, aired February 12, 2019.

<sup>99</sup> Id. ICS appreciated LaFromboise’s perspective. Criminal jurisdiction in Indian Country can be a morass of territorial uncertainty and is often, in the experience of ICS consultants, used as an excuse for deflecting responsibility. That difficulty, however, neither explains nor excuses the failure of managers to conduct credible and serious administrative inquiries such that personnel decisions that affect patient safety can be made.

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group that if something was not done regarding Weber, she would go to the Blackfeet Tribal Council and attempt to have Weber “resolved off” the reservation.<sup>100</sup>

Lewis, now retired, told ICS that he had no recollection of a call from LaFromboise, Foster and (b) (6) but stated that if he had received this type of call, he would have gone immediately to Jeanotte and the Area Office Chief Medical Officer with the information due to the allegations involving a physician.<sup>101</sup> Lewis told ICS that he “thinks” that some of the other doctors in Browning approached Jeanotte and complained about Weber and that Jeanotte told the doctors that they could remove Weber’s privileges locally and then the Area Office could take action. Lewis does not recall ever seeing any documents with any type of allegations involving Weber.

Lewis felt that there were always communications problems with the service units; **that they “conceal, conceal, conceal until it’s out of the bag.”**<sup>102</sup> The service units did not see the area office as a resource or an ally, but, Lewis conceded, the area office also felt the same way about IHS Headquarters. Headquarters made no effort to visit the area offices or help them solve problems.

Rottenbiller was already in Billings for a quarterly meeting of CMOs in the spring of 1995 when he was told to report to the office of AD Jeanotte.<sup>103</sup> Jeanotte told Rottenbiller that he had conducted his own review of Weber’s patient load and confirmed it consisted mainly of male patients. Jeanotte also said that he had received a direct complaint from the parent of one of the patients. The parent reported that the young boy had stayed at Weber’s house overnight.

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*Jeanotte told Dr. Rottenbiller that “I’m concerned you have a pedophile on your staff, and you need to get rid of him.”*

ICS interview of Dr. Randy Rottenbiller, former CMO at Blackfeet Community Hospital, Billings, Montana, September 10, 2019.

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Lewis did not recall ever hearing about this complaint from Jeanotte, however, Lewis stated, it is common for a complainant to contact the service unit director locally and then complain directly to the area office.<sup>104</sup>

Jeanotte refused a request for a formal interview by ICS consultants, but in refusing an interview made several assertions relevant to this report. Jeanotte told ICS that he definitely was not involved with, or aware of, the allegations against Weber at

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<sup>100</sup> ICS interview of (b) (6), former IHS administrative employee at the Browning Service Unit, Browning, Montana, August 28, 2019. Had Weber been “resolved off” as (b) (6) had threatened, IHS policy would have required an inquiry. “Upon notice or receipt of such a resolution or directive, [IHS management officials shall] take action to establish a fact-finding team to ascertain all relevant facts. The findings of this team will be reported to IHS management within 30 days.” Section 3 (c), INDIAN HEALTH SERVICE CIRCULAR NO. 95-17, TRIBAL RESOLUTIONS EXCLUDING INDIAN HEALTH SERVICE EMPLOYEES FROM RESERVATIONS WHERE ASSIGNED, October 17, 1995.

<sup>101</sup> ICS interview of Charles Lewis, former Deputy Area Director, Billings Area Office, Joliet, Montana, September 10, 2019.

<sup>102</sup> Id.

<sup>103</sup> ICS interview of Dr. Randy Rottenbiller, former CMO at Blackfeet Community Hospital, Billings, Montana, September 10, 2019.

<sup>104</sup> ICS interview of Charles Lewis, former Deputy Area Director, Billings Area Office, Joliet, Montana, September 10, 2019.

the time they were made (1994-1995).<sup>105</sup> Jeanotte did not recall having a meeting with Dr. Rottenbiller to address issues and allegations involving Weber and continued to assert absolute ignorance of the allegations; the information “never got to me.” Jeanotte insisted that he was “very sensitive to any allegations” alleging sexual misconduct.<sup>106</sup> Lewis also disclaimed any knowledge of the allegations against Weber and was adamant that any allegations regarding pedophilia should have been immediately reported to the area office.<sup>107</sup>

In addition to categorically denying any knowledge of the allegations against Weber, Jeanotte had no recollection of having any involvement with his transfer to Pine Ridge.<sup>108</sup> Dr. Rottenbiller, on the other hand, told ICS that he also thought that Jeanotte would have “greased the skids” on any transfer of Weber to the Pine Ridge service unit.<sup>109</sup> (b) (6)

in Rapid City, worked at Pine Ridge for 22 years between 1989 and 2012, and told ICS that during that time, circa 1995, it was common for a medical provider (physician) to personally call either the Service Unit Director or the Clinical Director directly and lobby for their transfer.<sup>110</sup> Either of those senior managers could have “easily streamlined” Weber’s transfer to Pine Ridge.

**As Dr. Rottenbiller told *Frontline* “I guess the better response would be launch an investigation, and yet the IHS response is, typically, to sweep it under the rug or to, you know, pass it along to another place”.**<sup>111</sup> During his interview with ICS, Rottenbiller struggled to articulate how allegations such as those made against Weber should have been reported -- “[w]here do you refer him to, Tribal cops? The FBI? Maybe the CEO or the Medical Review Committee?”<sup>112</sup>

By the end of 1994, Weber had already decided to move on. He had announced in December that he had applied for and accepted another position, and that he was leaving the Blackfeet IHS Service Unit. Weber had not yet been transferred when Rottenbiller returned to Browning and summoned Weber to his office. Rottenbiller told Weber “I’ve been told you need to leave.” During this meeting, Weber admitted that the boy referenced by Jeanotte had indeed spent the night at his house but maintained that the boy had been abandoned and that he had nowhere else to go. Weber told Dr. Rottenbiller that he had received threats of physical harm and that he had already decided to leave Browning.<sup>113</sup> Rottenbiller recalled that Weber packed up and left Browning the day after their meeting.

<sup>105</sup> Telephonic discussion with Duane Jeanotte, former Area Director, Billings Area Office, September 2019.

<sup>106</sup> Id.

<sup>107</sup> ICS interview of Charles Lewis, former Deputy Area Director, Billings Area Office, Joliet, Montana, September 10, 2019.

<sup>108</sup> Telephonic discussion with Duane Jeanotte, former Area Director, Billings Area Office, September 2019

<sup>109</sup> ICS interview of Dr. Randy Rottenbiller, former CMO at Blackfeet Community Hospital, Billings, Montana, September 10, 2019.

<sup>110</sup> ICS interview of (b) (6) Rapid City, South Dakota, October 23, 2019.

<sup>111</sup> *Frontline* Interview of Dr. Randy Rottenbiller, aired February 12, 2019.

<sup>112</sup> ICS interview of Dr. Randy Rottenbiller, former CMO at Blackfeet Community Hospital, Billings, Montana, September 10, 2019.

<sup>113</sup> *Frontline* Interview of Dr. Randy Rottenbiller, aired February 12, 2019. Rottenbiller did not recall, when interviewed, that Weber had expressed that intention the previous December. ICS interview of Dr. Randy Rottenbiller, former CMO at Blackfeet Community Hospital, Billings, Montana, September 2019.

In May of 1995 Weber was formally transferred to Pine Ridge.<sup>114</sup>

### South Dakota



Weber began his service as a pediatrician at the Pine Ridge Hospital, serving the Oglala Sioux tribal members of the Pine Ridge Reservation, on June 10, 1995.<sup>115</sup>

Pine Ridge Service Unit Chief of Pediatrics (b) (6) recorded on the "Recommendations" page of Weber's transfer that Weber "comes highly recommended" from Browning. In fairness to (b) (6) however, Weber's references from the Blackfeet Service Unit included no one who would speak unfavorably of Weber.

In August 1995, there was a complaint made by a parent against Weber for giving an adolescent male patient "too thorough of an examination." It was alleged that Weber examined the patient's genitals although her son was at the doctor's office in connection with symptoms of a cold / flu.<sup>116</sup> The (b) (6) showed (b) (6) documents related to "patient issues" involving Weber during his tenure at the Blackfeet Hospital. After reviewing these written reports and discussing the situation further, (b) (6) and (b) (6) agreed that the complaint should be referred to law enforcement for a criminal sexual assault investigation.<sup>(b) (6)</sup> referred the matter to the Federal Bureau of Investigation (FBI). ICS consultants were not provided, and could not locate, any documents or extant records collected by Dr. Dixon and referred to by (b) (6)

As referenced earlier, when Dr. Foster learned that Weber had transferred, he called Pine Ridge several times to warn them about Weber.<sup>117</sup>

Each time he called, Foster identified himself and asked to speak with the Service Unit Director. Dr. Foster told ICS that he spoke with the Deputy CEO on at least two occasions, although he could not recall her name. The Deputy CEO at the time, who

<sup>114</sup> Official Personnel File (OPF), Personnel Order Number 5139.015, dated May 19, 1995. The exact date of Weber's departure is unclear. It was not unusual for IHS employees to leave their current post of duty and go to the Area office until their reassignment becomes final. It is not uncommon, at any given time, for several IHS employees to be temporarily detailed to the area office awaiting a time to post to a new duty station. ICS interview of Dr. Randy Rottenbiller, former CMO at Blackfeet Community Hospital, Billings, Montana, September 10, 2019.

<sup>115</sup> Id. Pine Ridge Service Unit Chief of Pediatrics (b) (6) recorded on the "Recommendations" page of Weber's transfer that Weber "comes highly recommended" from Browning. OPF, Recommendations and Approvals, June 15, 1995. In fairness to (b) (6) however, Weber's references from the Blackfeet Service Unit included no one who would not speak of Weber favorably. Although a competent and reliable background inquiry would have included contact with colleagues not cited by the applicant who may or may not have "highly recommended" Weber.

<sup>116</sup> ICS interview of (b) (6), Rapid City, South Dakota, October 23, 2019.

<sup>117</sup> ICS interview of Dr. Daniel Foster, former IHS psychologist at the Browning Community Hospital in Browning, Harlem, Montana, November 5, 2019.

was also serving as (b) (6) was (b) (6) would have had supervisory responsibility with regard to Weber. (b) (6) was contacted by ICS and declined the company's request for an interview. Among other issues, ICS sought to determine whether (b) (6) was the source of the information from Browning that (b) (6) reviewed before the case was given to the FBI.

According to (b) (6) Weber was placed on non-duty status for a brief period but was soon reinstated because the allegation could not be substantiated.<sup>118</sup> Weber's OPF makes no reference to his being placed on non-duty status in 1995. The FBI interviewed the alleged victim who either failed to confirm the accusation or changed details of the initial allegation. The case was presented to the U.S. Attorney's Office for a prosecutorial decision and the case was declined.<sup>119</sup>

While the matter was under investigation, (b) (6) was confronted by Weber – who angrily denied the allegation – and was also confronted by other doctors, one of which told (b) (6) that “you don't know that he did any of this” and that (b) (6) should “just leave him alone.” Relationships were strained after the incident.<sup>120</sup> Pine Ridge IHS

(b) (6) (b) (6) was also warned, within 3 months of her arrival in 2005, to stay quiet about Weber -- “Shut-up.” “Don't gossip.” “It's none of your business”.<sup>121</sup>

At Pine Ridge, Weber initiated the kinds of preferences and practice innovations that had led first to accolades and then to concerns in Browning. (b) (6) wrote on May 22, 1997, that:

*“Dr. Weber has infused a new energy into the pediatric department [with] good ideas on how to improve the delivery of care in the outpatient clinic and the rapport [with] co-workers to slowly get things implemented. He likes working with adolescent and older pediatric patients which adds a new, much needed, dimension to our department. Adolescents have received no consistent care until now. His supports and efforts in implementing the extended hours clinic has improved our ability to provide care to a greater number of patients [with] more efficiency and has been well received by the community. (Many others' efforts were involved as well).”<sup>122</sup>*

<sup>118</sup> ICS interview of (b) (6), Rapid City, South Dakota, October 23, 2019. See also Pourier letter to (b) (6) dated June 19, 2009.

<sup>119</sup> ICS interview of (b) (6), Rapid City, South Dakota, October 1, 2019. (b) (6) was not assigned to the Rapid City Resident Agency until 1999 and bases his recollection on what he was told by another agent. ICS did not have access to the original FBI file.

<sup>120</sup> ICS interview of (b) (6), Rapid City, South Dakota, October 23, 2019.

<sup>121</sup> ICS interview of (b) (6) at Pine Ridge, Pine Ridge, South Dakota, September 30, 2019.

<sup>122</sup> IHS Pine Ridge Service Unit Credentialing file, IHS Medical Staff Professional Reference Checklist, signed by (b) (6) dated May 26, 1996 (ICS emphasis added). Credentialing is required for HHS facilities and facilities who benefit from federal programs, such as Medicare or Medicaid, by 42 CFR § 482.22. “The medical staff must examine the credentials of all eligible candidates for medical staff membership and make recommendations to the governing body on the appointment of these candidates in accordance with State law, including scope-of-practice laws, and the medical staff bylaws, rules, and regulations. A candidate who has been recommended by the medical staff and who has been appointed by the governing body is subject to all medical staff bylaws, rules, and regulations, in addition to the requirements contained in this section.” 42 CFR § 482.22(a)(2).

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Another pattern that re-emerged at Pine Ridge, that had generated suspicions at Browning, was Weber's penchant for hiring boys – lots of boys - to work in the garden at his house.



Weber's Pine Ridge colleagues took notice of the unusually high traffic of adolescent Indian boys at Weber's new quarters on Pine Ridge. His neighbor from across the street, former IHS nurse Kelly Brewer, told *Frontline* that there were always boys over at Weber's house working in his garden. "He hired kids to work in it all the time and they were always young Native American boys ... 10ish to 12ish years in age."<sup>123</sup> Years later, in May 2016, Weber told law enforcement that he hired boys to work at his home in Pine Ridge, but denied that any ever stayed the night and alleged that they rarely entered the house.<sup>124</sup> However, another neighbor, IHS nurse Jacklyn Miller, testified that the arrival of young boys to Weber's house was "frequent" and typically

ranged from daytime into the night and often throughout the night into the late evening hours. She recalled often seeing young boys going into and out of Weber's house after midnight.<sup>125</sup> Another neighbor, (b) (6) told ICS that she and her husband called security over 200 times between 2006 and 2016. **Boys came to Weber's house "at all hours of the day and night" and would come sober and several hours later be totally inebriated, causing vandalism and burglary.**<sup>126</sup> Miller also called hospital security -- "Couldn't tell you how many times; it was a lot" -- to report a lot of cars being parked at Weber's house. Weber "confronted her" (Miller) one time about her calling security on him and she told him that she called security because it was a safety issue around the neighborhood; some of the boys he had at his house were "known to break into cars."<sup>127</sup>

Others in Weber's housing cul-de-sac also recalled the traffic of young boys to Weber's house.<sup>128</sup> Weber's neighbors also included his supervisors, CEO William Pourier and CEO Wehnona Stabler, who would have been witness to the same activity.<sup>129</sup>

Medical Support Assistant (b) (6) was raised in Pine Ridge and recalled going to Weber's house for "partying" money.<sup>130</sup> She and two boys with whom she socialized were approximately 15-17 years old. (b) (6) recalled that she always waited in the car when one of the two boys – never

<sup>123</sup> *Frontline* interview of Kelly Brewer, aired February 12, 2019. See also, ICS interview of (b) (6) former IHS credentialing specialist at Pine Ridge Hospital, Sheridan, Wyoming, August 1, 2019.

<sup>124</sup> *Weber*, CR 17-50033, Dk. No. 50, pp. 10-12, 35.

<sup>125</sup> *Weber*, CR 17-50033, Trial testimony of Jacklyn Miller, IHS nurse at Pine Ridge, September 25, 2019. From notes of ICS consultant.

<sup>126</sup> ICS interview of (b) (6) IHS nurse at Pine Ridge, Pine Ridge, South Dakota, September 30, 2019.

<sup>127</sup> ICS interview of Jacklyn Miller, IHS nurse at Pine Ridge, Pine Ridge, South Dakota, November 19, 2019.

<sup>128</sup> See, ICS interview of (b) (6) Registered Nurse at the Pine Ridge Service Unit, Pine Ridge, South Dakota, November 12, 2019.

<sup>129</sup> ICS interview of (b) (6) Director of Security at the Pine Ridge Service Unit, October 24, 2019.

<sup>130</sup> ICS interview of (b) (6) former Medical Support Assistant at the Pine Ridge Service Unit, Rapid City, South Dakota, November 27, 2019.

both at the same time -- went into Weber's house to get the "party money." Each time the boy would be in the house for 20-25 minutes. This always occurred late at night, typically between 11 p.m. and midnight. (b) (6) told ICS that she remembered the incidents so clearly because she used to "tease [] about abuse and getting money from Dr. Weber."<sup>131</sup>

As in Browning, Weber's pediatric focus on prepubescent and adolescent males generated rumors and speculation. (b) (6) began her career with IHS at the Pine Ridge Hospital in 1997 as a receptionist. According to (b) (6) "[i]t was the first thing I heard from the nurses – keep track of how long he [Weber] is in the room with a boy patient."<sup>132</sup> (b) (6) told ICS that when she first started working at the Pine Ridge Service Unit, nurses would say to her, "there goes Dr. Weber admitting another boy; you will see, just watch, he admits boys only."<sup>133</sup> (b) (6) said when she worked directly with Weber, she would not leave patients alone with him because of "all the rumors swirling around" about him. "[E]verybody knew about the suspicions" regarding Weber.<sup>134</sup>

Former IHS nurse Evelyn (Eve) Weston testified in the South Dakota trial that Weber preferred to see boys whose ages ranged from 8 years of age to mid-teenagers although he would occasionally see older

teenage boys.<sup>135</sup> Weston had been a nurse for eight years of Weber's tenure at Pine Ridge, and had served as Team Lead for the nurses in the Pediatrics Department, where she screened patients and oversaw the nursing staff. According to Weston, young boys would come into the hospital specifically to visit with Weber "all the time – on a daily basis". Young unaccompanied boys who did not have a medical appointment would come to the hospital "asking for Patrick".<sup>136</sup> Nurse Weston witnessed Weber giving cash to at least one boy "on a daily basis."<sup>137</sup>

(b) (6) herself a pediatrician, told ICS the protocol dictates that a doctor should never see a patient under 18 years of age without a parent or a chaperone – and the nursing staff attempted to curtail Weber's behavior by reminding him that he needed a chaperone when seeing his patients – but Weber routinely violated this policy.

ICS Interview of (b) (6), Clinical Director of Sioux San Hospital, Rapid City, South, Dakota, October 23, 2019

Former Medical Support Assistant (MSA) (b) (6) recalled an instance when she brought her (b) (6) and her (b) (6) to the Pediatric (PEDS) Clinic at the Pine Ridge Hospital. The PEDS MSA asked (b) (6) if she had a doctor preference for her son to see and (b) (6) replied "not Dr. Weber."<sup>138</sup> Her son was then scheduled

<sup>131</sup> Id. Brackets indicate names not disclosed.

<sup>132</sup> ICS interview of (b) (6) (b) (6) at Pine Ridge Hospital, Sheridan, Wyoming, August 1, 2019.

<sup>133</sup> ICS interview of (b) (6) (b) (6) at Pine Ridge, Pine Ridge, South Dakota, November 19, 2019.

<sup>134</sup> Id.

<sup>135</sup> *Weber*, CR 17-50033; Trial testimony of Eve Weston, former IHS nurse at Pine Ridge, September 25, 2019. From notes of ICS consultant.

<sup>136</sup> ICS interview of (b) (6) (b) (6) at Pine Ridge, Pine Ridge, South Dakota, September 30, 2019.

<sup>137</sup> *Weber*, CR 17-50033; Trial testimony of Eve Weston, former IHS nurse at Pine Ridge, September 25, 2019. From notes of ICS consultant.

<sup>138</sup> ICS interview of (b) (6) (b) (6) (b) (6) at the Pine Ridge Service Unit, Pine Ridge, South Dakota, November 15, 2019.

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to see a Physician's Assistant (PA). While (b) (6) was waiting with her son, her son was paged to the front window where she heard Nurse (b) (6) talking to Weber. Weber had pulled (b) (6) son's medical chart and he wanted to know why the boy was seeing a PA and not him. (b) (6) pulled the chart away from Weber and said the boy was seeing the PA. Weber tried again to pull the chart away from (b) (6) so he could see (b) (6) son, but (b) (6) did not give it to him.

(b) (6) told ICS that "(b) (6) had my back that day."<sup>139</sup>

Weber would often come to the hospital in the evenings (7 p.m. and after) to visit the rooms of the young male patients even though he was not the on-call doctor when he made these visits.<sup>140</sup> No other doctors made nighttime visits, but Weber did it so regularly that nurses came to expect him to show up. He visited the patients in their rooms alone and after the clinic was closed.<sup>141</sup> (b) (6) recalled a particular instance when, according to a nurse, Weber made one of his evening visits to see a patient in his hospital room. The nurse told (b) (6) that she had gone to check on the patient because "she knew the rumors about Dr. Weber".<sup>142</sup> When the nurse entered the patient's room, Weber was sitting at the foot of the bed and the patient, a young male about 14 or 15, was crying. When the nurse

entered the room, Weber "quickly" stood up from the bed and left the room. The nurse told (b) (6) that she asked the boy what was wrong, but he refused to tell her. (b) (6) was not sure if the nurse reported to the nursing supervisor what she saw.<sup>143</sup> ICS recognizes that this anecdote is a third hand rendering of events and is therefore more susceptible to inaccuracy. The information is valuable regardless of accuracy, however, because it reflects Weber's reputation amongst the nurses at Pine Ridge -- a reputation that should have, and may have, garnered greater management attention if it had been translated into a series of prompt, consistent and formal complaints.

This incident, or others akin to it, was widely discussed at Pine Ridge. (b) (6) recalled speaking with a nurse on the Acute Care wing who told her she found Weber in a patient's bed playing video games on the game console. The nurse filed a complaint against Weber for the incident, but no action was taken against Weber.<sup>144</sup> (b) (6) also recalled the "rumor" that Weber had been discovered in the hospital bed of one of his patients on the Acute Care ward. She understood that a nurse had discovered and reported this, but there was no action taken against Weber.<sup>145</sup> IHS nurse (b) (6) also recalled this or a similar incident.<sup>146</sup>

<sup>139</sup> Id.

<sup>140</sup> ICS interview of (b) (6), Pine Ridge, South Dakota, November 12, 2019.

<sup>141</sup> Id.

<sup>142</sup> ICS interview of (b) (6), Pine Ridge, South Dakota, November 15, 2019.

<sup>143</sup> Id.

<sup>144</sup> ICS interview of (b) (6), Acting Chief of Pediatrics at the Pine Ridge Service Unit, Pine Ridge, South Dakota, November 25, 2019.

<sup>145</sup> ICS interview of (b) (6), Rapid City, South Dakota, October 23, 2019.

<sup>146</sup> ICS interview of (b) (6), November 15, 2019. All these witnesses were interviewed independently and therefore recounted the episode without knowing that others had disclosed the same episode.

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*It is important to note that the suspicions about Weber, with the possible exception of the August 1995 accusation, were not generated by actual victim disclosures – but by the deductions of adults – making verification of abuse extremely difficult without a rigorous investigation.*

**Even though several nurses and other providers were aware of the rumors or complained directly, there was no action taken to document or act upon this information. This inaction would later be used as an affirmation that accusations against Weber were unfounded.<sup>147</sup> During his tenure at Pine Ridge, Weber was repeatedly suspected of misconduct, but his victims did not disclose or confirm the abuse, so he continued to practice medicine.**

According to experts, a major problem with relying on children’s statements in forensic investigations is that many sexually abused children remain silent about abuse; they may deny that abuse ever occurred, or they may produce a series of disclosures of abuse followed by recantations of these disclosures.<sup>148</sup>

Weber’s efforts to ingratiate himself with young boys manifested itself in numerous ways, in addition to cash payments. Miller testified that Weber routinely delivered a pushcart into the hospital room of adolescent male patients who had been admitted to the hospital. The pushcart contained a TV set and a game console, like a PS-3 or X-Box console, for the boys to play games on. Weber never delivered the game console cart to any patients who were young girls.<sup>149</sup> Once, Miller asked Weber if the pushcart could be delivered to one of the young female patient’s room, but Weber refused the request claiming the game console was broken. The next day, Weber admitted a male patient and he brought the game console to the patient in his room.<sup>150</sup>

One of Weber’s colleagues, Dr. Mark Butterbrodt, had arrived at Pine Ridge in 1999 or 2000.<sup>151</sup> Weber’s abuse of teenage male patients did not become clear to Butterbrodt for several years after his arrival. His early years as Weber’s colleague were generally collegial and he thought well of Weber’s performance as a doctor. By 2006 that had changed. Dr. Butterbrodt brought the suspicions of Weber’s molestation directly to Dr. Rory Summers, then the Clinical Director. Butterbrodt observed Weber going through patient charts “cherry-picking the cute teenage

<sup>147</sup> “Apparently, the accusing officer is still up to no good and even though there have been no patient complaints or any other complaints for that matter (nursing staff), the accusing officer is pushing this issue.” Keats email to Birney and McSherry dated June 11, 2009.

<sup>148</sup> In 1983, Dr. Roland Summit, a psychiatrist, published a formal description of how sexually abused children disclose abuse. The purpose of this model, termed child sexual abuse accommodation syndrome (CSAAS), was to outline for clinicians why child victims of abuse may be reluctant to disclose abuse. Summit’s model included five components: (a) secrecy; (b) helplessness; (c) entrapment and accommodation; (d) delayed, conflicted, and unconvincing disclosures; and (e) retraction of disclosure. Summit argued that “children who have been sexually abused may respond with self-blame and self-doubt. They may fear the perpetrator and the possible consequences of disclosure.” DISCLOSURE OF CHILD SEXUAL ABUSE, *Psychology, Public Policy, and Law* 2005, Vol. 11, No. 1, p. 195. See also *Weber*, CR 18-14-GF-BMM, Dk. No. 127. Testimony of (b) (6), September 4, 2018, pp. 39-41.

<sup>149</sup> *Weber*, CR 17-50033, Trial testimony of Jacklyn Miller, September 25, 2019. From notes of ICS consultant.

<sup>150</sup> ICS interview of Jacklyn Miller, IHS nurse at Pine Ridge, Pine Ridge, South Dakota, November 19, 2019.

<sup>151</sup> ICS interview of Dr. Mark Butterbrodt, former pediatrician at Pine Ridge, Rapid City, South Dakota, October 2, 2019.

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boys”.<sup>152</sup> “He didn’t like seeing babies. He didn’t like seeing toddlers. He didn’t like seeing girls. Didn’t like seeing teenage girls.” Dr. Butterbrodt told *Frontline* that “I couldn’t get anybody on the medical staff to listen to me.”<sup>153</sup>

### First Butterbrodt Complaint August 2006

On August 20, 2006, Dr. Butterbrodt sent an email, titled “Regarding School Clinics,” to Dr. Summers, with a copy to CEO Bill Pourier.<sup>154</sup> At the end of the email, most of which had nothing to do with Weber, Dr. Butterbrodt wrote,

*“Now I have one request to make of you, and that is to familiarize yourself with the reasons Dr. Patrick Weber is out of step with the American Academy of Pediatrics, the Indian Health Service, the CDC and NIH, and most importantly our own Pine Ridge families and school clinics in a high risk population (arguably the highest risk in the United States). I’d like you to familiarize yourself with why he left Montana and why, for 10 years, he has cast a negative eye on virtually every community-based health initiative people have tried to get going on the Pine Ridge reservation. Kelly Moore, the senior pediatrician in Indian Health might be the person to begin with, although she was not the Chief Medical Officer in the*

*Billings Area at the time Patrick left, that being before her time.”*<sup>155</sup>

There is no indication from the records provided ICS that Dr. Butterbrodt’s superiors took any action at that time to address the physician’s concerns about Weber’s practice except, at some point, to search a database for a history of adverse professional findings.<sup>156</sup>

As had happened in Browning, Weber’s sexual abuse of Indian boys led to him being attacked and beaten on November 13, 2006. This was the second time Weber was victimized by one of his victims. (b) (6) or (b) (6) had robbed him of his wallet on January 15, 2005 and fled, only to be arrested later by Tribal Police.<sup>157</sup>

A tribal member, Henry Red Cloud, knew of several boys that would get money from Weber.<sup>158</sup> Red Cloud told *Frontline* that he and two friends, including (b) (6) assaulted and robbed Weber at Weber’s home. According to Red Cloud, (b) (6) told his two friends that Weber was a child molester. The third assailant was another Weber victim, (b) (6) although at the time, (b) (6) and (b) (6) had not disclosed to each other what Weber had done to them.<sup>159</sup> Hospital security records reflect that Weber called security at 11:34 p.m. and that security arrived at his house two minutes later. Weber told the security officer that three young men pounded on his door and when he opened it, they rushed in, knocking him to the floor, hitting him while demanding

<sup>152</sup> *Frontline* interview of Dr. Mark Butterbrodt, aired February 12, 2019.

<sup>153</sup> *Id.*

<sup>154</sup> Butterbrodt email to Summers and Pourier, dated August 20, 2006.

<sup>155</sup> *Id.*

<sup>156</sup> Butterbrodt complaint to South Dakota Board of Medical Examiners, dated December 2, 2008.

<sup>157</sup> *Frontline* interview (telephonic) of (b) (6) aired February 12, 2019. Also, *Frontline* interview of Dan Hudspeth, former Oglala Sioux Tribe police officer, aired February 12, 2019.

<sup>158</sup> *Frontline* interview of Henry Red Cloud, aired February 12, 2019.

<sup>159</sup> Trial testimony of (b) (6) and (b) (6) September 24, 2019. From notes of ICS consultant.

money. Weber said he gave them \$80 and they left.

Weber was treated at the Pine Ridge hospital Emergency Room for significant injuries received as a result of the beating. Hospital security called Pourier. Pourier confronted Weber at the emergency room and asked him what happened to him. Weber would not respond.<sup>160</sup> Dr. Butterbrodt told ICS that he spoke with Pourier the day after Weber was assaulted. Pourier told Butterbrodt – “yeah, it was probably one of his boyfriends.”<sup>161</sup> According to Pourier, he relayed the incident to his Regional Supervisors, but nothing happened. Director of Security (b) (6) was told that Weber’s physical assault was an “isolated incident” and that no increased security measures were needed. Pourier did not consider the issue a “public risk.” (b) (6) advised ICS that rumors began to circulate that Weber was a pedophile and that he had been physically assaulted by one or more of his teenage victims.<sup>162</sup> (b) (6) boss at the time, Director of Security (b) (6) told him to “stay away from Weber”. Pourier took no further action for fear he would be suspended or fired – “They can do what they want with you.”<sup>163</sup>

## DWI/AWOL February 2008

On February 26, 2008, Weber was arrested and temporarily incarcerated in Rapid City, SD for driving while intoxicated (DWI).<sup>164</sup> The incarceration prompted an administrative disciplinary charge of Absent With Out Leave (AWOL), which was required, but not applied due to intentional inaction on the part of Weber’s supervisors.

On February 28, 2008, Dr. Summers sent an email to Ronald Keats, the Commissioned Corps Liaison for the Great Plains Area in Aberdeen, writing in part “*Patrick Weber, MD, was cited for a DUI offense on the evening of 2/26/2008, while driving towards Rapid City, SD, on the way back from the Rapid City Regional Airport following a vacation on his own time. He stated that his breathalyzer showed a 0.2 and that a blood test is pending. He came to my office around noon yesterday, 2/27/08, to tell me this... have spoke [sic] with Bill Pourier about it, and he recommend I make sure you were notified.*”<sup>165</sup>

On March 2, 2008, Weber sent an email to Keats, with a copy to Dr. Summers, wherein he wrote “...*When I got to Rapid City I started driving to the hotel I was to stay at for the night. I had the following day off and*

<sup>160</sup> *Frontline* interview of William Pourier, aired February 12, 2019.

<sup>161</sup> ICS interview of Dr. Mark Butterbrodt, former pediatrician at Pine Ridge, Rapid City, South Dakota, October 2, 2019.

<sup>162</sup> ICS interview of (b) (6) (b) (6), Pine Ridge, South Dakota, October 24, 2019.

<sup>163</sup> *Frontline* interview of William Pourier, aired February 12, 2019. It is unclear from the information available to ICS what exactly Pourier told his superiors about the incident or whether he indicated that it was at all related to Weber’s relationships with young Indian males. No extant written or electronic communications (relating to the assault of Weber in November 2006) were provided or discovered during this inquiry. His actions in 2009-2010 suggest that Pourier was never rigorous in addressing concerns that suggested that Weber was molesting his patients. His comments during the *Frontline* interview may have been cast in the best possible light with the benefit of hindsight.

<sup>164</sup> Official Personnel File (OPF), Credentialing docs. dated April 29, 2009. See also emails below wherein Weber describes the events leading up to his arrest and incarceration on the drunk driving charge.

<sup>165</sup> Summers email to Keats dated February 28, 2008.

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*was then going to return to Pine Ridge in the morning. After getting into town I was pulled over and a police officer asked to see my registration, as my auto tags had expired. After looking at them he asked me to get out of the car and did some sobriety tests on me. He said he was going to charge me with DWI and took me to the jail, where I was booked...*"

In pleading his case Weber pointed to the fact that *"as for my ability to work with peers and patients, I think my record here speaks for itself. I have been elected Chief of Staff three times ..."*<sup>166</sup> ICS noted that one year later an *ad hoc* committee, made up of his colleagues at Pine Ridge, would be assembled to investigate misconduct allegations against Weber. The same staff had elected him Chief of Staff three times.

On March 14, 2008, Keats sent a memorandum to Summers regarding Weber's February 26 DWI. The memorandum recommended that Weber *"be either formally counseled regarding his actions or given a Letter of Reproval to be maintained in his local Service Unit for up to 2 years."*<sup>167</sup> Summers signed the memorandum approving Formal Counseling as the appropriate discipline. Summers also initialed the memorandum to reflect that a Letter of Reproval should not be entered.

During this period, Commissioned Corps headquarters insisted that Weber be charged with, and disciplined for, being AWOL. Keats insisted that **the service unit did not want to cite Weber for AWOL or punish him further** for the DUI arrest. Commissioned Corps headquarters continued to press the AWOL issue.

On April 30, 2008, Captain David Birney, a PHS personnel officer, sent an email to Keats and Paul McSherry, the Deputy Director of the Division of Commissioned Personnel Support (DCPS), saying, *"We have not issued an AWOL order for CAPT Weber. The dates are not 100% clear. Can you shed some light?"* to which Keats replied *"CAPT Weber was not put in for an AWOL and an AWOL should not be submitted (I believe)."*<sup>168</sup> Keats argued that Weber had not been AWOL because he did not go to jail.

On the following day, May 1, 2008, Birney continued the email conversation. *"Are you sure? I have a copy of a statement by CAPT Weber that says in part '... I posted bail and got out of jail'"* to which Keats replied *"You are correct about the statement below, but the arrest and release happened on the same day when the officer was traveling home, and the officer reported for duty on time the next day. I discussed this with his supervisor and there was no AWOL requested."*<sup>169</sup>

Based on the records available, the discussion of the mandatory AWOL citation was not continued after May 1, 2008. Later conversations reflect that Keats was told that the AWOL was not discretionary and must be imposed. Keats stalled until the matter went away, only to be resurrected in March 2009.

In a March 12, 2009 email, Keats admitted to Birney and McSherry that *"I guess you are correct then, this is the same officer, but the Service Unit wanted to handle the previous issue (the AWOL) locally because of his excellent history as both an employee*

<sup>166</sup> Id.

<sup>167</sup> Keats memo to Summers, dated March 14, 2008. This is a long memorandum that outlines Weber's service history at IHS and lists mitigating factors.

<sup>168</sup> Birney email to Keats and McSherry dated April 30, 2008, and response. ICS emphasis added.

<sup>169</sup> Id., email string continued May 1, 2008.

and officer. I am sending the PHS 1662 through Mary Muir this morning.”<sup>170</sup>

Birney advised Keats that “[t]he policy does not allow for the service unit to handle the situation (the AWOL) locally.”

Keats then sent an email to Mary Muir, then a Military Human Resources Specialist with the Division of Commissioned Personnel Support, attaching the PHS-1662 for Weber and writing that “*CAPT Weber was arrested for a DUI on February 26, 2008 and by policy (CAPT Birney) must be placed on AWOL status for his incarceration. The effective date of his AWOL will be 02/26/2008.*”<sup>171</sup> Keats forwarded this email to Birney

Birney responded that “[a]n AWOL request is usually in memo format requesting the OCCO Director to place an officer on AWOL for a reason – in this case it might be incarceration due to a DUI arrest. The AWOL request should include any appropriate documentation so that the Director can assess the validity of the request.”<sup>172</sup> Keats replied “*Jeesh you’re picky*” and “*Ok, the memo may take me a little bit longer as I mentioned the Service Unit did not want to punish the officer at that time. I will write a memo and have the Area Director sign it and then forward it to you.*”<sup>173</sup>

The AWOL disciplinary action languished without resolution for another three months.

On June 11, 2009, Keats sent an email to Birney, copying McSherry, saying “[t]hank you for the opportunity to ask you a question pertaining to CAPT S. Patrick Weber and his AWOL issue from 2008. **The IHS Pine**

**Ridge Service Unit and the Aberdeen Area Office requested that no AWOL be charged concerning this officer subsequent to the DUI issue in 2008 based on past performance, mitigating circumstances and because no time was lost to the service unit. To date, there has not been a response from OCCO concerning whether this issue is closed or still under review.**”<sup>174</sup>

On August 21, 2009, Keats sent an email to Birney, copying McSherry, wherein Keats relates that “...I learned that the Special Pays are being held due to an adverse action pending in the officers file. I am assuming this is the AWOL situation from the DUI last year. In the past, I believe I sent you IHS support requesting that the AWOL be dismissed due to mitigating circumstances, but there has been no correspondence concerning this request and an AWOL personnel order has not been processed.”<sup>175</sup>

Apparently defeated by Keats’ total resistance over the previous 21 months to properly disciplining Weber for the AWOL, Birney surrendered on November 9, 2009. In an email to Keats, Birney wrote, in part, that “...[t]echnically speaking and (sic) AWOL order remains in an officer’s OPF for their entire career as do all orders. However, based on an incident that occurred in the IHS regarding the promotion of an officer who just came off AWOL, it was decided by RADM Furman that AWOL would be treated as misconduct for all administrative issues for a period of 1 year after the AWOL order was issued (sic) (as well as for the time period of AWOL). Given that the officer has not been issued AWOL orders (for a number

<sup>170</sup> First Keats email to Birney and McSherry dated March 12, 2009.

<sup>171</sup> Keats email to Muir dated March 12, 2009.

<sup>172</sup> Birney email to Keats dated March 12, 2009.

<sup>173</sup> Keats email to Birney dated March 12, 2009. ICS emphasis added.

<sup>174</sup> Keats email to Birney, dated June 11, 2009. ICS emphasis added.

<sup>175</sup> Keats email to Birney and McSherry, dated August 21, 2009. ICS emphasis added.

*of reasons) and the incident occurred about 1.5 years ago – it would not be reasonable to hold in limbo for a year if the AWOL order are issued – the decision (sic) to issue are for the Director, OCCO.”<sup>176</sup>*

Weber had escaped the consequences of being AWOL thanks to the unrelenting support of the Commissioned Corps Liaison. After the extensive campaign over the DWI and AWOL issue, no adverse personnel action was taken on the AWOL. Only the most minimal action of verbal counseling was taken on the DWI. **The extensive delay and calculated evasion successfully shielded Weber from any substantial professional consequence for the AWOL violation.**

An Anonymous Former IHS Employee (AFE) concluded that the DWI/AWOL incident involving Weber was mishandled at all levels within the Commissioned Corps, starting with Keats and then all the way up to Commissioned Corps Liaison at Commissioned Corps Headquarters.<sup>177</sup> AFE noted that it was ultimately CEO Pourier’s decision not to give Weber any discipline regarding the AWOL, but that policy required that Keats draft a memo recommending discipline which would go to the Service Unit CEO and to the Great Plains Area (Aberdeen) Area Director and finally to McSherry, the Commissioned Corps Headquarters Liaison.<sup>178</sup>

(b) (6) (b) (6) said Weber should have received a Letter of Reprimand for the DWI he received because

<sup>176</sup> Birney email to Keats, dated November 9, 2009.

<sup>177</sup> ICS interview of Anonymous Former IHS Employee (AFE), November 13, 2019. This witness requested anonymity for fear of family retaliation.

<sup>178</sup> Id.

<sup>179</sup> ICS interview of (b) (6), Rapid City, South Dakota, November 27, 2019.

<sup>180</sup> ICS interview of (b) (6), East Glacier, Montana, September 18, 2019.

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he was AWOL,<sup>179</sup> but the Commissioned Corps Liaison cannot take action against the officer without the supervisor’s – in this case CEO Pourier’s -- concurrence. The unusual supervision structure that exists in the IHS between the Commissioned Corps and the agency leads some physicians to consider their “boss” to be the PHSCC and not the IHS, thereby creating, if not a divided loyalty, at least uncertainty about to whom they answer.<sup>180</sup>

*It appears that the Weber AWOL issue was allowed to expire through a course of intentional delay and inaction, not through any sort of affirmative decision to close the matter with a suitable resolution. This was a consistent pattern throughout Weber’s career – for 25 years he benefited from management’s willingness to ignore problems rather than address them.*

This issue is discussed extensively under *Leadership Failures in Part II Analysis and Conclusions.*

### South Dakota Board of Medical and Osteopathic Examiners December 2008

Between 2006 and 2008, Dr. Butterbrodt’s fears about Weber were not addressed, nor did it appear that IHS management had any intention to take them seriously. By late 2008, Butterbrodt had transferred to the IHS

facility in Wanblee.<sup>181</sup> The CEO of the Wanblee Service Unit, Francine Red Willow, told Dr. Butterbrodt about a psychologist who had worked with Weber on the Blackfeet reservation, Dan Foster. Butterbrodt called Dr. Foster and learned of Foster's suspicions involving Weber and several of his adolescent male patients in Montana.

In subsequent conversations with Red Willow, Butterbrodt was told that it appeared Weber was being "protected" by someone in the Aberdeen<sup>182</sup> Area Office.<sup>183</sup>

*Rumors about Weber at Pine Ridge persisted and expanded to include adolescent boys spending the night at Weber's government house. Dr. Butterbrodt understood that the new nurses' orientation included standard admonitions that Weber should not be left alone with male patients.*

ICS Interview of Dr. Mark Butterbrodt, former pediatrician at Pine Ridge, Rapid City, South Dakota, October 2, 2019

On December 2, 2008, Dr. Butterbrodt lodged a formal complaint against Weber with the SDBMOE.<sup>184</sup> Butterbrodt related in the complaint that he had previously expressed his concerns to his then supervisor, Dr. Sumners, and Sumners' only

response was to check the National Practitioner Data Bank for formal findings of misconduct, note no convictions, and do nothing further to investigate Butterbrodt's allegations.<sup>185</sup> In the complaint, Butterbrodt asserted that the "MD in question was assaulted 11/14/06 by 3 young men, one of whom he'd loaned money to earlier in the day. MD in question did not file criminal charges against the boys. FBI currently investigating (agent (b) (6) (b) (6)). MD in question selectively 'cherry picks' young teenage boys in clinic, there are questions of conduct problems in his previous places of employment – Browning, MT (app 1992-95) and Ada, OK (1986-89)." Dr. Butterbrodt identified persons he believed would have information about Weber's history in Montana (Dr. Daniel Foster) and Oklahoma (Investigator (b) (6)).

On March 12, 2009, Keats emailed Birney and McSherry that "[t]he South Dakota State Medical Board has been notified and is doing a check of their own. They have notified the officer that he needs to undergo some Psychological Evaluation and I assume they are also checking on other issues. The office (sic) that started this whole thing has been directed to stop sending out the emails with these allegations. I have not heard from Pine

<sup>181</sup> ICS interview of Dr. Mark Butterbrodt, former pediatrician at Pine Ridge, Rapid City, South Dakota, October 2, 2019. The Pine Ridge Hospital serves the Lakota Indian population and is the largest in the Great Plains Area. The medical staff sees medical, obstetrical, pediatric, and surgical patients. The facility located in Pine Ridge, South Dakota, includes full service general surgery, an obstetrical ward, and dental. Kyle and Wanblee Health Centers and two health stations (Manderson and Lacreek ) operate within the Pine Ridge Service Unit. IHS website, [www.ihs.gov/greatplains/healthcarefacilities/pineridge/](http://www.ihs.gov/greatplains/healthcarefacilities/pineridge/).

<sup>182</sup> The Aberdeen Area Office later became the Great Plains Area Office. References throughout this report are used interchangeably.

<sup>183</sup> Id. Former Deputy Area Director Shelly Harris told ICS that Weber was "very friendly" with the Area Director, Charlene Red Thunder. ICS interview of Shelly Harris, Chief Executive Officer (CEO), Quentin Burdick Memorial Hospital, Belcourt, North Dakota, October 29, 2019.

<sup>184</sup> Butterbrodt complaint to South Dakota Board of Medical Examiners, dated December 2, 2008.

<sup>185</sup> Id. See also, *Frontline* interview of Dr. Mark Butterbrodt, aired February 12, 2019. "We've looked at the data bank. There's no complaints on him. He's clean".

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*Ridge of anyone in particular that is doing an investigation, but will ask.”<sup>186</sup>*

On May 5, 2009, Dr. Butterbrodt submitted a letter to (b) (6) (b) (6) in Sioux Falls. In the letter Butterbrodt requested that additional information be added to his original complaint. He noted his concern the information had not been provided to SDBMOE “by the medical staff or administration at Pine Ridge.” Butterbrodt attached seven emails he had exchanged with CEO Pourier and Clinical Director Jan Colton in connection with possible misconduct by Weber.

*“I have learned that Dr. Patrick Weber is being taken off administrative leave and will be resuming his practice in Pine Ridge as of today. This is not exactly a surprise. I certainly have no ill will towards the SD Board. From the beginning I’ve felt this situation was allowed to fester because of a weak medical staff here at Pine Ridge. I’m very confident that his practice preference would not have been tolerated for a single day at a strong institution, say for instance Black Hill Pediatrics. I would like these emails added to the file of Dr. Weber if that’s alright with you and the Board. I regret I’d inadvertently erased the e-mail regarding the number of males and females he sees in his practice and the statistical odds of that happening by chance (two out of a trillion) but I could get*

*you that raw data and statistical analysis if that would be helpful. I am curious if the Board investigators were given that information by the medical staff or administration at Pine Ridge. Why do I have a feeling that they were not? I think situations like this would be less apt to happen in South Dakota were all Indian Health Service physicians active in the State AMA and in local medical societies. My pleas to my Indian Health Service colleagues about getting involved in the private medical community in South Dakota fall on deaf ears.”<sup>187</sup>*

In early June 2009, (b) (6) an (b) (6) issued two letters – one to the Pine Ridge Service Unit and the other to the “PHS Indian Hospital” in Browning – requesting, from Pine Ridge, “information regarding any complaints, concerns, and/or corrective actions, if any, (written and/or verbal, formal and/or informal), regarding his [Weber’s] medical practice and his interpersonal relationships with patients, patients’ families, and other medical staff.”<sup>188</sup> Attached to each letter was an Authorization for Release of Information signed by Weber which, in the case of Pine Ridge, permitted “the release and full written and verbal disclosure of any information that PHS/IHS Pine Ridge has concerning my professionalism, competence, and fitness to practice medicine.”<sup>189</sup>

<sup>186</sup> Second Keats email to Birney and McSherry dated March 12, 2009.

<sup>187</sup> Butterbrodt letter to (b) (6) (b) (6), dated May 5, 2009.

<sup>188</sup> (b) (6) letter to Pourier, Pine Ridge Service Unit, Pine Ridge PHS Indian Hospital, dated June 5, 2009. The letter to Browning was similar but more expansive, also asking for “investigations, performance evaluations, ... any difficulties or concerns with his interpersonal relationships with patients, patient families, or other hospital staff, and any other information that you feel would assist us in the investigation.” (b) (6) letter to PHS Indian Hospital, Browning, Montana, dated June 5, 2009.

<sup>189</sup> Id. Attached waivers.

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(b) (6) closes her letters by noting that “[t]he Board has a duty to protect the citizens of South Dakota by ensuring that only qualified, safe and competent practitioners are licensed to practice.”

In his June 18, 2009 response to (b) (6) letter, Pourier wrote “Dr. Butterbrodt has raised issues concerning Dr. Weber twice; once in 2006 and now in 2008-2009. In each instance the concerns raised by Dr. Butterbrodt dealt with inappropriate behavior with adolescent males. An investigation was conducted in both instances. Allegations and innuendos were found, but no concrete evidence. We had placed Dr. Weber on leave during our investigation and many members of the Oglala Sioux Tribe requested his return.”<sup>190</sup> Pourier concluded that “Dr. Weber is an excellent [] clinician who is generally well-respected by patients, their families, and his peers.”

ICS was unable to locate any response to (b) (6) letter by IHS officials at Browning.<sup>191</sup>

When Weber was interviewed in May 2016 by the OIG, Weber admitted that part of the SDBMOE’s investigation **included a polygraph examination, which he failed.**<sup>192</sup>

Publicly available records of the SDBMOE reflect no action involving Weber in 2009; no complaint, no investigation, no conclusion. The only record available for public review references Board action taken in 2017.<sup>193</sup> According to the December 14, 2017 Final Order of the Board, Weber was under investigation starting in January 2017 and subsequently “failed to renew his South Dakota medical license prior to March 1, 2017, as required by state law.” The Board ordered “that Dr. Weber's medical license be deemed ‘Withdrawn under Investigation’.”<sup>194</sup>

The South Dakota grand jury indictment charging Weber with Aggravated Sexual Abuse had been public since February 26, 2017. Weber was a charged criminal defendant – formally accused of sex crimes against children -- for 10 months before his license was deemed “withdrawn”.

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*There is no suggestion in Pourier’s letter that he was complying with the licensing boards’ request for detailed information, but instead it appears Pourier attempted to dissuade the licensing board from any further action. To that end, Pourier did not reference the August 1995 allegation against Weber referred to the FBI, he did not include any of the emails or memoranda prepared by Butterbrodt, he did not address the November 2006 physical assault of Weber, and he makes no reference to Weber’s DWI arrest in 2008, all of which would have been responsive to the SDBMOE request for information.*

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<sup>190</sup> Pourier letter to (b) (6) dated June 19, 2009.

<sup>191</sup> Because the SDBMOE denied an IHS request to cooperate with the ICS inquiry, ICS did not have access to documents in the licensing board’s files to verify if the Blackfeet Community Hospital had complied with the request. There were no relevant documents made available or discovered in Browning.

<sup>192</sup> Id., at pp. 69-70.

<sup>193</sup> South Dakota Board of Medical and Osteopathic Examiners, Primary Source Verification, retrieved August 16, 2019.

<sup>194</sup> South Dakota Board of Medical and Osteopathic Examiners, Final Order, dated December 14, 2017, signed by Walter O. Carlson, MD, MBA. The South Dakota grand jury indictment charging Weber with Aggravated Sexual Abuse had been public since February 26, 2017.

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**The *ad hoc* Investigation  
Committee  
March 2009**

In February 2009, Dr. Butterbrodt sent an email titled “male versus female” to Dr. Jan Colton and copied CEOs Pourier and Red Willow. Colton was, at the time, the Clinical Director at the Pine Ridge facility. In his email, Butterbrodt wrote, in part, “*Look at the last 40 STD screens done on Dr. Weber’s patients. Dr Weber does STD screens on all teenagers regardless of the chief complaint. That practice is not why I bring this to your attention. It is the ratio of teenage females to males seen by Dr. Weber in general that is problematic. Only 6 of the 40 patients were females. This would be hard to achieve statistically other than preferential selection of males over females (going to Dr. Weber) at some point in the OPD process.*”<sup>195</sup>

Marjorie Schmidt, a Physician’s Assistant who initially worked at Pine Ridge from 2007 through mid- 2011 personally observed that Weber preferred to treat young adolescent male patients. She disclosed to ICS that “**everybody knew**” that Weber was intentionally structuring his patient load to see adolescent male patients.<sup>196</sup>

IHS nurse (b) (6) confirmed that Weber ordered STD tests on all male patients even when a test was not needed. (b) (6) said she felt that Weber ordered these tests, when he was Acting Clinical Director and not officially seeing

patients, as a “disguise” to see the boys.<sup>197</sup> Fellow pediatrician (b) (6) was aware that Weber performed a STD examination on every patient he saw. She did not think this examination was needed and it was not standard practice at the hospital.<sup>198</sup> Nurse Nicole Ward recalled that Weber ordered STD tests on every adolescent male he saw for a sports physical.<sup>199</sup>

(b) (6) told her supervisor, Mary American Horse, that she thought it odd that Weber would order these tests (STD) on so many male patients because the tests he ordered did not pertain to a STD complaint by the patient or a diagnosis by a doctor. She said that American Horse told her that “maybe Dr. Weber suspects abuse.” (b) (6) said she told American Horse that “there’s something not right” about these tests and that “not everybody was abused.” American Horse told (b) (6) she would look into this issue, but to (b) (6) knowledge it went no further. While (b) (6) may have been correct that this was used as a “disguise” so he could keep seeing adolescent males when he was officially not doing patient care, the fact that the practice dated back to at least 2009 suggests that it also offered him the opportunity to examine the genitalia of young boys under the pretext of an STD exam.

On February 27, 2009, Dr. Butterbrodt sent a second email to Colton, with a copy to Pourier and Red Willow. In this email, Butterbrodt wrote that “[a] statistician

<sup>195</sup> First Butterbrodt email to Colton, Pourier and Red Willow, dated February 27, 2009.

<sup>196</sup> ICS interview of Marjorie Schmidt, former Deputy Clinical Director at the Pine Ridge Service Unit, Gordon, Nebraska, November 26, 2019.

<sup>197</sup> Id. ICS interview of (b) (6) IHS nurse at the Pine Ridge Service Unit, Pine Ridge, South Dakota, November 27, 2019.

<sup>198</sup> ICS interview of (b) (6) Acting Chief of Pediatrics at the Pine Ridge Service Unit, Pine Ridge, South Dakota, November 25, 2019.

<sup>199</sup> ICS interview of Nicole Ward, Assistant Director of Nursing at the Pine Ridge Service Center, Pine Ridge, South Dakota, October 22, 2019.

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*friend ran the numbers on the probability of seeing as few female patients as Dr. Weber saw in the 90-dd patient surveyed. The odds are 2 out of a trillion. He (Weber) is specializing in adolescent boys. Because of his conduct at Pine Ridge, along with questions of conduct at Browning and Ada I request information from you from our medical staff bylaws regarding how to proceed, as a member of the medical staff, with a motion to suspend his clinic privileges.”<sup>200</sup>*

On March 2, 2009, there were a series of emails and replies concerning Weber. Butterbrodt sent an email to Colton, Pourier, and Dr. Frankie Delgado, Medical Director at the Pine Ridge IHS Hospital, regarding “revoking Privileges.”<sup>201</sup> Butterbrodt informed his colleagues that “I’m emailing the list of recent encounters so you can look them over. It’s not enough that he (Weber) resign. I’m asking for a roll call vote of the medical staff on revoking his privileges, so he never comes back here again.”

In her response, which included Delgado and Pourier, Colton advised “[y]ou may request a Profession Review Action. The specifics of what, when and how issues are dealt with are clearly specified in the Medical Staff Bylaws, pages 20-34.” Butterbrodt immediately replied to all with a request for a Professional Review Action and added “[i]n the meantime, what specifically are you going to do to address the fact that his practice consists overwhelmingly of adolescent boys and young men? I faxed that information to you today.”

To further emphasize the gender disparity in Weber’s patient population, Butterbrodt advised Colton, Delgado, Pourier, and Red Willow that “[w]e pulled 160 of my patients between the ages of 14 and 22 for the last few weeks. 81 were females, despite the fact that the other two providers here are women and one would expect a tendency for all the teenage girls and young women to choose a female provider.”<sup>202</sup>

Dr. Colton was the Acting Clinical Director at Pine Ridge in 2009 for approximately one year.<sup>203</sup> Being new to the position of Clinical Director, Colton sought the advice of the Office of General Counsel (OGC). On March 6, 2009, Colton emailed (b) (6) (b) (6) and included Keats and Pourier. In her email, Colton said “I just wanted to let you know that I have been in contact with CDR. Keats, the Commissioned Corps Liaison for our Area regarding the officer who was recently placed on administrative leave. At this point in time I do not have specific guidance, but will keep you apprised as I receive such information.”<sup>204</sup> (b) (6) then advised Colton to form an *ad hoc* Investigation Committee to formally investigate the allegations by Dr Butterbrodt. In addition, Colton was advised that Weber should be placed on administrative leave during the investigation.<sup>205</sup>

Colton told ICS that attempts to obtain information regarding Weber from the Blackfeet Hospital were rebuffed on the grounds that the information was “privileged”. **“Communication within IHS leaves much to be desired. They protect**

<sup>200</sup> Second Butterbrodt email to Colton, Pourier, and Red Willow, dated February 27, 2009.

<sup>201</sup> Butterbrodt email to Colton, Pourier, and Delgado, dated March 2, 2009.

<sup>202</sup> Second Butterbrodt email to Colton dated March 2, 2009.

<sup>203</sup> ICS interview of Dr. Jan Colton, former Pediatric Dentist and former Acting Clinical Director at the Pine Ridge Service Unit, Phoenix, Arizona, November 25, 2019.

<sup>204</sup> Colton email to (b) (6) (b) (6) Keats, and Pourier, dated March 6, 2009.

<sup>205</sup> ICS interview of D. Jan Colton, November 25, 2019.

**their own.**<sup>206</sup> In addition, the Committee was unable to obtain police reports they thought were relevant to their investigation.

March 11, 2009, saw a flurry of emails about Weber. Keats sent an email to Birney and McSherry, writing that *“I have received information from the Pine Ridge Service Unit that there is currently an officer issue. The officer has been accused of unprofessional conduct at work by another corps officer, but there has been no official complaint by a patient or any other co-worker at the facility. The Aberdeen Area has temporarily placed this officer (Weber) on Administrative Leave with pay while there is an investigation being done. My question: Is there anything we should be doing from a corps perspective, or are our hands tied until there is a formal complaint?”*<sup>207</sup>

Birney responded to Keats’ email: *“With respect to the officer (Weber) – the officer should be placed on Non-Duty with Pay pending the outcome of the investigation – not admin leave – this requires a 1662. ... Also, this is the officer who owes was supposed to have been placed on AWOL in Feb 2008. We never received the request.”*<sup>208</sup>

While these discussions were occurring, Pourier sent an email to Dr. Butterbrodt in which he wrote *“[i]n reference to your complaints and concerns on a local provider, I have been advised by our Office of General Counsel that you are to turn in all information you have collected on this provider to me. Further, I am directing you to cease your individual investigation of this matter, your emails concerning this issue, and your discussions on this matter. We*

*need to allow for the normal judicial process, e.g. South Dakota Board to occur without the possibility of it being compromised.”*<sup>209</sup>

Butterbrodt responded to Pourier’s email, and added Red Willow to the conversation, writing:

*“I have not withheld any information from you regarding this matter. Both you and Dr. Colton (and before her, Dr. Summers) have been given all the information I have on this provider. I have been giving you this information for at least three years. I intend to proceed with a motion to the medical staff to suspend his clinical privileges. His peers are in a much better position to make a decision on his fitness to practice than is the State Board. It is our responsibility as a medical staff to protect Oglala Lakota families from physicians with conduct issues. I have been hearing virtually every member of the medical staff – in private – snicker or deride this physician’s preference for seeing teenage boys. I have offered Francine my resignation in the past to demonstrate my own culpability in this sorry business.”*<sup>210</sup>

That same day, Dr. Butterbrodt also sent a separate email to Pourier, with a copy to Red Willow, stating in relevant part:

*“Bill, I’m assuming the physician in question has been reinstated to clinical privileges pending the State Board investigation. That doesn’t leave me any choice. I’d already*

<sup>206</sup> Id.

<sup>207</sup> Keats email to Birney, dated March 11, 2009.

<sup>208</sup> Keats email to Birney, dated March 11, 2009. Birney reply to Keats, part of same email string.

<sup>209</sup> Pourier email to Butterbrodt, dated March 11, 2009.

<sup>210</sup> Butterbrodt email to Pourier and Red Willow, dated March 11, 2009. ICS emphasis added.

*decided that if he continued to practice here, my conscience would dictate that I would have to resign. I've informed Francine of my resignation from Wanblee. You may take this as my resignation from the Pine Ridge medical staff... We've been friends a long time. I'm sorry we've reached an impasse on this matter. I'm not going to pursue a medical staff action on this as I'd suggested in today's email. I'll finish my career in the Indian Health Service elsewhere. There's no fight left in me on this matter.”<sup>211</sup>*

According to subsequent email evidence, Butterbrodt was, at that time, mistaken that Weber was reinstated to clinical privileges. He had been placed on leave on March 3, not because of the SDBMOE referral, but based on Butterbrodt's allegations and Request for Professional Review Action.<sup>212</sup> Dr. Butterbrodt changed his mind about resigning and remained at Wanblee for another year, before an involuntary reassignment to an IHS facility in North Dakota on the Canadian border.

On March 12, 2009, Keats, in an email to Pourier and Colton, asked to be brought up to date “concerning what is taking place with CAPT Weber? In addition, I need to know the exact date the officer was put on Administrative Leave so I can have a personnel order cut for the period of time he was on “Non-duty with Pay Status.”<sup>213</sup> Dr. Colton responded to Keats and Pourier, with

a copy to (b) (6) (b) (6) saying, “[a]fter discussion with (b) (6) I presented the informal allegation to the Medical Exec staff. **We then selected a 3 member ad hoc committee who will investigate and determine the validity of the allegation and whether or not it should be pursued.** This decision will be made within 14 (days) in accord with our Medical Staff Bylaws. Dr. Weber continue on Nonduty with Pay Status. He was placed in Nonduty with pay status Tuesday afternoon, March 3, 2009.”<sup>214</sup>

On March 20, 2009, Keats emailed Colton to advise her that “I have submitted the paperwork to place CAPT Weber officially on Non-Duty with Pay (NDWP) status with the Commissioned Corps. I expect the personnel orders to be completed in a couple of days. He is by policy placed on NDWP status for a maximum of 60 days. If your investigation comes back in his favor with nothing proved, please let me know that date so I can do personnel orders removing him from this status in order to put him back to work.”<sup>215</sup>

ICS determined that the 60-day rule referenced by Keats, and set out in Commissioned Corps policies, is not without exceptions. While it appeared to be used as a predicate for rushing this process through with as little scrutiny as possible, under Commissioned Corps policy extensions of the 60 days, if recommended, and other options – such as a detail to an administrative office away from Pine Ridge – were available.<sup>216</sup> At no time did Keats, as

<sup>211</sup> Butterbrodt email to Pourier, dated March 11, 2009. There is a handwritten note on the copy of the email provided to ICS: “I ended up not resigning. Mark.”

<sup>212</sup> Colton email response to Keats and Pourier, dated March 12, 2009.

<sup>213</sup> Keats email to Pourier and Colton dated March 12, 2009.

<sup>214</sup> Colton email response to Keats and Pourier, dated March 12, 2009. ICS emphasis added.

<sup>215</sup> Keats email to Colton, dated March 20, 2009.

<sup>216</sup> “Requests for extensions beyond the initial 60 calendar days on nonduty with pay status, if recommended by the OPDIV or Program’s SGPAC Representative and approved by the Director, DCP, will be announced as an amendment(s) to the initial personnel order which placed the officer in nonduty with pay status.” Commissioned

the Commissioned Corps Liaison, advise Dr. Colton that she had alternatives.

Colton responded to Keats that “[o]ur medical executive committee has assigned an *ad hoc* committee to investigate this issue. They are due to have the investigation completed next Friday (the 27th). I have several things I would like to discuss with you regarding this matter.” While Colton indicated that the investigation was due for completion on March 27<sup>th</sup>, no one from this *ad hoc* committee had ever contacted Dr. Butterbrodt.<sup>217</sup>

**In fact, it appears that the *ad hoc* committee did absolutely nothing to investigate the allegations.** While Dr. Colton considered the committee an investigative mechanism, Dr. Hector Burgos, a member of the Medical Executive Committee (MEC), saw the *ad hoc* committee as a jury to whom evidence needed to be presented.<sup>218</sup>

**Dr. Burgos could only recall one meeting being held by the *ad hoc* committee. There were no police reports, no victim statements or patient complaints to review and discuss. There were no witnesses called; no interviews conducted. No nurses were interviewed. Neither Dr. Butterbrodt nor Weber were interviewed,**

nor were they asked to appear before the *ad hoc* committee to make any allegation or to defend against it. Dr. Burgos understood that the *ad hoc* committee was specifically prohibited from contacting any of Weber’s patients and concluded that it was unable to proceed with an investigation because it had no evidence.<sup>219</sup> Although Burgos mistakenly believed he was a member of the *ad hoc* committee; his observation is consistent with the information provided by Dr. Colton.

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*This type of circular inaction was prevalent in the handling of the Weber accusations: No evidence relating to the allegation is sought – leads to no evidence obtained – leads to no evidence considered – leading to the conclusion that there is no evidence to support the allegation.*

*See Part II Analysis and Conclusions, Finding #3, Failure to Investigate*

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In a March 26, 2009, personnel order, Weber was formally placed on Non-Duty with Pay Status. In the Remarks section of the document Keats indicated that “[o]fficer’s assignment to Non-Duty with Pay Status at Officer’s residence not to exceed: 5/2/2009. This status will not

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Corps Personnel Manual, Part 2--Commissioned Corps Personnel Administration, CC 23.6, Section D (6). While “[s]uch requests must include a plan of action for either returning officers to duty or separating officers” certainly the time required for the active investigation of alleged sexual abuse would have justified an extension. Weber could also have been detailed to the Aberdeen Area Office until a full investigation was conducted. See, ICS interview of (b) (6) Northern Plains Regional Commissioned Corps Liaison, Rapid City, South Dakota, November 27, 2019.

<sup>217</sup> ICS interview of Dr. Mark Butterbrodt, former pediatrician at Pine Ridge, Rapid City, South Dakota, October 2, 2019.

<sup>218</sup> Dr. Burgos recalled that he was a member of the *ad hoc* committee. ICS interview of (b) (6) (b) (6), Pine Ridge, South Dakota, November 14, 2019. But Dr. Colton, who was interviewed after (b) (6), told ICS that the *ad hoc* committee members were (b) (6), (b) (6) and (b) (6). ICS interview of Dr. Jan Colton, former Pediatric Dentist and former Acting Clinical Director at the Pine Ridge Service Unit, Phoenix, Arizona, November 25, 2019.

<sup>219</sup> ICS interview of Dr. Hector Burgos, General Surgeon at the Pine Ridge service Unit, Pine Ridge, South Dakota, November 14, 2019.

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exceed 60 calendar days unless extended or removed via another personnel order.”<sup>220</sup>

On April 10, 2009, Colton informed Keats that “I sent a letter to (b) (6) (with a copy to Mr. Pourier and Ms. Shelly Harris) stating that the Medical Executive committee was not, in my opinion, the appropriate body to investigate such allegations. We have no legal authority to gain access to a variety of information (tribal police reports, results of previous investigations and so on). To date I have heard nothing. I am a bit concerned that we may reach the 60 day mark with no resolution.”<sup>221</sup>

Keats replied to Colton’s concerns. “Thank you, I will pass this information on to both CAPT Paul McSherry and (b) (6). Have. I know this is difficult, but if there is no resolution within 60 days, he may be returned to duty. If that is a problem for either the Service Unit or the officer, we may need to start making appropriate plans.”

Colton responded to Keats, now adding Shelly Harris, then the Deputy Area Director for the Aberdeen Area Office, to the conversation, saying, “I don’t believe it would be a problem for the officer. I believe AAO [Aberdeen Area Office] would have a problem with such a move. I have forwarded this to Ms. Harris for her input as well.”

Harris told ICS that she does not recall anyone ever advising her of the allegations of child sexual abuse against Weber. She

insisted she would have remembered it if she had been told about such allegations. Harris faulted the Service Unit for not advising the Area Office. She speculated that the reason the Service Unit may not have reported such serious allegations to the Area Office was because “they did not want to lose a provider”.

As Colton had forecast, the 60-day suspension came and went without satisfactory resolution, at least to the extent the outcome was the product of a thorough and credible inquiry. **No *ad hoc* committee report was ever provided to, or found by ICS, although Dr. Colton recalled that a report was written, filed with the MEC and maintained in the office of the Clinical Director, with a copy sent to the Aberdeen Area Office.**<sup>222</sup> The report, based on Dr. Colton’s recollection, concluded that there were significant allegations, and some unsupported rumors, but no definitive proof that Weber had engaged in inappropriate behavior. Dr. Colton noted that when she left the position of Acting Clinical Director around early 2010, Dr. Fernando Cosme was named the Acting Clinical Director. After Dr. Cosme, Weber was named the Acting Clinical Director.

Dr. Colton opined that the Committee’s report has been destroyed.<sup>223</sup> One witness, who came into the Administrative Offices on a Sunday afternoon in May 2016, found Weber shredding documents.<sup>224</sup>

<sup>220</sup> Official Personnel File (OPF), PHS Form 7063, Personnel Order (PO) 2009085.027, issued with an effective date of 3/3/2009, dated March 26, 2009.

<sup>221</sup> Keats email to Colton, and response, dated April 10, 2009. ICS noted that by April 10 Weber was over 30 days into a 60-day suspension before Dr. Colton concluded that the internal process she had convened could not perform as intended and, in any event, could not complete any inquiry in the time remaining.

<sup>222</sup> ICS interview of Dr. Jan Colton, former Pediatric Dentist and former Acting Clinical Director at the Pine Ridge Service Unit, Phoenix, Arizona, November 25, 2019.

<sup>223</sup> Id.

<sup>224</sup> ICS interview of (b) (6) Administrative Assistant to the CEO and Deputy CEO at the Pine Ridge Service Unit, Pine Ridge, South Dakota, November 14, 2019.



On November 10, 2009, Keats prepared and submitted a request that Weber be removed from Non-Duty with Pay status effective May 2, 2009.<sup>225</sup> A personnel order was signed (electronically) on November 18, 2009, removing Weber from a Non-Duty with Pay Status.

It should be noted that despite the fact that they are all required to report allegations of criminal conduct and allegations that constitute a risk to public safety, none of the individuals involved made a report to the OIG.

### Weber Application for Reappointment *April 2009*

On April 29, 2009 while on Non-Duty with Pay status in connection with the *ad hoc* investigation, Weber prepared and submitted an Application for Reappointment to the Pine Ridge Medical Staff. Weber answered “Yes” to two questions which required he provide a narrative response explaining his answers.

Question #1 - “Have any civil or criminal charges ever been filed against you, or are you under investigation which might lead to such charges?” and

Question #2 - “Are you currently involved in or have knowledge of a pending investigation review, or surveillance of your professional practice or conduct that could result in an adverse action concerning your narcotics registration, ability to bill and collect from Medicare or Medicaid programs, professional license, registration or certification, or medical staff membership or privileges?”

Weber attached a typed statement explaining his answers.<sup>226</sup>

Regarding the first question, Weber wrote “I received a DWI while I was in Rapid City. This occurred after my flight into Rapid City after a meeting. I was driving to a hotel when I was stopped without my lights on and eventually charged with a DWI. This event was reported to Dr. Summers, the Clinical Director then, the next day. The Commission Corps was also notified. I was allowed to continue to work. All three of my license boards were notified. All three have renewed my license for the current year.”

Regarding the second question, Weber explained that “Dr. Butterbrodt has filed a complaint against me both with the hospital here and with the South Dakota Medical Board. I have not seen the complaint. I met with the South Dakota Medical Board on 2/19/09 when they informed me of a complaint they received. **One of the complaints if (sic) that I am child molester.** There are no specific names mentioned in the complaint, but **that I have molested children here and in Browning, where I worked before coming here.** There (sic) accusations are completely false and any investigation into this will prove this. There were other details in the complaint such as I have been “treating” children in my home, which is also false. ... [t]here was **also an accusation that I was selecting out teenage male patients to see in clinic.** I would like to point out that I have completed Adolescent Fellowship more than 15 years ago and have felt very competent with teenage patients, both males and females.” Weber continued that, “[i]n the complaint was also that I have kids working for me on the compound and that I pay them for this. This was though (sic) to

<sup>225</sup> Official Personnel File (OPF), PHS Form 1662, Request for Personnel Action retroactively effective to May 2, 2009, dated November 10, 2009.

<sup>226</sup> IHS Pine Ridge Service Unit Credentialing File, Application for Reappointment, April 2009.

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be a conflict of interest since some of these kids were also seen by me at the hospital. I do have people, both adults and children do outdoor work such as cutting the grass and work in my garden. When someone comes by my house and asks for work, if there is work to be done I will have them do it.” Weber claimed the accusations were vindictive and cited an incident that occurred in approximately 2007 wherein he reported Dr. Butterbrodt for substandard patient care.<sup>227</sup>

At that time, in the summer of 2009, the credentialing application went through a two-step review by the Credentialing Committee and then the Medical Executive Committee at the Service Unit level. The Application was then forwarded to the Area Office for a third review and ratification.<sup>228</sup> The Recommendation & Approval section of Weber’s Application for Reappointment was signed and approved by the following supervisors. Each of the individuals listed below checked the line that said “I do recommend appointment to the Medical Staff”:

- *Supervisor/Consultant: Fernando Cosme on May 5, 2009*
- *Credentialing Committee: Hector Burgos on May 5, 2009*
- *Medical Executive Committee: Jose Carlos Rodriguez, on May 18, 2009*

- *Medical Director: F. Delgado on May 19, 2009<sup>229</sup>*
- *Chief Executive Officer: Bill Pourier on May 21, 2009*
- *Chief Medical Officer: Vickie Claymore-Lahammer on June 11, 2009*
- *Governing Body: Charlene Red Thunder on June 15, 2009<sup>230</sup>*

Dr. Cosme admitted to ICS that he signed Weber’s application without reviewing the information on the ‘attachment page’ that Weber had provided. “I just signed it – didn’t review it thoroughly”. Dr. Cosme had no recollection of any discussion during the MEC meeting that Weber had self-reported on his application that he was being investigated for allegations he was “a child molester.”<sup>231</sup>

Dr. Burgos recalled there was a discussion by the MEC on how to proceed with this application because Weber had answered yes to the question on the application on whether he was under investigation. According to Dr. Burgos, the MEC needed more evidence than just Dr Butterbrodt’s allegation against Weber and without any evidence supporting the allegations, the MEC voted to recommend Weber’s reappointment to the medical staff.<sup>232</sup>

<sup>227</sup> Id. ICS emphasis added.

<sup>228</sup> The process has been changed to require both Service Unit and Area Office collaboration and a jointly undertaken review and approval process. ICS interview of (b) (6)

(b) (6) Pine Ridge Hospital, Pine Ridge, South Dakota, October 24, 2019. See also, ICS interview of (b) (6) (b) (6), Sheridan, Wyoming, August 1, 2019.

<sup>229</sup> In December 2011, Delgado was indicted by a federal grand jury in South Dakota, charged with three counts of Aggravated Sexual Contact. *U.S. v. Delgado*, CR. 11-30162-RAL, Dk. No. 1 (DSD 2011). On May 8, 2007, Delgado had “highly” recommended Weber and indicated that the two had been colleagues since 2002. IHS Pine Ridge Service Unit Credentialing file, IHS Medical Staff Professional Reference Checklist, May 2007.

<sup>230</sup> IHS Pine Ridge Service Unit Credentialing File, Application for Reappointment and Credentialing File, April 2009-

<sup>231</sup> ICS interview of Dr. Fernando Cosme, Pediatrician at the Pine Ridge Service Unit, Pine Ridge, South Dakota, November 14, 2019.

<sup>232</sup> ICS interview of Dr. Hector Burgos, General Surgeon at the Pine Ridge Service Unit, Pine Ridge, South Dakota, November 14, 2019.

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On May 21, 2009, CEO Pourier also recommended that Weber be reappointed to the Medical Staff.<sup>233</sup> The Application was then mailed to the Aberdeen Area Office for review by the Governing Body. Pourier was well aware of the active SDBMOE investigation prior to recommending that Weber be reappointed to the medical staff, as evidenced by Pourier's email of March 11, 2009 to Dr Butterbrodt directing Butterbrodt to "cease your individual investigation" and allow the investigation of the "South Dakota Board to occur without the possibility of it being compromised."

Weber's Application was logged in at the AAO on May 29, 2009 by Carol Slaba, Office of Medical Care Evaluation. Slaba reviewed Weber's Application and recorded her observations, one of which was "New liability issues – (See Orange tab)" The file was then forwarded to Dr. Vickie Claymore, the Acting Chief Medical Officer, before ending up with Area Director Charlene Red Thunder, who served as the Head of the Governing Body.

Dr. Claymore served on the (b) (6) the entire time she was stationed in AAO (2006 – 2015). Dr. Claymore did not recall any specific issue with respect to the application for reappointment submitted by Weber. Claymore said she was unaware that Butterbrodt filed a formal complaint against Weber with Dr. Colton in February 2009. Similarly, Claymore does not recall being informed that an *ad hoc* Investigation Committee was formed to investigate Dr. Butterbrodt's complaint.

Claymore was shown a copy of Weber's April 2009 application for reappointment

and confirmed that her initials and the handwritten notation "need to discuss before signature / discussed with Carol Slaba 6/7/09" appear on page 2 of this document.

Claymore could not recall the details of the notation. After some reflection, Claymore believed the conversation likely would have focused on the information provided by Weber which detailed his DWI arrest in February 2008, and the formal complaints filed against him by Dr. Butterbrodt that resulted in two separate investigations (*ad hoc* and SDBMOE). Claymore confirmed that she signed Weber's Application recommending that he be reappointed to the Pine Ridge medical staff on June 11, 2009 and that AD Red Thunder granted the reappointment on June 15, 2009.

After reviewing page 8 of the application, Claymore stated that Weber's application **should never have been forwarded** to the Governing Body. She explained that the Pine Ridge Medical Executive Committee **should not have recommended** Weber's reappointment because of the active pending investigations by the *ad hoc* and SDBMOE. When asked whether, in light of this information, the Governing Body should have approved Weber's reappointment, Claymore said the (b) (6) is the final step in the process, and unless the Governing Body received specific information that both investigations had cleared Weber, then the Governing Body **should not have approved** Weber's application for reappointment.<sup>234</sup>

Claymore thought that it was possible that the Area Office received notice that the

<sup>233</sup> IHS Credentialing File, Pine Ridge Service Unit, April-May 2009. Signed off by Pourier on May 21, 2009.

<sup>234</sup> ICS interview of Dr. Vickie Claymore, Clinical Psychologist, former Acting Chief Medical Officer at Aberdeen Area Office, and currently the Director of Field Operations, Nashville Area Office, Nashville, Tennessee, December 13, 2019.

investigations had resolved the issues.<sup>235</sup> As noted in the previous section, Pourier received a letter from SDBMOE investigator (b) (6) on or about June 05, 2009. This letter requested specific information about Weber and confirmed that there was an active investigation of Weber by SDBMOE contemporaneous to Weber's reappointment.

When shown a copy of CEO Pourier's June 18, 2009 letter to the SDBMOE which clearly indicates that the licensing agency investigation is still ongoing, Claymore was at a loss to explain the discrepancy. She suggested that Pourier had not been forthright with the Governing Body on whether Weber should have been reappointed to the medical staff.<sup>236</sup>

On June 19, 2009, the day after Pourier's aforementioned letter to the SDBMOE regarding their ongoing investigation, Weber was advised that the "Medical Executive Committee met on May 18, 2009 and approved your Reappointment application to the Medical Staff and requested Clinical Privileges. The Aberdeen Area Governing Body for the Pine Ridge IHS also approved your application and requested privileges on June 15, 2009."<sup>237</sup>

(b) (6) told ICS that "Pourier simply pushed it [Weber's reappointment] through." (b) (6) added, "Bill Pourier was so concerned about losing his job that he neglected to do his job."<sup>238</sup>

In his interview with *Frontline*, Pourier blames his superiors; placing responsibility for the failure to squarely address the Weber allegations at the feet of unnamed superiors in Aberdeen. Although he thought there was reason to believe Weber was in fact a predatory pedophile, he was powerless to do anything.<sup>239</sup> "Well at that time, you think of your career and job and your livelihood so I would have probably got fired. I guess that was the risk I would've took. I couldn't afford to take the risk at that time. To lose my job." Nothing in the email traffic or other documents generated at the time, including the letter to (b) (6) of the SDBMOE, suggests anything other than Pourier was a vocal defender of Weber, and an equally vocal critic of Dr. Butterbrodt. **The record suggests that Pourier did everything in his power to protect Weber and to continue his employment at Pine Ridge.**

Former Deputy Area Director Shelly Harris recalled that it would not be unusual "to have 10-12" credentialing files wheeled around on a cart at the same time" in the AAO for the Area Director and the Chief Medical Officer to review and sign.

**According to Harris, the AAO Governing Body did not sit down as a group to review the credentialing files.**<sup>240</sup> Her recollection was echoed by another former career employee that told ICS that the process in place in 2009 was for the credentialing and privileging files to be mailed by the service units to the Area Office for the signatures of the Area

<sup>235</sup> ICS interview of Dr. Vickie Claymore, Clinical Psychologist, former Acting Chief Medical Officer at Aberdeen Area Office, and currently the Director of Field Operations, Nashville Area Office, Nashville, Tennessee, December 13, 2019. A copy of the *ad hoc* Investigation Committee report has never been found.

<sup>236</sup> ICS interview of Dr. Vickie Claymore, December 13, 2019.

<sup>237</sup> IHS Pine Ridge Service Unit Credentialing file, April – June 2009.

<sup>238</sup> ICS interview of (b) (6) (b) (6) Hospital, Sheridan, Wyoming, August 1, 2019.

<sup>239</sup> *Frontline* interview of William Pourier, aired February 12, 2019.

<sup>240</sup> ICS interview of Shelly Harris, Chief Executive Officer (CEO), Quentin Burdick Memorial Hospital, Belcourt, North Dakota, October 29, 2019.

Director and the Area CMO. Like Harris, the Anonymous Former Employee emphasized that the Governing Body **did not convene for discussions and any substantive review of the applications.** This process (mailing the files without a formal Governing Body meeting) was set up by Dr. Sara Dye when she was the Area CMO and this practice remained in effect until September 2016 when Dr. Lee Lawrence became Area CMO.<sup>241</sup>

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*During the 2009 period when Weber was reappointed to Pine Ridge medical staff under a cloud of accusation and active pending investigation, the Governing Board served no useful purpose. Weber was granted continued unrestricted privileges without objective review or thorough analysis of the facts. Due diligence was required for them to discharge their oversight responsibilities properly informed. The Governing Body, Medical Executive Committee, Credentialing Committee and senior management officials had enough facts placed before them to require further inquiry into Weber's fitness for continued privileges, rather than granting him automatic approval of them.*

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It should be noted that despite the fact that they are all required to report allegations of criminal conduct and allegations that constitute a risk to public safety, none of the individuals involved made a report to the OIG.

## Second Butterbrodt Complaint May 2009

Dr. Butterbrodt, having never been interviewed by the SDBMOE, receiving no response to his complaint, and believing that the SDBMOE investigation had been concluded without consequence for Weber,<sup>242</sup> wrote a letter to Dr. Colton. In his May 25, 2009 letter, Butterbrodt reiterated his concerns about Weber selecting adolescent boys – and avoiding female patients -- and made another request for “a professional review action”.<sup>243</sup> **Butterbrodt claimed that Weber had a “criminal conduct disorder”** and indicated that he had “strong reason to think Dr. Weber left Ada, Oklahoma, and Browning, Montana because of the same conduct issue.”

Butterbrodt wrote:

*“I think his clinical privileges should be revoked because his actions in his clinical practice are in violation of Pine Ridge IHS staff bylaws (see B, page 10 of bylaws regarding ethics and conduct)” “I have first hand knowledge, based upon my years of association with this individual, that he preferentially chooses skinny or normal weight teenage boys and young men in his practice and I have observed him on many occasions picking the charts of those patients out of my own box.”*

Butterbrodt never received a response from Colton. Butterbrodt told ICS that, with this letter, he “was trying to go through the proper process and work within the system”

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<sup>241</sup> ICS interview of Anonymous Former IHS Employee (AFE), November 13, 2019. This witness requested anonymity for fear of retaliation against family members.

<sup>242</sup> ICS interview of Dr. Mark Butterbrodt, former pediatrician at Pine Ridge, Rapid City, South Dakota, October 2, 2019. ICS could locate no witness who indicated that they were contacted by the SDBMOE investigators.

<sup>243</sup> Butterbrodt letter to Colton, dated May 25, 2009. This letter indicates it was copied to Pourier.

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to have a proper review of his complaints. He concluded that the Medical Executive Committee was the proper authority to take action against Weber.<sup>244</sup>

Colton told ICS that she does not recall ever receiving the May 25, 2009 letter from Butterbrodt. While her memory may be failing in that regard, emails reflect that she confided in Keats the situation. Review of emails from Keats, Birney and McSherry reveal a change in strategy and tactics by Keats, **a movement away from simply defending Weber from disciplinary action into an active campaign to completely discredit Butterbrodt and then have adverse administrative disciplinary actions initiated against him.**

In June 2009, Keats wrote: *“Coincidentally, I’ve been on the phone with the Clinical Director [Colton] today. Apparently, the accusing officer [Butterbrodt] is still up to no good and even though there have been no patient complaints or any other complaints for that matter (nursing staff), the accusing officer is pushing this issue. CAPT Weber has had a rough 3-4 months and the clinical director says he looks used, old and beaten up from this experience. He has stated that he wants to retire from the Corps even though he will lose everything by breaking his Special Pay contracts, just to get away from the situation and stop the stress, We are encouraging against this action and have discussed both disciplinary action against the other officer [Butterbrodt] for*

*these problems and/or transferring CAPT Weber to Sioux San in Rapid City until he can retire at the end of his contracts (about 18 months).”<sup>245</sup> McSherry responded to Keats and Birney saying, “How about two things....just to consider.... Move CAPT Weber to restore him. Move the other guy too so there is no implication that his actions or accusations have merit. The sun is shining in Kotzebue this time of year.”<sup>246</sup>*

Keats, replying to McSherry’s comments, wrote *“There seems to be a block wall in regards to the “other” officer [Butterbrodt] at the CEO level [Red Willow] who is blocking any disciplinary action. I have suggested a LOR for this file for initiating this problem based on his “opinions” and no substantiated evidence, but the CEO does not want to push this issue and lose a “good” medical officer. This is a problem out here where the staffing shortage is so acute.”* McSherry, replying to the Keats’ comments about Butterbrodt, said *“[t]hat bad boy [Butterbrodt] just may get a letter from farther up line and the CEO might too if he does not control him.”*

Birney, in reference to Weber, wrote *“I am not sure if we would allow the officer [Weber] to voluntarily retire if he was breaking a SP contract.”*

The following day, June 12, 2009, McSherry responded to Birney, saying, *“No. He can’t.”<sup>247</sup>*

<sup>244</sup> ICS interview of Dr. Mark Butterbrodt, former pediatrician at Pine Ridge, Rapid City, South Dakota, October 2, 2019.

<sup>245</sup> Id., part of June 11, 2009 email string.

<sup>246</sup> Id. Kotzebue is a city in the Northwest Arctic Borough in Alaska. North of the Arctic Circle, Kotzebue is home to the Maniilaq Association, a health and social services organization which is part of the Alaska Native Tribal Health Consortium.

<sup>247</sup> Id. The Special Pay contract notwithstanding, PHS officers like Weber, who have completed twenty years of service but less than thirty years, “may be retired by the Secretary, with or without application by the officer, on the first day of any month after completion of twenty or more years of active service.” 42 U.S.C. § 212(a)(3); Commissioned Corps Instruction (“CC”) 43.8.1 § 6-3(c). The retirement regulations further provide that such retirements may occur involuntarily or voluntarily “at the discretion of the Corps.” CC43.8.1 § 6-3(a); CC23.8.5 § 6-

On June 12, 2009, Keats sent an extensive email to Aberdeen Area Director Charlene Red Thunder.<sup>248</sup> Shelly Harris, McSherry, CEO Pourier and Dr. Jan Colton were copied. Keats writes “*I know you are aware of the Medical Officer issue at the Pine Ridge Service Unit where CAPT S. Patrick Weber was accused of inappropriate behavior as a medical officer, which her [sic] was immediately put on “Non-Duty with Pay” status for 60 days while an investigation was conducted.*”

Continuing, Keats wrote “... another Commissioned Officer based on arbitrary information without any evidence or proof, accused CAPT Weber of non-professional behavior. During the investigation that has been conducted by Pine Ridge, there was no evidence uncovered of any wrongdoing, and there has been no patient and/or nursing staff complaints concerning the behavior of this officer at all, now or in the past concerning such behavior (based on input from the Clinical Director).... CAPT Weber has now returned to full duty, but the accusing officer is still pushing the issue and causing problems to the point the Clinical Director (CAPT Jan Colton) is concerned for CAPT Weber’s safety and well being (physically and emotionally). In addition, during an assessment with the Psychiatrist (part of the State of South Dakota’s requirement for the investigation), the Psychiatrist stated that he believed the (sic) CAPT Weber was now a target.”<sup>249</sup>

Keats advised Red Thunder, Harris, McSherry, Pourier, and Colton that “*CAPT Weber has requested to retire in order to remove himself from this situation, but I have been informed through my chain of command in the Commissioned Corps that CAPT Weber “will not” be allowed voluntarily retire because he is currently under a 4 year Special Pay contract with approximately 18 months remaining on that contract.... In addition, I suggested that the accusing officer, CDR Mark Butterbrodt, stop his actions immediately because his accusations were arbitrary and unsubstantiated and therefor damaging to the reputation of CAPT Weber. The CEO of Pine Ridge, Mr. Pourier, did direct CDR Butterbrodt to stop his accusations several weeks ago. Unfortunately, it appears as if CDR Butterbrodt has not stopped his behavior/accusations and I have suggested disciplinary action against the officer to which CAPT Colton at Pine Ridge states that the CEO of the Kyle Health Center is not willing to move forward on.*”<sup>250</sup>

As noted earlier, Weber had been returned to duty on May 3, 2009.<sup>251</sup> Despite Weber’s desire to retire in June 2009, he was not allowed to break his special pay contract with the Commissioned Corps.

ICS was not provided any reply email to Keats, and it is unknown whether there was reply from anyone on the email chain. It is noteworthy that this email from Keats to Area Director Charlene Red Thunder is

1. Insisting that a Special Pay contract be performed only served to keep a predator in place amongst his current and future victims for another three years.

<sup>248</sup> A former IHS employee described Red Thunder as the head of a “network of administrative thugs who have a history of abusing certain employees and protecting those that are connected.” Gjovik, Nathan D., (2013) “*Netherworld: Reflections on Working for the US Government*”, Tate Publishing, p. 151. Gjovik also attributed to Keats the admission that he, Keats, was a “tool for management – management tells me to do something and I do it”. *Id.*, at p. 334, Appx. 19 (from an email dated December 22, 2009).

<sup>249</sup> Keats email to Red Thunder, Harris, McSherry, Pourier, and Colton, dated June 12, 2009.

<sup>250</sup> *Id.* ICS emphasis added.

<sup>251</sup> Official Personnel File (OPF), Personnel Order No. 2009322.063, dated November 8, 2009. The order was entered six months after the effective date of the order.

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dated June 12, 2009. Three days later, Red Thunder signed off on Weber's application for reappointment, thereby granting Weber unrestricted privileges on the Pine Ridge medical staff.

On July 16, 2010, Weber and Dr. Butterbrodt got into a heated argument over the care of a patient. Weber told IHS security that Butterbrodt had threatened him; that he was afraid of Butterbrodt and wanted to get a restraining order against him.<sup>252</sup> Within an hour, Dr. Butterbrodt was sitting in the office of the Acting Clinical Director accused of intimidation. Dr. Butterbrodt told his supervisor that if he were trying to intimidate Weber, he would castrate him "with a rusty knife." "That remark went right to Washington and I was branded as a violent, out-of-control person." **The nurses told Dr. Butterbrodt that now he could see why they never speak up – "Look what they've done to you."**<sup>253</sup>

It should be noted that despite the fact that they are all required to report allegations of criminal conduct and allegations that constitute a risk to public safety, none of the individuals involved made a report to the OIG.

### Referral to OIG August 2010

In August 2010, Dr. Butterbrodt again expressed his concerns about Weber with Birney, who in turn contacted the OIG. On August 3, 2010, Birney sent an email to Scott Vantrease, the OIG's Assistant Special

Agent in Charge, Special Investigations Branch, with a copy to Gregory Stevens, Office of the Assistant Secretary for Health (OASH). In this email, Birney wrote, "I received a telephone call today from CAPT Mark Butterbrodt (call rec'd from 605-411-1031) who is assigned to the Indian Health Service and is stationed in the Aberdeen Area Office in Pine Ridge, SD. CAPT Butterbrodt said that he and CAPT Weber have had difficulties for the past 15 years. He alleged that CAPT Weber has left 2 Service Units "under a shadow;" CAPT Weber was being protected by the former liaison; and that in the nurse orientation, "since 1998, the nurses have been told not to leave CAPT Weber alone with teenaged boys." The allegation that CAPT Butterbrodt made that he believed was "sweep.." was that CAPT Weber saw a lot of teenaged boys in his practice. Many more than he statistically should have. The allegations were sent to IHS for investigation, and we were told there was nothing there. The former liaison was CAPT Ron Keats. CAPT Weber is eligible for voluntary retirement. His retirement credit date in 17 December 1981 which means he will be at the mandatory 30 year retirement on 1 January 2012. Is there anything that you would like us to do or not do?"<sup>254</sup>

On August 9, 2010, Vantrease responded to Birney in an email stating, "We will log the complaint, but unless there is something more specific than an affiliation with Capt Keats, we will have to rely on the IHS review at this time."<sup>255</sup>

<sup>252</sup> As noted earlier, ICS was provided a summary of service unit security encounters involving Weber. The primary use of the spreadsheet here is to establish the date with certainty and confirm the animus between the two physicians that both Weber and Butterbrodt have described.

<sup>253</sup> ICS interview of Dr. Mark Butterbrodt, former pediatrician at Pine Ridge, Rapid City, South Dakota, October 2, 2019. Also, *Frontline* interview of Dr. Mark Butterbrodt, aired February 12, 2019.

<sup>254</sup> Birney email to Vantrease, dated August 3, 2010.

<sup>255</sup> Vantrease email to Birney, dated August 9, 2010. The reference to "Capt. Keats" is to Ronald Keats, Weber's Commissioned Corps Liaison in the Aberdeen Area Office and who participated extensively in the management



Vantrease made this statement despite the fact that Birney's email to him was overwhelmingly about Butterbrodt's complaint, not Ron Keats. ICS could not locate any documents or witnesses which indicated that the OIG took any action as a result of this complaint.

The following day, August 10, 2010, Birney replied. "*Yesterday I spoke with CAPT Travis Watts regarding CDR Butterbrodt. CAPT Watts brought up the fact that CDR B. believes that CAPT Weber has acted inappropriately with teenaged boys. CAPT Watts went on to say that both the FBI and OIG have looked into the allegations and came up with nothing.*"<sup>256</sup> At the time Watts was serving in a temporary posting as the Acting Commissioned Corps Liaison for the Great Plains Region. Watts, now a RADM and the Area Director for the Oklahoma City Area, explained to ICS that he had no independent knowledge of investigations into Weber, had reviewed no reports or confirmed any of these details with the FBI or the OIG, and that his recollection of his communications with Dr. Butterbrodt

focused on the physician's concern that he, Butterbrodt, was being railroaded because he continued to voice his conviction that Weber was a predator.<sup>257</sup> The only information RADM Watts would have had about Weber would have come from McSherry, the Deputy Director of the Division of Commissioned Personnel Support (DCPS).

Despite being notified that both the FBI and the OIG had conducted investigations of Weber and come "up with nothing," Vantrease took no apparent action to confirm or deny this information. Had he done so, he would have discovered that the information was false. During the review, ICS requested an interview with Vantrease through the IHS. The OIG declined to make Vantrease available for an interview. It should be noted that the OIG taking no action does not absolve any employee from making a required report to the OIG.

Within three weeks of the above emails, Dr. Butterbrodt was abruptly transferred to the IHS facility in Belcourt, North Dakota.<sup>258 259</sup>

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communications and decisions regarding Weber. At the time this email was sent Keats had been indicted by the U.S. Attorney in South Dakota on child pornography charges. See "*Cases of Other IHS Medical Care and Support Providers*", *infra*. Vantrease never initiated any investigation. The OIG would not become actively involved in any investigation into Weber until five years later.

<sup>256</sup> Birney email to Vantrease, dated August 10, 2010. The OIG conducted no significant investigation until October 2015.

<sup>257</sup> ICS interview of RADM Travis Watts, Area Director and Assistant Surgeon General, Oklahoma City Area. Oklahoma City, Oklahoma, August 6, 2019.

<sup>258</sup> Lawler email to Harris, dated November 4, 2019. Bertha Lawler is a credentialing specialist at the Belcourt facility who confirmed, at Harris' request, the dates of Butterbrodt's service at Turtle Mountain. Dr. Butterbrodt was on site in North Dakota on August 26, 2010. The Turtle Mountain Service Unit in Belcourt, North Dakota, serves the Turtle Mountain Band of Chippewa Indians. Like Browning it is a very remote and rural facility; 50 miles south of the Canadian Border in the east-central portion of the state. Belcourt is 110 miles from Minot, N.D., and 176 miles from Winnipeg, Manitoba, Canada.

<sup>259</sup> At the same time Dr. Butterbrodt was being banished to Turtle Mountain, the United States Senate Committee on Indian Affairs was considering the chronic administrative failures that plagued the Aberdeen Area Office. IN CRITICAL CONDITION: THE URGENT NEED TO REFORM THE INDIAN HEALTH SERVICE'S ABERDEEN AREA, Report of the Senate Committee on Indian Affairs, December 28, 2010. One of the primary findings of the Committee was that "between 2002 and August 2010 there were a total of 364 reassignments, 235 details and 31 employee transfers. Additionally, the available documentation suggests that employees who filed EEO complaints were more likely to be detailed or reassigned compared to those that did not." *Id.*, pp. 6-7. Dr. Butterbrodt's involuntary and abrupt transfer was clearly intended to suppress his crusade to expose Weber, and remove an employee considered a troublemaker.

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Weber, however, remained at Pine Ridge for another six years.

**The accusations and investigations did not deter Weber from continuing to prey on adolescent Indian males.**

Agents interviewed (b) (6) at his home. He stated that Weber was his pediatrician for an extended period and even saw (b) (6) as an adult, which would be an anomaly considering Weber was a pediatrician throughout his career.<sup>260</sup>

(b) (6) said the first time Weber inappropriately touched him was during a football physical when he was 13.<sup>261</sup> (b) (6) also indicated that when he would go into the Emergency Room of the hospital, Weber would insert himself into the management of his treatment, even though Weber was not assigned to the Emergency Department.<sup>262</sup>

The first time Weber aggressively molested (b) (6) occurred after Weber invited (b) (6) to Weber's house. Weber sat next to him and eventually Weber used his hand to touch and stimulate (b) (6)'s penis, under (b) (6)'s clothes, while also masturbating. Weber gave (b) (6) \$100.

The first incident of violent sexual assault also occurred at Weber's home. Weber saw (b) (6) at Big Bats, a convenience store in Pine Ridge, and invited (b) (6) back to his house for "beer." Upon arrival at the home, Weber had prepared alcohol, served in a bowl with fruit. Weber also provided (b) (6) with OxyContin pills. Weber asked (b) (6) to "name" his "price" to engage in anal sex. At some point during the evening, (b) (6) blacked out. When he awoke the next morning, he was naked in Weber's bed and

his "butt hurt." Weber was gone but next to (b) (6)'s clothes Weber had left him more OxyContin pills.

In about mid-June of 2011, the second incident of sexual assault occurred. (b) (6) went to Weber's house because he needed money. Weber gave (b) (6) marijuana, and then attempted to engage in anal sex with (b) (6). (b) (6) resisted but Weber continued to exert force against (b) (6), and ultimately achieved anal penetration. (b) (6) told him to stop and that Weber was hurting him, but Weber did not stop. After that, Weber told (b) (6) to get dressed. Weber gave (b) (6) \$600.<sup>263</sup>

The third and final incident of abuse (of (b) (6)) occurred on (b) (6) (b) (6) was now (b) (6) years old. (b) (6) was walking between Big Bats and Subway in Pine Ridge when Weber drove by and told him to get into the car. When back at Weber's house, Weber gave (b) (6) what he believed were morphine pills, and (b) (6) took 3 of them. Weber forced (b) (6)'s pants down, held him down and Weber forcibly anally penetrated (b) (6) without lubrication, causing significant pain.<sup>264</sup> (b) (6) told him it hurt and was crying, but Weber did not stop. After Weber finished, he gave (b) (6) a "crate" of pain killers and (b) (6) left on foot.

It is worth noting that the five incidents of predation involving (b) (6) makes clear that Weber's abuse of patients continued well after the events of 2009-2010. Those events are recapped below:

- *SDBMOE Investigation*
- *ad hoc Committee Investigation*

<sup>260</sup> *In the Matter of the Search of 2315 5th Avenue, Spearfish, South Dakota*, 5:17 mj-20 (DSD), Dk. No. 2, at p. 19

<sup>261</sup> *Weber*, CR 17-50033; Trial testimony of (b) (6) September 24, 2019. From notes of ICS consultant.

<sup>262</sup> *Id.* *In the Matter of the Search of 2315 5th Avenue, Spearfish, South Dakota*, 5:17 mj-20 (DSD), Dk. No. 2, at p. 20.

<sup>263</sup> *Id.*, at p. 20.

<sup>264</sup> *Weber*, CR 17-50033; Trial testimony of (b) (6) September 24, 2019. From notes of ICS consultant.

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- *Butterbrodt's Second Complaint to the Clinical Director*
- *Referral of Allegations to the OIG*
- *Retaliation against Butterbrodt with his Reassignment to Belcourt*

As Weber approached his mandatory retirement with the Commissioned Corps, he made application with the IHS to be a civilian physician. On December 6, 2011, Acting Deputy CEO of the Pine Ridge facility, Sophia Conroy, advised the Human Resources Department of the IHS that upon his retirement from the Commissioned Corps, Weber had “tentatively accepted the position of PR2015 with the following salary upon approval:

GS 15-1(:)	\$ 99,682
Market Pay:	\$105,372
Total:	\$205,000” <sup>265</sup>

“The Pine Ridge Hospital is in dire need of a Pediatrician,” Conroy wrote, “Dr. Weber has been with the Commission Corp [sic] for 30 years and will be retiring from the Commission Corp [sic] effective December 31, 2011. In order to keep the Pediatrician Services the Pine Ridge Hospital will like to retain Dr. Weber as the Supervisory Pediatrician. Dr. Weber will not request a retention bonus if he receives the proposed Market Pay. Dr. Weber has been working at the Pine Ridge Hospital as a provider for over 15 years and is familiar with the remoteness, staff, and patients.”

Administrative Support Assistant (b) (6) warned Conroy that she was concerned about the frequent visits of unaccompanied boys coming to see Weber when he was Clinical Director. Conroy had no comment when Cross told her that she was anxious about the situation; that it was unusual and disturbing.<sup>266</sup> **Conroy, to her knowledge, never did anything about it and the steady stream of boys coming to see Weber never stopped until Weber left the facility.**

On December 28, 2011, Weber signed a PHS Quarters Assignment and Acceptance Agreement. A handwritten notation across the top of the document indicated that the personnel change was “Moved Commission Corps to Civil Service.”<sup>267</sup> Beginning on January 1, 2012, Weber was a retiree of the PHS Commissioned Corps and a civilian employee of the Indian Health Service.<sup>268</sup> Weber was also now in management of the Pine Ridge Service Unit. In July 2011 Weber had been elevated to Acting Clinical Director,<sup>269</sup> a position he would hold until his resignation from the IHS in May 2016.<sup>270</sup>

### CEO Wehnona Stabler 2011

While Acting Clinical Director, Weber’s immediate supervisor was Wehnona Stabler, CEO of the Pine Ridge Service Center. Stabler lived near Weber in the IHS housing community where other neighbors observed the constant traffic of young boys to and

<sup>265</sup> Official Personnel File (OPF), Conroy Memorandum to Shanda Reiker, HR Specialist, dated December 6, 2011.

<sup>266</sup> ICS interview of (b) (6) Administrative Assistant to the CEO and Deputy CEO at the Pine Ridge Service Unit, Pine Ridge, South Dakota, November 14, 2019.

<sup>267</sup> Official Personnel File (OPF), PHS Quarters Assignment and Acceptance Agreement, dated December 28, 2011.

<sup>268</sup> Official Personnel File (OPF), Notice of Personnel Action, Office of Personnel Management, Approval Date January 13, 2012, signed (electronically) Geraldine A. Fox, Human Resources Officer.

<sup>269</sup> Official Personnel File (OPF), Commissioned Officer’s Effectiveness Report, November 28, 2011.

<sup>270</sup> ICS could not confirm whether Weber held the position of Acting Clinical Director continually or intermittently during this period.

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from Weber's house.<sup>271</sup> Stabler told *Frontline* that she had been made aware of the allegations of Weber's pedophilia, that a caller complained about Weber, but didn't provide her any specifics and it never went anywhere.<sup>272</sup> Asked if he was the anonymous caller, Dr. Butterbrodt told ICS that the call came from him, was by no means anonymous, and that he provided Stabler with all of the information he had collected. Butterbrodt urged Stabler "in the strongest possible terms" to remove Weber from Pine Ridge.<sup>273</sup> **Stabler took no action to investigate the allegations, remove Weber, or report the allegations to the Area Office or the OIG.**

In 2017, Stabler was indicted by a federal grand jury in South Dakota for failing to disclose a payment from a subordinate on government ethics forms. Stabler had accepted a \$5000 payment from Weber in January of 2013.<sup>274</sup> In June of 2018, Stabler plead guilty to the felony crime and was placed on a one-year unsupervised term of probation.

## BIA Law Enforcement Referral 2015

In the summer of 2015, Oglala Sioux Tribe Attorney General Tatawin Means contacted BIA law enforcement with information regarding possible victims of Weber.<sup>275</sup> The BIA invited the OIG Special Investigations Branch to participate in the criminal investigation in October of that year.

**Although allegations against Weber had been referred to the OIG in 2010,<sup>276</sup> this appears to have been the first time the OIG had initiated an investigation into the allegations against Weber.**

On June 15, 2015, (b) (6) was contacted by SA Fred Bennett.<sup>277</sup> (b) (6) now an adult and (b) (6), disclosed that he was sexually abused by Weber from when he was 11 years old, and a patient of Weber's, until he was about 18 years old. During his interview with Bennett, (b) (6) said that the years of sexual abuse by Weber included digital stimulation of his penis, oral and anal sex for which he was rewarded with money, clothes, alcohol, a gaming

<sup>271</sup> ICS interview of (b) (6) Director of Security at the Pine Ridge Service Unit, October 24, 2019. (identifying Stabler's house for ICS). As to activities at Weber's house, *Weber*, CR 17-50033, Trial testimony of Jacklyn Miller, IHS nurse at Pine Ridge, September 25, 2019. From notes of ICS consultant; Also, ICS interview of Jacklyn Miller, IHS nurse at Pine Ridge, Pine Ridge, South Dakota, November 19, 2019; See also, ICS interview of (b) (6) IHS nurse at Pine Ridge, Pine Ridge, South Dakota, September 30, 2019.

<sup>272</sup> *Frontline* reference to Wehnona Stabler, aired February 12, 2019.

<sup>273</sup> ICS interview of Dr. Mark Butterbrodt, former pediatrician at Pine Ridge, Rapid City, South Dakota, October 2, 2019. Butterbrodt's assertions to ICS consultants about the call were somewhat inconsistent with what he told the press. "Dr. Butterbrodt made one last effort to oust Mr. Weber. He said he called Wehnona Stabler, then the new CEO at the Pine Ridge IHS hospital and made an anonymous complaint." Christopher Weaver, Dan Frosch, and Gabe Johnson, "A Pedophile Doctor Drew Suspicions for 21 Years. No One Stopped Him", PBS *Frontline* in partnership with Wall Street Journal, February 8, 2019. Stabler did not report the allegations to OIG or the Area Office as she would have been required to under federal statute, regulation and IHS policy.

<sup>274</sup> *United States v. Stabler*, CR 17-50097 (DSD), Dk. No. 2 (Indictment), June 20, 2017. Dk. No. 47, (Judgment) June 28, 2018.

<sup>275</sup> *In the Matter of the Search of 2315 5th Avenue, Spearfish, South Dakota*, 5:17 mj-20 (DSD), Search Warrant Application and Affidavit of Curt Muller, Dk. No. 2, p. 17.

<sup>276</sup> Birney email to Vantrease, dated August 3, 2010; Also, Vantrease email to Birney, dated August 9, 2010. "We will log the complaint, but unless there is something more specific than an affiliation with Capt Keats, we will have to rely on the IHS review at this time."

<sup>277</sup> *Weber*, CR 17-50033; Trial testimony of Fred Bennett, Special Agent, Bureau of Indian Affairs Law Enforcement., September 24, 2019. From notes of ICS consultant.

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system, and other enticements.<sup>278</sup> Weber gave (b) (6) Percocet and Vicodin and testified that he knew Weber gave other boys drugs as well. (b) (6) recalled that Weber brought him gifts from Thailand and Germany.<sup>279</sup>

(b) (6) recalled that he was incarcerated in the Juvenile Services Center (JSC) in Rapid City on December 24, 2004, and **Weber signed him out**. They then engaged in sex acts and Weber gave him money. Then (b) (6) absconded. JSC records confirmed the events related by (b) (6) as to his incarceration, release to Weber, and failure to return to the facility in December 2004.<sup>280</sup>

(b) (6) told agents that most of the sex abuse occurred in Weber's IHS housing.<sup>281</sup> (b) (6) gave a detailed description of Weber's naked body. (b) (6) indicated that he engaged in the sex with Weber primarily for the money Weber was willing to give him in exchange for sex. Weber continued giving (b) (6) money, and other gifts, no longer in exchange for sex, when (b) (6) was in custody in the State Penitentiary. The continued contact between them was verified with several letters (b) (6) provided to law enforcement.<sup>282</sup>

Reminiscent of Weber's conduct in Montana and explanation for having boys spend the night at his home, (b) (6) testified that when he was young "Dr. Weber was the only one who cared for me when my family put me out".<sup>283</sup>

When later interviewed by the OIG, Weber acknowledged knowing (b) (6) and claimed that he probably gave money to (b) (6) but that the payments were for housework. Weber denied sexually abusing him. He admitted to checking (b) (6) out of JSC, but again denied (b) (6)'s allegations of sexual congress. **Weber also admitted to bailing out other Indian boys.**<sup>284</sup> While admitting that boys in Browning spent the night at his home when he was at Blackfeet, Weber denied any boys had ever spent the night at his house in Pine Ridge.<sup>285</sup>

Later, in a *Frontline* interview, (b) (6) recounted an incident when he had gone to Weber's house for money. As Weber started to molest him, (b) (6) (referred to in the *Frontline* broadcast as (b) (6) "snatched" his wallet and fled.<sup>286</sup> IHS Security records<sup>287</sup> reflect that this incident occurred on January 15, 2005. Tribal police also responded to reports of an assault and located (b) (6) not too far from Weber's

<sup>278</sup> *In the Matter of the Search of 2315 5th Avenue, Spearfish, South Dakota*, 5:17 mj-20 (DSD), Search Warrant Application and Affidavit of Curt Muller, Dk. No. 2, p. 17.

<sup>279</sup> *Weber*, CR 17-50033; Trial testimony of (b) (6) September 24, 2019. From notes of ICS consultant.

<sup>280</sup> *Id.*, Also, *In the Matter of the Search of 2315 5th Avenue, Spearfish, South Dakota*, 5:17 mj-20 (DSD), Search Warrant Application and Affidavit of Curt Muller, Dk. No. 2, pp. 17-18.

<sup>281</sup> *In the Matter of the Search of 2315 5th Avenue, Spearfish, South Dakota*, 5:17 mj-20 (DSD), Search Warrant Application and Affidavit of Curt Muller, Dk. No. 2, pp. 18. At trial, (b) (6) clarified that all of the abuse occurred in Weber's home – "never at the hospital". Trial testimony of (b) (6) September 24, 2019. From notes of ICS consultant.

<sup>282</sup> *Id.*, at 18. It was noted that on the day of Weber's interview, a young boy was at Weber's house. *Weber*, CR 17-50033, Transcript of Interview with Dr. Patrick Weber, May 19, 2016, Dk. No. 50, pp. 14-15.

<sup>283</sup> Trial testimony of (b) (6) September 24, 2019. From notes of ICS consultant.

<sup>284</sup> *Id.*, at pp. 13-14, 22-27.

<sup>285</sup> *Id.*, at p. 12.

<sup>286</sup> *Frontline* interview (telephonic) of (b) (6) aired February 12, 2019.

<sup>287</sup> As noted earlier, ICS was provided a summary of service unit security encounters involving Weber in the form of an annotated spreadsheet with limited details about each incident. The security staff are not associated with tribal police. (b) (6) arrest for this incident was made by tribal police. It is used here only to establish the date with greater precision.

home. (b) (6) disclosed to Officer Hudspeth what Weber had been doing to him and, according to Hudspeth, because the tribal authorities did not have jurisdiction over the crime alleged, he passed the accusation along to federal authorities.<sup>288</sup>

ICS did not locate any contemporary documentation of the referral – which may have been only a verbal referral -- **but no further investigation was initiated. (b) (6) was never contacted by federal authorities<sup>289</sup> until the 2015 investigation had been initiated.**

After (b) (6)s disclosures, agents began compiling a list of other potential victims from other sources such as witness interviews, medical records, police reports, anonymous tips, and anecdotal information provided by other witnesses.<sup>290</sup>

On July 8, 2015, (b) (6) (b) (6) emailed Rick Sorensen, Deputy Area Director, and Ron Cornelius, Area Director, for the Great Plains Area. *“I have looked at the investigative report and I called John Long this evening. He said that the investigation is still ongoing but that they have opened a federal case with the US Attorney's Office. No action on their part is imminent. But they felt they should let IHS know of their findings in case IHS wanted to take any action. I think the best course of action is to discuss this with Employee Relations and with Alice LaFontaine*

*tomorrow....”<sup>291</sup> Included with the email was the undated, two-page Report of Investigation (ROI) prepared by BIA SA (b) (6)<sup>292</sup> The report, which (b) (6) confirmed he had provided to his supervisor who delivered it to the Area Office,<sup>293</sup> detailed the disclosures by (b) (6) and advised the reader that Weber had also been the subject of accusations in Browning.<sup>294</sup>*

On July 9, 2015, (b) (6) sent a second email to Sorensen and Cornelius, and included fellow (b) (6), titled “Pine Ridge Investigation.” *“Following up on the investigative report ... I also spoke with John Long, Chief Investigator for BIA Police at Pine Ridge. No immediate action of [sic] their part is anticipated but they are proceeding forward on the investigation. They sent the information to IHS in the event IHS wanted to take any action with respect to this provider. You have no way of corroborating the investigation. There are no names used that would allow you to cross reference your own records. At this time, you have been put on notice by BIA Police of a possible crime or crimes committed by one of your providers and a link between those crimes and the providers Federal duties and in particular, patient care duties. That being the case, the questions (sic) arises to what action can/should be taken. From the personnel perspective, I do not think there is sufficient basis to invoke indefinite*

<sup>288</sup> Frontline interview of Dan Hudspeth, former Oglala Sioux Tribe police officer, aired February 12, 2019.

<sup>289</sup> Frontline broadcast aired February 12, 2019. The narrator identifies (b) (6) as the source of the assertion that he was never contacted by federal authorities.

<sup>290</sup> Weber, CR 17-50033; Trial testimony of Curt Muller, Special Agent, HHS OIG, September 26, 2019. From notes of ICS consultant.

<sup>291</sup> (b) (6) email to Sorensen and Cornelius, dated July 8, 2015.

<sup>292</sup> The email exchange suggests that the (b) (6) memo came to (b) (6) from Sorensen and that it was first provided to the Area Office, not the OGC. ICS does not have the emails that preceded the ones referenced here, but conclude that there is at least one relevant communication – where the report was forwarded to (b) (6) – is missing. (b) (6) confirmed that the report was delivered to the Area Office, not OGC.

<sup>293</sup> ICS interview of (b) (6) former BIA Special Agent at Pine Ridge, Rapid City, South Dakota, October 1, 2019.

<sup>294</sup> (b) (6) email to Sorensen and Cornelius, dated July 8, 2015. (b) (6) report attached to email.

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*suspension of the provider, See attached MSPB case [Hernandez v. Department of Navy]. I suggest that we have a discussion regarding what other actions may be warranted. **Our recommendation is to place him on summary suspension of clinical privileges (action available to you through the Bylaws) and placement on some administrative duty and away from patient care.** I know you have your hands full with Winnebago but if you would like to discuss this I will try to be available."*<sup>295</sup>

On July 10, 2015, Sorenson responded to (b) (6) "I am out of the office at a hospital (b) (6) . I have copied Shelly Harris<sup>290</sup> on this message. I think I need to

*let Shelly take it from here since she has oversight of the service units."*<sup>297</sup>

**In July 2015, the OIG was not involved in the investigation. Everyone involved in this exchange – in the Area Office and at the OGC – are required by federal regulation to report allegations of criminal conduct<sup>298</sup> and allegations that constitute a risk to public safety.<sup>299</sup> None did so. The OIG was advised of the allegations and brought in to an already initiated BIA investigation in October 2015.<sup>300</sup>**

Almost four months later, in an October 30, 2015, email, shortly after the BIA had brought the OIG into the Weber

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*ICS does not further recount here what happened to Weber's victims. Several other victims testified or were interviewed, and their graphic depictions of sexual assault, degradation, and abuse are available in court documents. ICS emphasizes, however, the importance of confronting the real and personal damage Weber has done. The victims who came forward span almost 30 years (the last known victim in 2011) and represent an unbelievable scope of human wreckage. For every known victim there are likely dozens of victims who endured their abuse in silence and will do so until the end of their life. The agency must appreciate – as so many of Weber's managers seemingly failed to do – the destruction caused by child sexual abuse and the urgency of action such allegations demand.*

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<sup>295</sup> (b) (6) email to Sorenson, Cornelius, and (b) (6) dated July 9, 2015. ICS emphasis added.

<sup>296</sup> In July 2015, Harris was serving as the Acting Deputy Area Director Field Operations, Great Plains Area Office. ICS interview of Shelly Harris, Chief Executive Officer (CEO), Quentin Burdick Memorial Hospital, Belcourt, North Dakota, November 2, 2019.

<sup>297</sup> Id. Part of the same email string, adding Harris.

<sup>298</sup> 45 CFR § 73.735-1301 - Responsibility for reporting possible criminal violations. An employee who has information which he or she reasonably believes indicates a possible offense against the United States by an employee of the Department, or any other individual working on behalf of the Department, shall immediately report such information to his or her supervisor, any management official, or directly to the Office of the Inspector General.

<sup>299</sup> 45 CFR § 73.735-1302 - Responsibility for reporting allegations of misconduct. An employee who has information which he or she reasonably believes indicates the existence of an activity constituting (a) a possible violation of a rule or regulation of the Department; or (b) mismanagement, a gross waste of funds, or abuse of authority; or (c) a substantial and specific danger to the public health and safety, shall immediately report such information to his or her supervisor, any management official of the Department, or directly to the Office of the Inspector General.

<sup>300</sup> *Weber*, CR 17-50033; Trial testimony of Curt Muller, Special Agent, HHS OIG, September 26, 2019. From notes of ICS consultant.

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investigation, Harris advised Conroy and Weber that “*Dr Weber is to Be [sic] assigned ONLY Administrative Clinical Director duties effective immediately to ensure Medical Leadership & Oversight. Dr. Weber is not to perform any Direct Patient Care until further notice.... Dr. Weber will be focusing on CMS deficiencies & assist with a corrective action plan.*”<sup>301</sup> Harris informed the OIG of this action the following day.<sup>302</sup>

Harris told ICS that the first she ever “officially heard” of the accusations of pedophilia against Weber was when she was contacted by OIG SA Muller in the Fall of 2015.<sup>303</sup> While this may be her recollection, her memory fails to account for the July 9-10, 2015, email string forwarded to her by Sorenson which suggests she either did not read its contents at the time or did not take the matter – “... *you have been put on notice by BLA Police of a possible crime or crimes committed by one of your providers and a link between those crimes and the providers Federal duties and in particular, patient care duties.*” -- seriously. She received a letter about Weber from CEO Colton in March 2009. Additionally, she was on email strings regarding Weber, and specifically mentioned by name in at least two of those emails.<sup>304</sup> Harris said the Pine Ridge Service Unit leadership should have

“erred on the side of caution” and reported the allegations to the Area Office because children were possibly being assaulted. Harris speculated that the Aberdeen Service Unit did not report the allegations to the Aberdeen because “they did not want to lose a provider.” Harris told ICS that she was concerned about the Medical Executive Committee investigating “one of their own” and that it is a “conflict.” In retrospect, she expressed concern about “how thorough” the committee was in investigating one of their colleagues; “how far did the committee go to investigate the allegations is a concern of mine.”

There is also no indication from the extant records that (b) (6) Cornelius or Sorenson followed up on the July discussions to ensure appropriate action was taken.<sup>305</sup> The willingness of Area and Unit management to ignore and suppress any allegation against Weber seems to have blessed his career right up to the end.

**ICS noted, with some degree of incredulity, that the Area Office took almost four months to address the OGC directive -- and then, when action was spurred by the OIG, Harris found it appropriate to keep Weber in the Pine Ridge Service Unit as the Acting Clinical Director, with access to hospital records, access to patients (victims, potential victims, and**

<sup>301</sup> Harris email to Conroy and Weber, dated October 30, 2015.

<sup>302</sup> Id. Forwarded to SA Muller, OIG, October 31, 2015.

<sup>303</sup> ICS interview of Shelly Harris, Chief Executive Officer (CEO), Quentin Burdick Memorial Hospital, Belcourt, North Dakota, October 29, 2019.

<sup>304</sup> Keats email to Colton, Colton’s response, dated April 10, 2009. “*I sent a letter to (b) (6) (with a copy to Mr. Pourier and Ms. Shelly Harris) stating that the Medical Executive committee was not, in my opinion, the appropriate body to investigate such allegations.*” (ICS emphasis added); Keats email to Colton, Harris and Pourier, dated April 10, 2009 (“*I believe AAO [Aberdeen Area Office] would have a problem with such a move. I have forwarded this to Ms. Harris for her input as well.*”) (ICS emphasis added); Keats email to Red Thunder, Harris, McSherry, Pourier, and Colton, dated June 12, 2009 (“*I know you are aware of the Medical Officer issue at the Pine Ridge Service Unit where CAPT S. Patrick Weber was accused of inappropriate behavior as a medical officer, ...*”)

<sup>305</sup> As noted in the INTRODUCTION, however, there are significant gaps in either documentation or the recovery of documentation. This observation is made based on the evidence available during the review upon which conclusions could be drawn.

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witnesses), and as a line supervisor of facility staff (potential witnesses). **For an agency that exhibited little operational opposition to the rapid reassignment of employees to other facilities, leaving Weber in place at Pine Ridge AND in a supervisory position was not the best exercise of management judgment.** It was, however, the easiest way to address the situation if avoiding confrontation and controversy is prioritized over patient safety.

In fairness to Harris, however, the directive from OGC did not recommend a more consequential response; no one involved appeared to appreciate the danger of allowing an accused pedophile to have continued access, in the facility, to the targeted group of teenage Indian males in the Pine Ridge community he was accused of molesting. In fact, numerous managers indicated to ICS that confronted with allegations of pedophilia they would remove the provider from patient care and assign them to some administrative tasks such as chart reviews until the investigation was complete.<sup>306</sup> ICS concluded that this limited administrative reaction reflected a misunderstanding of pedophilia – that a predator will discontinue his abuse if his professional access is restricted -- and an assumption that removing the provider from the examining room is sufficient to deprive the provider from access to his preferred patient population which he has spent countless hours cultivating and grooming for abuse. **The better response would have been to remove him from the facility and**

**the best response would have been to remove him from the community entirely.**

When asked about her decision, Harris told ICS that she thought this was the best way to keep Weber from seeing patients while not alerting him to the criminal investigation.<sup>307</sup> However, that justification seems inconsistent with the fact that Weber told her the next day that *“I do not see many patients any more, only those who ask to see me, so this is easy to accomplish.... Several months ago I became aware that former employee of IHS who had been on a crusade to destroy my career was back in the area. I also became aware that he was working to get a medication program that the Tribal DA was advocating for in the treatment of alcoholics. I have been expecting that he would restart his campaign against me, perhaps with the DA’s support...”*<sup>308</sup> Weber was already aware that he was being investigated; Harris was immediately advised of that fact by Weber himself.

**(b) (6)** came to Pine Ridge as a Medical Support Assistant (MSA) in the Pediatrics Department (PEDS) in September 2015. Weber would tell her that patients – which she discovered were only young teenage boys -- would be coming to the clinic to see him and that she was to call him in the Administration Offices when they arrived at PEDS.<sup>309</sup> The boys would randomly come into PEDS and ask to see Weber; they were unaccompanied, did not have appointments, and did not go through normal patient registration at the entrance of the hospital and fill out the paperwork as the

<sup>306</sup> ICS interview of Dr. Lee Lawrence, Chief Medical Officer (CMO), Great Plains Area Office, Aberdeen, South Dakota, October 15, 2019.

<sup>307</sup> ICS interview of Shelly Harris, Chief Executive Officer (CEO), Quentin Burdick Memorial Hospital, Belcourt, North Dakota, November 2, 2019.

<sup>308</sup> Weber email response to Harris, dated October 31, 2015. ICS emphasis added.

<sup>309</sup> ICS interview of **(b) (6)** former Medical Support Assistant at the Pine Ridge Service Unit, Rapid City, South Dakota, November 27, 2019.

regular patients did when they came to the PEDS Clinic. When the boys arrived, (b) (6) called Weber and he would come over to PEDS from the Administration Office. Weber used one of the examination rooms for about 20 minutes to see the young boys. Weber was the Acting Clinical Director at the time, and he was not actually working in the PEDS Clinic.

An Administrative Support Assistant at the Pine Ridge facility came to the hospital in October 2015. She personally observed that it was common for young boys to visit the Administrative Office after hospital hours, which she clarified as after 5:30 p.m., and ask to see Weber. These boys were often alone, although sometimes there would be two to three boys in a group. Weber would always take the boy(s) – being 12 – 14 years of age -- into his office and close the door.<sup>310</sup> This occurred the first week in her new position and lasted until Weber retired from federal service.<sup>311</sup> (b) (6) told ICS that young teenage boys always came to see Weber; never any females. When Weber was the Clinical Director “this happened a lot”. She would see the same faces of the same boys always coming to see Weber in the Administration office. Cross recalled asking some of the boys for their names, but they would not give them to her, saying they would come back to see Weber later. Jacklyn Miller told ICS that Weber “got his way around here” because he was the Clinical Director the last couple of years before he left; Weber “had a lot of say so and nobody challenged him.”

During this final year, while Weber was supposedly restricted to administrative duties and was not to be seeing patients, Weber still ordered Sexually Transmitted Disease (STD) tests for male patients and distributed Zithromax (an STD medication) from his office.<sup>312</sup> Ordering STD exams for all adolescent male patients, regardless of complaint, was a practice of Weber’s since at least 2009.<sup>313</sup> Between 2011 and 2016, when Weber served as Acting Clinical Director, Marjorie Schmidt, then the Deputy Clinical Director at Pine Ridge, observed Weber storing and dispensing Zithromax to adolescent boys from his office. Schmidt confronted Weber, reminding him that prescription drugs could only be dispensed through the pharmacy and only by prescription. **Schmidt told ICS that her efforts were to no avail and Weber continued to keep and dispense drugs from his office without a prescription until he left in May of 2016.**<sup>314</sup>

Weber also continued his nighttime visits to the hospital rooms of adolescent males. (b) (6) saw Weber – then working in Administration as the Clinical Director and not actively treating patients -- come to the Acute floor 3 or 4 times a day after he admitted boys to the hospital. Weber would also take the video game console, which he kept in his office in Administration, into the rooms to give to the boys. Because Weber was admitting boys for minor medical issues (non-serious) so often, (b) (6) started to follow Weber

<sup>310</sup> ICS interview of Diane Little Hawk, Administrative Support Assistant at Pine Ridge, Pine Ridge, South Dakota, November 12, 2019.

<sup>311</sup> Id.

<sup>312</sup> ICS interview of (b) (6) IHS nurse at the Pine Ridge Service Unit, Pine Ridge, South Dakota, DATE

<sup>313</sup> First Butterbrodt email to Colton, Pourier and Red Willow, dated February 27, 2009.

<sup>314</sup> ICS interview of Marjorie Schmidt, former Deputy Clinical Director at the Pine Ridge Service Unit, Gordon, Nebraska, November 26, 2019. Schmidt had also served on the 2009 *ad hoc* committee assembled by Dr. Jan Colton.

into the hospital rooms when he came to visit the boys.<sup>315</sup>

Dr. Cosme served as the Acting Clinical Director sometime around 2010 or 2011. Although he could not recall the dates with precision, this would have been before Weber became the Acting Clinical Director in July of 2011. While Acting Clinical Director, Cosme had access to the files in the Clinical Director's office file cabinet. One drawer contained numerous files on Pine Ridge Hospital medical providers who had been the subject of complaints, internal investigations, and disciplinary action.<sup>316</sup> Dr. Cosme told ICS that the files included the complaints filed against Weber and the *ad hoc* Investigation Committee's report. Dr. Cosme further advised that these files were "no longer there"; Cosme does not know who removed the files or where the files are now located.

Just before his departure in May of 2016, Cross came to work on one Sunday in the Administration office and found Weber in the office, shredding documents and cleaning out his office. When she saw Weber shredding documents, she immediately thought to herself, "he is shredding the evidence."<sup>317</sup> Weber told Cross that "these are my last few days and I'm sure you are going to hear that I'm leaving the hospital." Sometime after Weber cleaned out his office, OIG agents arrived at the hospital to take his computer. Marjorie Schmidt and (b) (6) were asked to produce records relating to Weber that were needed for the OIG investigation.

<sup>315</sup> ICS interview of (b) (6) Registered Nurse at the Pine Ridge Service Unit, Pine Ridge, South Dakota, November 27, 2019.

<sup>316</sup> ICS interview of Dr. Fernando Cosme, Pediatrician at the Pine Ridge Service Unit, Pine Ridge, South Dakota, November 14, 2019.

<sup>317</sup> ICS interview of (b) (6) Administrative Assistant to the CEO and Deputy CEO at the Pine Ridge Service Unit, Pine Ridge, South Dakota, November 14, 2019.

<sup>318</sup> ICS interview of Marjorie Schmidt, former Acting Clinical Director at the Pine Ridge Service Unit, Gordon, Nebraska, November 26, 2019.

<sup>319</sup> Official Personnel File (OPF), Conroy letter to Weber, dated May 11, 2016.

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Very few documents regarding Weber were located.<sup>318</sup>

**Summarizing the events of 2015, after almost four months of inaction regarding Weber, management took steps which**

- *allowed him continued access to the same adolescent Indian male population into which he had spent years ingratiating himself,*
- *allowed him to stay in the service unit working among the most probable pool of witnesses against him,*
- *allowed him to remain in a management role as the supervisor of employees who might be witnesses against him, and*
- *allowed him continued access to IHS communications and documents where he could delete any and all records that may contain evidence against him.*

Almost a year after the BIA investigation had been initiated, and eight months after the OIG had joined the investigation, on May 11, 2016, Weber was placed on paid administrative leave.<sup>319</sup> Four days later, on Sunday, May 15, 2016, in an email to the Area Administrative Officer, Weber announced his decision to retire from the

IHS<sup>320</sup>, and resigned the following day on May 16, 2016.<sup>321</sup>

On May 19, 2016, SA Bennett saw Weber stopped in construction traffic in Pine Ridge and told him that agents wanted to interview him. Weber had not been, prior to that day, interviewed in relation to the allegations made against him.

SA Bennett and SA Muller interviewed Weber that same day at his home in IHS housing. He was in the process of moving out due to his resignation. During the interview, Weber denied sexually abusing boys, but did admit, as stated above, to knowing victim (b) (6)<sup>322</sup>

During the investigation, agents established that Weber had, over the course of his IHS career, repeatedly traveled to various Third World countries known for sex tourism, most often Thailand. After one such trip, Weber had returned from Thailand with a black eye which he claimed to have sustained in a fall.<sup>323</sup> During the interview, Weber admitted to traveling to these countries and engaging in sex with young men, but that he "thought" they were all adults. Agents concluded from the answers given during the interview that Weber did not attempt to verify his victims were in fact adults.<sup>324</sup> Weber was asked, "Did you have to pay them to have sexual intercourse when you were in Thailand?" Weber responded, "Well, not exactly, but you know if you're having sex with somebody you do favors for them, like take them out to eat or buy them

some clothes. But I don't know if you could really classify it as a fee." Investigators later determined from the review of airline records that Weber had traveled to Bangkok, Thailand, on approximately 10 different occasions from the years 2010 to 2015.<sup>325</sup> Although Weber claimed that many trips to Thailand involved medical conferences he admitted that all of these trips were paid for out of his own pocket and the IHS never covered the costs of travel. Weber admitted viewing gay male adult sites on the internet but denied using his government issued laptop to search for or view pornography. Weber could not remember the name of any internet pornography site he had ever viewed. During the discussion regarding his pornography habits on the internet, Weber was asked, "Any juvenile pornography whether video or still pictures?" Weber responded, "I can't ... no. Not normally, no." Follow up questions were asked of Weber regarding his use of computers and him visiting websites containing possible child pornography. Weber stated, "Not that I know of."<sup>326</sup>

Weber admitted that he had been polygraphed at least twice while at Pine Ridge. Once by the FBI in 1996 when he was accused of molesting a patient. He recalled that he passed.<sup>327</sup> Then he was polygraphed during the SDBMOE investigation in 2009. He did not recall that

<sup>320</sup> Official Personnel File (OPF), Weber email to Administrative Officer Kathy Jarussi and Conroy, dated May 15, 2016.

<sup>321</sup> Official Personnel File (OPF), Notice of Personnel Action, Weber Resignation effective May 16, 2016, dated May 27, 2016, signed (electronically) Alice L. LaFontaine, Human Resources Officer.

<sup>322</sup> *In the Matter of the Search of 2315 5th Avenue, Spearfish, South Dakota*, 5:17 mj-20 (DSD), Dk. No. 2, at p. 25.

<sup>323</sup> ICS interview of (b) (6) former IHS credentialing specialist at Pine Ridge Hospital, Sheridan, Wyoming, August 1, 2019.

<sup>324</sup> *Weber*, CR 17-50033, Transcript of Interview with Dr. Patrick Weber, Dk. No. 50, pp. 17-20.

<sup>325</sup> *Id.*, at p. 24.

<sup>326</sup> *Id.*, at pp. 124-126.

<sup>327</sup> *Id.*, at p. 64.

he failed.<sup>328</sup> Weber told Muller and Bennett that he went for a 3-day psychological assessment during the licensing board inquiry, and that the SDBMOE had ultimately “cleared” him.<sup>329</sup>

In February of 2017, Weber was indicted for numerous acts of criminal sexual assault against children.

### *Prosecution and Criminal Proceedings*

**On February 22, 2017, a federal grand jury in South Dakota indicted Weber on 10 counts of crimes against children including Aggravated Sexual Abuse, Sexual Abuse, and Sexual Abuse of a Minor.**<sup>330</sup> **All charges related to the abuse of child patients under his care while he was working at the IHS facility in Pine Ridge.** The indictment was sealed and remained so until February 28, 2017, when Weber appeared before a U.S. Magistrate in Rapid City and plead not guilty to all charges in the indictment.<sup>331</sup> On June 19, 2017, Weber filed a motion to suppress evidence secured by a search warrant executed during the investigation.<sup>332</sup> An evidentiary hearing was conducted on November 1, 2017, and the motion taken under advisement by the Court pending

supplemental briefing based on evidence adduced at the hearing.<sup>333</sup>

On February 7, 2018, while the South Dakota prosecution was still pending, a **federal grand jury in Montana indicted Weber on five counts of Aggravated Sexual Abuse of a Child for crimes against children on the Blackfeet Indian Reservation while he was an IHS pediatrician at the Browning facility between 1992 and 1995.**<sup>334</sup> Weber appeared before the U.S. Magistrate in Great Falls on the Montana indictment and plead not guilty on March 6, 2018. A jury trial was set for May 14, 2018.<sup>335</sup>

On April 13, 2018, in the Montana case, Weber filed a series of motions to suppress evidence and statements made, and other evidentiary requests.<sup>336</sup> Trial was continued to June 25, 2018.<sup>337</sup> Weber moved to continue the motions hearing and trial date. The Court scheduled a motions hearing for June 26, 2018, and continued the trial date to August 6, 2018.<sup>338</sup>

That same day, April 13, 2018, in South Dakota, the U.S. Magistrate Judge submitted findings and recommendations regarding the motion to suppress filed in the South Dakota case on June 26, 2017.<sup>339</sup> The final decision

<sup>328</sup> Id., at pp. 68-71. Weber’s 2013 OPF contained a January 17, 2013, letter from (b) (6) SDBMOE, indicating that the SDBMOE had conducted an audit of their “Closed” files and advised Weber that his file “was closed with no action warranted”. Official Personnel File (OPF), February 25, 2013.

<sup>329</sup> Id., at p. 68.

<sup>330</sup> *United States v. Weber*, CR 17-50033 (DSD, Western Division) [18 U.S.C. §§2241(c), 2242(A)(c), 2243(a) and 1152]; Dk No. 1.

<sup>331</sup>

<sup>332</sup> *Weber*, CR 17-50033; Dk No. 28.

<sup>333</sup> *Weber*, CR 17-50033; Dk No. 43.

<sup>334</sup> *United States v. Weber*, CR 18-14-GF-BMM (DMT, Great Falls Division) [18 U.S.C. §§2241(c), 2243(a), 2244(a)(2) and 1152]; Dk No 1.

<sup>335</sup> *Weber*, CR 18-14-GF-BMM, Dk Nos. 10, 13.

<sup>336</sup> *Weber*, CR 18-14-GF-BMM, Dk Nos. 20-29.

<sup>337</sup> *Weber*, CR 18-14-GF-BMM, Dk No. 34.

<sup>338</sup> *Weber*, CR 18-14-GF-BMM, Dk Nos. 45, 46.

<sup>339</sup> *Weber*, CR 17-50033; Dk No. 55.

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then rested with the U.S. District Judge in South Dakota.

After another short continuance in the Montana prosecution, Weber's motions were heard on July 10, 2018.<sup>340</sup> Weber filed another motion to continue the trial, but U.S. District Court Judge Brian Morris denied the request.<sup>341</sup> Weber then asked that the trial be moved to South Dakota. That motion was also denied.<sup>342</sup> Due to an undisclosed and "unforeseen" event occurring the weekend before trial was set to begin, trial was continued to September 4, 2018.<sup>343</sup>

After a three-day jury trial in Great Falls, on September 6, 2018, Weber was found guilty of four counts of the Montana Indictment and not guilty on one count.<sup>344</sup> Weber was remanded into custody and sentencing was set for December 13, 2018.<sup>345</sup>

Meanwhile, in South Dakota, on October 15, 2018, Chief U.S. District Judge Jeffrey Viken denied the motion to suppress filed in the South Dakota case, and set the trial for November 13, 2018.<sup>346</sup>

On October 23, 2018, the grand jury in South Dakota handed down a 12-count Superseding Indictment.<sup>347</sup> A motion to continue the trial date was granted and the trial reset for January 8, 2019.<sup>348</sup> On December 10, 2018, Weber requested

another continuance of the trial, and trial was continued to February 19, 2019.<sup>349</sup>

Weber asked for a continuance of the December 2018 sentencing on the Montana charges and sentencing was set for January 2019.<sup>350</sup> On January 16, 2019, on the Montana Indictment and conviction, Weber was sentenced to over 18 years in prison (220 months), a \$200,000 fine and five years of supervised release by U.S. District Judge Morris.<sup>351</sup> Weber remained in custody.

On January 29, 2019, Weber appealed his conviction and sentence to the United States Court of Appeals for the Ninth Circuit.<sup>352</sup> The Circuit has set the case for oral arguments in Seattle on February 6, 2020.<sup>353</sup> On January 17, 2020, the Circuit Court vacated the oral argument and submitted the case on the briefs. At this writing the Montana appeal is still pending.

On January 23, 2019, the prosecution in the South Dakota case sought a continuance of the trial. A series of defense motions followed on January 25, 2019. On February 7, 2019, the government's motion was granted, and trial was reset for September 23, 2019.<sup>354</sup>

**On August 20, 2019, a federal Grand Jury in South Dakota handed down a new indictment charging Weber with two additional counts of Sexual Abuse of a**

<sup>340</sup> *Weber*, CR 18-14-GF-BMM, Dk No. 50.

<sup>341</sup> *Weber*, CR 18-14-GF-BMM, Dk Nos. 52, 54.

<sup>342</sup> *Weber*, CR 18-14-GF-BMM, Dk Nos. 62, 63.

<sup>343</sup> *Weber*, CR 18-14-GF-BMM, Dk No. 87.

<sup>344</sup> *Weber*, CR 18-14-GF-BMM, Dk No. 122.

<sup>345</sup> *Weber*, CR 18-14-GF-BMM, Dk No. 126.

<sup>346</sup> *Weber*, CR 17-50033; Dk Nos. 59, 60.

<sup>347</sup> *Weber*, CR 17-50033; Dk No. 62.

<sup>348</sup> *Weber*, CR 17-50033; Dk Nos. 61, 64.

<sup>349</sup> *Weber*, CR 17-50033; Dk Nos. 66, 67.

<sup>350</sup> *Weber*, CR 18-14-GF-BMM, Dk Nos. 135, 136.

<sup>351</sup> *Weber*, CR 18-14-GF-BMM, Dk No. 145.

<sup>352</sup> *Weber*, CR 18-14-GF-BMM, Dk No. 150.

<sup>353</sup> *United States v. Weber*, CA 19-3022, Dk. No. 28, November 24, 2019.

<sup>354</sup> *Weber*, CR 17-50033; Dk Nos. 70, 72-76, 78.

**Minor (18U.S.C. §§ 2243(a) and 1152) involving an unidentified victim.**<sup>355</sup>

The government filed a Notice of Intent to Offer Evidence pursuant to Rules 413 and 414 of the Federal Rules of Evidence, which put Weber on notice that victims not identified in the indictment would be called to testify to establish a propensity and pattern of conduct.<sup>356</sup>

On September 10, 2019, the federal grand jury in South Dakota returned a Second Superseding Indictment against Weber, charging him again with 12 counts that include Aggravated Sexual Abuse (18 U.S.C. §2241(c)), Sexual Abuse of a Minor (18 U.S.C. §2243(a)), and Sexual Abuse (18 U.S.C. §2242(2)(A)).<sup>357</sup> The amended pleading merely changed some of the wording in the counts to clarify the accusation. On September 13, 2019, the government moved to dismiss one of the counts of the Second Superseding Indictment when it was concluded that one of the victims may have been older than 12 years at the time of the assault.

Trial commenced in Rapid City, South Dakota, on September 23, 2019. During the trial two counts were dismissed on motion of the government after the prosecution concluded its witnesses had not testified as to facts that would sustain a conviction.<sup>358</sup> Another count was dismissed at the close of

the government's case, pursuant to Rule 29, *Federal Rules of Criminal Procedure*, for failure of the prosecution to prove the allegations of that count.<sup>359</sup>

On September 27, 2019, Weber was found guilty on all remaining eight counts of the indictment.<sup>360</sup>

Sentencing on the South Dakota conviction was set for February 10, 2020.<sup>361</sup>

### Agency Response

IHS maintains its policies and procedures in the Indian Health Manual (IHM). The policy "Ethical and Professional Conduct of Health Care Providers," in the IHM, establishes guidelines and procedures for IHS staff at all levels of the agency to ensure that staff, including healthcare providers (e.g., physicians, nurses, dentists, psychologists), adhere to ethical standards of conduct.<sup>362</sup> This policy currently prohibits any sexual contact or sexual relationship between a patient, client, or parent or guardian of a pediatric patient or client.<sup>363</sup> IHS also requires staff to report any misconduct, and the policy outlines the reporting structure for such allegations.<sup>364</sup>

In 2018, IHS leadership notified all staff of the agency's "**zero-tolerance**" policy, which prohibits staff from engaging in intimate physical relationships with patients

<sup>355</sup> *United States v. Weber*, CR 19-50114, (DSD, Western Division), Dk. No. 1, filed August 20, 2019.

<sup>356</sup> *Weber*, CR 17-50033; Dk Nos. 82, 83.

<sup>357</sup> *Weber*, CR 17-50033; Dk No. 97.

<sup>358</sup> *Weber*, CR 17-50033; Dk No. 122.

<sup>359</sup> *Weber*, CR 17-50033; Dk No. 102.

<sup>360</sup> *Weber*, CR 17-50033; Dk No. 129 (Verdict form); See also, Christopher Weaver, "Former U.S. Indian Health Service Doctor Is Found Guilty of Abusing Boys", Wall Street Journal, September 27, 2019.

<sup>361</sup> *Weber*, CR 17-50033; Dk No. 131. Arielle Zions, "Weber sentencing set for February 2020", Rapid City Journal, October 1, 2019.

<sup>362</sup> IHM, Part 3, Chapter 23 (Ethical and Professional Conduct of Health Care Providers) (August 2004). The policy applies to health care providers, which the IHM defines as "Anyone who provides physical or behavioral health treatment to patients[.]" IHS, IHM, pt. 3; Ch. 23, section 3-23.1(C) (Definitions). This includes IHS employees, volunteers, and providers rendering care at an IHS facility under a staffing contract.

<sup>363</sup> IHS, IHM, pt. 3; Ch. 23; sections 3-23.1(A)(2) (Introduction).

<sup>364</sup> IHS, IHM, pt. 3; Ch. 23; 3-23.3(E)(5) (Introduction).

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and requires staff to report, investigate, and follow up on any concerns of patient abuse.<sup>365</sup>

On February 20, 2019, **IHS added a new policy to the IHM**, “Protecting Children from Sexual Abuse by Health Care Providers.”<sup>366</sup> The policy prohibits sexual abuse and exploitation by healthcare providers, stating that under no circumstances are healthcare providers to engage in sexual activity, sexual communication, or sexual contact with current or former patients under the age of 18.<sup>367</sup> This policy requires IHS facilities to post information on how IHS employees, patients, parents, and others may report sexually inappropriate behavior; and provides protections for IHS staff from adverse action when reporting suspected sexual abuse.<sup>368</sup> **The policy also required mandatory training** which included information on indicators of abuse and warning signs, organizational safeguards used to ensure patient safety, and the process for reporting suspected sexual abuse. The training was developed under the review and guidance of IHS clinical subject matter experts and the HHS Office of the General Counsel.<sup>369</sup> In developing the 2019 policies, IHS officials researched best practices and consulted with industry leaders, such as the AAP Committee on Native American Child Health (CONACH), an advocacy group for

AI/AN children comprised of pediatric providers.<sup>370</sup>

On February 12, 2019, HHS Deputy Secretary Eric D. Hargan made a formal request of the Inspector General for HHS, Daniel R. Levinson, that the OIG conduct an IHS system-wide review. In June 2019, **the Office of Inspector General was tasked with a system review to assess the efficacy of policies and procedures** instituted by the IHS since 2017.<sup>371</sup>

In early 2019, **IHS established a new component – the Quality Assurance Risk Management (QARM)** -- comprised of senior-level officials in IHS HQ, tasked with reviewing high-risk issues facing the agency, such as patient abuse allegations and significant fraud, waste, and abuse.<sup>372</sup> The QARM constitutes a new level of oversight to ensure agency accountability, innovate processes, ensure patient safety, and expedite corrective actions.<sup>373</sup>

The IHS also solicited and obtained an outside review by enlisting the services of an outside contractor to conduct a **Medical Quality Assurance Review** of the IHS history with Weber to determine what factors led to his continued service in spite of consistent and repeated concerns about his interactions with adolescent Indian males.<sup>374</sup> The contract set out the scope of the contract for a “comprehensive analysis

<sup>365</sup> IHS, Internal email correspondence regarding zero tolerance policy for sexual abuse or exploitation of children by healthcare providers, March 28, 2018.

<sup>366</sup> IHS, IHM, pt. 3; Ch. 20 (February 6, 2019);

<sup>367</sup> Id., at (E)(1).

<sup>368</sup> Id., at (E)(4).

<sup>369</sup> *Protecting Children from Sexual Abuse In Health Care Settings - Supporting a Culture of Community Safety*, IHS Training Materials (2019), citing Ulrich, B., & Kear, T. (2014). *Patient Safety and Patient Safety Culture: Foundations of Excellent Health Care Delivery*. *Nephrology Nursing Journal*, .41(5), pp. 447–457.

<sup>370</sup> OIG, Organizational Challenges to Improving Quality of Care in Indian Health Service Hospitals, OEI-06-16-00390, August 2019.

<sup>371</sup> Memo from HHS DS Hargan to IG Levinson, February 12, 2019.

<sup>372</sup> ICS interviews of IHS Senior Leadership, June 24-27, 2019.

<sup>373</sup> Id.

<sup>374</sup> Solicitation No. 19-236-SOL-00002; Order No. 75H70419P00042.



showing how IHS could significantly improve the identification of, and response to complaints of patient abuse, especially sexual abuse of minors.” The order directed the contractor to “perform a fact- finding inquiry and record review at the Oklahoma Area IHS, Billings Area IHS and Great Plains Area IHS, and IHS Headquarters in Rockville, MD. The period of the records to review are from 1986 to 2018.” The contract set out the following objectives:

*The objectives of the review will be to: (a) identify facts relating to IHS’s policies and procedures regarding the reporting of allegations of sexual abuse of IHS patients by clinical staff; (b) identify any possible process or system failures and the contributing causes of any such process or system failures; and (c) make recommendations for improvement.*<sup>375</sup>

In addition to agency responses, the White House has appointed a **Presidential Task Force** to investigate the institutional and systemic breakdown that failed to prevent Weber from sexually assaulting children while acting in his capacity as a doctor in the Indian Health Service.<sup>376</sup> The Weber case highlighted other issues – including the due diligence exercised when granting facility privileges -- which drew the attention of Congress. In May of 2019 the U.S. Senate Committee on Indian Affairs asked the **Government Accountability Office (GAO) to review IHS policies and actions** for addressing and documenting personnel performance and misconduct issues.<sup>377</sup> The Committee raised concerns about IHS use of transfers, duty reassignments, and administrative leave to

address poor performance and misconduct, and asked GAO to determine the extent of such activity since 2010, when this issue was initially identified by the Committee. The Committee also requested that GAO assess whether a new centralized credentialing system adopted by IHS captures performance and misconduct information and is accessible across facilities.

<sup>375</sup> Id.

<sup>376</sup> Presidential Task Force on Protecting Native American Children in the Indian Health Service System, March 2019 order.

<sup>377</sup> Letter from the Senate Committee on Indian Affairs to the Comptroller General for GAO, May 16, 2019.

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## Chapter 2: Other Cases Involving IHS Medical Care and Support Providers

### *Relevance of Related Cases*

As noted in the Introduction to this report, an issue central to the ICS inquiry was the extent to which the Weber case was an anomaly or indicative of a broader organizational failure. This assessment is not subject to a statistical analysis -- because not all abuses are reported and not all reported abuses lead to publicly available documentation -- but must be informed by reports of related cases, Congressional and OIG reports, and the anecdotal statements of IHS employees.<sup>378</sup> In researching relevant cases, ICS looked most closely at cases involving sexual abuse or sexual misconduct. The company also considered whether patients or patient safety was involved, whether the perpetrator stood in a position of trust or rank with regard to the victim, and if the agency response displayed any process similarities to the Weber case.

ICS gathered a significant collection of other reported cases that suggests that management and administrative errors similar to those made in the Weber case were also present in the handling of other cases.<sup>379</sup> Although the contract parameters did not provide for a thorough inquiry into other cases, to the extent these narratives

bear on the conclusion that Weber was not an isolated case, they are summarized here.

It should be noted that the details described in this section are primarily from media reports, court records, or other third parties which are, by their nature, secondary, not primary, sourcing. Accuracy and reliability should be weighed accordingly. Additional caveats which distinguish the facts from those in Weber, or in which no finding of misconduct was found (such as in the settlement of litigation without an admission of liability or findings of wrongdoing by the agency or court), are footnoted.

### *Studied Cases*

#### **Ted Kammers, Social Worker Confederated Tribes of the Chehalis Reservation, 1986**

Kammers was a social worker and counselor for the IHS facility in Oakville, Washington. (b) (6) a member of the Chehalis Tribe, sought mental health consultation from the IHS and was counseled by Kammers. (b) (6) had a history of economic deprivation and of physical, sexual and emotional abuse as a child. When she started consultation with Kammers, she was divorced and pregnant with her fourth child. She saw Kammers for counseling from 1973 until 1981.<sup>380</sup> In October 1978 Kammers initiated romantic contact with (b) (6) during a counseling session, encouraging her to act on her professed feelings of attraction to him. In January 1979 he had sexual intercourse with her

<sup>378</sup> ICS did not have access to the records of the OIG's Special Investigations Branch which likely would be important evidence in the determination of the question. For the purposes of this report, the phrase "related cases" means primarily cases of sexual abuse by IHS employees, and, secondarily, criminal cases involving IHS employees that are not of a sexual nature but reflect organizational process failures in dealing with criminally or professionally tainted providers of health care services.

<sup>379</sup> ICS limited its search to cases after the employment of Weber in 1986. The cases cited here are not likely all the cases involving IHS personnel.

<sup>380</sup> (b) (6), 805 F.2d 1363 (9<sup>th</sup> Cir. 1986).

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during an out-of-town trip and this romantic and sexual relationship continued during the remainder of Simmons' treatment.

In January 1980, the Chehalis Tribal Chairwoman notified Kammers' supervisor, Victor Sansalone, of her concerns about the relationship between (b) (6) and Kammers. Sansalone took no action either to correct Kammers' improper counseling or to relieve him of his duties.<sup>381</sup>

(b) (6) filed suit against the IHS in December 1983. After a bench trial, the Court found in favor of (b) (6) and awarded her \$150,000. The government appealed, unsuccessfully, and the judgment against the United States was enforced.

### **Dr. David Bullis** *Pueblo of Laguna, 1999*

(b) (6) is a member of the Laguna Pueblo Indian Tribe in New Mexico. As a teenager, (b) (6) suffered from depression and a drug and alcohol dependency problem that led to frequent arrests by the local police. After attempting suicide, (b) (6) was referred by the police and the IHS to Bullis, an IHS psychologist, for counseling.<sup>382</sup> Bullis diagnosed (b) (6) who was then 15, as suffering from a variety of psychological disorders, including depression with suicidal intent, polysubstance abuse, and cannabis dependence. Despite this diagnosis, Bullis allegedly told (b) (6) that continued alcohol and drug abuse would be appropriate and even therapeutic. Bullis used therapy

sessions to convince (b) (6) that he was homosexual and that he should have sex with Bullis. During the patient-therapist relationship, Bullis allegedly engaged in sexual contact with (b) (6)

(b) (6) filed a lawsuit against the IHS and developed a record that Bullis had a reputation for using drugs and alcohol with many of his teenage patients, and Bullis himself told one of his supervisors that he had engaged in "some exploratory sexual contact" with (b) (6).<sup>383</sup> The supervisor never notified his superiors of Bullis' conduct, but merely wrote in his notes that he felt comfortable allowing Bullis to continue with his regular duties. The IHS did not relieve Bullis of his clinical responsibilities until January 1995, when (b) (6) filed an administrative tort claim against the agency.<sup>384</sup>

After losing an appeal on jurisdictional grounds, the IHS settled the lawsuit brought by (b) (6)

### **Dr. Muhammad K. Ahsan** *Pine Ridge Reservation, 2005*

In 2005, Ahsan, an IHS contract provider,<sup>385</sup> was sued for sexual assault against a patient he saw at the Pine Ridge IHS hospital. Tribal member (b) (6) (also known as (b) (6)) went to the IHS hospital in Pine Ridge on November 24, 2004, seeking treatment for abdominal pain. During an examination, according to her complaint, Ahsan pulled up her blouse and touched her inappropriately, questioned if

<sup>381</sup> Id. See also, Sallie G. DeGolia and Kathleen M. Corcoran (editors), *Supervision in Psychiatric Practice: Practical Approaches Across Venues and Providers*, American Psychiatric Association Publishing, 2019, p. 401.

<sup>382</sup> (b) (6) 177 F.3d 927 (10<sup>th</sup> Cir. 1999).

<sup>383</sup> (b) (6) 998 F. Supp 1225 (D.N.M. 1997).

<sup>384</sup> Id.

<sup>385</sup> VISTA Staffing Solutions Inc. of Salt Lake City was originally named as a defendant in the civil case because VISTA provided Ahsan to the hospital as a temporary physician. Carson Walker, "Pine Ridge woman's lawsuit against doctor proceeding 8-07", Indian Country News, August 16, 2007.

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she was married and had children, and asked if she would return to see him.<sup>386</sup> (b) (6) alleged in her complaint that "[t]he physical touching by defendant Ahsan was not related to any legitimate medical purpose, nor was it necessary for treatment or diagnosis by plaintiff." (b) (6) alleged that she was "disturbed and upset, she felt like crying and felt 'dirty' and had difficulty sleeping" and, Ahsan's conduct caused her to have bouts of crying, anxiety, nightmares, nausea and loss of appetite.

The case was actively litigated for at least two years. In July 2007, attorneys received a sixth continuance of the trial date after taking depositions of IHS employees in June.<sup>387</sup> The case was later settled out of court.<sup>388</sup>

(b) (6) passed away on July 28, 2019 at the Pine Ridge IHS Hospital. She was 39 years old.<sup>389</sup>

### **Dr. Frankie Delgado** *Cheyenne River Reservation, 2011*

After repeated accusations of sexual harassment and attempted assault in Pine Ridge where he was the Medical Director, Delgado was transferred to the IHS hospital on the Cheyenne River-Eagle Butte Indian Reservation in South Dakota, a few hours away from Pine Ridge.<sup>390</sup> While working

there in 2011, Delgado was indicted by the federal grand jury on multiple counts of abusive sexual contact committed against two nurses. In Counts I and II of the Indictment, Delgado was charged with having engaged in abusive sexual contact of T.H. at the IHS Hospital in Eagle Butte, between March 1, 2011 and May 31, 2011.<sup>391</sup> In Count III of the Indictment, Delgado was charged with the abusive sexual contact of K.F. on May 5, 2011, in Eagle Butte. These were felony allegations. A little over a year later, the case was resolved by a plea agreement which permitted Delgado to enter a guilty plea to two charges of misdemeanor disorderly conduct in exchange for the dismissal of the felony charges.<sup>392</sup> K.F. testified that she felt the plea agreement minimized Delgado's conduct. "I guess it offends me because it makes me feel like what he did to me wasn't -- wasn't -- what he did to me wasn't that bad."<sup>393</sup> "And my fear is that him dealing with women and children, he's going to do this again to someone else and they might not have the courage and strength that I've had to seek through my family members to stand up to what a man of authority -- because he uses his power as a doctor to manipulate people and take advantage of people... Just that he's done this to myself and to Ms. [T.H.], and I fear that he's going to victimize more nurses, more patients."<sup>394</sup>

<sup>386</sup> Carson Walker, "IHS doctor accused of sexual contact with patient", Rapid City Journal, September 19, 2005.

<sup>387</sup> Carson Walker, "Pine Ridge woman's lawsuit against doctor proceeding 8-07", Indian Country News, August 16, 2007.

<sup>388</sup> Joe Flood, "Long-Time Pine Ridge Reservation Pediatrician Investigated for Child Sexual Abuse" Medium.com, December 8, 2016. It should be noted that the settlement of a case is no admission of wrongdoing. Settlements are often entered into merely to avoid the expense of further litigation, a concern about potential liability at trial, to minimize damage to reputation, and avoid additional attorney's fees.

<sup>389</sup> Obituary for Tamara Starr, Bennett County Booster, August 1, 2019.

<sup>390</sup> Joe Flood, "A Summary of the Ongoing Indian Health Services Sexual Assault Scandal", Medium.com, March 14, 2018.

<sup>391</sup> *U.S. v. Delgado*, CR. 11-30162-RAL, Dk. No. 1 (DSD 2011).

<sup>392</sup> *Id.*, Plea Agreement, Dk. No. 70, January 18, 2013.

<sup>393</sup> *Id.*, Transcript of Plea and Sentencing Hearing, Dk. 81, p. 19, April 18, 2013.

<sup>394</sup> *Id.* p. 28.

Delgado was sentenced to a \$1000 fine,<sup>395</sup> and received no probationary or supervisory sentence. He was allowed to maintain his medical license, and was hired as a physician with the Department of Veterans Affairs (VA) in Fort Meade, South Dakota, treating military veterans.<sup>396</sup> The VA said that Delgado had been thoroughly screened before being hired and that the VA was well aware of his indictment, reduction of charges, and guilty plea.

Delgado served as Medical Director at Pine Ridge in 2009 and was one of the approving officials for Weber's continued employment (recredentialing) in the midst of the DWI/AWOL and allegations of child sexual abuse.<sup>397</sup>

### Ronald Keats Great Plains Region, 2012

Ronald Keats was a nurse with the PHS since 1997, who rose through the ranks to become the Commissioned Corps Liaison in the Aberdeen Area Office.<sup>398</sup> In April 2010, an IHS employee found a compact disc (CD) containing child pornography in the elevator of the federal office building where she worked.<sup>399</sup> The disc contained over 2,000 images of child pornography as well as a document authored by Keats. The following month, federal agents seized an external computer hard drive and Keats' federal government-issued laptop computer

from his office. A forensic analysis of the external hard drive found images of child pornography and law enforcement was able to link the hard drive to Keats' government-issued laptop, as well as the CD found in the building. On the day of the seizure, federal agents interviewed Keats at his home and conducted a search, at which time he turned over four CDs that contained more than 1000 images of child pornography (including 500 images of prepubescent children). During the interview, he conceded that some of the children depicted in the pornography he had downloaded appeared to be underage. Evidence in the case showed a link among Keats' government-issued laptop, the CDs and the confiscated external hard drive.<sup>400</sup>

Indicted in 2010, Keats pleaded guilty to possession of child pornography and was sentenced on July 23, 2012, to 44 months custody, 8 years supervised release, and a \$100,000 fine.<sup>401</sup>

As referenced in *Chapter 1* of this report, Keats was the Commissioned Corps Liaison in the IHS's Great Plains Area Office in Aberdeen, South Dakota. From February of 2008 through June of 2009, he was extensively involved in the decisions regarding Weber's fitness for service, repeatedly came to Weber's defense, and worked diligently to silence Dr. Butterbrodt.<sup>402</sup>

<sup>395</sup> Id., Judgment, Dk. No. 78, April 23, 2013.

<sup>396</sup> Joe Flood, "Indicted for 'Abusive Sexual Contact,' Plead Guilty to Disorderly Conduct, and Still Practicing Medicine for the VA — The Story of Dr. Frankie Delgado-Canas", Medium.com, April 26, 2018.

<sup>397</sup> Official Personnel File (OPF), Application for Reappointment and Credentialing File, April 2009.

<sup>398</sup> *Keats v. Sebelius*, Civil Action No. 13-cv-1524 (TSC)(DCDC), Dk. No. 66, Memorandum Opinion dated April 23, 2019. Keats' rank at the time is clear from documents cited in this report, including emails with the signature "CDR Ron Keats, IHS Commissioned Corps Regional Liaison, 115 Fourth Ave SE, Room 309D, Aberdeen, SD 57401".

<sup>399</sup> Id. Also, ICS interview of Shelly Harris, Chief Executive Officer (CEO), Quentin Burdick Memorial Hospital, Belcourt, North Dakota, October 29, 2019.

<sup>400</sup> Journal Staff, "Aberdeen man pleads guilty to child porn charges", Rapid City Journal, May 6, 2012.

<sup>401</sup> *Keats v United States*, Nos. Civ 13-1023, CR 10-10046 (DSD 2013).

<sup>402</sup> See, e.g., Keats email to Birney and McSherry, dated June 11, 2009.

Keats was released from prison on October 23, 2015.<sup>403</sup>

**Dr. William Hall**  
*Colville Indian Reservation, 2013*

William Hall was a clinical director of the IHS unit in Colville, Washington. After receiving complaints of sexual misconduct involving patients which dated back almost 2 years, the IHS terminated Hall<sup>404</sup> following an investigation by the Washington Department of Health.<sup>405</sup> The only reference the media made to the reason for his departure from IHS was that he was “accused of making unwanted advances toward several female patients.” In 2018, Hall was convicted for attempting to solicit sex from an undercover agent posing as a minor in a Florida law enforcement sting dubbed “Operations Cupid’s Arrow” and was sentenced to three years in prison in July of 2018.

(b) (6)  
*Eastern Band of Cherokee Indians,*  
*2014*

(b) (6) was a maintenance worker at the IHS’s Unity Healing Center in Cherokee, North Carolina. In (b) (6), (b) (3) (A), 2016, Unity workers complained to managers that (b) (6) had been (b) (3) (A), (b) (6) with and hugging a (b) (6), (b) (6) (b) (3) (A), (b) (6) who sometimes referred to (b) (6) as (b) (3) (A), (b) (6)<sup>406</sup> IHS management did not, at that time, assume any sexual relationship existed.<sup>407</sup> Then staff members saw the security-camera footage showing the two entering a private bathroom and closing the door. A couple of days later, two workers questioned the (b) (6), (b) (3) (A), (b) (6)<sup>408</sup> (b) (3) (A), (b) (6) was upset by the questions about (b) (6) and was worried the other workers would show (b) (6) letters they had taken from (b) (3) (A), (b) (6). The next day the (b) (6), (b) (3) (A) (b) (6), (b) (3) (A) A Unity administrator

<sup>403</sup> Federal Bureau of Prisons, Inmate Locator, <https://www.bop.gov/inmateloc/>, retrieved November 14, 2019.

<sup>404</sup> Christopher Weaver, “A Suicide Attempt, an Order to Keep Silent: A U.S. Agency Mishandled Sex-Abuse Claims,” Wall Street Journal, June 7, 2019. It should be noted that while a government memorandum, *Sufficiency and Implementation of Indian Health Service Patient Abuse Policies*, MIS Record Number: OEI-06-19-00330, dated June 2019 (Draft Design) indicates that Hall was “fired”, at least one news report indicates that he was allowed to retire. Karl Etters, “‘Cupid’s Arrow’ Suspect Pleads, Sentenced to Prison,” Tallahassee Democrat, July 13, 2018. ICS did not resolve the discrepancy, but it would be material to the questions presented if the IHS, as in the Weber case, permitted a retirement (separation without accountability for misconduct, less stigma, less reputational injury, full benefits, etc.) rather than take the more decisive step of affirmative termination. Because the allegations went back almost two years (the Weber case having allegations going back two decades) the appearance that management may regularly allow predators to “age out” rather than deal immediately with potential risks to patient safety should also be a concern. Beyond the decision to allow continued exposure of patients to a potential abuser, there are significant issues of organizational morale attached to a decision to keep a person employed when his or her colleagues all know that the offending conduct is being swept under the rug.

<sup>405</sup> Id., Etters, “‘Cupid’s Arrow’ Suspect Pleads, Sentenced to Prison,” Tallahassee Democrat, July 13, 2018.

<sup>406</sup> Weaver, “A Suicide Attempt, an Order to Keep Silent: A U.S. Agency Mishandled Sex-Abuse Claims,” Wall Street Journal, June 7, 2019.

<sup>407</sup> Timeline of Events created by IHS in response to (b) (6) case, edition described as “rebuilt” in 2019 “using available documentation and staff accounts from memory and may contain inaccuracies”.

<sup>408</sup> Weaver, “A Suicide Attempt, an Order to Keep Silent: A U.S. Agency Mishandled Sex-Abuse Claims,” Wall Street Journal, June 7, 2019.

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banned (b) (6) from the residential building.<sup>409</sup>

Several Unity employees said in interviews that the facility's clinical supervisor, Tracey Grant, instructed workers not to report the matter. According to the (b) (6), (b) (3) (A) "[s]he (Grant) told me, 'No, I will handle this. Do not contact anybody, [s]o I didn't. I deeply regret that.'" The (b) (6), (b) (3) (A) believed she could be fired for disobeying.

On October 13, 2016, the agency transferred (b) (6) to another IHS facility, the Masheee Service Unit in Cape Cod, Massachusetts, for a month.<sup>410</sup> On (b) (6), (b) (3) (A) 2016, the (b) (6), (b) (3) (A) (b) (6), (b) (3) (A) and (b) (6) returned to Unity once his TDY assignment had concluded.

(b) (6) was again observed on video surveillance, on March 12, 2017, this time caressing and hugging a non-employee adult female.<sup>411</sup>

In May 2017, eight months after the (b) (6), (b) (3) (A) incident, IHS placed (b) (6) on leave with pay pending removal.<sup>412</sup> Although the removal letter was given to

(b) (6) on May 9 the letter itself was dated March 28. The removal letter cited both the (b) (6), (b) (3) (A) 2016 incident with the (b) (6), (b) (3) (A) and the March 2017 episode.<sup>413</sup>

On May 12, 2017, an anonymous report was made to the Eastern Band of Cherokee Indians (EBCI) Public Health and Human Services, Department of Human Services that asserted that the (b) (6), (b) (3) (A) 2016 incident involved a sexual encounter between (b) (6) and the (b) (6), (b) (3) (A). The Office of General Counsel for HHS indicated that this May 2017 report was the first time that they had been made aware that the (b) (6), (b) (3) (A) activity was sexual.<sup>414</sup> Had they been told that the activity was criminal, it is assumed, their advice to Unity prior to May 16 would have been markedly different.

Unity employees later disobeyed the instructions to keep the matter confidential and reported the incident to local law enforcement. A Unity staff member also called the HHS OIG and reported that the alleged sexual misconduct had been "swept under the rug."<sup>415</sup>

<sup>409</sup> Id. ICS notes that the response in this case seems relatively decisive and expeditious but posits that if (b) (6) had been a physician the response may have been less so.

<sup>410</sup> Id. Also see Timeline of Events created by IHS.

<sup>411</sup> Timeline of Events created by IHS.

<sup>412</sup> Weaver, "A Suicide Attempt, an Order to Keep Silent: A U.S. Agency Mishandled Sex-Abuse Claims," Wall Street Journal, June 7, 2019.

<sup>413</sup> Timeline of Events created by IHS.

<sup>414</sup> Id. "Last (b) (6) [2016], the staff at Unity were concerned because a Unity (b) (6), who had known (b) (6), (b) (3) (A), developed a non-sexual relationship with a maintenance worker at Unity. You [Tracey] investigated, looked at video tape, and agreed that better boundaries were needed. Again, nothing indicated a sexual relationship. You [Tracey] decided to remove the employee for 30 days to Masheee (sic) Service Unit in order to allow the (b) (6) to finish out (b) (6) without the distraction of the employee, who (b) (6) referred to as a (b) (6), (b) (3) (A). Monday [May 15, 2017] was the first time learning about an allegation regarding a sexual relationship between the Unity (b) (6) and the Unity employee." (b) (6) (b) (6) email to Unity Clinical Supervisor Tracey Grant, dated May 18, 2017.

<sup>415</sup> Id. Lilly Knoepp, "Sexual Assault Allegations Against Tribal Council Candidate Resurface" Blue Ridge Public Radio, June 26, 2019, quoting a tribal official as finding the seven months delay it took for the IHS incident to be reported to the Eastern Band "unacceptable". It should be noted that according to these reports the matter was never formally referred to tribal law enforcement but was "leaked" by employees admonished not to speak of the incident. It should also be noted that the Wall Street Journal article also referred to a prior incident at Unity regarding an unidentified IHS employee engaged in a suspected sexual relationship with a teenage boy. Employees said they

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The OIG investigated but (b) (6) remained employed with IHS until his voluntary separation in March 2019 – almost two years after the incident was confirmed to have been a sexual relationship with a

(b) (6), (b) (3) (A)

Other personnel actions were taken including temporarily transferring Grant to Pine Ridge, her “home community.”<sup>416</sup> Her Pine Ridge TDY was extended but in March 2019 she was returned to the Nashville Area Office. Grant was not disciplined but took leave a week after a *Wall Street Journal* report on the Unity case and resigned July 31, 2019.<sup>417</sup>

### Dr. John Lindberg Turtle Mountain, 2017

In 2012, Lindberg resigned as an emergency room physician at Samaritan Lebanon Community Hospital in Lebanon, Oregon. Later that year he testified in the trial of a human trafficker that he had had sex with a 17-year-old girl that had been forced into prostitution. Lindberg admitted he met the girl through another escort he'd found online. Lindberg also said he thought she was 19, and that he wanted to help her get back on her feet. He said he had given her \$10,000 to \$15,000 and a key to his condo

so she could use it if she needed a place to stay.<sup>418</sup>

One year later, in 2013, and with knowledge of Lindberg’s significant involvement with a teenage prostitute, the IHS hired Lindberg as an emergency room physician.<sup>419</sup> In 2017, Lindberg was a Medical Officer at the Turtle Mountain Service Unit of the IHS in Belcourt, North Dakota.<sup>420</sup>

### Other Employee Cases Considered

ICS limited its search for related cases, or within scope comparisons, to cases involving allegations of sexual abuse or sexually related conduct. In researching those cases, however, ICS found other information which may bear on larger issues relating to process. While the nature and seriousness of the allegation should weigh on the outcome, the process of determining the truth should be simple, consistent, and effective. **If there is a failure in process -- a lack of clarity, an evasion of responsibility, or a disparity in treatment -- then accountability will suffer.**

ICS observed that the breakdown in the system is not always one of wrongdoing going unaddressed; in some instances, it appears that employment favoritism was shown despite criminal activity being admitted. In 2008, for example, the OIG

reported their concerns to management, but their allegations weren’t relayed to law enforcement at the time, and the worker later resigned. Weaver, “*A Suicide Attempt, an Order to Keep Silent: A U.S. Agency Mishandled Sex-Abuse Claims*,” *Wall Street Journal*, June 7, 2019

<sup>416</sup> Timeline of Events created by IHS. “CAPT Grant was removed from her leadership position at Unity and offered a detail to a non-supervisory nursing position in Pine Ridge (her home community) due to continued management and operating failures at Unity”.

<sup>417</sup> Christopher Weaver, “*Manager Accused of Squelching Abuse Report at U.S. Indian Health Service Center Quits*”, *Wall Street Journal*, August 1, 2019.

<sup>418</sup> Aimee Green, “*Portland trial offers rare look at the life of a teenaged prostitute – and how Internet sex ads enriched a pimp*”, *The Oregonian/OregonLive*, February 6, 2012.

<sup>419</sup> Christopher Weaver, Dan Frosch, and Gabe Johnson, “*A Pedophile Doctor Drew Suspensions for 21 Years. No One Stopped Him*”, *PBS Frontline* in partnership with *Wall Street Journal*, February 8, 2019. In fairness to Lindberg and the IHS it should be emphasized that the girl was not a patient or in any way associated with Lindberg’s employment. Therefore, unlike in the other cases described here, the sexual relationship was not work-place related.

<sup>420</sup> 2019 FederalPay.org.

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discovered that two employees in the Great Plains Area who had criminal convictions — one for embezzlement and the other for diverting drugs — were both rehired into the IHS in the same region in which they were charged and convicted.<sup>421</sup>

On May 30, 1991, the OIG placed Tracy L. Jones, also known as Tracy L. Galvin, a clinical nurse at the Omaha Winnebago Hospital in Winnebago, Nebraska, on its List of Excluded Individuals/Entities (LEIE) in connection with the revocation of her LPN license in Nebraska.<sup>422</sup> She had been convicted of two felony counts of criminal conspiracy related to the delivery of Diazepam, a medication commonly used to treat anxiety and insomnia.<sup>423</sup> In addition, her license had been revoked by the state licensing board from 1990 to 1993 for professional performance and competence issues. She was on the list until April 23, 2008 at which time she was granted reinstatement. However, the OIG determined that Jones was rehired by IHS in 2001, over seven years before she was legally eligible for employment.<sup>424</sup>

The effect of an OIG LEIE exclusion is that no federal health care program payment may

be made for any items or services furnished by the excluded individual or entity. The payment ban applies to all methods of federal program reimbursement, whether payment results from itemized claims, cost reports, fee schedules, or a prospective payment system. In addition, no federal program payment may be made to cover an excluded individual's salary. Simply put, the agency disregarded the employment prohibition relating to Jones and hired her anyway. The pattern of ignoring rules and protocols to punish some employees and doing the same to protect or promote others, is discussed at greater length in *Part II: Analysis and Conclusions* below.

Another case is relevant because of the appearance of whistleblower retaliation around the time of Dr. Butterbrodt's transfer to Turtle Mountain facility in Belcourt.

Clinical Psychologist Dr. Michael Tilus was the Director of the Behavioral Health Clinic at the Spirit Lake Health Center on the Spirit Lake Reservation headquartered at Fort Totten, North Dakota.<sup>425</sup> CDR Tilus was a PHS Commissioned Corps officer.<sup>426</sup> For several of his 10 years at Spirit Lake, Dr. Tilus had repeatedly reported his concerns

<sup>421</sup> Matthew Daly, Associated Press, "Report: Indian Health Service hired criminals", Bismarck Tribune, September 28, 2010.

<sup>422</sup> Memorandum to Jeanelle Raybon, Director of IHS Program Integrity and Ethics Staff from David Krupnick, Director of the HHS OIG Investigations Branch, June 26, 2008.

<sup>423</sup> IN CRITICAL CONDITION: THE URGENT NEED TO REFORM THE INDIAN HEALTH SERVICE'S ABERDEEN AREA, Report of the Senate Committee on Indian Affairs, December 28, 2010. p. 39. Matthew Daly, Associated Press, "Report: Indian Health Service hired criminals", Bismarck Tribune, September 28, 2010. Also see, Nidhi Subbaraman, "The Tribe That's Suing The US Government To Keep Its Promises", BuzzFeedNews, November 17, 2016. See also, Jamie Oh "Indian Health Services Faces Panel After Investigations of Fraud, Theft and Employee Misconduct", Beckers ASC Review, September 30, 2010.

<sup>424</sup> Memorandum to Jeanelle Raybon, Director of IHS Program Integrity and Ethics Staff from David Krupnick, Director of the HHS OIG Investigations Branch, June 26, 2008.

<sup>425</sup> The Spirit Lake Tribe of the Spirit Lake Dakota Reservation is in east-central North Dakota on the southern shores of Devils Lake. It is made up of people of the Pabaksa, Sisseton, and Wahpeton bands of the Dakota tribe. Diedrich, Mark (2007). *Mni Wakan Oyate (Spirit Lake Nation): A History of the Sisseton, Wahpeton, Pabaksa, and other Dakota that Settled at Spirit Lake, North Dakota*. Spirit Lake, North Dakota: Cankdeska Cikana Community College.

<sup>426</sup> "Public Health Service punishes psychologist who warned of child abuse", Workplace Bullying Institute (WBI), August 2, 2012. The letter of reprimand and Dr. Tilus's response are attached to this blog post. <https://www.workplacebullying.org/tilus/>.

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about the safety of Indian children (from abuse, neglect, and violence) to direct supervisors, but his warnings were seemingly ignored.<sup>427</sup> He finally wrote, in April of 2012, to state and federal (including IHS and HHS) officials outside the Health Center. Tilus also gave an interview to the *New York Times* about child welfare dangers at Spirit Lake, in which he criticized tribal officials.<sup>428</sup> In an email titled “Letter of Grave Concern,” Dr. Tilus said that child abuse on the reservation was “epidemic” and that he had “no confidence” in tribal leadership “to provide safe, responsible, legal, ethical and moral services to the abused and neglected children of the Spirit Lake Tribe.”

Dr. Tilus was almost immediately reprimanded and reassigned. In the reprimand letter, Dr. Candelaria Martin, the Clinical Director at Spirit Lake, said Tilus’s dissemination of the e-mail to health and law enforcement officers outside his chain of command constituted “engaging in action and behavior of a dishonorable nature.”<sup>429</sup> Dr. Martin wrote that Dr. Tilus had brought discredit to the federal government’s public health services and had damaged relationships with patients, the Spirit Lake Tribe, the Indian Health Service and the Bureau of Indian Affairs.<sup>430</sup> Martin charged Dr. Tilus with “misconduct, insubordination and general demeanor not becoming of an officer” for “going outside of your direct chain of command in

forwarding a letter to the offices of Senators Hoven and Conrad.”

In his response, Dr. Tilus emphasized that he had repeatedly, and over a period of years, sought a satisfactory response to his public health concerns through his chain of command but that his concerns were always left unaddressed. “This public health crisis was embedded within layers of agency stagnation that unfortunately kept the children’s safety and health at great risk.”<sup>431</sup>

Tilus was punished within two weeks of the *New York Times* article by immediate reassignment “for non-patient services and unclassified duties at the Aberdeen Area Office, Aberdeen, SD for a period not to exceed 120 days.”<sup>432</sup> In Martin’s letter of reprimand Dr. Tilus was also denied any opportunity for promotion for two years.<sup>433</sup>

On August 2, 2012, the Director of the Indian Health Service, Dr. Yvette Roubideaux, rescinded the Letter of Reprimand, restored Dr. Tilus’s privileges and sanctioned a previously approved transfer – a transfer that Tilus had requested – to the Fort Belknap Indian Health Center in Harlem, Montana, a component within the Billings Area Office. “I want to assure you that IHS is committed to protecting employees who communicate with Congress regarding concerns on matters of public health and safety.”<sup>434</sup>

In the Tilus case, ICS recognized important parallels to Weber – Drs. Butterbrodt’s and

<sup>427</sup> Timothy Williams, *Psychologist Who Wrote of Abuse Is Punished*, *New York Times*, July 30, 2012.

<sup>428</sup> Timothy Williams, *Officials See Child Welfare Dangers on a North Dakota Indian Reservation*, July 7, 2012.

<sup>429</sup> Timothy Williams, *Psychologist Who Wrote of Abuse Is Punished*, *New York Times*, July 30, 2012.

<sup>430</sup> Letter of Reprimand to Dr. Tilus from Dr. Candelaria Martin, Clinical Director of Medical Staff, dated June 25, 2012 (signed by CEO Arlene M. de la Paz for Dr. Martin).

<sup>431</sup> Memorandum from Dr. Tilus to IHS Health Center CEO Arlene M. de la Paz dated July 19, 2012, in response to Letter of Reprimand.

<sup>432</sup> Memorandum from IHS Health Center CEO Arlene M. de la Paz to Dr. Tilus, dated July 18, 2012.

<sup>433</sup> Letter of Reprimand to Dr. Tilus from Dr. Candelaria Martin, Clinical Director of Medical Staff, dated June 25, 2012.

<sup>434</sup> Letter from Dr. Yvette Roubideaux to Dr. Tilus, dated August 2, 2012.

Foster's persistent warnings over a period of years, supervisory disdain for the disruption and implied criticisms of management, and punishment of the messengers rather than concern for the message. These issues are discussed at length in the *Part II: Analysis and Conclusions* portion of the report.

### ***Undocumented and Undisclosed Misconduct***

In the review of the Weber case, and others above, a significant challenge to the consultants – as well as any other person seeking to discover the facts of any particular IHS employee misconduct allegation -- is the lack of any official documentation of complaints, allegations, or adverse personnel actions. Official records of government service seem only to capture superlatives, good conduct, and compliments. One of the reasons often relied upon to justify Weber's continuing employment – when his career was repeatedly and continually plagued by accusations and suspicions of patient molestation -- was the absence of any adverse findings or actions. He was "clean."<sup>435</sup>

On July 28, 2016, a Columbia University student filed a Freedom of Information Act (FOIA) request for "a full list of all complaints, instances of misconduct, and personnel actions filed against eight current or former providers at the Indian Health Service."<sup>436</sup> The eight individuals identified

included Weber, Keats, Delgado, and Ahsan. In response to her FOIA request the "IHS claimed that none of these doctors had complaints or disciplinary actions against them, writing that '[t]he Great Plains Area Human Resources office searched their files and no records responsive to your request exist'.<sup>437</sup>

The lack of records in the eight cases identified – when at least four resulted in prosecution or suit -- could mean any one or all of four things:

1. That there were never any complaints or actions;<sup>438</sup>
2. That there were complaints or actions, but those allegations, discussions, or conclusions were not documented;
3. That there were records created that would reflect complaints or actions, allegations, discussions, and conclusions that by 2016 had been lost or destroyed, or;
4. That the IHS search was cursory; not seriously or rigorously performed.

Relevant to the fourth possibility, in the Weber case, the investigating OIG agent made a request through the Billings Area Office for certain records from the Blackfeet Community Hospital. In an email responding to the request, the agent's contact in the Billings Office was told that "[w]e were unable to find information pertaining to Stanley J. Weber with in the documentation from either Box 1 or Box 2

<sup>435</sup> *Frontline* interview of Dr. Mark Butterbrodt, aired February 12, 2019. "And that was always the Indian Health Service line. We've looked at the data bank. There's no complaints on him. He's clean".

<sup>436</sup> November 18, 2016, IHS letter to Laura Brickman, Columbia University, in response to FOIA request dated July 28, 2016.

<sup>437</sup> Joe Flood, "Long-Time Pine Ridge Reservation Pediatrician Investigated for Child Sexual Abuse", Medium.com, December 8, 2016. Flood's investigative reporting was supported by a Columbia University student, Laura Brickman, who made the FOIA request on July 28, 2016.

<sup>438</sup> This is obviously not the case, at least with the request for information relating to Weber – which was one of the providers specifically named in the FOIA request -- since there was an abundance of documentary evidence discovered and provided to ICS.

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located in the storage room as well as anything in the Risk Management Office.”<sup>439</sup> The agent later performed his own search for the documents while on site at the Browning facility and discovered hundreds of critical records that should have been produced as responsive to his 2016 request.<sup>440</sup>

These details are included in this section of the report to emphasize the difficulties faced when any reporter, investigator, or reviewer seeks to make a thorough and credible re-creation of actual events. The failure to adequately document complaints and agency responses, and the apparent inability of the agency to find such records when they exist in their own files, are issues discussed at length in the *Part II Analysis* section of the report.

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<sup>439</sup> Lyle Rutherford, Blackfeet Community Hospital, email to Dawn Oleyete, Billings Area Office, dated January 25, 2017. ICS assumes that the incorrect middle initial was not the reason no Weber files were discovered.

<sup>440</sup> Many of the records found were incorporated into the OIG report and used to support the prosecution case in *United States v. Weber*, CR 18-14-GF-BMM (DMT 2018).

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## PART II: ANALYSIS AND CONCLUSIONS

### ROOT CAUSE FINDING # 1

*Leadership Failures,  
Failure to Serve the Mission,  
Self-Interest and Refusal to Accept  
Responsibility*

The origin of all the other root causes specifically identified in this review was leadership failure. All outcomes were either directly or proximately caused by management errors at the service unit level in both Browning and Pine Ridge and leadership failures at the Area level in both Billings and Aberdeen. **Management decisions were consistently the product of weakness, apathy, evasion of responsibility, willful dereliction, or self-interest, rather than a commitment to patient safety and the promotion of the overall mission of the IHS.**

The history of the Weber case is marked by repeated opportunities to protect juvenile patients lost to a consistent abandonment of professional responsibility. Reporting physician misconduct was neither prioritized nor encouraged by a management structure more dedicated to ignoring problems than correcting them.

*While IHS management acted decisively and swiftly to silence and punish whistleblowers who exposed critical dangers to patient safety, they willfully ignored or actively suppressed any efforts to address the dangers themselves.*

### Leadership Failures (Montana 1992-1995)

### Overview of Management Structure at the Browning Community Hospital<sup>441</sup>

The Executive Leadership structure at an IHS service unit consists of the Chief Executive Officer (CEO), Clinical Director and/or Chief Medical Officer (CMO), the Administrative Officer, Director of Nursing, and the Chief Financial Officer. The CEO is delegated the responsibility and the authority for the overall management of the service unit. The CEO position was previously referred to as the Service Unit Director. The Clinical Director is the principal medical advisor to the CEO. The CEO and Clinical Director are vested with the administrative responsibility of ensuring the ethical and professional practice of the medical staff, and to ensure adherence to the uniform standards for quality patient care.<sup>442</sup> The Browning Community Hospital operated pursuant to established medical by-laws, and clearly written rules, regulations and charters for their medical staff. Professional reviews and corrective actions were available to address allegations of unprofessional or unethical conduct, actions considered detrimental or disruptive to the hospital's proper functions, or in violation of IHS policies. Leadership had the option to refer the complaints to the Ethics Committee for any review or action they deemed appropriate. Leadership could have

<sup>441</sup> The background information referenced here is the product of numerous interviews, organizational charts, and other research and will not be specifically attributed to individual sources.

<sup>442</sup> Pine Ridge Service Unit Medical Staff By-Laws, Rules and Regulations, Committee Charters (July 12, 2019).

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requested a peer review to monitor patient care, identify any deficiencies in patient safety, and confirm that responsible, professional and ethical behavior was provided to patients by the provider. There was also the option of requesting a Focused Professional Practice Evaluation to address the complaints and quality-of-care concerns voiced by other medical staff, to identify any complaints received from patients (or their families), or to document any unusual occurrences with respect to behavior or performance issues that might pose a threat to the health and safety of the patient, or to the public.<sup>443</sup>

### Information Provided to Browning Hospital Administrators

The Weber problem at the Browning Service Unit was not non-disclosure. Weber's actions were well known, and his actions were an obvious red flag to those individuals who chose to question his behavior. The cornerstone of leadership is problem solving and one of the most serious of all failures at Browning was the failure to recognize the consequences of inaction. Ignoring a problem in hopes it goes away or cures itself is not a positive strategy. Throughout the arc of the Weber history, starting with Browning, inaction was often rooted in the evasion of responsibility coupled with an overriding concern for self-preservation.

Information developed during the course of the ICS review revealed inconsistent and ineffective leadership, dithering and delay, and supervisory dereliction-of-duty by senior management officials at the Blackfeet Community Hospital.

Mary Ellen LaFromboise, was the Service Unit Director/Chief Executive Officer. Dr.

Randy Rottenbiller was the Clinical Director/Chief Medical Officer. Both administrators were provided specific actionable information regarding Weber's questionable behaviors from a variety of sources; by the medical staff, the community, by the support staff from Human Resources, and by employees in the Housekeeping and Maintenance department. Clear examples of the specific information of Weber's behaviors provided to leadership included:

- *Weber's preference to treat only adolescent male patients as reported by the nurses and housekeeping staff.*
- *Weber's attempts to take control of patient load composition and scheduling from the nursing staff.*
- *Weber's relocation of a couch from the patient waiting area into his office.*
- *Weber's treatment of unaccompanied young male patients after regular clinic hours.*
- *At least two occasions of Weber reporting to work intoxicated.*
- *Weber's 'grooming behavior' of at-risk youth, (prepubescent boys of slight physical stature who Dr. Dan Foster characterized as "slow developers") during peer counseling sessions.*
- *Weber's off-reservation unsupervised road trips with youth for pizza and shopping.*
- *The inspection of Weber's government housing revealed an abundance of food, candy, pop, cookies, dozens of VHS movies, kids' games.*
- *Weber had unaccompanied minor boys in his home at night as reported by the Maintenance staff.*

<sup>443</sup> Id.

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- *Young boys spending the night at Weber's government housing.*
- *Teenage drinking parties at Weber's government housing.*
- *A relative of one of Weber's male patients physically assaulted Weber at his government housing.*
- *A tribal member was so outraged by Weber's conduct that she was prepared to have him "resolutioned off" the Blackfeet Reservation.*

ICS was not provided, nor was ICS able to locate during any of its fieldwork, any records prepared by either CEO LaFromboise or CMO Rottenbiller that reflect that these senior managers documented even a single complaint or suspicion of Weber's misconduct,<sup>444</sup> had referred for professional review any of the numerous complaints filed by coworkers on Weber's conduct, or that they themselves had acted upon any allegations about Weber's unethical and unprofessional misconduct.<sup>445</sup> To the contrary, there were several occasions where Weber received exceptional performance ratings on his annual Commissioned Officers' Effectiveness Reports commending him on the community-based activities.<sup>446</sup> These activities were the very events that some of

Weber's coworkers reported as red flag indicators of possible child abuse.

Dr. Foster repeatedly recommended to LaFromboise she should safeguard Weber's male patients simply by requiring that a nurse chaperone be present when Weber treated young boys at the hospital. LaFromboise admitted she had received similar concerns from Director of Nursing Violet Heagan and Rottenbiller indicated that he received similar complaints from Janelle Hall, Pediatrics Nurse. However, Dr. Foster's recommendation for a second adult in the examination room was never adopted. The recommendation of a nurse chaperone is not an unusual method of protecting patients. It is an acknowledged example of hospital policies on staff-patient boundaries by the American Academy of Pediatrics.<sup>447</sup>

Instead of objectively documenting and investigating the reports of Weber's apparent misconduct, retaliatory action was taken against Dr. Foster, the most vocal of the whistleblowers, for expressing his concerns that Weber was a pedophile. Branded "a trouble-maker" after insistently voicing his concerns to Rottenbiller and LaFromboise, both Dr. Foster and his wife were ostracized and marginalized by the medical staff. Dr. Foster was removed from the multi-disciplinary team, lost his

<sup>444</sup> In addition to no extant documentation being found, neither Rottenbiller or LaFromboise claimed that they created any documentation which served to confirm that Weber's conduct or any of the allegations were ever reduced to writing. The seriousness of failing to document allegations is discussed extensively in the analysis of COMMUNICATION below.

<sup>445</sup> It should be noted that sometime in the last six months of Weber's time at Blackfeet, LaFromboise, at the insistence of Dr. Foster, Tim Davis, and (b) (6) finally made a call to AO DAD Charles Lewis. Until that time, however, LaFromboise had resisted doing anything about the allegations or attempted to protect patients through any remedial action.

<sup>446</sup> Official Personnel File (OPF), Commissioned Officers' Effectiveness Report, dated June 21, 1993, by Randolph Rottenbiller, Clinical Director. "Has done exceptional work with school based clinic", "Has shown rapid growth in developing trust/rapport with adolescent patients & cultural values & perceptions", "Has made significant contribution to adolescent health care in the community" "Extreme dedication to goal of improving health status of teens". Reviewing Official: Mary Ellen LaFromboise, Service Unit Director.

<sup>447</sup> See, Policy Statement—Protecting Children From Sexual Abuse by Health Care Providers, AAP COMMITTEE ON CHILD ABUSE AND NEGLECT, Pediatrics, Vol. 128, No. 2, August 2011.

government housing, and had his office relocated.

**As would happen throughout his career, Weber’s accusers were targeted by management and his position protected.**

### Mary Ellen LaFromboise Service Unit Director

As the Service Unit Director, LaFromboise was required to promote ethical standards of behavior, investigate allegations of misconduct, and initiate disciplinary action when appropriate.<sup>448</sup> Unlike many other management witnesses who claimed ignorance, LaFromboise admitted during her interview with ICS that she had spoken with, and received substantial complaints from Dr. Foster, (b) (6) Tim Davis (Maintenance), (b) (6) and an unidentified community member in regards to Weber’s misconduct at the service unit, at his government housing unit, and in the community (social events off the reservation with young boys). In addition, LaFromboise was personally aware of Weber’s physical assault at his government housing unit.<sup>449</sup>

LaFromboise acknowledged that she and the other senior medical staff received pressure from the other doctors to investigate Weber’s actions. As detailed above<sup>450</sup> these complaints were specific in nature, they reflect calculated destructive behavior, and they were delivered in person by several of the hospital staff. These complaints were not unattributable rumors, unspecific hallway whispers, or casual comments offered during a coffee break. **But LaFromboise did nothing to document the complaints, investigate internally as to their validity, refer the matter to law enforcement, or suspend or remove Weber from the service unit. LaFromboise’s unwillingness to provide responsible effective leadership, whether it was rooted in self-preservation, a lack of personal courage, general apathy, or from a complete lack of managerial skill, is the epitome of supervisory dereliction-of-duty.**

During the interview with ICS, LaFromboise questioned “Who is the responsible person to come in and do something?” Obviously, that was a question she should have asked herself, and found an answer to, 25 years ago.

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*A common theme throughout the Weber investigation was management’s claim of ignorance even in the face of multiple sources – even a written record at times – asserting that those managers had received reports on the concerns of staff. ICS did not find this unusual since to admit knowledge is to admit responsibility. Even armed with a scintilla of evidence to suggest child abuse, a supervisor’s duty is to inquire further, investigate vigorously, document thoroughly, and keep his or her managers informed.*

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<sup>448</sup> IHS, IHM, pt. 3; Ch. 23; section 3-23.1, Introduction.

<sup>449</sup> Many of these acknowledgements can also be seen in LaFromboise’s interview on the *Frontline* broadcast. *FRONTLINE Predator on the Reservation*, Public Broadcasting Service (PBS), Dan Frosch and Christopher Weaver (Correspondents), Frank Koughan (Senior Producer), Raney Aronson-Rath (Executive Producer of *Frontline*), aired February 12, 2019.

<sup>450</sup> The allegations can also be found discussed at greater length in *Part I: Investigation*.

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She opined that the Weber issue was complicated by the fact he was a Commissioned Corps officer, because “they couldn’t be supervised or disciplined”. Interestingly, a Commissioned Corps witness told ICS the precise opposite – that the Commissioned Corps was incapable of punishing a PHS provider working at an IHS Service Unit without the approval of the physician’s supervisor at the service unit.<sup>451</sup> Based upon the information gathered during this review, ICS concluded that the fact that Weber was Commissioned Corps should have in no way interfered with LaFromboise’s personnel actions against Weber if she had responded to the reports she was receiving with any sort of administrative process. But ICS saw no evidence that any effort was made.

At the end of the *Frontline* broadcast, LaFromboise blamed the IHS bureaucracy for the leadership failures that occurred. In a moment of retrospect, LaFromboise did admit, “It was on my watch. I should have known better, but I didn’t.”

**Dr. Randy Rottenbiller**  
*Chief Medical Officer/Clinical Director*

During his interview with ICS, Dr. Rottenbiller admitted that he had received complaints about Weber from Janelle Hall (Pediatrics Nurse). He denied receiving complaints from other hospital staff, even though both Dr. Foster and Tim Davis say they reported their concerns, and those which they had heard from others, directly

to him. LaFromboise reported to ICS that Weber reported to work with a black eye. Rottenbiller denied knowing that Weber had been physically assaulted although, based on other witnesses’ accounts, it was common knowledge in the Browning community.

Dr. Rottenbiller confirmed that serious complaints should have been forwarded to the Medical Review Board for their review, proper assessment and their decision on any action they deemed appropriate. When Tim Davis relayed his concerns to Dr. Rottenbiller, the doctor told Davis that the issue would be discussed with the Governing Board. Rottenbiller confirmed there should have been an investigation into Weber’s activities, but that IHS’ typical response was to “sweep it under the rug” and to simply “pass it on to some other place.”<sup>452</sup> And that is exactly what happened in 1995 when Weber was transferred to Pine Ridge. **At the conclusion of the *Frontline* broadcast, Rottenbiller said “I didn’t do much to prevent it. I certainly could have done more.”**

Dr. Rottenbiller struggled to articulate how allegations such as those made against Weber should be reported. He stated, “Where do you refer him to, Tribal cops? The FBI? Maybe the CEO or the Medical Review Committee?” This response, similar in nature and scope to that made by LaFromboise, epitomized the leadership failures at the service unit; asking questions in 2019 that should have been asked – and answers found – in 1995.

<sup>451</sup> ICS interview of (b) (6) (b) (6) Rapid City, South Dakota, November 27, 2019.

<sup>452</sup> ICS interview of Dr. Randy Rottenbiller, former CMO at Blackfeet Community Hospital, Billings, Montana, September 10, 2019. Like so many others who disclaimed responsibility during the review by ICS, some management witnesses spoke of IHS as if it were some separate entity with which they had only a casual association and certainly no authority to act on its behalf.

*As noted earlier, one of the most serious of all failures of leadership is the failure to recognize the consequences of inaction.*

In their attempts to avoid any issue that may prove complicated or confrontational, management at Browning allowed apathy and a reluctance to get involved to carry the day -- which allowed Weber to put himself in the path of unsuspecting victims at Pine Ridge.

Weber was interviewed on May 19, 2016 by HHS OIG SA Curt Muller.<sup>453</sup> During this interview, Weber confirmed that kids spent the night at his home at least several times a year. Some of these kids were probably minors under the age of 18. He confirmed there was an investigation by Hospital Security into a report that Weber was intoxicated at his government housing unit and there were kids present (date not established). Weber said he was formally interviewed and that an investigative report was filed. That investigation prompted a meeting with the Clinical Director.<sup>454</sup>

During this meeting with the Clinical Director, Weber was asked if he wanted to stay at Blackfeet or if he wanted to leave. Weber said his response was "I think I'll leave."

*On the opposite end of the spectrum of leadership failures where there was inaction in response to concerns about his conduct was the misguided focus on actively promoting Weber's career advancement regardless of those concerns. ICS reviewed Weber's Effectiveness Reports – searching for some word of caution or acknowledgment of the concerns – and found only commendations.*

Former CMO Rottenbiller confirmed it was common for Commissioned Corps officers to give artificially inflated performance ratings of "Exceptional" to each other, even if not deserved, because of the unwritten requirement within the Commissioned Corps that those given the highest ratings will be promoted in rank. And, ICS observed, in the ever shifting "Acting" roles in the Service Unit leadership, a physician's subordinate one year may be his supervisor the next.

A review of Weber's Commissioned Officers Effectiveness Reports for the period July 1992 to June 1995 revealed that Weber received above average, outstanding and exceptional ratings on his Overall Job Performance ratings. On his last two Effectiveness Reports, Weber was recommended for Promotion in Rank. None of the Effectiveness Reports reflect any negative information, or any

<sup>453</sup> *United States v. Weber*, CR 17-50033, (DSD, Western Division), Transcript of May 19, 2016, Interview with Patrick Weber, Dk. No. 50.

<sup>454</sup> *Id.*, at p. 59. The Clinical Directors during Weber's time at the Blackfeet Community Hospital were (b) (6) and Rottenbiller. Weber did not identify in the interview which of these two supervisors he met with, but the statement coincides with the conversation Rottenbiller related occurred following the directive from Jeanotte to get rid of Weber based on his apparent abuse of young Indian males. As noted, Weber recalls that the conversation related to a drinking incident at his home.

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management/supervisor/coworkers/ community concerns of Weber's personal conduct. This despite Rottenbiller's disclosure that Weber was not sanctioned -- or even documented -- for being intoxicated and so belligerent when he responded as a member of the Child Protection Team to an intervention at the Emergency Room that he had to be forcibly removed from the room by hospital security. (b) (6) (b) (6) recalled a second incident with Weber being intoxicated on duty. This incident was documented by (b) (6) (b) (6) believes that (b) (6) report went directly to LaFromboise.

Dr. Rottenbiller confirmed that Weber created a document entitled *Memorandum of Assignment*, dated January 1, 1994, and placed it before him for signature. This memo clarifies "special official duties" to "provide school-based services within the Browning and Heart Butte school districts" to include diagnosis, evaluation, treatment, preventative health care, health education, and counseling within the schools. The memo also authorized Weber to provide group counseling sessions after school, on weekends and during summer travel events to include day trips, overnight trips and extended trips such as camping trips. LaFromboise recalled reviewing and discussing this memo with Rottenbiller prior to its issuance. She was in favor of Weber's desire to have a great deal more contact with Indian youth, and she supported the extra duties assigned to Weber. Both managers seemed so focused on satisfying some popular metric regarding community outreach that they failed to critically consider the implications of permitting a pediatric provider to greatly expand his responsibilities outside his area of expertise, outside the service unit facility, and into the social lives of middle-school children.

Dr. Foster and former Deputy Area Director Charles Lewis were shocked to learn of the existence of this memorandum. Dr. Foster advised that Dr. Rottenbiller's issuance of this memo appeared to constitute evidence of "impaired judgment". Lewis stated that he had "never seen anything like that [memo] before," and he further advised the memorandum "never crossed my desk, but it should have."

**Charles Lewis**  
Assistant Area Director  
Billings Area Office

According to Lewis, the early information provided to him about Weber was positive in nature. Later, there were questions about Weber's extensive interaction with adolescents and whether this work was appropriate. Although two witnesses related to ICS that Lewis was specifically called about all of the allegations against Weber, and a third said she called either Lewis or the other Deputy Area Director, Lewis said he never received any information about the suspicions about Weber. Lewis does not recall ever hearing about Weber being physically assaulted. Lewis had no recollection of ever hearing about Weber being intoxicated while on duty.

ICS found it unusual that Lewis claimed such ignorance of any of the controversy swirling around Weber since, he claimed during his interview, that he visited each of the Billings AO's service units at least once a month in order "to listen", attend staff meetings, and understand what was

happening at the local level.<sup>455</sup> Lewis told ICS that he “thinks” that some of the other doctors in Browning approached Billings Area Director Duane Jeanotte and complained about Weber. According to Lewis, Jeanotte, putting the burden back on the Service Unit, told the doctors that they could remove Weber’s privileges locally and then the Area Office could act.<sup>456</sup> Lewis does not recall ever seeing any reports alleging misconduct by Weber.

Lewis dismissed any further responsibility by adding that the strategy of many service units was “**conceal, conceal, conceal until it’s out of the bag.**”<sup>457</sup> As noted below, once the extent of Weber’s misconduct was “out of the bag”, Jeanotte concealed the service unit’s “Weber problem” by allowing his transfer to Pine Ridge.

**Duane Jeanotte**  
*Area Director*  
*Billings Area Office*

Dr. Rottenbiller told both ICS and *Frontline* that while attending a staff meeting in the Billings Area Office, he was personally notified by Jeanotte that Weber was a suspected pedophile. Jeanotte, according to Rottenbiller, had conducted a review of Weber’s patient load and determined that the patient population consisted mainly of

adolescent males. In addition, Jeanotte had received a direct complaint from a parent of one of the patients. The parent reported that the young boy had stayed at Weber’s house overnight. Jeanotte told Rottenbiller “get rid of Dr. Weber.”<sup>458</sup>

When contacted by ICS, Jeanotte refused a formal interview but denied that he received any allegations of misconduct involving Weber. Jeanotte did not deny, but he does not recall, having a meeting with Dr. Rottenbiller to address misconduct issues involving Weber. Jeanotte does not recall being involved in the transfer of Weber from Browning to Pine Ridge.

The evidence that Jeanotte knew about Weber came from a variety of sources -- witnesses who had direct contact with Jeanotte, or claimed to have had, and witnesses that were confident, based on their knowledge of events and the system in place in 1995, that Jeanotte would have been a critical manager in the events. ICS, however, was not particularly surprised at Jeanotte’s claim of ignorance. **To have admitted knowing that Weber was a likely pedophile, he would not only be confessing his failure in not removing him from the IHS but acknowledging his role in allowing a suspected predator to be foisted upon an unsuspecting service unit and the teenage boys it served.**

<sup>455</sup> A degree of contextual consideration is appropriate when assessing the information provided by Charlie Lewis. At the time of his interview he was in his late 80s and had some apparent difficulty with recall. However, as with many others, the lack of recollection often seemed selective and bent toward self-serving.

<sup>456</sup> ICS interview of Charles Lewis, former Deputy Area Director, Billings Area Office, Joliet, Montana, September 10, 2019.

<sup>457</sup> Lewis’s placement of blame at the Service Unit level was remarkably consistent with the position of another former Deputy Area Director, Shelly Harris, who told ICS that Service Units conceal things from the Area Office because “they did not want to lose a provider.” ICS interview of Shelly Harris, Chief Executive Officer (CEO), Quentin Burdick Memorial Hospital, Belcourt, North Dakota, October 29, 2019. Although that may have been their shared experience, in neither Montana nor South Dakota does it appear to have been the case. The Service Units may not have been fulsome in their reporting to the Area Offices, but they certainly interacted sufficiently that the Area Offices could have engaged more actively if they had chosen to do so.

<sup>458</sup> This recounting is consistent with Lewis’s recollection that Jeanotte put the responsibility back on the Service Unit to pull Weber’s privileges; a plan of action that was made unnecessary by Weber’s decision to leave voluntarily.

## Overview of the Period

*Pine Ridge*

*1995-2015*

As Weber began his career at Pine Ridge, he came with his carefully chosen recommendations from providers who either did not know – or did not care – about the suspicions that plagued him at Browning.

(b) (6)

recorded on the "Recommendations" page of Weber's transfer that Weber "comes highly recommended" from Browning.<sup>459</sup>

However, almost immediately after beginning his practice his predilections for teenage boys became apparent – at least to those paying attention. Throughout ICS' fieldwork conducted on the Pine Ridge Indian Reservation one consistent fact was expressed -- Weber was suspected to be a pedophile from early on and those suspicions continued and persisted throughout his 21-year career at Pine Ridge.

Within three months of his transfer to Pine Ridge, Weber was accused by a parent of molestation; his examination of a young boy complaining of flu and cold-like symptoms had been, euphemistically, "too thorough".

The visit had included a genital exam. The

(b) (6)

showed (b) (6)

"patient issues" involving Weber during his tenure at the Blackfeet Hospital. After reviewing these written reports and discussing the situation further, (b) (6) and (b) (6) agreed that the complaint should be referred to law enforcement for a criminal sexual assault

investigation. (b) (6) referred the matter to the FBI.<sup>460</sup>

ICS interviewed numerous medical staff, including doctors, nurses and Medical Support Assistants who had worked alongside Weber at Pine Ridge. These individuals were candid in their recollections of the open secret, widely disseminated throughout the hospital, that Weber liked young boys in a manner that suggested more than a doctor-patient relationship.

Weber's pedophilia was widely suspected, and the suspicions were grounded in a host of circumstances witnessed by a host of observers. In *Part I: Investigation*, and the supporting memoranda of interview, there are recorded several accounts of all these observations:

- adolescent boys working at his house
- adolescent boys coming and going from Weber's house at all times of the day and night
- adolescent boys coming into the hospital asking for Weber
- Weber giving boys money
- Weber cherry picking patient charts looking for adolescent and prepubescent males; populating his patient load with only young males of a certain type
- Weber providing a game console to only male patients
- Weber wheeling in TV/VHS player and VHS movies to male patients
- Weber in bed with a patient playing on game console
- neighbors calling hospital security because of the boys coming to Weber's house
- Weber examining all male teenage patients for STDs even if that was

<sup>459</sup> Official Personnel File (OPF), Recommendations and Approvals, June 15, 1995.

<sup>460</sup> Id.

*not their complaint or reason for treatment*

- *Weber dispensing drugs without a prescription*
- *Weber providing young boys with cash*
- *Weber insisting on being alone with young boys in the examination room*

The nursing staff was so convinced of his potential threat that since 1997 they had warned nurses during their orientation training not to leave Weber alone too long with young boys.

These events are recounted in other portions of this report. **They are reiterated here to emphasize that there were no complaints forced to the surface between 1996 and 2006.**<sup>461</sup>

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*As subsequent events unfolded, the truth of Weber's danger to patients would have been likely discovered had they be rigorously investigated rather than rigorously suppressed.*

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This was the factual context – the “open secret” – that existed when Dr. Butterbrodt first raised the issue formally in his 2006 email to Acting Clinical Director Sumners and CEO Poirier.

**William “Bill” Poirier**  
*Chief Executive Officer*  
 2006

Despite the widely known but undocumented suspicions that surrounded Weber since his arrival at Pine Ridge in 1995, Weber served as the Hospital Chief of Staff from 2006 through 2009. As Chief of Staff, Weber was the Acting Clinical Director when the Clinical Director was away from the hospital.

The first *documented* evidence of a complaint at Pine Ridge with regard to Weber was identified within the August 20, 2006 email from Dr. Mark Butterbrodt to Clinical Director Rory Sumners, which was courtesy copied to CEO Bill Poirier. In the email, Dr. Butterbrodt questioned Weber's medical practice and requested that Sumners “*familiarize yourself with why he left Montana...*”<sup>462</sup> While the text of the email is careful not to accuse Weber of pedophilia, Butterbrodt advised ICS that it followed verbal reports to Sumners in early 2006 wherein Butterbrodt was more candid about what nurses had informed him about Weber's interactions with male patients.<sup>463</sup>

Three months later, Weber was severely beaten by three teenage boys at his government housing unit.<sup>464</sup> Weber's injuries required immediate medical attention. Poirier responded to the Emergency Room and confronted Weber seeking specific information regarding the attack. Weber was evasive, he did not

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<sup>461</sup> After the FBI referral in 1995, the next time the record reflects that Weber's conduct was formally brought to the attention of the administration was in an August 2006 email when Dr. Butterbrodt wrote to Clinical Director Dr. Rory Sumners, regarding Weber, “*I'd like you to familiarize yourself with why he left Montana...*” Butterbrodt email to Sumners and Poirier, dated August 20, 2006.

<sup>462</sup> Butterbrodt email to Sumners and Poirier, dated August 20, 2006.

<sup>463</sup> ICS interview of Dr. Mark Butterbrodt, former pediatrician at Pine Ridge, Rapid City, South Dakota, October 2, 2019. Based on the cumulative information received from witnesses, ICS concluded that before 2006 the accusations against Weber were cautious and carefully crafted, couched in generic terms but unmistakable in meaning.

<sup>464</sup> Although unknown at the time, two of the assailants were victims of Weber's sexual abuse.

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provide any specific information on the assault and he refused to cooperate with Pourier's inquiry. No criminal charges were ever filed against the attackers. Pourier told *Frontline* that he contacted his superiors at the AAO regarding this incident.<sup>465</sup>

The review and analysis of Weber's Effectiveness Reports for the six-year period of 2004 through 2010 reflect that Pourier reviewed, concurred with and approved the performance evaluation ratings issued to Weber. During this time frame Weber consistently received above average, outstanding, and exceptional ratings. As had been the case in Browning, evaluators made laudatory comments about Weber's performance. Comments in the Pine Ridge narratives to support these exceptional ratings constantly referenced Weber's creation and involvement in evening pediatric clinics, off sight school and sports physicals, and increased offering of STD screenings.<sup>466</sup>

Dr. Butterbrodt stated that he spoke with Pourier the day after Weber was physically assaulted and that Pourier commented that "*it was probably one of his boyfriends.*"<sup>467</sup> It is unknown what Pourier told his superiors about the incident or whether he indicated that it was possibly related to Weber's relationships with young Indian males. No extant written or electronic communications relating to Weber's physical assault were provided or discovered during this inquiry, and Pourier never alluded to any documentation of the incident to *Frontline*.

The review of security records and interviews with hospital staff, including the Director of Security, revealed that there were no increased safety precautions taken, no safety awareness bulletin issued, or any enhanced security measures ordered for the safety of the hospital staff. Director of Security (b) (6) recalled being instructed that Weber's physical assault was an "isolated incident" and that no increased security measures were needed because Pourier did not consider the issue a "public risk." (b) (6) advised ICS that rumors began to circulate that Weber was a pedophile and that he had been physically assaulted by one or more of his teenage victims.<sup>468</sup> (b) (6) boss at the time, Director of Security (b) (6) told him to "stay away from Weber".

The attack and physical assault by multiple assailants of a Commissioned Corps doctor, who served as the hospital's Chief of Staff, inside that officer's government housing unit, was quickly dismissed as an isolated incident not worthy of formal investigation. The response, or complete lack of a response, suggests that the "open secret" about Weber that had held sway for his ten years at Pine Ridge was also known to management. The dismissive attitude reflects management's blindness to the dangers Weber posed and its determination to protect the career of a senior doctor at the expense of patient safety. It would be the recurring theme of Pourier's actions in subsequent misconduct investigations of Weber in 2008 and 2009.

<sup>465</sup> *Frontline* interview of William Pourier, aired February 12, 2019.

<sup>466</sup> Official Personnel File (OPF), Commissioned Officers' Effectiveness Reports, Pine Ridge (2004-2010), Reviewing Official: William Pourier, Chief Executive Officer.

<sup>467</sup> ICS interview of Dr. Mark Butterbrodt, former pediatrician at Pine Ridge, Rapid City, South Dakota, October 2, 2019.

<sup>468</sup>

## DWI/AWOL February 2008

On February 26, 2008, Weber was arrested in Rapid City, South Dakota, for driving while intoxicated (DWI), displaying expired license plates and no proof of vehicle insurance. Weber was taken to jail, soon posted bail, and was released. Weber reported his arrest to Clinical Director Dr. Rory Summers two days later. After briefing CEO Pourier on the situation, Summers then emailed Ronald Keats, the Commissioned Corps Liaison for the Great Plains Area. In the email, Summers stated, *"I have told Dr. Weber that he can return to work, and that this thing will be kept confidential."* One week later, Weber emailed Keats and provided a written explanation of the situation.

Keats soon emailed David Birney, a personnel officer with the PHS in the Office of the Assistant Secretary for Health (OASH) and Paul McSherry, the Deputy Director of the Division of Commissioned Personnel Support (DCPS), requesting Weber *"receives the minimal PHS CC discipline possible, maybe at most a "Letter of Reproval"*. Keats subsequently sent a memorandum to Summers on March 14, 2008 which recommended that Weber *"be either formally counseled regarding his actions or given a Letter of Reproval to be maintained in his local Service Unit for up to 2 years"*. Keats memorandum outlines Weber's service history and lists mitigating factors in support of the recommendation for such light punishment. Keats wrote that *"[f]rom a review of this officer's OPF, it appears there has never been a drug and /or alcohol related incident as explained above."* Keats stressed *"This is a first offense of any type of drug and / or alcohol abuse issue for this officer"*. While it was correct that

Weber's OPF did not contain any information of prior alcohol related incidents, this was not Weber's first alcohol abuse issue. As noted in the Montana Section, above, there are at least two previous alcohol related issues involving Weber being intoxicated while on duty that should have been properly documented and recorded into his OPF.

Summers signed the memorandum approving Formal Counseling as the appropriate discipline for Weber. Summers also initialed the memorandum to reflect that a Letter of Reproval should not be entered. This action by Summers was consistent with an email he had previously sent to Keats,

*"Well, I have known Dr. Weber for all the years he has been here and would characterize our working relationship as excellent. I have never observed any issues with respect to his level of professionalism or competence, and can attest to his integrity in the workplace. He has been the Chief of Staff for the last three years or so, and had performed admirably-he has always been a great assistance to me, functioning on the Credentialing and By-Laws Committee, and acting as Clinical Director numerous times in my absence. I trust him implicitly with confidential matters. I feel that he is a superlative physician as well. I have been his supervisor since July, 2005."*<sup>469</sup>

David Birney had previously advised Keats the administrative charge of AWOL with appropriate disciplinary sanctions **was required** under Commissioned Corps policy due to Weber's overnight incarceration. The directive to impose this penalty on Weber was ignored by the Service Unit and by the

<sup>469</sup> Summers response to Keats email dated March 4, 2008.



Area Office. The matter was simply buried until March 2009 when Weber's sexual conduct would again become an issue, exposing the fact that the AWOL issue had been ignored by Keats, contrary to the instructions he had received from Headquarters. When the issue resurfaced, Keats emailed Birney, noting "... as I mentioned the Service Unit did not want to punish the officer at that time" and that "...the Service Unit wanted to handle the previous issue (the DWI/AWOL) locally..."<sup>470</sup>. Birney advised Keats that "[t]he policy does not allow for the service unit to handle the situation (the DWI/AWOL) locally."<sup>471</sup>

(b) (6) told ICS that if an Officer was AWOL because of an arrest and incarceration and unable to work, the officer would lose pay for that day and this documentation would stay in the officer's personnel file forever. (b) (6) recalled that although there is an AWOL letter in Weber's file, no disciplinary action was ever taken against Weber. According to (b) (6), Weber should have also received a Letter of Reprimand for the DWI. A Letter of Reprimand stays in the officers' personnel file for six months to two years. When an officer receives a Letter of Reprimand, the officer will not be considered for a promotion in rank, special pay will be affected depending on the severity of the DWI and there will be discussions on whether to refer the officer to Medical Affairs for alcohol rehabilitation/treatment.

Weber's DWI/AWOL issue was allowed to expire through a course of intentional inaction, not through any sort of affirmative

decision to close the matter with a suitable resolution.

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*This was a consistent pattern throughout Weber's career – for 25 years he benefited from management's willingness to ignore problems rather than address them.*

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## SDBMOE

December 2008

On December 2, 2008, Dr. Butterbrodt lodged a formal complaint against Weber to the South Dakota Board of Medical and Osteopathic Examiners (SDBMOE). The written complaint alleged that Weber "cherry picks" patient charts for teenage male patients. It also reported Weber's physical assault in November 2006. The complaint also alleged there were conduct issues at Weber's previous duty stations in Montana and Oklahoma. The complaint was assigned to (b) (6) (b) (6) for investigation.

On May 5, 2009, Butterbrodt supplemented his initial complaint with a letter addressed to (b) (6) (b) (6). Attached to Dr. Butterbrodt's letter were copies of seven emails exchanged from March 2, 2009 and March 11, 2009 between Dr. Butterbrodt and CEO Pourier and the Clinical Director, Dr. Jan Colton. Dr. Butterbrodt requested that his letter and the attached emails be added to the SDBMOE investigative case file on Weber.

On June 5, 2009, (b) (6) issued a letter to CEO Pourier requesting all complaints,

<sup>470</sup> First Keats email to Birney and McSherry dated March 12, 2009.

<sup>471</sup> Id.

concerns and corrective actions pertaining to Weber.

On June 18, 2009, Pourier responded to the SDBMOE. Without providing any documents, Pourier referenced a patient complaint in 1996 alleging a physical examination by Weber was “too complete” and that an evaluation conducted by (b) (6) former Clinical Director concluded the complaint meritless. Pourier also wrote:

*“Dr. Butterbrodt has raised issues concerning Dr. Weber twice; once in 2006 and now in 2008-2009. In each instance the concerns raised by Dr. Butterbrodt dealt with inappropriate behavior with adolescent males. An investigation was conducted in both instances. Allegations and innuendos were found, but no concrete evidence. We had placed Dr. Weber on leave during our investigation and many members of the Oglala Sioux Tribe requested his return. Dr. Weber is an excellent clinician who is generally well-respected by patients, their families, and his peers.”*

Pourier did not inform (b) (6) that the August 1995 sexual assault allegation was referred to the FBI, he did not include any of the emails or memoranda prepared by Butterbrodt, and he makes no reference to Weber’s DWI arrest, all of which would have been responsive to (b) (6) request for information that was needed for a thorough, objective and independent investigation of Weber. Pourier references internal investigations of Weber conducted by the Pine Ridge Hospital in 2006 or 2008-2009 but did not provide any of the records sought by the SDBMOE. ICS was not provided, and was unable to locate, any investigative reports detailing these two investigations although Dr. Colton assured the consultants that a report was written and should have been on file both at the Service Unit and in

the Area Office. Pourier’s reference to an internal investigation into Weber’s inappropriate behavior with adolescent males in 2006 (if it exists) is especially troubling in light of Pourier’s public statements on the *Frontline* broadcast that Weber refused to cooperate with Pourier’s inquiry into the physical assault.

On January 17, 2013, (b) (6) issued a letter to Weber advising that SDBMOE’s “concern had been addressed appropriately and the file had been closed.” This letter acknowledged that SDBMOE had closed their investigation and concluded that no action by SDBMOE was warranted.

On October 19, 2019, RADM Chris Buchanan requested that the SDBMOE provide IHS with copies of all documents that were provided to SDBMOE by IHS in connection with the investigation of Weber, as well as a full copy of SDBMOE’s investigative file regarding Weber. As of the date of this report, no response from SDBMOE has been received.

The SDBMOE files and investigative reports are necessary in order to conduct a full assessment of their investigation and to evaluate the actions and statements of IHS leadership in that regard.

An issue of critical concern is Weber’s admission statements to OIG Special Agent Curt Muller on May 19, 2016. During this interview, Weber confirmed to SA Muller that he participated in a three-day psychological assessment by SDBMOE wherein he was questioned on whether he had sex with male patients. Weber also confirmed that he was subsequently administered a polygraph examination as part of that investigation. Weber said he did not recall failing the polygraph examination, and he claimed that he did not remember

having any discussion on why he failed the polygraph examination.<sup>472</sup>

### The *ad hoc* Investigation Committee March 2009

In March of 2009, Clinical Director Colton assembled an *ad hoc* Investigation Committee to address Butterbrodt's complaint formally lodged against Weber with her and CEO Pourier. The failures of the *ad hoc* Investigation Committee as a fact-finding mechanism are fully explored in Root Cause Finding #3 - Ineffective Internal Investigations as an institutional failure of the process itself, but also resonate as a failure of leadership that should be examined from that perspective as well.

While the allegations leveled by Butterbrodt signaled potential criminal behavior that should have been referred to law enforcement, Dr. Colton was advised by the Office of General Counsel to form an *ad hoc* Investigation Committee to investigate the complaint. It was clear almost from its formation that the *ad hoc* team was neither qualified nor prepared to conduct the thorough investigation required of the seriousness of their assignment.

Leadership should have realized these facts:

- *None of the members had any specialized training to properly conduct this type of investigation;*
- *None had any background in interviewing witnesses, assembling records, or evaluating direct and circumstantial evidence;*
- *This was a collateral duty assigned to them to be performed in addition to their full-time obligations as medical practitioners and therefore*

- they were hampered not only by inexperience and lack of training but also by resources and opportunity;*
- *There was an inherent conflict of interest of allowing Weber's subordinates to be involved in the investigation, some of whom may have been witnesses to relevant facts yet disclosed or undiscovered;*
- *The credibility, impartiality and objectivity required of the investigation was fatally compromised from inception as Weber served as Chief of Staff; it would have been impossible for the committee members to ignore the possibility that he would be involved in the future review of their annual performance evaluations; and*
- *The time allotted for the investigation be completed- and a written report be issued- within two weeks was completely inconsistent with the gravity of the allegations.*

The committee called no witnesses. It did not contact Butterbrodt for verification of his allegations or to inquire whether additional, yet unrevealed, evidence existed to support his complaint. The committee did not even confront Weber to explain the circumstances giving rise to Butterbrodt's concerns or ascertain whether he denied the allegations. The group's lack of expertise, lack of objectivity, and lack of effort resulted in the inevitable conclusion that Butterbrodt's allegations could not be substantiated.

In sum, while an *ad hoc* committee comprised of an accused provider's colleagues – or worse, subordinates – is a flawed mechanism from the outset for addressing allegations of criminal patient endangerment, it reflects a deeper problem

<sup>472</sup> *United States v. Weber*, CR 17-50033, (DSD, Western Division), Transcript of May 19, 2016, Interview with Patrick Weber, Dk. No. 50, p. 53.

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of leadership in either not recognizing the flaws inherent in such a decision or a failure to appreciate the seriousness of child abuse allegations.

In an email dated April 10, 2009 Colton referenced their inability to obtain “previous investigations” and related “police reports” pertinent to the Weber investigation. The leadership at the Pine Ridge Service Unit was required to exercise reasonable judgment when considering the record. A reasonable supervisor would have concluded that the amount of specificity and attribution of these allegations was sufficient to warrant further investigation. The nature and seriousness of the allegations, the prominence of the employee’s position (Chief of Staff), and the sheer volume of Weber’s personal contact with the adolescent patients, should have resulted in a thorough investigation. If one could not be conducted by an internal committee, a referral to law enforcement for a proper investigation was mandated.

Managers involved (Pourier, Keats, and Colton) did not ask themselves any of the questions necessary to address a serious allegation. As a result of that failure no evidence relating to the allegation was sought and (not unexpectedly) no evidence was obtained; therefore, no evidence of Weber’s misconduct was considered which resulted in the conclusion that there was no evidence to support the allegation. The most sinister interpretation of such a series of events would be that managers like Pourier

obtained a pre-determined outcome that had nothing to do with whether or not the allegations were true. The perception of those not directly involved in the process was that Weber had been ‘cleared’ of any wrongdoing.

ICS had some sympathy for Dr. Colton. She took over as the Clinical Director from Dr. Summers and was almost immediately confronted with the Weber case. She followed a course recommended by (b) (6) (b) (6) who seemed to treat the matter as a common personnel issue, not a conduct and patient safety issue with serious criminal implications.<sup>473</sup> In doing so, an allegation of child sexual abuse occupied the same level of urgency as a misdiagnosis or insufficient attentiveness to a patient's complaint.

Ultimately, CEO Pourier was the person responsible for the effective management of employee conduct, properly documenting and investigating allegations and incidents of employee misconduct, and initiating corrective action as warranted. Pourier failed in all aspects of his responsibilities with regard to the *ad hoc* investigation by accepting the meaningless conclusion that nothing further could be done to resolve this complaint.

**Pourier, Keats, and others treated an allegation of child abuse as an inconvenient personnel issue. That was the leadership failure separate and apart from the manner of investigation itself.**

<sup>473</sup> ICS found fault with HHS OGC for its failure to acknowledge the seriousness of the allegations or counsel Dr. Colton, CEO Pourier, or anyone else with whom they communicated that they had statutory and regulatory obligations to refer this matter to law enforcement. 34 U.S.C. § 20341. Child abuse reporting, “A covered individual who learns of facts that give reason to suspect that a child has suffered an incident of child abuse, including sexual abuse, shall as soon as possible make a report of the suspected abuse to [federal law enforcement]”; Crime Control Act of 1990 - Public Law 101-647. 45 CFR § 73.735-1302 – “Responsibility for reporting allegations of misconduct. An employee who has information which he or she reasonably believes indicates the existence of ... (c) a substantial and specific danger to the public health and safety, shall immediately report such information to his or her supervisor, any management official of the Department, or directly to the Office of the Inspector General.” The OGC failed Dr. Colton.

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## Weber Application for Reappointment *April 2009*

In the midst of the uproar of 2009 when Weber was now accused of pedophilia, an *ad hoc* committee formed to investigate, a SDBMOE investigation underway, and the 2008 DWI/AWOL issue was being revisited after lying dormant for a year, Weber needed to be recredentialed to continue practicing medicine at the Pine Ridge Service Unit.

Weber was placed on 60-day Non Duty with Pay status from March 03, 2009 to May 02, 2009 during the investigations into allegations of his misconduct.<sup>474</sup> While on his administrative leave, Weber prepared and submitted an Application for Reappointment (Application) to the Pine Ridge medical staff as part of his two-year recredentiaing process.

The credentialing and privileging approval process is designed to properly screen medical providers, certify their minimum standards for competency are maintained, promote quality patient care, and identify potential risk to patient health care. The credentialing process is a suitability review that evaluates and verifies the qualifications and practice history of the medical provider. Factors considered and evaluated include education, training,

residency and licensing. Coupled with that is privileging, which authorizes a healthcare practitioner to practice within a certain scope of patient care services.

A thorough review and objective analysis of the provider's information is required. The process is designed to identify deficiencies and resolve any outstanding concerns. Renewal is neither automatic nor guaranteed. The goal is to avoid exposing patients and medical facilities to unnecessary risks generated by unprofessional, unethical, dangerous and/or incompetent health care providers.<sup>475</sup>

The IHS's credentialing and privileging process, as outlined in IHS Circular 95-16, Appendix A, consists of the following steps:

- Step 1. A practitioner completes and applies for medical staff membership and clinical privileges. The practitioner must sign and date both applications.
- Step 2. The credentialing coordinator/ credentialing specialist reviews the applications for completeness and verifies the credentialing information.
- Step 3. The clinical director at the medical facility reviews both applications for completeness and

<sup>474</sup> In December 2010 the Senate Committee on Indian Affairs issued their report on the IHS Aberdeen Area – “*In Critical Condition: The Urgent Need to Reform IHS’ Aberdeen Area*”. Several service units within AAO were cited for licensing and credentialing problems. The report identified Pine Ridge as having substantial accreditation issues. The Senate Committee found fault in numerous instances of employees being placed on administrative leave with pay due to an ongoing investigation. Between 2005 and 2010 there were 23 employees placed on administrative leave with pay at Pine Ridge. The Committee was critical of allowing the local service unit the authority to place employees on administrative leave due to a pending investigation without the knowledge of, and the approval of the Area Office.

<sup>475</sup> The above recitation is a distillation taken from IHS Manual -Chapter 1 – Medical Credentials and Privileges Review Process, Part 3 - Professional Services, and IHS Manual -Chapter 23- Ethical and Professional Conduct of Health Care Providers, Part 3- Professional Services.

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determines whether the applicant has requested privileges that the facility either supports or requires.

- Step 4. The clinical director reviews the applications and any additional information with the medical staff executive committee. This committee recommends the applications for medical staff membership to be accepted or rejected and determines which of the requested clinical privileges should be granted. This recommendation is routed through the Clinical Director and the CEO before being forwarded to the governing body.
- Step 5. The CEO at the medical facility reviews the appropriateness of the recommendations from the medical staff executive committee and forwards the recommendations to the governing body of the service unit.
- Step 6. - The governing body reviews the applications and grants, restricts, or denies the staff membership and/or privileges in writing.

Under the Application for Reappointment, section “Liability Claims and Adverse Actions”, Weber answered “Yes” to two questions that required him to attach a statement explaining his answer:

- ❖ Question - Have any civil or criminal charges ever been filed against you, or are you under investigation which might lead to such charges?

Weber provided a brief summary regarding his DWI arrest in Rapid City in February 2008. He advised that he had reported the arrest to the Clinical Director and his

licensing boards, completed drug/alcohol counseling and that he had been alcohol free since the arrest.

- ❖ Question - Are you currently involved in or have knowledge of a pending investigation review, or surveillance of your professional practice or conduct that could result in an adverse action concerning your narcotics registration, ability to bill and collect from Medicare or Medicaid programs, professional license, registration or certification, or medical staff membership or privileges?

Weber acknowledged that Dr. Butterbrodt had filed two complaints against him, one with the Pine Ridge Hospital and one with SDBMOE. Weber confirmed that he had met with SDBMOE on February 19, 2009 regarding the complaint. He noted the complaint alleged that (a) he was a “child molester” at both Pine Ridge and Browning, Montana, (b) he had been “treating” children in his home, and (c) he “selected out teenage male patients” to see in the clinic. Weber also referenced other complaints by Butterbrodt filed with CEO Pourier and Clinical Directors Sumner and Colton since 2007, although these other complaints were not further identified.

Weber denied the allegations. He claimed they were vindictive based on Weber’s quality of care complaint filed in 2007 against Butterbrodt alleging substandard patient care. Weber did not provide any information regarding the *ad hoc* investigation, or the fact that he was currently on a 60-day Non-Duty with Pay administrative leave status.

The Recommendation & Approval section of Weber’s Application was signed and approved by seven IHS senior officials. Each of the individuals listed below

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unconditionally recommended Weber for reappointment to the Pine Ridge Medical Staff before the completion of the SDBMOE investigation:

- Supervisor/Consultant: Fernando Cosme on May 5, 2009
- Credentialing Committee: Hector Burgos on May 5, 2009
- Medical Executive Committee: Jose Carlos Rodriguez, on May 18, 2009
- Medical Director: F. Delgado on May 19, 2009
- Chief Executive Officer: Bill Pourier on May 21, 2009

Weber's Application was then mailed to the Aberdeen Area Office for further review and analysis by the Governing Body. At the AAO, Weber was recommended for reappointment by Vickie Claymore-Lahammer (Claymore), the Acting Chief Medical Officer, on June 11, 2009. Weber's Application for Reappointment now had the endorsements of the Credentialing Committee, the Medical Executive Committee, the Pine Ridge CEO and the AAO Acting Chief Medical Officer. It was subsequently approved by Area Director Charlene Red Thunder on June 15, 2009. The Application was then returned to the Pine Ridge service unit and Weber resumed his medical career where he continued to prey on his adolescent male teenage victims.

The governing body had the ultimate authority on whether to grant, restrict or deny a medical provider's privileges. It is required to exercise a sufficiently independent review and determination to

make that authority a credible exercise. Recommendations from the two subordinate oversight committees cannot be used as an excuse for the Governing Body's failure to restrict or deny Weber's privileges at the Pine Ridge Hospital. The Governing Body is ultimately responsible for this monumental failure. The signatures of Governing Body members CEO Bill Pourier, Chief Medical Officer Vickie Claymore Lahammer and Area Director Charlene Red Thunder – without additional information to explain the lack of robust analysis -- confess their failures to act as responsible managers.<sup>476</sup>

**Weber's Application contained sufficient information to restrict and possibly deny his reappointment. Two separate investigations into allegations that he was a suspected pedophile should have triggered a comprehensive analysis of the situation. Just the opposite occurred. Three oversight committees, and the leaders who chaired them, simply rubber-stamped Weber's Application for Reappointment to the Pine Ridge medical staff.**

(b) (6) did not recall specifically reviewing Weber's application, although she admitted it was her responsibility to do so.

(b) (6) confirmed that all three oversight committees failed in their responsibility to properly screen, analyze, vet and process Weber's Application for Reappointment.

Dr. Fernando Cosme was the Chairman of the Pine Ridge Credentialing Committee in 2009. He admitted to ICS that he had personally observed "lots of male patients would ask for Weber." Cosme claimed no

<sup>476</sup> ICS requested copies of the meeting minutes of the Credentialing Committee, the Medical Executive Committee and the Governing Body for 2009 in an attempt to identify whether there had been any discussions, reviews, or debate regarding Weber's reappointment. None of these documents were provided and none of these documents could be located during ICS' fieldwork. Likewise, ICS requested a copy of the *ad hoc* Investigation Committee report seeking a better understanding of their process, analysis and conclusions. This report could not be located.

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knowledge of the *ad hoc* committee investigation, even though Cosme witnessed Weber being placed on 60-day administrative leave in March 2009 by Clinical Director Colton and Weber's Application clearly referenced both investigations. Cosme did recall the SDBMOE investigation but said Weber "was cleared" by the SDBMOE. Cosme was not interviewed by anyone from the SDBMOE. He never saw, or read, a SDBMOE report that cleared Weber. When asked to elaborate on how he knew that Weber "was cleared" by the SDBMOE, Cosme replied, "If he (Weber) comes back to work – he was cleared." Cosme then noted, "Weber got a pay increase – he must have been cleared."

Cosme initially denied that the "attachment page" was attached to Weber's Application when he (Cosme) reviewed it and signed as Supervisor / Consultant on May 05, 2009 recommending Weber's reappointment to the medical staff. Cosme was unable to explain the duties and responsibilities inherent to the position of Supervisor / Consultant. Upon further questioning, Cosme admitted that he signed Weber's application without reading the 'attachment page'. "I just signed it – didn't review it thoroughly".

Cosme explained that the credentialing process in 2009 was "just informal" and he stated "Before... we trusted." Dr. Cosme's casual attitude toward the credentialing process is a prime example of the leadership failures that plagued the service unit. It further demonstrates that leadership was more focused on the advancement of Weber's career than on patient safety.

Dr. Hector Burgos also served on the Pine Ridge Credentialing Committee and the Medical Executive Committee in 2009. Burgos advised that the Credentialing Committee reviewed Weber's Application as a group, but the Committee did not interview Weber about the written narrative that was attached to his application. Burgos further advised that Cosme, as the Supervisor / Consultant, should have reviewed Weber's application first, and then personally discussed with Weber these issues before providing his (Cosme's) recommendation for Weber's reappointment. Cosme claimed that he did not have any discussions with Weber about his application.

Burgos claimed that he also served on the *ad hoc* Investigation Committee.<sup>477</sup> He felt the *ad hoc* committee was not an investigative body, that this Committee "lacked the ability to get evidence"; from his perspective it was the Administration's responsibility to provide the review committee the evidence it needed to complete its charge.

Without any additional evidence and consistent with Cosme's recommendation as Supervisor/Consultant that Weber's reappointment should be approved, the Credentialing Committee voted to recommend Weber's reappointment to the medical staff. Burgos confirmed that there was an option available to the Credentialing Committee to 'table' Weber's application for reappointment pending a more thorough investigation, or to wait for the completion of the SDBMOE investigation. According to Burgos, there was no discussion by the Credentialing Committee to table Weber's Application. But there should have been. Tabling Weber's Application would have been an effective alternative to that of

<sup>477</sup> This claim is somewhat in doubt as Dr. Colton did not identify Burgos as one of the three members she named to the *ad hoc* review. As a member of the MEC Burgos may have had sufficient interaction with the members of the *ad hoc* committee to believe – particularly 10 years later – that he had a formal role.

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simply recommending Weber's reappointment without benefit of additional evidence into allegations of his misconduct.

Burgos recalled that Weber had returned to work (from the 60-day suspension) before he (Burgos) recommended Weber's reappointment to the medical staff. Burgos interpreted Weber's return to work as proof that Weber had been cleared of the misconduct allegations.

On May 21, 2009 CEO Bill Pourier recommended to the Governing Body that Weber be reappointed to the Pine Ridge Medical Staff. After Pourier's recommendation, Weber's Application was mailed to the AAO for further review, recommendations and final decision by the Governing Body and the Area Director. The Acting Chief Medical Officer, Vickie Claymore Lahammer told ICS that it was Pourier's responsibility to alert the Governing Body to the issues contained in Weber's Application. As Pourier told the PBS *Frontline* broadcast, "I couldn't afford to take the risk of losing my job at that time." Pourier's excuse for abandoning his responsibility is a stark reminder of the personal financial motivation that too often drives professional inaction.

Instead of focusing on patient safety, these IHS officials opted to focus on promoting the career path of one of their own colleagues. The entire credentialing and privileging process at the Pine Ridge service unit was dysfunctional. The one common denominator in the failed process was the oversight required of CEO Pourier. As CEO he oversaw the daily functions of the hospital and he served on the Governing Body. His responsibility was a unique dual

obligation to both the hospital and to the Governing Body.

Three days after the Governing Body granted Weber's reappointment to the Pine Ridge medical staff, Pourier responded to the letter from SDBMOE requesting information. Pourier provided no documents and his response was nothing more than a lobbying effort to get the SDBMOE to go away. Pourier's actions are undeniable evidence that he knew there was an active investigation by the SDBMOE **both before and after** he recommended Weber's reappointment to the Pine Ridge medical staff. **His actions were unjustifiable, unreasonable and they demonstrate a total disregard for the seriousness of the allegations.**

Dr. Vickie Claymore told ICS that she was unaware that Butterbrodt filed a formal complaint against Weber in February 2009 with Dr. Colton. She did not recall being informed that an *ad hoc* Investigation Committee was formed to investigate this complaint, nor was she aware of any written report from the *ad hoc* Investigation Committee.<sup>478</sup> Although Weber disclosed the investigation in his reappointment application, Claymore was also unaware that Butterbrodt had filed a formal complaint against Weber with the SDBMOE in December 2008.

Although Claymore did not recall any specific issue with respect to Weber's application, when she reviewed a copy, she speculated that she may have discussed with Carol Slaba the notation that read "new liability issues." These liability issues were derived from the fact that Weber was under investigation for possible misconduct. She was unable to explain why she, and AAO

<sup>478</sup> Dr. Colton insisted that the committee had concluded its business and issued a written report, a copy of which was sent to the Aberdeen Area Office. ICS interview of Dr. Jan Colton, former Pediatric Dentist and former Acting Clinical Director at the Pine Ridge Service Unit, Phoenix, Arizona, November 25, 2019.

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Area Director Charlene Red Thunder signed off on approving Weber for reappointment to the Pine Ridge medical staff before these investigations were completed. **She admitted the Governing Body should not have approved Weber's application for reappointment before the completion of the investigation.**

Claymore stated that Weber's Application should never had been forwarded to the Governing Body; that the Pine Ridge Medical Executive Committee should not have recommended Weber's reappointment because of the active pending investigations of Weber. Claymore shifts primary responsibility to Pourier, noting that it was the CEO's responsibility to fully inform the Governing Body of the SDBMOE investigation, including his letter to SDBMOE on June 18, 2009.

On June 19, 2009, the day after Pourier's letter to the SDBMOE, Weber was advised that the "Medical Executive Committee met on May 18, 2009 and approved your Reappointment application to the Medical Staff and requested Clinical Privileges. The Aberdeen Area Governing Body for the Pine Ridge IHS also approved your application and requested privileges on June 15, 2009."

In the ten-year period between 2001 and 2011, HHS-OIG issued 26 reports on IHS leadership failures, quality of care deficiencies, ineffective credentialing and privileging policies, patient safety, and the lack of oversight of program effectiveness. These reports often cited specific instances of employee misconduct. They all included recommendations for improvement. During that time frame, the OIG issued eight reports for deficiencies associated with ineffective

credentialing and privileging (HHS OIG White Paper "Summary of OIG-IHS Activities-2011").

**Everyone, individually (and collectively) involved in the review, vetting, analysis and recommendation of Weber's 2009 Application for Reappointment failed in their primary obligation to ensure patient safety.** Starting with (b) (6) the (b) (6) who processed Weber's application and ending with AD Charlene Red Thunder who ultimately granted Weber continued unrestricted privileges at the Pine Ridge Hospital, all involved and specifically those who signed off recommending Weber's continued unrestricted privileges were derelict in their oversight responsibilities.<sup>479</sup>

**This was a stunning failure in light of the number of levels of review, all presumably charged with conducting meaningful review and exercising objective judgment. So many were given the responsibility, and the authority, to review the suitability of a provider for practice in an IHS facility.** Three oversight committees -- the Credentialing Committee, the Medical Executive Committee and the Governing Body -- and key leaders -- the Chief Executive Officer, the Chief Medical Officer and the Area Director -- all reviewed paperwork where an applicant revealed he was suspected of sexually abusing children and determined that he was deserving of privileges without any further inquiry.

A pivotal opportunity to uncover the truth about Weber and stop him from further injury to IHS patients was lost to an apathy of leadership and a dereliction of duty.

<sup>479</sup> ICS noted that Carol Slaba, the Credentialing Coordinator for the Office of Medical Care Evaluation, at the Aberdeen Area Office, appeared to be one of the only administrators -- out of the many involved with Weber's credentialing in the summer of 2009 -- who acted responsibly in attempting to put the brakes on a runaway process that seemed intent on rubber-stamping his privileges and career without any regard for the danger he presented.

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## CEO Wehnona Stabler 2011

In July 2011 Weber was elevated to Acting Clinical Director, a position he would hold until his resignation from the IHS in May 2016. Weber retired as a Commissioned Corps officer on December 31, 2011, and the next day started a civilian career with the IHS.

While Acting Clinical Director, Weber's immediate supervisor was CEO Wehnona Stabler. Stabler and Weber were neighbors in the IHS housing complex located adjacent to the hospital.

Stabler told *Frontline* that an anonymous caller provided her allegations of Weber's pedophilia. She claimed the caller didn't provide her any specific information and therefore the complaint was not pursued.

Dr. Butterbrodt told ICS that the call to Stabler was from him and that it was by no means 'anonymous'. Butterbrodt said he provided Stabler with all of the information he had collected on Weber and urged the CEO "in the strongest possible terms" to remove Weber from patient care.

During his interview with SA Muller in May 2016, Weber confirmed that Stabler became the CEO in 2011 and admitted that he had a meeting with both Stabler and Acting Deputy CEO Sophia Conroy regarding this particular complaint. Weber was told by Stabler the caller – concealing Butterbrodt's identity – told her that Weber "was molesting boys." Weber assumed the call to Stabler was placed by Dr Butterbrodt.<sup>480</sup>

According to Weber, there were no further discussions about this issue. Weber admitted to giving Stabler "a sizable amount" of money as a gift because he knew that Stabler "was having problems financially". Weber could not recall if he also gave money to Conroy.<sup>481</sup>

### **Stabler took no action to investigate the allegations, to restrict Weber's patient care, or report the allegations to the Area Office or the OIG.**

The fact that Stabler took no action to verify the complaint clearly reveals that like so many before her, she dismissed the allegations against Weber on the basis of nothing more than his denials. If the complaint was serious enough to notify Conroy and then hold a meeting with Weber, the complaint was serious enough to warrant making a record of the allegations, the meeting, and her decision. It was serious enough to comply with the mandatory reporting requirements of statute, regulation, and policy.

Without more ICS did not conclude that the payment to Stabler was some sort of corrupt payment exchanged for her silence and collaboration in his efforts to conceal his criminal conduct. Stabler did not disclose the payment on her ethics disclosures and was held to account for that crime.

Although ICS could not determine that Weber ever gave money to any of his other supervisors, financial and professional security was not an uncommon motivation for ignoring problems rather than addressing them.<sup>482</sup> Although few managers were candid enough to admit that money and

<sup>480</sup> *United States v. Weber*, CR 17-50033, (DSD, Western Division), Transcript of May 19, 2016, Interview with Patrick Weber, Dk. No. 50, p. 111-112.

<sup>481</sup> *Id.*, at pp. 114-115.

<sup>482</sup> "Well at that time, you think of your career and job and your livelihood so I would have probably got fired. I guess that was the risk I would've took. I couldn't afford to take the risk at that time. To lose my job." *Frontline* interview of William Pourier, aired February 12, 2019.

position motivated them to ignore the alarms about Weber, circumstances suggest that the urge to suppress potentially embarrassing problems is closely tied to concerns of self-interest. This issue is discussed at length in Root Cause Finding #2 related to disclosure.

However, when it comes to leadership failures, taking a large sum of money from a subordinate who has been accused of criminal activity – and having done nothing with the allegation – certainly compromises the manager by an appearance of corrupt behavior. **An appearance of corruption alone is sufficient to demoralize the staff, cast doubt on the integrity of the institution as a whole, and bring disrepute to an agency in the eyes of its clients, the public, and the legislators that fund it.** Whether Stabler's decisions were controlled by Weber's money is a fair question that only two people can answer. But the damage is done regardless of their answer.

### BIA Law Enforcement Referral 2015

At some point in early July 2015, BIA Law Enforcement delivered to the Great Plains Area Office an undated, two-page investigative summary prepared by SA Fred Bennett regarding their investigation into Weber.<sup>483</sup>

SA Bennett's summary provided graphically detailed sexual assault allegations from an alleged victim who claimed that he had been sexually abused by Weber from the age of 12 to the age of 18 and that Weber had provided him gifts of money, clothing, alcohol and a PlayStation 2 gaming console.

<sup>483</sup> It is difficult to accurately determine the date as emails or other documentation recording events were not available. The first record is an OGC email to the Area Office which suggests that the Area Office, at some point on or before July 8, 2015, sent Bennett's report to the OGC. As with so many other periods of the Weber story, there is a failure to retain or a failure to retrieve relevant documents. SA Bennett confirmed that he gave it to the IHS in Aberdeen. ICS interview of Fred Bennett, former BIA Special Agent at Pine Ridge, Rapid City, South Dakota, October 1, 2019.

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According to the alleged victim, most of these assaults occurred at Weber's government housing unit located near the Pine Ridge hospital.

The alleged victim also claimed that while incarcerated in the juvenile detention facility in Rapid City, (b) (6)

(b) (6) The report again provided graphic details of these sexual assaults and the locations where they occurred. The victim further reported that he broke free of Weber during this outing and did not return to juvenile detention facility as required.

SA Bennett had confirmed with U. S. Probation Office and corrections officials at the juvenile detention facility that (b) (6)

The victim had disclosed to Bennett that while a fugitive, Weber had provided him money and then sexually abused him on several more occasions.

SA Bennett's summary referenced Weber's previous physical assault in Pine Ridge and included information that Weber had perpetrated similar sexual assaults on young boys at his previous duty station in Browning. SA Bennett reported that he had contacted some of Weber's previous coworkers in Browning, confirming these allegations.

On July 8, 2015, (b) (6) (b) (6) emailed Rick Sorensen, Deputy Director, and Ron Cornelius, Area Director for the Great Plains Area. (b) (6) had

reviewed SA Bennett's investigative report and then he had spoken with SA Bennett's supervisor, BIA Supervisory Agent (b) (6) confirmed to AD Cornelius and Deputy AD Sorenson that a federal criminal investigation of Weber was underway, and the matter had already been referred to the U. S. Attorney's Office.<sup>484</sup>

After over 20 years of dismissing the allegations as specious or inconclusive, avoiding credible inquiry, and protecting Weber at all costs, the IHS now had a *bona fide* formal criminal investigation under way that seemed to be given serious attention. Now IHS was provided a written summary report that contained the specificity and attribution that had been cited so many times before as the reason why no personnel action against Weber could be sustained. Now law enforcement had a victim who was cooperating. A victim who had gone on record with date specific, location specific, criminal element specific allegations of Weber's pedophilia. And that information was formally documented, and hand delivered to IHS.

(b) (6) advised Cornelius and Sorenson that *"[a]t this time, you have been put on notice by BIA Police of a possible crime or crimes committed by one of your providers and a link between those crimes and the providers Federal duties and in particular, patient care duties. ... Our recommendation is to place him on summary suspension of clinical privileges (action available to you through the Bylaws) and placement on some administrative duty and away from patient care."*<sup>485</sup>

Sorenson handed this seemingly explosive issue off to Shelly Harris, Acting Deputy Director for Field Operations and *"...let her take it from here since she has oversight of the service units"*,<sup>486</sup> and appeared to wash his hands of any further responsibility.

No further documentation was provided that would indicate there were any more management discussions about the referral.<sup>487</sup> It would take almost four months, and only after the OIG contacted the IHS in October 2015, for any administrative action to be taken.

In October 2015, OIG SA Muller contacted Harris and requested records pertinent to their criminal investigation. SA Muller told her that Weber was taking inappropriate actions with minors and that he was assaulting his patients. Despite the July email from (b) (6) SA Bennett's investigative report with all the details, and the events of 2009 to which she was a party, Harris told ICS that this was the first time that she "officially heard" that Weber was a pedophile.<sup>488</sup>

Like so many others in IHS management, Harris seems to have elevated the standard of proof to an almost unattainable level before engaging on a serious patient safety allegation. Her comments suggest that Weber could not be a dangerous pedophile, "officially", without being caught in the act by multiple witnesses or a confession. Or, as troubling, in 2009 and 2015 she just ignored the warnings that were put on her desk.

<sup>484</sup> (b) (6) email to Sorenson, Cornelius, and (b) (6), dated July 9, 2015.

<sup>485</sup> Id. ICS emphasis added.

<sup>486</sup> (b) (6) email to Sorenson, Cornelius, and (b) (6), dated July 9, 2015. Sorenson reply, July 10, 2015.

<sup>487</sup> This conclusion is based on the fact that there were no records – no emails, no memos, no personnel actions – to suggest any further discussions took place. That conclusion is reinforced by the fact that nothing happened.

<sup>488</sup> ICS interview of Shelly Harris, Chief Executive Officer (CEO), Quentin Burdick Memorial Hospital, Belcourt, North Dakota, October 29, 2019.

On October 30, 2015, Harris directed that Weber be removed from patient care but left him in place as Clinical Director.<sup>489</sup>

As Clinical Director, Weber continued to see patients,<sup>490</sup> had supervisory control over the staff,<sup>491</sup> dispensed drugs from his administrative office,<sup>492</sup> continued to see adolescent boys at his administrative offices,<sup>493</sup> and had continued access to IHS files which he likely destroyed on the eve of his departure.<sup>494</sup>

At various places in this report we have acknowledged that Harris was following OGC guidance. Having conceded that, ICS was incredulous that no one involved in the July 2015 discussion appreciated the seriousness of the allegation and the fecklessness of their response to it. Bennett's report should have triggered an emergency response; instead it triggered only the same buck-passing and apathy that had protected Weber for 30 years.

It wasn't until May 2016 that Weber was formally placed on administrative leave and removed from the leadership reigns of the Pine Ridge Hospital.

Four days later Weber resigned from federal service.

### **Conclusion**

**Leadership failed because it wanted the warnings about Weber to be untrue because if they were true, they would**

**have to take steps that would be awkward, arduous, inconvenient, messy, and embarrassing.**

**It ignored them when possible, and actively worked to insure they were not substantiated when forced to confront them.**

All other failures flowed from this primary cause. It is why whistleblowers were discouraged and those that did come forward punished. It is why there were never any credible attempts to investigate. It explains, at least in part, why such serious events were so poorly documented and preserved. Leadership wanted the allegations to be spurious, treated them as such from the moment they were made, and declared them to be so as if to reinforce their predetermined conclusions.

Managers in Browning, Billings, Pine Ridge, and Aberdeen had an abundance of evidence – some presented to them and some discoverable with the most modest amount of sincere inquiry -- with which to remove Weber. The IHS did not have to prove him a pedophile beyond a reasonable doubt. Its standard of proof for a personnel action would have been much lower. It was

<sup>489</sup> Harris email to Conroy and Weber, dated October 30, 2015.

<sup>490</sup> ICS interview of (b) (6) former Medical Support Assistant at the Pine Ridge Service Unit, Rapid City, South Dakota, November 27, 2019.

<sup>491</sup> ICS interview of Jacklyn Miller, IHS nurse at Pine Ridge, Pine Ridge, South Dakota, November 19, 2019. Weber "had a lot of say so and nobody challenged him."

<sup>492</sup> ICS interview of (b) (6) Registered Nurse at the Pine Ridge Service Unit, Pine Ridge, South Dakota, November 27, 2019.

<sup>493</sup> ICS interview of Diane Little Hawk, Administrative Support Assistant at Pine Ridge, Pine Ridge, South Dakota, November 12, 2019.

<sup>494</sup> ICS interview of (b) (6) Administrative Assistant to the CEO and Deputy CEO at the Pine Ridge Service Unit, Pine Ridge, South Dakota, November 14, 2019.

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a failure to put the mission of the agency first and avoid controversy at all costs.

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*In a very real sense, every victim of Weber's abuse at Pine Ridge was also a victim of the failures of IHS management.*

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**ROOT CAUSE FINDING # 2**

*Failure to Disclose,  
Ineffective or Insufficient Reporting,  
Concealment from Management  
Superiors*

When it comes to making disclosures of abuse against a fellow IHS employee, a significant and pervasive fearfulness permeates the Indian Health Service ranks, particularly in the two Areas studied most extensively by ICS (Billings, Great Plains).<sup>495</sup> At the staff level, this fear displaces the conscientious impulses of dedicated and compassionate health care providers and replaces those intentions with the powerful instinct for economic self-preservation; diligence in the protection of patients succumbs to material concerns for career and family. At the management level, self-interest, and the fear of losing position or opportunity for advancement, often supersedes the IHS mission to ensure patient care and results in efforts to ignore or bury accusations of abuse that may embarrass the administration at the Service Unit or Area Office level.<sup>496</sup>

Staff employees fear their Unit managers, Unit managers fear their Area managers, and Area managers fear Headquarters. **Fear of backlash and retaliation, together with a sense of futility,** inhibits staff from exposing abuse. **Fear of criticism, disfavor, and loss of position** inhibits Unit managers

from acknowledging legitimate concerns related to abuse.

***Analysis of Disclosure in the  
Weber Case***

IHS facilities, like Browning and Pine Ridge, are located in remote and economically disadvantaged areas. While the agency has historically been plagued by the inability to attract medical providers, what is also true is that most of the administrative, nursing, technical, housekeeping, maintenance, and support staff positions are filled by members of the local tribal community. Employment of any kind is often difficult to secure on the reservation, but federal jobs with federal pay scales and benefits are most precious. Often the primary breadwinner for a family, and often an extended family, is the member employed at the IHS. As former maintenance worker and union leader Tom Connell told ICS, whistleblower retaliation was a “major issue” and that many IHS employees are reluctant to raise issues because their jobs are “the only good jobs” available in their tribal community.<sup>497</sup> Reluctance to disclose abuse, uncertainty, and fear of retaliation must be analyzed through the prism of this reality.

During the course of Weber’s career, the system was skewed in his favor. While his predation seems to have been widely known,

<sup>495</sup> This assessment may be somewhat dated. One witness told ICS that she thought that the culture of fear and retaliation was “rampant” but improving. ICS interview of (b) (6) Billings Area Office, Billings, Montana, July 10, 2019. While most witnesses spoke of the fear of speaking up in contemporary as well as historical terms, some made the observation primarily with respect to the period of Weber’s practice in their community. This is not a significant caveat. The record is replete with confirmations of an ongoing atmosphere of fear and retaliation within the IHS and is discussed more extensively herein.

<sup>496</sup> Root cause findings are generalities; circumstances and decisions occurring often enough to be identified as a predominant cause of outcomes. As with all generalities, there are exceptions. Not all staff was afraid to disclose and not all managers allowed concerns for their professional well-being to deter them from attempting to address the allegations.

<sup>497</sup> ICS interview of (b) (6) at the Browning Service Unit, Browning, Montana, September 18, 2019. See also, ICS interview of (b) (6) at the Pine Ridge Service Unit, October 22, 2019.

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most of the staff stayed silent. That silence provided managers who were reluctant to take the warnings seriously the chance to undermine the allegations before they were investigated.

**Browning:** Witnesses interviewed felt that many employees stayed silent about Weber’s conduct because staff did not believe the substantial risk to their position was worth the minimal chance that their concerns about a doctor would be addressed. Although CEO LaFromboise received warnings from numerous sources – Dr. Foster, Tim Davis, tribal members – she was slow to act, did not see any “cause for alarm”,<sup>498</sup> and took no action on her own to address the Weber problem, which lent support to the view that there is minimal chance the reporting of concerns would lead to action.

**Browning:** Unit Managers showed no interest in addressing mounting allegations against Weber until the concerns of the Fosters, Unit staff, and the community – in addition to the violence against Weber by retaliating family members – became too numerous and too frequent to ignore; even then no one in management sought to have the matter investigated, treating Weber as a personnel problem not a criminal threat. There is no clear indication that management ever made – or would have ever made -- any decision to do something about the allegations against Weber. If Dr. Foster and a tribal member had not forced the issue by going to the Area Office, it is likely that the Weber problem would have been ignored indefinitely.

**Billings:** Although the Area Director and the Deputy Area Director denied any knowledge of the Browning accusations against Weber, at the same time they insisted that they were actively engaged in their relationships with the Unit. Foster, like Butterbrodt, seemed intent on alerting anyone who would take his calls. “I guess the better response would be launch an investigation, and yet the IHS response is, typically, to sweep it under the rug or to, you know, pass it along to another place”.<sup>499</sup> Charles Lewis told ICS that one of the more pervasive problems was “blaming someone else and a failure to take responsibility.”<sup>500</sup> **Lewis noted that employees avoided involving any one higher in the organization in their issues; “you don’t understand,” “you don’t help us,” and “you’re only here if there is a problem” were frequent refrains Lewis heard from employees at all levels.**<sup>501</sup>

**Billings:** (b) (6) [REDACTED], advised that in the past, the agency has suffered from employees not “raising their hands” due to fear of losing their jobs. Reprisals and retaliation in the past have been “rampant.” Wofford believed this has started to improve but acknowledged that it is still a significant problem in the IHS.<sup>502</sup> (b) (6) [REDACTED] (6) highlighted the futility that many employees feel, telling ICS that there has always been a problem with “IHS

<sup>498</sup> *Frontline* Interview of Tim Davis, aired February 12, 2019.

<sup>499</sup> *Frontline* Interview of Dr. Randy Rottenbiller, aired February 12, 2019.

<sup>500</sup> ICS interview of Charles Lewis, former Deputy Area Director, Billings Area Office, Joliet, Montana, September 10, 2019.

<sup>501</sup> *Id.*

<sup>502</sup> ICS interview of (b) (6) [REDACTED], Billings Area Office, Billings, Montana, July 10, 2019.

not being trusted” and that “if you complain, it won’t go anywhere.”<sup>503</sup>

**Pine Ridge:** Weber was stationed at Pine Ridge for a very short time before his behaviors attracted the attention of the nurses who cautioned new hires “keep track of how long he [Weber] is in the room with a boy patient.”<sup>504</sup> The reluctance of staff to report is best captured with what Dr. Butterbrodt was told when he was transferred to Turtle Mountain “look what they’ve done to you”. **Nearly every staff level witness, and many management witnesses who had started as staff, were clear that fear of negative consequences kept many employees from expressing concerns about potential dangers in the workplace.**

**Pine Ridge:** Witnesses repeatedly reported to ICS that fear of retaliation and sense of futility were prevalent and served to keep employees from disclosing misconduct.

- *Nurse Beth Perkins observed that staff members are “scared” to report things because they fear retaliation, so they just do not say anything about issues, especially when it involves doctors. Perkins said things at the hospital “just go on and on” without getting resolved because of the fear employees have in reporting misconduct or other problems.*
- *Former Physician’s Assistant Marjorie Schmidt said she often heard the standard response when allegations against a doctor surfaced*

*at Pine Ridge, “We need them (doctors), if we don’t have the doctors, you don’t have the patient care.”*

- *Nurse (b) (6) felt that staff members are “fearful” to report concerns or problems because it leads to retaliation. Although they “see things they don’t like,” staff do not report on doctors because they feel they will be disciplined, or nothing will be done on what they report.*
- *Dr. Rod Cuny, former Chief Medical Officer in Aberdeen, acknowledged that “he’s [Butterbrodt] a direct result of what people fear would happen. What might happen to you is what happened to him. And that’s why people didn’t come forward like he did. And that’s sad.”<sup>505</sup>*

**Pine Ridge:** CEO Pourier blamed all of his failures on fear of what it would do to him professionally – “I couldn’t afford to take the risk at that time. To lose my job.”<sup>506</sup> – but many witnesses indicated that Unit management is reluctant to pass any problems up the chain to the Area Office for fear of being considered incompetent. Area Commissioned Corps Liaison Keats perpetuated Unit containment of adverse action against Weber by approving of it rather than demanding accountability and discipline for a PHS officer; “...the Service Unit wanted to handle the previous issue (the DWI/AWOL) locally...”<sup>507</sup>

<sup>503</sup> ICS interview of (b) (6) (b) (6) at the Browning Service Unit, East Glacier, Montana, September 18, 2019.

<sup>504</sup> ICS interview of (b) (6) (b) (6), Sheridan, Wyoming, August 1, 2019. Referencing the admonition, she received during her first days in the Pine Ridge Service Unit in 1997.

<sup>505</sup> *Frontline* interview of Dr. Rod Cuny, aired February 12, 2019.

<sup>506</sup> Id.

<sup>507</sup> First Keats email to Birney and McSherry dated March 12, 2009. ICS concluded Keats’ protective behavior was probably not just professional loyalty. Keats was also sexually attracted to children and therefore Weber was a kindred spirit.

**Aberdeen:** Area Commissioned Corps Liaison Keats made every effort to protect Weber, from taking no steps to ensure that there would be any accountability for Weber's DWI and AWOL, to constantly denigrating Dr. Butterbrodt and his allegations so that anyone in his chain of communication would be desensitized to the dangers presented.<sup>508</sup>

**Aberdeen:** Former Deputy Area Director Shelly Harris was well aware of the climate that made staff reluctant to come forward in 2009. It was the mentality of IHS employees in the past to "say nothing, to keep it quiet, especially involving providers." Harris recalled IHS supervisors being "vindictive after-the-fact" and when someone brought something up, "they took a chance", relating one particular occasion when she was told "remember you're an IHS, government employee and be cautious what you say."

**The treatment of Dr. Butterbrodt deserves particular emphasis because it epitomizes the extremes of retribution and suppression that so contributes to a culture of fear:**

- *After several emails ticking off the facts that gave rise to his concerns, CEO Pourier told Butterbrodt to desist: "I am directing you to cease your individual investigation of this matter, your emails concerning this issue, and your discussions on this matter."*
- *The following day, Keats assured Birney and McSherry that "The office (sic) that started this whole thing has been directed to stop sending out the emails with these allegations."*

- *The following month Keats indicates that his concern is about Butterbrodt, not Weber: "I am very concerned that the accusing officer [Butterbrodt] was so inappropriately verbal with his accusations that this officer's [Weber's] reputation has been damaged with the local community."*
- *A couple of months later Weber is back to work, and Keats is still attempting to silence Butterbrodt. In an email to Birney and McSherry he writes "Apparently, the accusing officer [Butterbrodt] is still up to no good and even though there have been no patient complaints or any other complaints for that matter (nursing staff), the accusing officer is pushing this issue. ... We ... have discussed both disciplinary action against the other officer [Butterbrodt]."*
- *McSherry responded to Keats and Birney saying, "How about two things....just to consider.... Move CAPT Weber to restore him. Move the other guy too so there is no implication that his actions or accusations have merit. The sun is shining in Kotzebue this time of year."*
- *Keats: "There seems to be a block wall in regards to the "other" officer [Butterbrodt] at the CEO level who is blocking any disciplinary action. I have suggested a LOR for this file for initiating this problem based on his "opinions" and no substantiated evidence, but the CEO does not want*

<sup>508</sup> Keats's active protection of Weber may have been related to the fact that he was also a pedophile (as opposed to concern for position). However, he would be an exception. Other managers were clearly motivated by a desire to tamp down the problem to avoid addressing it or exposing themselves to accusations that they should have done something.

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*to push this issue and lose a “good” medical officer.*<sup>509</sup>

- *McSherry: “That bad boy [Butterbrodt] just may get a letter from farther up line and the CEO might too if he does not control him.”*
- *Keats then sought to enlist the assistance of the Area Director, Charlene Red Thunder, in his effort to penalize Butterbrodt, writing “Unfortunately, it appears as if CDR Butterbrodt has not stopped his behavior/accusations and I have suggested disciplinary action against the officer to which CAPT Colton at Pine Ridge states that the CEO of the Kyle Health Center is not willing to move forward on.” Keats clearly sought Red Thunder’s assistance in removing Wanblee CEO Francine Red Willow as an obstacle to punishing Butterbrodt until he stopped making waves.*
- *Within a month of a heated argument with Weber in July 2010, Dr. Butterbrodt had been reassigned to the Canadian border, and to the IHS facility at Turtle Mountain.*

Unquestionably the Commissioned Corps has a valid interest in good order and discipline and must be wary of false allegations used to discredit or harass a fellow officer. However, absent a credible inquiry there was no way to conclude that Butterbrodt’s claims were unjustified. Had there been one, it would have been determined that all of Butterbrodt’s factual accusations about patient density, STD testing, examining unaccompanied teenagers after hours, and a prior history at Browning were true. The conclusions to draw from those facts may have been subject to argument, but the truth of the facts Butterbrodt used to come to his own conclusions were sound. **Any credible inquiry would have undermined the campaign by Pourier and Keats to silence and punish the witness.**

### Reporting Requirements

The federal government in general, and the IHS in specific, is not short of mandatory reporting edicts. Required reporting obligations are embedded in federal statutes,<sup>510</sup> state statutes,<sup>511</sup> regulations,<sup>512</sup>

<sup>509</sup> There is a significant irony in Keats’ insistence on Letter of Reprimand for Butterbrodt when he was equally ardent that Weber should receive little or no punishment for a DWI and no punishment whatsoever for being AWOL.

<sup>510</sup> 18 U.S.C. §1169 - Reporting of child abuse – making it a misdemeanor crime for specifically identified persons, including those in health care, who “knows, or has reasonable suspicion, that— (a)(2)(A) “a child was abused in Indian country, B) actions are being taken, or are going to be taken, that would reasonably be expected to result in abuse of a child in Indian country; and (3) fails to immediately report such abuse or actions described in paragraph (2) to the local child protective services agency or local law enforcement agency...”. 18 U.S.C. §1169(a)(2), (3).

<sup>511</sup> Montana Code Annotated (MCA) §§ 41-3-201; 15-6-201(2)(b), South Dakota Codified Laws (SDCL)§ 26-8A-3; 26-8A-6; 26-8A-7.

<sup>512</sup> 45 CFR § 73.735-1301 - Responsibility for reporting possible criminal violations. An employee who has information which he or she reasonably believes indicates a possible offense against the United States by an employee of the Department, or any other individual working on behalf of the Department, shall immediately report such information to his or her supervisor, any management official, or directly to the Office of the Inspector General. Also, 45 CFR § 73.735-1302 - Responsibility for reporting allegations of misconduct. An employee who has information which he or she reasonably believes indicates the existence of an activity constituting (a) a possible violation of a rule or regulation of the Department; or (b) mismanagement, a gross waste of funds, or abuse of authority; or (c) a substantial and specific danger to the public health and safety, shall immediately report such information to his or her supervisor, any management official of the Department, or directly to the Office of the Inspector General.

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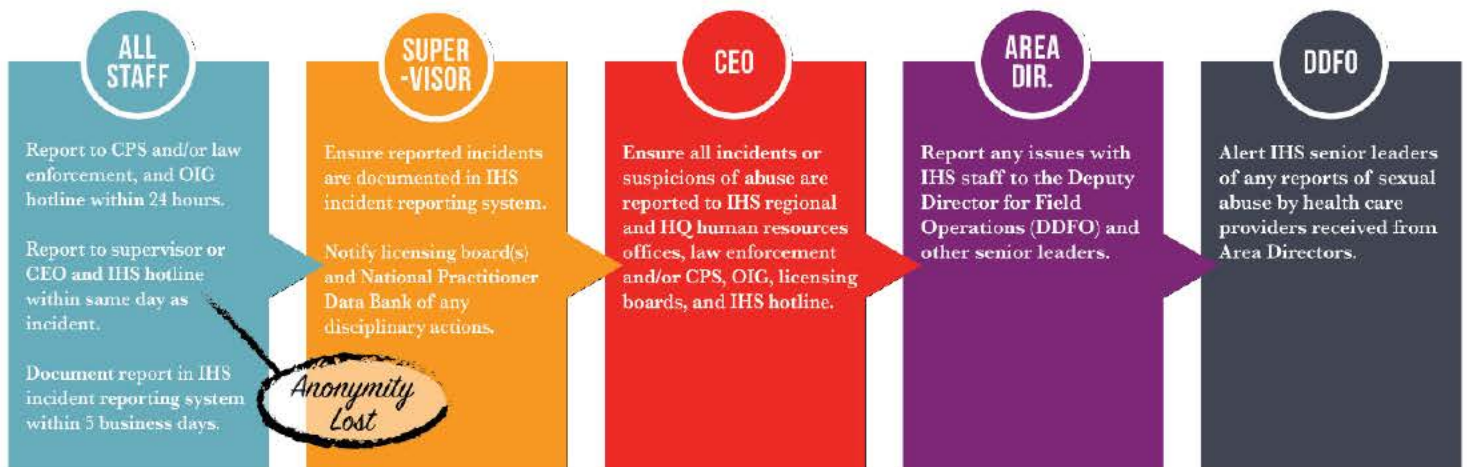
and policies.<sup>513</sup> Since August of 1994, the IHM has had guidelines for reporting and responding to violations of ethical standards and created a reporting structure for allegations of unethical conduct; “it is unethical not to report known violations of misconduct or violations of ethical standards.”<sup>514</sup> The policies require facility staff to immediately report allegations of misconduct or violations of ethical standards to their supervisor or other appropriate officials, and the supervisors must then report the allegations to senior leadership in the facility and/or the Area Office.

They also require that CEOs of the IHS-operated facilities report all allegations to the Area Office, the OIG, or the IHS Division of Personnel Security and Ethics (DPSE). Once Area Offices are notified, the

Area Directors must report the allegations to DPSE and/or OIG and to the appropriate professional organizations and State licensing/certification boards.”<sup>515</sup>

**Mandatory reporting policies serve no functional purpose unless the person obligated to report is not afraid to comply and has confidence that their reporting will have an impact. Promises of anonymity ring hollow when the rules require the employee to report the misconduct to their own supervisor. Indeed, whistleblower protections are premised on the expectation that managers may be inclined to punish those that step forward with disclosures of wrongdoing.**

### IHS REPORTING RESPONSIBILITIES FOR INCIDENTS OR SUSPICIONS OF SEXUAL ABUSE OF CHILDREN BY HEALTH CARE PROVIDERS



Source: IHS, IHM, pt. 3; Ch. 20; section 3-20.2 (Responsibilities). IHS training, *Protecting Children from Sexual Abuse in Health Care Settings – Supporting a Culture of Community Safety*, June 28, 2019.

<sup>513</sup> IHM, Part 3, Chapter 20 - “Protecting Children from Sexual Abuse by Health Care Providers”, February 2019. (Ethical and Professional Conduct of Health Care Providers) (August 2004). Also, IHS Internal email correspondence regarding zero tolerance policy for sexual abuse or exploitation of children by healthcare providers, March 28, 2018.

<sup>514</sup> IHS, IHM, pt. 3; Ch. 23; section 3-23.1, Introduction (1984). Also, IHS, Transmittal Notice 04-05, August 5, 2004, Ethical and Professional Conduct of Health Care Providers.

<sup>515</sup> Id.

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*Witness after witness testified to the existence of a culture of fear and retaliation within the IHS and cited this culture as a reason that more did not come forward with their concerns.*

Those that did come forward were criticized, isolated, and punished which in turn reinforced the reluctance of others.

ICS did not discount the importance of a clear and emphatic policy, which serves not only to guide the actions of IHS personnel but also affords them a degree of protection when they act in accordance with that policy. However, policy does not guarantee compliance.

The reasons for non-disclosure emanated from a fear of retribution and an **uncertainty** about what should be reported. The concerns about Weber – both in Montana and in South Dakota -- were based on **circumstantial evidence**. It is no easy decision to report a colleague for something as serious as patient abuse when the concerns are based on a collection of inconclusive facts. Cherry-picking a patient population, examining all patients for STDs regardless of medical complaint, after-hours visits to the hospital rooms of teenage boys, examining children without the presence of a parent or nurse, high traffic of juveniles to a personal residence, stepping outside the parameters of medical practice, distributing drugs without a prescription, handing out cash and gifts to teenage boys, and even

finding the provider in bed with a patient playing video games, **may provide ample basis for concern but, particularly if considered separately, inadequate for accusation**. Time and again, even reported warnings were ignored because they were inconclusive – Weber was not “caught in the act”; everything he did could be explained away, especially if management was predisposed to disbelieve the accounts or ignore their importance.

Non-disclosure by management is an entirely different scenario:

- Management, which has the same regulatory and policy requirements to report allegations of abuse,<sup>516</sup> **often chose not to report** and to suppress the source of the allegation.<sup>517</sup>
- **Others seemed oblivious to their responsibility**; too often an intentional state of oblivion induced by self-interest or unwillingness to accept the challenge that properly dealing with such accusations would require.<sup>518</sup>
- Many others had a reporting obligation but failed to report.<sup>519</sup>

Managers regularly failed to report and failed to remind their subordinates of their statutory duty to report. In failing to do so they contributed to the preservation of Weber’s position and continuing victimization.

A manager is entitled to question the motives behind a report or the importance of

<sup>516</sup> The generality made here had exceptions, *albeit* woefully few, such as (b) (6) actions in 1995.

<sup>517</sup> Suppression took place primarily at the service unit level by managers such as Pourier but also at the Area level by managers like Keats. It can also be seen in the Crowe case with (b) (6).

<sup>518</sup> Motivated obliviousness was more pervasive and can be seen in the responses, or lack thereof, by managers like LaFromboise and Stabler and others.

<sup>519</sup> This category is populated by management engaged in the discussions from a distance who gave advice and counsel without recognizing that everyone with knowledge had a duty to report allegations from Browning and Pine Ridge to law enforcement. It would include OGC and Headquarters staff who communicated about the allegations against Weber.

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the accusation, but in a matter as serious as child abuse, simply dismissing the concerns without further inquiry is not a satisfactory response. The person making the allegation should be interviewed and the interview memorialized, questions asked, and a diligent inquiry documented and reported. Both law and policy require it. If law enforcement finds the allegations unreliable or insufficient to open an investigation, that is the OIG's prerogative, but that does not absolve the IHS manager from their responsibility. Enforcement of the criminal law is the OIG's concern; patient safety is the concern of the IHS.

Many service unit employees who failed to come forward in the Weber case cannot be fairly rebuked. **Rules regarding mandatory reporting are insufficient to distinguish between what appears weird, what may be concerning, and what is alarming.** That, coupled with a fear of retaliation, quieted many who could not afford to be disruptive.

The former had no power to initiate further inquiry and the latter had the responsibility to do so.

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*The same cannot be said of managers who were advised of an ample basis for alarm by those who did come forward and did little or nothing to rigorously inquire further as to its merit.*

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Returning to the primary theme of this section, the most salient problem throughout Weber's service to the IHS in Montana and

South Dakota was the **lack of seriousness with which the allegations were taken by management.**

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*Whatever motivations and justifications that informed administrators' decisions, the possible abuse of children didn't seem sufficiently clear or sufficiently alarming. No statute, regulation, or policy would have altered that mentality.*

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### ***Analysis of Disclosure Issues Generally***

Fear of retribution is not unique to the IHS, although it may be more pervasive in the IHS than other federal agencies, and it may be more prevalent in particular Areas and in particular Units within Areas.<sup>520</sup> Between 2009 and 2013, a time period relevant to this review, the Equal Employment Opportunity Commission (EEOC) reported that retaliation was the most common issue alleged by federal employees across all agencies and departments and the most common discrimination finding in federal sector cases. Nearly half of all complaints filed during fiscal year 2013 were retaliation complaints, with 42 percent of findings of discrimination based on retaliation.<sup>521</sup> The 2010 Senate Report found that EEO filings for the Aberdeen Area of the IHS, that alleged reprisal or retaliation, accounted for 44 percent of all EEO complaints in the ten years prior.<sup>522</sup> From 2008 to 2010, the number of EEO complaints based on reprisal

<sup>520</sup> According to a 2010 Merit Systems Protection Board survey, for example, 82 percent of NASA employees agreed that their agency encourages exposing wrongdoing, but just 43 percent at Housing and Urban Development said the same. Eric Yoder, "Surveys show fear of retaliation keeps would-be whistleblowers from speaking up", Washington Post, June 17, 2014.

<sup>521</sup> EEOC's Annual Report on the Federal Work Force 2009-2013 and EEOC No Fear Data for FY 2009-2013; [https://www.eeoc.gov/laws/types/retaliation\\_considerations.cfm](https://www.eeoc.gov/laws/types/retaliation_considerations.cfm).

<sup>522</sup> *IN CRITICAL CONDITION: THE URGENT NEED TO REFORM THE INDIAN HEALTH SERVICE'S ABERDEEN AREA*, Report of the Senate Committee on Indian Affairs, December 28, 2010, p. 11.

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or retaliation was substantially greater than those filed years prior. For instance, in 2005 there were five filings based on reprisal/retaliation; however, by 2008 the number of filings was 20 and in the seven month period from January 2010 to July 23, 2010 there had been 19, or 2.7 retaliation complaints every month.<sup>523</sup>

An IHS environment that discouraged speaking out, and punished those that did, appears in other cases after 2010. In the Crowe case at the Unity Healing Center (2016-2017) a (b) (6), (b) (3) (A) for a (b) (6), (b) (3) (A) victim regretted not coming forward to warn of the employee's predation. "She (Grant) told me, 'No, I will handle this. Do not contact anybody,' [s]o I didn't. I deeply regret that." The counselor believed she could be fired for disobeying.<sup>524</sup> A Unity staff member also called the HHS OIG and reported that the alleged sexual misconduct had been "swept under the rug."<sup>525</sup>

In the Tilus case (2012) from Spirit Lake, retaliation for disclosure was swift and unforgiving with an immediate four-month reassignment "for non-patient services and unclassified duties" to the Aberdeen Area Office, denial of any opportunity for promotion for two years, and cancellation of a voluntary transfer to Fort Belknap in Montana.<sup>526</sup>

At least during the time of the second Pine Ridge investigation into Weber (2006-2010), the fears of retaliation, particularly within the Aberdeen Area, were absolutely

justified. The 2010 Senate Indian Affairs Committee investigation revealed that between 2002 and August 2010 there were a total of 364 reassignments, 235 details and 31 employee transfers; the available documentation suggested that employees who filed EEO complaints were more likely to be detailed or reassigned compared to those that did not.<sup>527</sup> Nearly 11 percent of total reassigned employees had filed an EEO complaint (formal or informal) and almost 8 percent of the employees were placed on administrative leave prior to reassignment. Almost 3 percent of the employees had filed a grievance or other filing prior to their reassignment. About 13 percent of the total detailed employees had filed an EEO complaint (formal or informal).<sup>528</sup>

Senator Byron Dorgan, Chairman of the Senate Committee on Indian Affairs, also noted that these figures only included the employees who were transferred, detailed or reassigned to facilities located within the Aberdeen Area; it does not provide information on individuals employed in the Area but who were transferred, detailed or reassigned to facilities outside the Area.<sup>529</sup>

**The commonly held belief in the two Areas in which Weber primarily practiced – Billings and Aberdeen – was that staff who made allegations got punished and those against whom the allegations got made got protected. The way Dr. Butterbrodt was treated is a prime example supporting the first perception and the**

<sup>523</sup> Id.

<sup>524</sup> Weaver, "A Suicide Attempt, an Order to Keep Silent: A U.S. Agency Mishandled Sex-Abuse Claims," Wall Street Journal, June 7, 2019.

<sup>525</sup> Id. Lilly Knoepp, "Sexual Assault Allegations Against Tribal Council Candidate Resurface" Blue Ridge Public Radio, June 26, 2019

<sup>526</sup> Letter of Reprimand to Dr. Tilus from Dr. Candelaria Martin, Clinical Director of Medical Staff, dated June 25, 2012; Also see, Letter from Dr. Yvette Roubideaux to Dr. Tilus, dated August 2, 2012.

<sup>527</sup> *IN CRITICAL CONDITION: THE URGENT NEED TO REFORM THE INDIAN HEALTH SERVICE'S ABERDEEN AREA*, Report of the Senate Committee on Indian Affairs, December 28, 2010, p. 6-7.

<sup>528</sup> Id., at p. 7.

<sup>529</sup> Id.

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way Weber's position was secured is a prime example of the second.

As Dr. Butterbrodt told *Frontline*:

**"I was ordered to leave. I was chased off by a pedophile and the people who chose him over me."**

Again, although this presumption may have been most pronounced in these two Areas of the IHS, it is not unique to the agency or these locations.<sup>530</sup> The 2014 OPM survey of federal employees found that fear of retaliation and a belief that nothing would be done to address the problem were often cited as reasons for nondisclosure of wrongdoing.<sup>531</sup>

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*If the agency seeks to incentivize disclosure of patient safety concerns, it must remedy the culture of non-disclosure and change the perception of futility associated with reporting.*

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As Dr. Leonard Thomas, the Area Director in Albuquerque, expressed it, "[t]he focus should be on patient care; everything else should be small potatoes."<sup>532</sup> The Merit Systems Protection Board, in commenting on the OPM survey, noted that "[o]ne of the most important things that an agency can do to learn about internal wrongdoing is to

establish a culture that encourages employees to report perceived problems...."<sup>533</sup> "Agencies should know where their culture stands so that they can determine the extent of their need for improvement and measure whether improvement is occurring."<sup>534</sup>

Ella Richards, the Governing Board Coordinator for the Great Plains Area, has been with IHS since 1992 and acknowledged that **there has always been a cultural tension between encouraging disclosure, the chain of command, and fear of retaliation.** Richards is personally aware of many employees over the years who have been afraid to come forward with information for fear of losing their jobs.<sup>535</sup> Richards had personal experience with retaliation for refusing to participate in a professional action which she felt inappropriate, although she did not describe it as a patient safety issue.<sup>536</sup> **Additional training is needed for managers and employees, but, more importantly, a cultural change is needed within the agency regarding the reporting of information and protection for employees.**

ICS recognizes that there is a legitimate tension between two competing interests: exposure of wrongdoing on the one hand,

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<sup>530</sup> The Area Directors from Oklahoma City and Albuquerque both conceded that staff, particularly at the service unit level, are always hesitant to come forward with allegations of wrongdoing because they fear the potential reprisal that may occur. ICS interview of RADM Travis Watts, Area Director and Assistant Surgeon General, Oklahoma City Area Office, Oklahoma City, Oklahoma, August 6, 2019; ICS interview of Dr. Leonard Thomas, Area Director, Albuquerque Area Office, Albuquerque, New Mexico, December 3, 2019.

<sup>531</sup> EEOC's Annual Report on the Federal Work Force 2009-2013 and EEOC No Fear Data for FY 2009-2013; [https://www.eeoc.gov/laws/types/retaliation\\_considerations.cfm](https://www.eeoc.gov/laws/types/retaliation_considerations.cfm). Also, Yoder, "Surveys show fear of retaliation keeps would-be whistleblowers from speaking up", Washington Post, June 17, 2014.

<sup>532</sup> ICS interview of Dr. Leonard Thomas, Area Director, Albuquerque Area Office, Albuquerque, New Mexico, December 3, 2019.

<sup>533</sup> Yoder, "Surveys show fear of retaliation keeps would-be whistleblowers from speaking up", Washington Post, June 17, 2014.

<sup>534</sup> Id.

<sup>535</sup> ICS interview of Ella Richards, Governing Board Coordinator, Great Plains Area Office, Aberdeen, South Dakota, October 15, 2019.

<sup>536</sup> Id.

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which may require disclosure that takes the matter outside the control of the Service Unit or even the Area, and the legitimate interest in maintaining good order and discipline where a chain of command is used and respected.

In an April 26, 2010 email, IHS Director Roubideaux discouraged IHS employees from communicating with Congress, tribal governments, or other agencies and groups without permission from either their direct supervisor or staff in Rockville.<sup>537</sup> As the Senate Report concluded in 2010, “[a]lthough investigations into federal agencies are uncomfortable, and clearly supervisors worry that employees may communicate messages to Congress that are inconsistent with the current political agenda, communication is essential to the oversight responsibility of the Committee and should not be hampered in any manner.”<sup>538</sup>

The Roubideaux e-mail indicated that IHS employees should “always get approval before talking in your official capacity with Congress, the Department [of Health and Human Services (HHS)], or the media” and clarified that IHS employees were, at “all times”, “speaking for IHS.”<sup>539</sup>

Numerous IHS employees interpreted this to mean that at no time are they permitted to speak with Congress or other groups without prior approval.<sup>540</sup>

Focusing only on the reluctance of staff to come forward, however, would be an incomplete assessment of the effect professional concerns have on disclosure

and the administrative response to disclosure.

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*The reason management seeks to exercise such significant control over the dissemination of adverse reports is because of their own professional fears that they will be found responsible for the problem and suffer criticism or reprimand from unforgiving superiors. Several of the themes associated with non-reporting were management’s insistence that they did nothing wrong, the system did not provide clear alternatives, they didn’t know, they felt forced to do nothing, or nothing could be done.*

See, *Part I Investigation*. All of these explanations appear designed to avoid blame for their role in perpetuating Weber’s employment and access to young boys and should be viewed critically.

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**Browning:** CEO LaFromboise: “Who is the responsible person to come in and do something?” She concluded that the Weber issue was complicated by the fact he was Commissioned Corps, because “they couldn’t be supervised or disciplined.”

**Browning:** CMO Rottenbiller: “I guess the better response would be launch an investigation, and yet the IHS response is, typically, to sweep it under the rug or to, you know, pass it along to another place”. During his interview with ICS, Rottenbiller struggled to articulate how allegations such as those made against Weber should have been reported -- “[w]here do you refer him to, Tribal cops? The FBI? Maybe the CEO or the Medical Review Committee?”

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<sup>537</sup> *IN CRITICAL CONDITION: THE URGENT NEED TO REFORM THE INDIAN HEALTH SERVICE’S ABERDEEN AREA*, Report of the Senate Committee on Indian Affairs, December 28, 2010, p. 43.

<sup>538</sup> *Id.*

<sup>539</sup> *Id.* In fairness to Director Roubideaux, by the time of the Tilus case, she had completely reversed her 2010 position. The 2010 guidance, however, is relevant to disclosure issues during most of Weber’s career.

<sup>540</sup> *Id.*

**Billings:** AD Jeanotte: Jeanotte did not recall receiving any information from LaFromboise or having a meeting with Dr. Rottenbiller to address allegations involving Weber and continued to assert absolute ignorance of the allegations; the information “never got to me.”

**Pine Ridge:** CEO Pourier: According to Pourier, he relayed the incident to his Regional Supervisors, but nothing happened. Pourier took no further action for fear he would be suspended or fired – “They can do what they want with you.” Although he thought there was reason to believe Weber was in fact a predatory pedophile, he was powerless to do anything. “Well at that time, you think of your career and job and your livelihood so I would have probably got fired. I guess that was the risk I would’ve took. I couldn’t afford to take the risk at that time. To lose my job.”

**Aberdeen:** Deputy AD Harris: Despite being copied on emails concerning Weber in 2009, Harris insisted to ICS that the first she ever “officially heard” of the accusations of pedophilia against Weber was when she was contacted by OIG SA Muller in the Fall of 2015. Harris said the Pine Ridge Service Unit leadership should have “erred on the side of caution” and reported the allegations to AAO because children were possibly being assaulted.

**The culture of fear highlights two distinct problems for the agency – 1) Fear of professional retaliation that keeps some from disclosing wrongdoing and 2) Fear of professional retaliation for failure to address wrongdoing already disclosed.**

Asked whether he should have stepped outside the chain of command to contact police, Pourier told *Frontline* reporters, “I couldn’t afford to take the risk at that time to lose my job.”<sup>541</sup>

Simply put, leadership likes being in leadership; managers protect their position. A common bureaucratic defensive posture is to first deny there is a problem, then deny you knew there was a problem, then assert there was nothing you could have done about the problem. The final default position is to acknowledge the problem, that you knew about the problem, that you could have done something about the problem, but that it was someone else’s responsibility to deal with the problem.<sup>542</sup>

### Conclusion

Professional fear within the agency, as an impediment to both disclosure at the staff level and corrective action at the management level, is a cultural phenomenon that can only be solved over time. As the Inspector General for the VA told the House VA Subcommittee on Oversight and Investigations in July of 2019, “[i]t certainly takes time to change culture ... It’s going to take time, and with whistleblowers they have to prove to them that it’s a place where they feel comfortable coming forward and there will not be adverse actions against them.”<sup>543</sup>

However, conditions are not likely to change until managers no longer punish employees for “rocking the boat” and exposing their offices to criticism, and lower and mid-level managers find greater support from their

<sup>541</sup> Christopher Weaver, Dan Frosch, and Gabe Johnson, “A Pedophile Doctor Drew Suspicions for 21 Years. No One Stopped Him”, PBS *Frontline* in partnership with Wall Street Journal, February 8, 2019.

<sup>542</sup> This is discussed at length in FINDING #2 LEADERSHIP FAILURE but addressed here as a contributing factor to FAILURE TO INVESTIGATE as well.

<sup>543</sup> Nicole Ogrysko, “New accountability office hasn’t made a dent in VA’s ‘culture of retaliation,’ whistleblowers say”, Federal News Network, July 24, 2019.

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superiors when patient safety concerns are exposed.

**A culture of respect for disclosure by all employees must be fostered and embraced. Retaliation cannot be accepted, and effective training must be utilized to reinforce these concepts.**

**ROOT CAUSE FINDING # 3**

*Failure to Investigate Credible Allegations, Ineffective and Inconclusive Internal Investigations of Credible Allegations*

ICS encountered a troubling pattern throughout the entire sordid history of the Weber affair; a history of multiple chances to prevent patient abuse, followed by dereliction at best and active protection of the predator at worst, and lost opportunities for an agency to rid itself of a dangerous provider. A significant reason for this recurring set of events was a failure to properly investigate credible allegations once witnesses came forward.

This circular pattern repeatedly occurred: **Allegations of child abuse were not taken seriously; because they were not taken seriously, they were not rigorously investigated by the agency; because they were not rigorously investigated, the accusations could not be confirmed as likely true; because they could not be confirmed as likely true, they were not treated seriously.** And every time the sequence ended, and Weber was reinstated, his return to work was construed as proof he had been exonerated.<sup>544</sup> The cycle permitted Weber to continue abusing Indian boys for years, as a continuous stream of potential victims were presented to him because they had little choice but to rely on the IHS for their health care.



An effective response to allegations of abuse has three components: discovery, investigation, and resolution. As to the first element, in both Montana and South Dakota there was sufficient discovery. The disclosures by staff were attended by ample predication and circumstantial evidence to support a serious inquiry. As to the second element, however, a significant failure in the Weber case<sup>545</sup> was the lack of any investigation in Montana and no effective or conclusive investigations in South Dakota. There was a failure to respond to a serious allegation of predatory pedophilia with an investigative mechanism capable of making a reliable determination. Without investigation, there could be no resolution to satisfy the third element.

Beyond the direct consequences of failing to investigate rigorously and thoroughly -- being the failure to remove a dangerous

<sup>544</sup> (b) (6) told ICS that when Weber was allowed to return to work, he interpreted that as proof that Weber had been cleared of the allegations by Dr Butterbrodt. ICS interview of (b) (6) at the Pine Ridge service Unit, Pine Ridge, South Dakota, November 14, 2019. According to (b) (6), "He (Weber) was cleared" by the SDBMOE. When asked to elaborate on how he knew that Weber "was cleared" by the SDBMOE, (b) (6) replied that "If he (Weber) comes back to work – he was cleared." (b) (6) then noted, "Weber got a pay increase – he must have been cleared." ICS interview of (b) (6), (b) (6) at the Pine Ridge Service Unit, Pine Ridge, South Dakota, November 14, 2019.

<sup>545</sup> But also observed in several of the unrelated cases of Kammers, Bullis, Delgado, Hall, and Crowe. See "The Cases of Other IHS Medical Care and Support Providers, b. Studied Cases" in *Part I* above.

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provider – is the collateral consequence: Loss of confidence and the destruction of the agency’s credibility. Patients, employees, Congress, and the public at large understand what IHS managers did not appreciate – **a lack of investigation, or an investigation without witnesses, looks like a cover-up.**

### *Analysis of Failures to Properly Investigate*

#### **Failure to Investigate – Montana (1992-1995)<sup>546</sup>**

By the autumn of 1994 and the spring of 1995, IHS managers in Browning had a compelling basis for an administrative investigation of Weber.

- *Weber had an uncommon amount of unsupervised interaction with teenage boys – regularly having boys to his house, having extended office hours with teenage male patients, taking teenage boys on outings for pizza, overnight trips to other towns, counseling middle school boys, etc.*
- *Weber was not conducting himself as a pediatrician, but regularly expanding his role to that of counselor, social worker, substitute parent.*
- *A medical professional with experience in the treatment of sexual offenders (Foster) was raising the alarm about Weber’s penchant for adolescent males and highlighting his patient load density which was heavily tilted toward pre-pubescent and adolescent males.*

- *Weber was blatantly ingratiating himself with young Indian males by giving them food, money, entertainment, and a place to stay.*
- *Weber was being threatened and assaulted by family members of young boys.*

All of these details were known to IHS management at Browning at the time<sup>547</sup>, and, assuming as true the information provided by LaFromboise and Rottenbiller, by management in the Billings Area Office.

**No investigation of any kind was conducted.** Part of the reason may have been **confusion as to protocols** and a **lack of communication**. According to Rottenbiller he did not know to whom he should refer the allegations.<sup>548</sup> But the plain truth is neither he nor anyone else in the Billings Area even tried to discover the truth; no suggestion that a single manager even contemplated an investigation of Weber’s conduct. Admittedly, both Rottenbiller and LaFromboise insisted they told their superiors in the Area Office; Davis reported his observations to both Rottenbiller and LaFromboise; Foster passed the information to LaFromboise and his supervisor in Billings; housekeeper (b) (6) reported an incident to his supervisor; a concerned tribal member reported her concerns to LaFromboise. Everyone was reporting, but no one was doing anything about the reports.

**There is an obvious confusion and lack of communication or understanding by management as to the proper protocol for**

<sup>546</sup> This time span generally covers that period from the January 2004 Rottenbiller Memo expanding Weber’s duties far beyond pediatrics, to Weber’s departure from Browning sometime in the late spring or early summer of 1995.

<sup>547</sup> In making this assessment, ICS does not reference evidence – such as the testimony of victims or witnesses who did not disclose until after 2015 – which cannot be attributed to the knowledge of management in 1994-1995.

<sup>548</sup> ICS interview of Dr. Randy Rottenbiller, former CMO at Blackfeet Community Hospital, Billings, Montana, September 2019.

handling a sensitive and serious allegation.

**Ineffective and Inconclusive  
External Investigation – South  
Dakota  
(1995-1996)<sup>549</sup>**

Within months of his arrival at Pine Ridge, in August of 1995, Weber was accused of molesting a patient. IHS managers were confronted with a specific allegation – a parent alleged Weber had fondled her son’s genitals even though the child was at the hospital with a complaint of flu/cold – and at least some reports from Browning about the concerns at the Blackfeet facility.<sup>550</sup> Pine Ridge Service Unit leadership at the Clinical Director level made a decision to refer the case to the FBI for investigation. While Weber, according to (b) (6) was placed on a Non-Duty with Pay status for a brief period, there was no parallel administrative inquiry to address the personnel issue.<sup>551</sup>

Lacking clear protocols in 1995, and confronted with an allegation that would, if true, be a crime, (b) (6) likely selected the most straightforward alternative: referral to the FBI. However, by referring the inquiry to an outside agency, the IHS lost control over the timing and conclusiveness of the inquiry.

**Ineffective and Inconclusive  
Internal and External  
Investigation – South Dakota  
(2008-2010)<sup>552</sup>**

After Dr. Butterbrodt signaled his concerns in August of 2006,<sup>553</sup> the agency did not act on his warnings until he took the matter to the SDBMOE with a complaint in December 2008.<sup>554</sup> The administration had successfully ignored taking any significant adverse action against Weber over the February 2008 DWI/AWOL,<sup>555</sup> and it did not embrace Butterbrodt’s action even though they had -- at that time -- a persuasive collection of “red flags”.

- *The 1995 allegation that was referred to the FBI that, while not pursued to prosecution by a beyond a reasonable doubt standard, remained an allegation which should have caused the agency concern, particularly considering subsequent events.*
- *As in Browning, Weber had instituted an “after-hours” clinic at which he saw unaccompanied teenage boys.*
- *Some at Pine Ridge, in addition to Dr. Butterbrodt then at Wamblee, had been in contact with Dr. Foster from Browning and been made aware of his, Foster’s, concerns.*

<sup>549</sup> This time span covers that period from a patient allegation of a “too thorough an examination” by Weber [a genital exam of a boy complaining of the flu] and subsequent referral to the FBI and the declination by the U.S. Attorney’s Office (an unknown date but not likely prior to 1996 based on time necessary for even a limited investigation).

<sup>550</sup> ICS interview of (b) (6), (b) (6) of Sioux San Hospital, Rapid City, South Dakota, October 23, 2019.

<sup>551</sup> Weber’s OPF does not reflect any suspension or administrative action.

<sup>552</sup> This time span covers that period from Dr. Butterbrodt’s first email raising concerns about Weber’s professional conduct and Dr. Butterbrodt’s reassignment to Belcourt, North Dakota.

<sup>553</sup> Butterbrodt email to Summers and Pourier, dated August 20, 2006.

<sup>554</sup> Butterbrodt complaint to South Dakota Board of Medical Examiners, dated December 2, 2008.

<sup>555</sup> Counseling for the DWI and the AWOL was ignored until the Commissioned Corps Headquarters gave up on trying to hold Weber to account.

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*Many of the warning signs from Browning mirrored what Butterbrodt had seen at Pine Ridge.*

- **(b) (6)** had compiled a file with at least some of the allegations from Montana.
- The statistical evidence, although circumstantial, clearly supported the allegation that Weber was confining his practice to adolescent males; an unusual development in a government facility where providers generally do not have the flexibility to “pick and choose” their patients.
- Weber had been robbed in January 2005 by one of his patients, **(b) (6)**<sup>556</sup>, and assaulted and robbed November 2006, by **(b) (6)** and two others and then refused to provide details about the attack although he clearly knew at least one of his assailants.
- Weber conducted sexually transmitted disease (STD) tests on all patients regardless of their complaint.

All of these details were known, or with the most minimal inquiry could have been and should have been known, to IHS management at Pine Ridge at the time.<sup>557</sup>

The details proffered by Dr. Butterbrodt were known to the Area Office (Keats) and PHS Headquarters (McSherry and Birney).<sup>558</sup> Colton had consulted with **(b) (6)** **(b) (6)**<sup>559</sup>

In response, management did two things: it appointed an *ad hoc* committee that **conducted no investigation whatsoever** (not even an interview of the complainant), and it **deferred to a licensing inquiry** it did not initiate, and over which it had no control in terms of time and conduct. Indeed, the SDBMOE inquiry was **relied upon time and again as a reason not to do anything**<sup>560</sup>, while Pourier lobbied to keep the licensing agency from doing anything more.<sup>561</sup>

<sup>556</sup> According to **(b) (6)** he told Tribal Officer Hudspeth of Weber’s sexual assaults against him. *Frontline* interview (telephonic) of **(b) (6)** aired February 12, 2019. Also, *Frontline* interview of Dan Hudspeth, former Oglala Sioux Tribe police officer, aired February 12, 2019. Hudspeth told *Frontline* he passed the information to federal law enforcement.

<sup>557</sup> In making this assessment, ICS does not reference evidence – such as the testimony of victims or witnesses who did not disclose until after 2015 – which cannot be attributed to the knowledge of management in 2008-2010.

<sup>558</sup> First Keats email to Birney and McSherry dated March 12, 2009, attaching Butterbrodt emails of February 25, 27, 2009.

<sup>559</sup> Colton email to **(b) (6)** **(b) (6)** Keats, and Pourier, dated March 6, 2009.

<sup>560</sup> Keats email to Birney, dated March 11, 2009 (“*This particular one involves an investigation by the State Board and I don’t want to do anything improper where the Corps is concerned.*”); Pourier email to Butterbrodt, dated March 11, 2009 (“*We need to allow for the normal judicial process, e.g. South Dakota Board to occur without the possibility of it being compromised.*”); First Keats email to Birney and McSherry dated March 12, 2009 (“*[t]he South Dakota State Medical Board has been notified and is doing a check of their own.*”).

<sup>561</sup> In response to a request for “information regarding any complaints, concerns, and/or corrective actions, if any, (written and/or verbal, formal and/or informal), regarding his [Weber’s] medical practice and his interpersonal relationships with patients, patients’ families, and other medical staff” Pourier concealed any disclosure of the 1995 allegation, the 2008 DWI, or the 2006 assault. Pourier letter to **(b) (6)** SDBMOE investigator, dated June 19, 2009 (“*...Allegations and innuendos were found, but no concrete evidence. We had placed Dr. Weber on leave during our investigation and many members of the Oglala Sioux Tribe requested his return ... Dr. Weber is an excellent [] clinician who is generally well-respected by patients, their families, and his peers.*”).

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## Ineffective Internal Response to External Investigation – South Dakota (2015-2016)<sup>562</sup>

In the summer of 2015, and for a year after, IHS managers in Pine Ridge and Aberdeen had a compelling basis for an administrative investigation of Weber.

- *Reports from Dr. Foster that Weber was suspected of child sexual abuse while serving at the Browning Community Hospital in 1994-1995.*
- *The 1995 allegation that was referred to the FBI that while not pursued to prosecution remained an allegation which should have caused the agency concern, particularly considering subsequent events.*
- *The 2008-2009 allegations that, while not leading to any internal or licensing consequence, echoed the allegations from 1994-1995 in Montana and 1995 in Pine Ridge.*
- *A BIA report delivered to the Area Office in July 2015 laying out significant predication for a criminal investigation of child sexual abuse and advising IHS that Weber was being actively investigated.*
- *Contact with the HHS OIG in October that confirmed that both the BIA and the OIG were undertaking a serious and active investigation.*

In July 2015 the agency was clearly made aware of the threat Weber posed to adolescent boys. In fairness to the agency, law enforcement often dissuades agencies from initiating their own investigation while a criminal investigation is underway, but there is no indication that occurred here.

The responsibility of the agency remained, however, to protect patients. The July 2015 allegations in the BIA Law Enforcement report should have been taken seriously – the safety of patients would dictate that they be so – and immediately addressed. Yet it was not until October 2015, when the OIG made direct contact with the Area Office, that anyone responded to the warnings revealed almost four months earlier. When administrative action was taken, it permitted Weber to stay at the facility as a supervisor with authority over personnel who, potentially, would be witnesses against him. After years of cultivating teenage victims in Pine Ridge, it kept him in the community with ready access to that same population of vulnerable youth. And it allowed him continued access to the files and records of the agency that may constitute evidence of his alleged crimes.

### Analysis of Institutional Failures Generally

Organizational failure to rigorously inquire into allegations which carry such dire and enduring ramifications – in Montana and then on multiple occasions in South Dakota – is not uncommon. Government and medical facilities generally have a poor history of effective inquiry into allegations made against their own employees. Handing off the allegation to an outside law enforcement or regulatory agency is a similarly ineffective alternative to the agency's goal of a timely, robust, and conclusive investigation.

### Internal IHS Investigations

The IHS has protocols in place for internal investigations, such as the *ad hoc* committee assembled in 2009 at Pine Ridge. Those

<sup>562</sup> This time span covers that period from the start of the BIA investigation and Weber's resignation a year later. Disclosure of information pertaining to the IHS patient safety review and the contents of this report shall only be made in accordance with federal law at 25 U.S.C. § 1675.

processes, however, beg numerous questions:

- *Are these internal investigations effective?*
- *Are they conducted by people with the skills and training to complete them?*
- *Do those investigators have the time and resources to conduct them?*
- *Are they objective? Are they credible? Are they sufficient?*

The 2009 *ad hoc* committee investigation at Pine Ridge appears to have been none of those things. Leadership at Pine Ridge could not even agree on the purpose of the committee. Dr. Colton considered it investigatory; an evidence gathering body. Dr. Burgos considered it judicial; a body that would weigh evidence submitted to it. In the end Dr. Colton realized that the committee could not perform the function she envisioned,<sup>563</sup> and Dr. Burgos concluded that since no one volunteered any evidence the allegations were unfounded. The current

(b) (6) agreed with Dr. Colton's assessment that an *ad hoc* committee was not the right response to an allegation so serious as child sexual abuse.<sup>564</sup> Also, by any objective standard, the process was fundamentally compromised from the

beginning. Weber had been named the facility's Chief of Staff three times by 2008, a position to which he had been "elected" by his colleagues.<sup>565</sup> The *ad hoc* committee reported to the MEC and the MEC was comprised of the same providers that had selected him as their Chief of Staff. As (b) (6) Senior Associate Dean of Clinical Practices at University of New Mexico School of Medicine, observed, health care facilities in small remote communities can develop a "bunker mentality", sticking together in the face of adversity. (b) (6) also noted that colleagues and peers can experience difficulty "believing" that the allegations are true based on their experience working with the individual against whom allegations have been made.<sup>566</sup> And even if convinced of inappropriate conduct, they can have difficulty holding their coworkers' feet to the fire. Due to these problems with protectionism and lack of vigor in discipline, many smaller facilities now use an outside entity to conduct reviews at their facility.<sup>567</sup>

Many witnesses were aware of the current internal investigation alternatives available<sup>568</sup>, and described them to the consultants, but they almost uniformly found fault with the process. Delphine Brinlee, Human Resources Director in the regional office in Aberdeen, told ICS that misconduct

<sup>563</sup> Keats email to Colton, and response, dated April 10, 2019. "I sent a letter to (b) (6) (with a copy to Mr. Pourier and Ms. Shelly Harris) stating that the Medical Executive committee was not, in my opinion, the appropriate body to investigate such allegations. We have no legal authority to gain access to a variety of information (tribal police reports, results of previous investigations and so on)...."

<sup>564</sup> ICS interview of (b) (6) at the Pine Ridge Service Unit, Pine Ridge, South Dakota, November 12, 2019.

<sup>565</sup> Weber email to Keats, with a copy to Sumner, dated March 2, 2008.

<sup>566</sup> ICS interview of (b) (6) (b) (6), University of New Mexico School of Medicine, Albuquerque, New Mexico, December 5, 2019.

<sup>567</sup> Id.

<sup>568</sup> Although one witness indicated that allegations of misconduct should be investigated by the provider's supervisor. ICS interview of (b) (6), Billings Area Office, Billings, Montana, July 11, 2019. (b) (6) was an early interview; he may have also referred to other investigative options had the interviewers had the benefit of information gathered after July 11 and expanded the discussion. Over the course of Weber's career, however, there was a great deal of confusion as to the proper course of action.

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allegations are investigated by either area office or service unit employees, though they are generally investigated at the service unit level depending on the allegations.<sup>569</sup>

These employees, although some may receive some training in investigations<sup>570</sup>, conduct these inquiries as a collateral duty. An Area manager who had been tasked with an internal investigation of a provider in a service unit indicated that she had received no training, completed the work in a week and a half, and found no evidence to corroborate the allegation. She told ICS that “it would have been nice” to have had some sort of training or a team to conduct these types of investigations.<sup>571</sup>

The Oklahoma City Area may not have the same concerns. (b) (6) believes that the employee investigator process has become more professional and standardized; that the agency has more collateral duty trained investigators now and specific investigators can be selected for specific cases.<sup>572</sup> OKC AD RADM Watts indicated that the reports

generated by these fact-finding teams varies from thorough and complete to “pretty thin”.<sup>573</sup>

From (b) (6) point of view there were too few investigators, and suggested that the collateral duty responsibility is problematic; the investigations are “decent, but not great.”<sup>574</sup> Her observations were shared by numerous other witnesses who felt that the burden of investigation, when placed upon people expected to fulfill their regular duties, meant that both responsibilities suffer. (b) (6)

(b) (6) told ICS that she receives misconduct allegations from Rockville’s hotline and then works with the Area Director to identify an investigator.<sup>575</sup> The Area has a number of employees who are trained to be investigators as a collateral duty, but the number of trained investigators has shrunk and many investigators now regularly ask for time extensions in order to complete their cases. The Area struggles with the timeliness of their investigations.<sup>576</sup> Lengthy investigations are untenable as they

<sup>569</sup> ICS interview of (b) (6), Northern Plains Region Office, Rapid City, South Dakota, October 15, 2019.

<sup>570</sup> Training appeared extremely limited and employees are otherwise inexperienced in the business of interviewing witnesses, obtaining and reviewing relevant documents, corroboration, analysis and application of evidence to laws, regulations, rules or standards. It is a corollary obligation treated like a corollary obligation. An investigation of wrongdoing will only be as rigorous and credible as resources, talent, and commitment allow it to be.

<sup>571</sup> ICS interview of (b) (6), Great Plains Area Office, Aberdeen, South Dakota, October 24, 2019. While ICS is confident in (b) (6) commitment and good intentions, an untrained investigator operating without support or resources cannot likely deliver a credible result in 10 days, unless, as may have ben the case, the allegation had no predication in the first place.

<sup>572</sup> ICS interview of (b) (6), Oklahoma City Area, Oklahoma City, Oklahoma, August 12, 2019.

<sup>573</sup> ICS interview of RADM Travis Watts, Area Director and Assistant Surgeon General, Oklahoma City Area, Oklahoma City, Oklahoma, August 6, 2019.

<sup>574</sup> ICS interview of (b) (6), Northern Plains Region Office, Rapid City, South Dakota, October 15, 2019.

<sup>575</sup> ICS interview of (b) (6) Great Plains Area Office, Aberdeen, South Dakota, October 15, 2019. ICS noted that Oklahoma City, and some in the Great Plains and Billings Area Offices, organized teams of investigators while others used a singular investigator approach. This discrepancy may be the result of manpower issues or the time period. Obviously, the use of a single investigator would reduce the burden on manpower by only imposing on the time of a single employee.

<sup>576</sup> Id. Timeliness was also cited as a problem with the Area’s CMO. Interview of Dr. Lee Lawrence, Chief Medical Officer (CMO), Great Plains Area Office, Aberdeen, South Dakota, October 15, 2019.

are unfair to the accused employee and unfair to an agency trying to determine whether it is safe to return the provider to service.

(b) (6)

recommended to ICS that IHS “needs a division of trained responders” in a separate “Investigations Branch” to address the deficiencies in the agency’s investigative capabilities. (b) (6) had concluded that such an investigative unit would prevent “the multiple deflections of responsibility” when complaints are submitted.<sup>577</sup> (b) (6) agreed; dedicated positions with professional investigators would improve the outcomes.<sup>578</sup>

This problem – ineffective or inadequate investigations with collaterally dedicated employees with limited training – may differ from Area to Area depending on staffing, the number of complaints, and the number of complaints that deal with serious patient safety allegations. Some Areas may not even perceive that they have a problem.

However, as the discussion below establishes, there are certain inherent problems with internal governmental or health care facility investigations.

## Government Inquiry and Accountability

“It’s nearly impossible to fire a federal worker,” acting White House chief of staff and budget chief Mick Mulvaney told an audience in August. “I know that because a

lot of them work for me, and I’ve tried. You can’t do it.”<sup>579</sup> Mulvaney’s observation, while somewhat exaggerated, is fundamentally true. While it does not serve as an excuse for the failures in the Weber case, it does provide at least a portion of the explanation for why there is such resistance to vigorous inquiry into allegations of misconduct.

In a word: **Futility**.

The Weber case proves that investigation and removal of employees is not only structurally but also culturally difficult regardless of agency.<sup>580</sup> For every manager who is convinced that an employee is, by conduct or performance, in dire need of removal, there is another (usually in a more powerful position) equally convinced that the employee should be retained. Too often, merely because **removal is the much more difficult path** the contest ends in retention.

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*The obstacles to accountability are the lack of objectivity created by close professional relationships, differing agendas and priorities, and an erosion in commitment to the agency objectives in favor of protection of personal interests.*

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Support for that observation came recently from the Veterans Administration’s (VA) Office of Inspector General’s Report on the VA Office of Accountability and

<sup>577</sup> ICS interview of (b) (6), Great Plains Area Office, Aberdeen, South Dakota, October 24, 2019.

<sup>578</sup> ICS interview of (b) (6), Northern Plains Region, Aberdeen, South Dakota, October 15, 2019.

<sup>579</sup> Nathalie Baptiste, “The Trump Administration Has Figured out How to Get Rid of Federal Workers Without Firing Them”, October 7, 2019.

<sup>580</sup> Although the problem may be more acute in any agency where the organization is desperate for providers and reluctant to lose a single position.

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Whistleblower Protection (OAWP).<sup>581</sup> The OAWP was created for the sole reason to improve VA's efforts to hold its "employees accountable for their actions if they violate the public trust, and at the same time protect whistleblowers from retaliation."<sup>582</sup>

Accountability, by definition, means that the errant employee will suffer consequences, including dismissal once the violation has been established. What the VA OIG discovered was that despite being staffed with 103 employees to execute its mission, over the two-year period of the OAWP's existence, the office removed only one employee covered by the Act.<sup>583</sup>

Some OAWP officials expressed concern about the frequency with which the OAWP's recommended disciplinary actions were declined by proposing and deciding officials. The OAWP Director attributed this to some disciplinary officials applying subjective mitigating factors, such as, "I've known them for 25 years and they're a great guy." The OIG's review of OAWP data shows that, of the 35 Covered Executive disciplinary cases that proceeded to a final decision from June 23, 2017, to March 22, 2019, OAWP's recommended discipline was accepted only three times. In all other cases, a disciplinary official mitigated the recommended discipline. Eleven cases were mitigated by more than one official. In an additional five cases, the subject resigned or retired before discipline was proposed.<sup>584</sup> If an office created specifically to cleanse the organization of bad employees so

woefully fails to do so, what hope can the agency have that review teams assembled "as needed" – passing judgments on colleagues who they have worked with and must face again if they are not removed – will make the difficult, emotional, and time-consuming decisions?<sup>585</sup> Particularly when they see that their decision will likely be ameliorated or entirely overturned by someone in upper management. The **path of least resistance** – at least as ICS discovered regularly occurred in the Weber case -- is to ignore the allegations. Failing that, **condemn the person making the allegations and make half-hearted and superficial efforts to "investigate"** designed to achieve a particular result that causes the least disruption to the facility.

Government employee protections are designed to make discipline a time-consuming, arduous, and protracted process. Add to that the acrimony and hostility that a personnel action almost always entails, and it is not difficult to see why, from a government administration perspective, no consequential actions were taken in Montana or South Dakota to validate the allegations of child abuse against Weber.

### Health Care Facilities Inquiry and Accountability

Medical facilities have also shown themselves to be inadequate disciplinarians of physician misconduct. The Weber case is a prime example. **Weber was suspected or accused of child molestation on five**

<sup>581</sup> Veterans Administration Office of Inspector General (VAOIG), "*Failures Implementing Aspects of the Accountability and Whistleblower Protection Act of 2017*", October 24, 2019.

<sup>582</sup> Id., at p. 1. Citing, VA Office of Public Affairs, Press Release: "Secretary David Shulkin Announces Establishment of Office of Accountability and Whistleblower Protection and Names Peter O'Rourke as its Senior Advisor and Executive Director," news release, May 12, 2017.

<sup>583</sup> Id., at p. iii. "A critical purpose of the Act was to facilitate holding Covered Executives accountable for misconduct and poor performance".

<sup>584</sup> Id., at pp. 37-38. Internal citations omitted.

<sup>585</sup> This observation applies most keenly to Unit Service employees serving as investigators of colleagues in the same service unit, akin to the 2009 *ad hoc* committee at Pine Ridge.

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**separate occasions** – Browning (1994-1995) and Pine Ridge (1995-1996) (2006) (2008-2009) (2015-2016). On another occasion Weber was subject (but not subjected) to discipline for DWI and AWOL. On only one occasions did the agency initiate an internal inquiry, and in that case the inquiry was completely ineffective, incompetent, and designed to fail. On another occasion Service Unit management reported the accusation to law enforcement. All other external investigations were propelled by others, either outside the agency or acting without official approval of the agency.

In a 2009 study and letter to the Secretary of HHS – released in the midst of the continuing Weber controversy at Pine Ridge – the authors found that “[a]s of December 2007, almost 50 percent of the hospitals in the U.S. had never reported a single privilege sanction to the NPDB (National Practitioner Data Bank).”<sup>586</sup> Public Citizen, a consumer advocacy think tank, compiled the report by reviewing studies by the HHS Office of the Inspector General, medical journal articles, work by the non-profit Citizen Advocacy Center and recommendations from an October 1996 national meeting on hospital underreporting attended by hospital administrators, government officials, medical associations

and consumer advocates.<sup>587</sup> Public Citizen also analyzed the NPDB to examine the relationship between hospital reports and actions taken by state medical boards on the same physicians.<sup>588</sup> Two dominant factors behind the low number of hospital discipline reports were identified: 1) **Lax peer review**, including a **culture among doctors of not wanting to “snitch” on a colleague**;<sup>589</sup> and 2) hospital administrators **evading reporting requirements** by doing things such as imposing discipline of less than 31 days, thereby evading the reporting requirement or giving doctors a leave of absence in lieu of suspensions.<sup>590</sup>

A prime example of this professional reluctance was the reference given by (b) (6) in 1992. (b) (6) had observed Weber engaged in host of extremely troubling behaviors – having native teenagers at his house, letting them drive his car, giving boys gifts, even taking one on a trip with him to Europe – but when she gave the reference to the IHS she was not as damning as she might have been. She did tell the caller that she was concerned that Weber acted unprofessionally in having teenage boys over to his house, and his actions with the boys made her uncomfortable. The unidentified person making the call sanitized the comments even further by only writing that Weber was a

<sup>586</sup> Alan Levine and Dr. Sidney Wolfe, M.D., “Hospitals Drop the Ball on Physician Oversight - Failure of Hospitals to Discipline and Report Doctors Endangers Patients”, Public Citizen, May 27, 2009. Though a federal law requires hospitals to report physicians who have had their admitting privileges revoked or restricted for more than 30 days, the study found that in addition to inadequate discipline of physicians, hospitals routinely exploited loopholes to avoid government requirements, with nearly half of all hospitals not submitting a single doctor’s name to the National Practitioner Data Bank (NPDB) in the more than 17 years the data bank had existed at the time of the study.

<sup>587</sup> Id., at p. 3.

<sup>588</sup> Id., at p.

<sup>589</sup> While Drs. Foster and Butterbrodt were willing to sound the alarm about Weber, the fact that they were not joined or supported by their peers allowed management to isolate and marginalize them.

<sup>590</sup> Alan Levine and Dr. Sidney Wolfe, M.D., “Hospitals Drop the Ball on Physician Oversight - Failure of Hospitals to Discipline and Report Doctors Endangers Patients”, Public Citizen, May 27, 2009, at pp. 18-19. Weber was placed on Non-Duty with Pay status at least twice. The actions were never reported, although ICS is uncertain if the PHS considers the status a reportable event.

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hard worker who spent a lot of time at the Teen Center. The natural human reluctance to “bad-mouth” a colleague seems particularly strong in the health care community and the result is that a reputation is purified of questionable conduct. This leads to a misleading portrait of a flawed medical provider.

It is axiomatic that physicians generally, and physicians at a particular facility more specifically, share a natural bond and collegiality; they are members of the same club. In this environment, it is highly improbable that peers will enthusiastically investigate, or render an objective verdict on, another doctor.

There is also an inherent bias in internal investigations; the same that exists in government more generally. The hospital has an interest in making sure that its providers are not abusing patients or presenting other significant patient care issues and avoiding the possibility of liability and derision for the continued employment of such a provider. It also has a competing interest in that it must maintain adequate staffing levels. A consensus emerged during this review that, in underserved communities, there is a natural bias against terminating a provider when replacing the physician will be difficult and time-consuming, leaving the facility even more short-handed going forward.

## Licensing Authorities as an External Resource<sup>591</sup>

In his effort to have Weber investigated and terminated, Dr. Butterbrodt made a formal complaint to the SDBMOE.<sup>592</sup> CEO Pourier and Commissioned Corps Liaison Keats were quick to rely on the existence of an outside inquiry to deflect any expectation of additional action and condone a purely pretextual internal investigation. The involvement of the licensing board was repeatedly referenced over the following months by IHS management who used the fact of the Butterbrodt complaint and subsequent involvement of the SDBMOE to assert that the matter was being actively investigated.<sup>593</sup> Pourier communicated directly with the SDBMOE in a vigorous attempt to dissuade any further action by the board.<sup>594</sup>

**This created a management failure in the investigation of misconduct on two levels: While using the SDBMOE as a pawn to assure managers that the issues were being actively investigated (misleading communication), Pourier was at the same time actively lobbying the SDBOME for an outcome that would avoid any negative implications for the Pine Ridge facility (burying the problem).**

When she assembled the *ad hoc* committee in March 2009, Dr. Colton contacted the SDBMOE to inquire as to the status of Weber’s medical license.<sup>595</sup> She was told there was an active investigation and that

<sup>591</sup> It should be emphasized that it was not the Service Unit or Area Office who relied on the licensing boards. In both Montana and South Dakota, it was the physician with concerns that referred their allegations to the medical boards. The referral, however, at least in South Dakota, played an important role in the internal discussions about how to address personnel decisions regarding Weber.

<sup>592</sup> Butterbrodt complaint to South Dakota Board of Medical Examiners, dated December 2, 2008.

<sup>593</sup> Second Keats email to Birney and McSherry dated March 12, 2009.

<sup>594</sup> Pourier letter to (b) (6) dated June 19, 2009.

<sup>595</sup> ICS interview of Dr. Jan Colton, former Pediatric Dentist and former Acting Clinical Director at the Pine Ridge Service Unit, Phoenix, Arizona, November 25, 2019.

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Weber's license was temporarily suspended during that investigation.<sup>596</sup> On May 5, 2009, two days after Weber came off his 60-day suspension, in a letter to (b) (6) (b) (6) Dr. Butterbrodt advised the SDBMOE that Weber had been returned to his medical duties.<sup>597</sup> The evidence is clear that the SDBMOE was still investigating the allegations against Weber in June of 2009,<sup>598</sup> which begs the question: Why did the SDBMOE not raise any alarm that a physician with a suspended license was practicing medicine in the midst of an investigation?<sup>599</sup>

**Licensing boards should not be relied upon in all cases to make findings with the expectation that their efforts will produce a result that makes management's job easier – either to remove an employee or justify his continued employment without having to exercise independent accountability for either decision.** In too many instances, for whatever reasons, licensing boards do not exhibit rigor in the monitoring and discipline of licensed professionals. According to a Public Citizen study published in February 2016 in *PLoS ONE*, a peer-reviewed open access scientific journal published by the Public Library of Science, 70% of physicians (177 out of 253) who had engaged in sexual misconduct that led to sanctions by hospitals or other healthcare organizations or a malpractice payment were

not disciplined by state medical boards for their behavior.<sup>600</sup> The study concluded that “[a] small number of physicians were reported to the NPDB because of sexual misconduct. It is concerning that many of the physicians with a clinical-privileges action or malpractice-payment report due to sexual misconduct were not disciplined by medical boards for this unethical behavior.”<sup>601</sup>

In Ohio, State Medical Board of Ohio officials knew of former Ohio State physician Richard Strauss' abuse of students and student-athletes as early as 1996, and yet no one with this knowledge moved to involve law enforcement or revoke his license.<sup>602</sup> A medical board investigator “recognized the potential severity and reach of Strauss' improper conduct” during an investigation in July 1996, and reported that evidence showed “that Dr. Strauss has been performing inappropriate genital exams on male students for years.”<sup>603</sup> The investigative group's report deemed the negligence of anyone in a position of authority at the university to initiate an investigation into Strauss' conduct an “astounding failure.”<sup>604</sup> “For reasons that simply cannot be determined from the files still available or known or recalled by anyone interviewed by this working group, the investigation fell into what one former employee called a ‘black hole,’” working

<sup>596</sup> Id.

<sup>597</sup> Butterbrodt letter to (b) (6), dated May 5, 2009.

<sup>598</sup> (b) (6) letter to Pourier, Pine Ridge Service Unit, Pine Ridge PHS Indian Hospital, dated June 5, 2009.

<sup>599</sup> Id. As the SDBMOE declined ICS's request for assistance and interview, the question remains unanswered.

<sup>600</sup> AbuDagga A, Wolfe SM, Carome M, Oshel RE “*Cross-Sectional Analysis of the 1039 U.S. Physicians Reported to the National Practitioner Data Bank for Sexual Misconduct, 2003–2013*”. (2016) *PLoS ONE* 11(2): e0147800.

<sup>601</sup> Id., at p. 2.

<sup>602</sup> Report of the Working Group on Reviewing of the Medical Board's Handling of the Investigation Involving Richard Strauss submitted August 30, 2019.

<sup>603</sup> Id., at p.3.

<sup>604</sup> Abhigyaan Bararia and Sam Raudins, “*State Medical Board of Ohio Officials Knew of Strauss Abuse*”, The Lantern, August 30, 2019.

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group members wrote in their report.<sup>605</sup> **The Strauss case highlights several issues common to the Weber case: lack of interest, lack of transparency, lack of urgency, lack of records, lack of accountability.** These failures belong not just to the licensing agency but also to the provider's employer. The cycle referenced above, starting with the failure to take allegations of sexual abuse seriously, is clearly repeated in cases other than that of Stanley Patrick Weber.<sup>606</sup>

In South Dakota, as in most states, licensing investigations are confidential.<sup>607</sup> Any facility relying on a licensing investigation will undoubtedly be frustrated by the length of the investigation, its culture of secrecy, and the fact that, unless the medical license is suspended, they will never know the outcome.

As in Oklahoma, and the OBMLS, ICS made repeated attempts to interview representatives of the SDBMOE. ICS acknowledged the confidentiality of SDBMOE investigations but requested an interview "in order to ask some very general questions regarding the board and its procedures independent of Dr. Weber. These questions would include how the board communicates and works with various medical facilities and providers, including

those operated by the IHS."<sup>608</sup> (b) (6) declined the ICS request: "No, we are unable to meet with you. We do not meet with individual companies outside of a Request for Proposal (RFP) process nor do we need any products at this time. If we do in the future need something, an RFP will be filed with the state of South Dakota and available should you wish to submit at that time."<sup>609</sup> ICS then enlisted the assistance of IHS Deputy Director RADM Chris Buchanan who wrote a letter to the SDBMOE requesting access to the Weber file, or at least those documents in the file which were provided by employees of the IHS.<sup>610</sup> As of January 29, 2020, the date of this report, RADM Buchanan has never received a response to his request.

In the case of Weber, who was licensed in several states, it is plausible that if he had thought his South Dakota license was in jeopardy as a result of a rigorous investigation, he could have surrendered his license without adverse action, and continued to work at Pine Ridge on the basis of licensing privileges in other jurisdictions.<sup>611</sup> However, since the SDBMOE never came close to exposing his conduct he was free to practice – and

<sup>605</sup> Id.

<sup>606</sup> Also see Kammers case (Tribal chairman alerted IHS supervisor to improper sexual relationship, but concerns ignored), Bullis case (IHS psychologist admits to his supervisor that he had engaged in "some exploratory sexual contact" with teenage patient; supervisor does nothing), Delgado case (allegations of sexual assault at Pine Ridge lead to transfer to Eagle Butte without sanction or warning), and Crowe case (allegations of sexual relationship with (b) (6), (b) (6) (A) – first response to keep everyone quiet). *Part I: Investigation – Chapter 2: Other Cases Involving IHS Medical Care and Support Providers.*

<sup>607</sup> Jonathan Ellis, "South Dakota's medical complaint system like many other states", *Argus Leader*, March 23, 2014.

<sup>608</sup> ICS email to (b) (6) (b) (6) South Dakota Board of Medical and Osteopathic Examiners, Sioux Falls, South Dakota, October 14, 2019.

<sup>609</sup> (b) (6) reply to ICS email, October 15, 2019.

<sup>610</sup> IHS DD Buchanan letter to (b) (6) dated October 22, 2019.

<sup>611</sup> PHS employment as a physician requires only that the applicant have a "[c]urrent, unrestricted, and valid medical license from one of the 50 States; Washington, DC; the Commonwealth of Puerto Rico; the U.S. Virgin Islands; or Guam." <https://www.usphs.gov/profession/physician/requirements.aspx>.

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continue his abuse of children -- without any fear of the medical board.

**After 20 years of accusations – at least two formal criminal complaints (one in Montana and one in South Dakota), an FBI investigation, a DWI, two BIA investigations (one in Montana) , an HHS OIG investigation, a SDBMOE investigation, three federal indictments for child sexual assault and two federal convictions for child sexual abuse – based on the public records of the SDBMOE, Weber never had a blemish on his medical record.**

The only conclusion to be drawn from this discussion is that no responsible health care facility should ever rely solely on a state licensing agency – to any measure or degree – to investigate or evaluate any provider alleged to have engaged in conduct that jeopardizes patient safety.

### **Law Enforcement Investigations as an External Resource<sup>612</sup>**

As with reliance on licensing and regulatory referrals – law enforcement investigations<sup>613</sup> involve *unacceptable delay, lack of transparency*, and often *lack of conclusion*.

Criminal cases must meet the high threshold of proof beyond a reasonable doubt; erring on the side of patient safety requires that a lower standard be applied to personnel decisions. Patient safety concerns require an expeditious response and resolution. External criminal investigations offer neither. As the 2010 Senate Report found:

*“The most common reason for placing an employee on administrative leave is a pending investigation of the employee or management election, meaning it was the supervisor’s determination to place the employee on administrative leave. Further, the frequent use of administrative leave for purposes of a pending investigation may demonstrate unreasonably lengthy investigations. Attached as “Exhibit C” in the Appendix is a list of employees with the lengthiest administrative leave hours. Overall, the 11 employees who were placed on administrative leave due to pending investigations between 2005 and 2010 averaged over 560 hours*

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*While referrals to outside agencies for either criminal or licensing inquiries are appropriate, those referrals cannot be relied upon as a substitute for a rigorous internal review that can serve as the basis for making employment and patient safety decisions.*

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<sup>612</sup> It should be emphasized that it was not the Service Unit or Area Office who relied on law enforcement, apart from the 1995 incident in Pine Ridge. In Montana it was the physician with concerns that referred his allegations to the BIA. In 2009, there was no referral to law enforcement, and in 2015, it was the tribe that made the referral to the BIA. The 2015 referral, however, played an important role in the internal discussions about how to handle the Weber situation.

<sup>613</sup> Dr. Foster referred the allegations to the BIA (1994-1995) and the Tribal Prosecutor referred allegations to the BIA (2015). The Montana BIA inquiry does not appear to have reached any conclusion and the South Dakota inquiry took almost two years to reach conclusion (indictment).

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*of leave (more than 4 ½ months).”<sup>614</sup>*

Weber, on the other hand, was back at work within 60 days, without investigation and without resolution. The agency is therefore faced with a Hobson’s choice: Get an employee back to work and risk patient safety if the allegations are true -- or leave the employee on leave for an extended time and invite criticism that taxpayer monies are being wasted.

The FBI does not reject many cases at the intake stage. “[T]he FBI needs a ‘credible allegation of wrongdoing or reasonable basis to believe that an American’ is committing a federal crime in order to initiate an investigation.”<sup>615</sup> Low thresholds for taking a case means the FBI opens a lot of cases, all competing for finite time and resources. The IHS, however, is under significant time constraints in resolving personnel issues, and must contend with the loss of resources during the period of suspension. To leave a provider suspended with pay while any inquiry drags on only exposes the agency to additional criticism.<sup>616</sup>

The common apprehension in government agencies is that once a case is under criminal investigation, the agency should take no

steps which might hinder or complicate the criminal case. That concern was exemplified by the actions of Acting Deputy Area Director Shelly Harris when she made management decisions regarding Weber based, according to her explanations to ICS, on what she thought the OIG wanted her to do.<sup>617</sup> Too often, however, that understanding (that the agency should take no action which might injure the criminal investigation) is incorrect, untenable, and too easy an excuse to do nothing. Law enforcement is rarely insensitive to the necessity of an agency to conduct its business affairs during the pendency of an investigation. **The protection of patients must override concerns for criminal justice accountability, but the truth of the matter is that, in most cases, both can be achieved with proper coordination.** For a manager, keeping a criminal inquiry confidential is a far different matter than leaving a predator in place with continuing access to victims.

The conclusion to be drawn from this discussion is that responsible health care facility managers should not rely on or defer to a criminal investigation as a replacement for a timely, rigorous and professional internal inquiry; one in which the agency

<sup>614</sup> *IN CRITICAL CONDITION: THE URGENT NEED TO REFORM THE INDIAN HEALTH SERVICE’S ABERDEEN AREA*, Report of the Senate Committee on Indian Affairs, December 28, 2010, pp. 9-10. The Senate Report does not identify the cases as involving criminal inquiries, but the principle is the same. The IHS was criticized for keeping employees at home with pay, thereby creating a sense of urgency in resolving employee issues expeditiously.

<sup>615</sup> Michael German and Emily Hockett, “Standards for Opening an FBI Investigation So Low They Make the Statistic Meaningless”, Just Security, Reiss Center on Law and Security at New York University School of Law, May 2, 2017, citing FBI Director James Comey in a March 20, 2017, U.S House of Representatives Intelligence Committee hearing.

<sup>616</sup> *IN CRITICAL CONDITION: THE URGENT NEED TO REFORM THE INDIAN HEALTH SERVICE’S ABERDEEN AREA*, Report of the Senate Committee on Indian Affairs, December 28, 2010. “The Committee found that in some cases a single individual was placed on administration leave for over eight months due to a pending investigation. I do not understand why the Federal Government would pay someone for eight months to stay home while something is being investigated.” Chairman Dorgan’s Opening Statement, p. 3.

<sup>617</sup> ICS interview of Shelly Harris, Chief Executive Officer (CEO), Quentin Burdick Memorial Hospital, Belcourt, North Dakota, November 2, 2019. Harris said that giving Weber administrative duties but leaving him in the Pine Ridge Service Unit was her way of getting Weber out of patient care without him knowing the OIG was investigating.

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can have the confidence to make difficult decisions that elevate patient safety over all other interests.

### *An Alternate Paradigm – Conduct Response Team*

When it comes to providers and employees preying on the very population the organization exists to serve, the IHS is not alone in suffering controversy. Law enforcement services, the child and elderly care industries, the Boy Scouts, Olympic sports, colleges and universities and the Catholic Church have all been confronted with the consequences of predatory personnel. Each has had to address the issue of sexual abuse and take steps to remediate the damage and prevent further exploitation.

Few organizations have been plagued by ongoing and pervasive abuse as the Catholic Church. As such it has been compelled to respond not just to the betrayal of trust by a single priest or the consequences of a single episode, but to child abuse as a systemic problem. Because of the similarity of the Church's concerns to those of the IHS, its process for response to allegations may provide guidance to the agency in the aftermath of Weber case.

Beginning in 2002, with the passage of the Charter for the Protection of Children and Young People, also known as the Dallas Charter, the United States Conference of Catholic Bishops required all dioceses to take steps to protect children from sexual abuse.<sup>618</sup> Even before the passage of the Dallas Charter, the Denver Archdiocese had established a Conduct Response Team in 1991 to advise the Archbishop whether to

discipline priests alleged to have abused children and whether to pay for therapy, counseling or other support for victims.<sup>619</sup> The composition of the Conduct Response Team changed with the passage of the Dallas Charter. Since 2002, the Code of Conduct has mandated that the Conduct Response Team consist of a minimum of 5 persons “of outstanding integrity and good judgment, in full communion with the Church.” It specified that most members must be Catholic laypersons who are active in the practice of their faith and who do not work for the Denver Archdiocese. It required at least one member to be a mental health professional with expertise in the treatment of minors who have been sexually abused, along with at least one member from a judicial or law enforcement background.<sup>620</sup> Accordingly, as of 2019, the Denver Archdiocese's Conduct Response Team was composed of a clinical psychologist, a former social worker for children, a former deputy director of the Denver Police Department Victim Assistance Unit, two criminal defense attorneys, and a retired probation officer. The Denver Archdiocese's Code of Conduct describes the Conduct Response Team as “a confidential consultative body to the Bishop in discharging his responsibilities” pertaining to allegations of sexual misconduct involving minors.<sup>621</sup>

If the Denver Archdiocese receives an allegation of sexual abuse of a minor or misconduct with a minor, it connects the victim with its Victim Assistance Coordinator (VWC) who records the details of the victim's allegation. The VWC then forwards the complaint to Church officials

<sup>618</sup> Robert Troyer, Roman Catholic Clergy Sexual Abuse of Children in Colorado from 1950 to 2019, Special Master's Report, October 22, 2019, p. 16.

<sup>619</sup> Id., pp. 20-21.

<sup>620</sup> Id., p. 21.

<sup>621</sup> Id.

who then contact law enforcement.<sup>622</sup> At the same time, a Church official conducts a preliminary inquiry to establish that the abuse could have occurred, and, if so, the Archbishop initiates a canon law investigation into the details of the allegation.

Once the law enforcement agency concludes its investigation or tells the Denver Archdiocese to proceed, specific investigative steps may be divided up among or carried out entirely by the Judicial Vicar, the Vicar for Clergy, the Victim Assistance Coordinator, the Conduct Response Team, the law firm representing the Denver Archdiocese, or another priest assigned to the investigation. In some instances, the law firm representing the Denver Archdiocese may hire an outside investigator to conduct portions of the investigation.<sup>623</sup>

With an agreement between the Colorado Attorney General's Office and three Colorado Catholic Dioceses a Special Master was appointed to examine the sexual abuse allegation records of the Church, its compliance with state mandatory reporting laws, and the Church's internal response to the problem of clergy abuse.

The Special Master observed that “[c]ollectively the Denver Archdiocese’s clergy and the Conduct Response Team members have limited or no training and experience in acting as fact-finders in complex investigations of clergy child sex abuse. These investigations require advanced training in interviewing victims of sexual assault, especially those who are minors or who were minors when they were

assaulted. They also require significant field experience in completing or overseeing comprehensive investigations of crimes against children.”<sup>624</sup> After discussing the defects with the Conduct Response Team as constituted, the report found that “[t]hese flaws, cumulatively, can result in a victim’s allegation never really being treated as an allegation because the process can be so daunting and the burden on the victim so heavy that s/he declines to engage in or continue with the process. The result can be that an investigation ends inconclusively, and a potential abuser stays in ministry without restriction.”<sup>625</sup>

The consultants who participated in the Special Master’s Report recommended that the Diocese create an independent investigation team, recognizing that “[s]elf-policing always has some appearance of bias. But bias can and should be minimized.”<sup>626</sup> This investigative unit should “be composed of experts in the field of investigations, with an emphasis on expertise in investigating the sexual abuse of children and supported by a process that allows it to conduct fact-based, objective, and impartial investigations.”<sup>627</sup> The investigative unit “should ensure the [church officials] are aware of all allegations” and “should fully and independently investigate these allegations”.<sup>628</sup>

The investigative unit “should develop an investigative manual that provides procedures for all ... operations and investigations” and “should report to and coordinate with law enforcement”. It should establish and follow a timeline for completing and regularly reporting on the

<sup>622</sup> Id., p. 22.

<sup>623</sup> Id., pp. 22-23.

<sup>624</sup> Id., p. 28.

<sup>625</sup> Id., p. 30.

<sup>626</sup> Id., p. 32.

<sup>627</sup> Id., p. 37.

<sup>628</sup> Id.

status of investigations, and, the report emphasizes, investigators need to “thoroughly document all investigations” and “preserve these files electronically and even for allegations that are not substantiated.”<sup>629</sup>

The Special Master’s Report is instructive because it contained numerous parallels to the Weber case and the IHS’s ongoing concern for protection of patients. Although the Church had created a process for internal inquiry, that process was found wanting in expertise, objectivity, and clarity of mission. The Church cannot be faulted, however, for recognizing the need for an investigative protocol over which they could exert some degree of control over the depth and duration of the inquiry to satisfy their own personnel requirements.

There are two primary distinctions between the issues facing the church with clergy abuse and the issues facing this agency with provider abuse. The first is the probable origin of the complaint. Most clergy accusations come from victims. Based on the review of the Weber case and other cases examined during this review, most health care allegations arise from coworkers.<sup>630</sup> While the difference may affect the composition of the investigative team, the principle remains unchanged: **An effective and credible investigation would require professional – not “collateral duty” -- investigators.**

The second important distinction is the pressure of time. While clergymen can be relieved of their duties for as long as any investigation might take, federal employees, and particularly those federal employees who are providing a critical service such as medical care, simply cannot be sidelined for an indefinite period of time. Whether with

pay or without, federal policy and good management practice requires that a decision be made as quickly as possible as to whether the allegations are sufficient to take an adverse personnel action. But a prompt decision must also be a confident decision; it requires that a rigorous and competent investigation be conducted immediately and resolved quickly.

### *Conclusion*

*Currently the agency has no functional internal process for investigating serious allegations of patient abuse. While peer review and ad hoc collateral-duty investigators and committees may have utility in disposing of more minor issues, they are ill-equipped to deal with potentially criminal conduct that endangers patients.*

The 2009 *ad hoc* committee at Pine Ridge seemed unclear as to their mission. At least one member of the MEC viewed the *ad hoc* members as a sort of jury waiting to be presented the evidence, rather than an investigative entity tasked with finding the evidence.

(b) (6) in the Great Plains Area Office, told ICS consultants that IHS “needs a division of trained responders” in a separate “Investigations Branch” to address this deficiency. Such an investigative unit would prevent “the multiple deflections of

<sup>629</sup> Id.

<sup>630</sup> Also, the Crowe case (Cherokee), Keats (Aberdeen), and Delgado (Eagle Butte [coworkers were victims]).

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responsibility” that currently result when complaints are submitted.<sup>631</sup>

In the company’s view, a proper investigatory response to an allegation of patient abuse or other serious patient safety concern requires these elements:

- *Prompt Response, Rigorous Inquiry, Prompt Resolution, and Decisive Outcome*
- *Expertise in Investigations*
- *Clear Protocols*
- *Proper Documentation and Record Preservation*
- *Coordination with Law Enforcement and Senior Agency Management*
- *Credibility and the Appearance of Objectivity by operating outside the chain of command; untainted by favoritism or antagonism, or manpower, litigation, or other professional concerns.*

As noted earlier, the most fundamental problem with the Weber history was that management was too often determined to find the accusations untrue and therefore the allegations were not taken seriously. The deafening alarms that should have been heard and responded to were simply ignored. The risk for the patients is grave and the risk to the government is substantial; the taxpayer pays dearly for agency inaction.

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*The path forward for the agency requires a different approach to responding to and investigating allegations involving patient safety.*

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<sup>631</sup> ICS interview of (b) (6), Great Plains Area Office, Aberdeen, South Dakota, October 24, 2019.

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**ROOT CAUSE FINDING # 4**

*Ineffective or Inconsistent  
Communication, Failure to Document,  
Failure to Preserve,  
Failure to Locate*

Incomplete and ineffective communication also lay at the heart of the Weber case. The fundamental failure to communicate creates **uncertainty, confusion, the inability to manage or be managed**, and allows employees at every level to **escape responsibility** and accountability.

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*Lack of credible communication makes everyone in the organization functionally ignorant and incapable of determining, with any degree of confidence, that they have facts and understanding upon which competent decisions can be made.*

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The inability of the IHS to rid itself of a predatory provider like Weber was in large part due to a composite of communication failures. During his entire career, information was withheld, ignored, distorted, and manipulated to accomplish certain outcomes. A failure to document events and a failure to preserve what records may have been created combined to construct a protective barrier of uncertainty around Weber.

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*Had information been treated with the gravity it required – documented, maintained, and shared with decision-makers – the amalgamation of that information may well have ended Weber’s access to a generation of adolescent Indian boys.*

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***Ineffective or Inconsistent  
Communication***

Although it is an issue that took different forms at different times over Weber’s career, often times there were displays of confusion and inconsistency that can only be attributed to a communication failure.<sup>632</sup> This lapse in communication appeared to be most prevalent in the area of reporting instances of misconduct. **Ineffective or inconsistent communication creates two distinct administrative problems. First, the employee is uncertain as to his or her obligation and therefore does nothing and, secondly, uncertainty allows the employee to avoid responsibility and escape accountability.**

All communication has a purpose. In the management of organizations and the employees serving the organization, communication is more than mere distribution of information. From bottom to top communication is necessary to inform and seek guidance. From top to bottom communication is necessary to inform and provide guidance. **Incomplete or abandoned communication leaves principal actors able to avoid accountability and leads to claims of unawareness, finger-pointing, and ultimately the inability to hold people responsible for their failures.**

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<sup>632</sup> Although ICS is confident that in some instances, confusion or misunderstanding was exaggerated by witnesses attempting to explain their actions or lack thereof.

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Lack of accountability, in its turn, leaves bad employees and managers in place, good employees and managers disillusioned and frustrated, and the chances of another embarrassing crisis vastly improved.

**Albuquerque/Browning:** When Weber applied for the position at Browning, an unidentified IHS official reached out to (b) (6) as one of his references. (b) (6) operated a number of UNM-tribal partnership clinics -- (b) (6) -- for native youth in New Mexico. Among other things, (b) (6) revealed that Weber's conduct was troubling to her. She described Weber as spending too much time with adolescent boys and hosting them at his home. It was concerning and unprofessional. She also noted that he worked hard and spent many hours on the nights and weekends at the Teen Center. That positive reference was the one the IHS official noted on Weber's paperwork, ignoring the other warnings (b) (6) was trying to communicate.

**Browning:** Former Blackfeet Hospital Clinical Director Rottenbiller struggled to articulate how allegations such as those made against Weber should be reported.

**Browning:** Time and again LaFromboise and Rottenbiller were warned about Weber. Tribal Chairman Tim Davis, then in the IHS Maintenance Department, told LaFromboise about Weber's home being filled with stuff for teenagers (games, videos, snacks, clothes) even though he had no children. LaFromboise, despite being warned from various other sources "did not see any cause for alarm".

**Browning:** LaFromboise asked, rhetorically, "Who is the responsible person to come in and do something?" She opined that the Weber issue was complicated by the fact he was an officer in the Commissioned

Corps, because "they couldn't be supervised or disciplined".

**Browning:** Current Browning Service Unit (b) (6) told ICS that if a serious complaint was made, including alleged sexual contact, (b) (6) would go to the HR Division for guidance. He would contact senior staff at the Billings Area Office, and he would contact OGC in Denver for additional guidance. (b) (6) was uncertain of the protocol on when to contact law enforcement and he explained that he would seek additional guidance from the Billings Area Office and the OGC.

**Pine Ridge:** (b) (6) was concerned that Weber ordered "constant and frequent" chlamydia and gonorrhea tests for the male (young boys) patients even though there was no STD complaint by the patient or a diagnosis by a doctor. She reported this to her supervisor, Mary American Horse, who told her that "maybe Dr. Weber suspects abuse." (b) (6) said she told American Horse that "there's something not right" about these tests and that "not everybody was abused." American Horse told (b) (6) she would look into this issue but, to her knowledge, American Horse never did anything to move the information forward. (b) (6) recalled American Horse telling her, "you should have put your complaints about Dr. Weber in writing." (b) (6) said she learned from this experience (not putting her complaint in writing) and she will now always put her complaints in writing.

**Pine Ridge:** (b) (6) told Marge Murdock, Director of Nursing, and Doris Thibeault, Acting Assistant Director of

Nursing,<sup>633</sup> that she was concerned about all the young boys coming to see Weber unaccompanied. They both told (b) (6) that they would take care of it and thanked her for letting them know. After (b) (6) told Murdock and Thibeault about this issue, however, the boys continued to come into PEDS to see Weber. (b) (6) also told Mary Afraid of Bear, (b) (6) direct supervisor at the time, about the unaccompanied boys who were regularly coming to see Weber. Afraid of Bear told (b) (6) that this issue (unsupervised boys coming to see Weber) had been reported to hospital Administration/Leadership Committee and nothing was being done about it. (b) (6) said she told Afraid of Bear about the large number of boys always coming and going to Weber's house. Afraid of Bear said she "would look into it". (b) (6) was not sure if Afraid of Bear ever looked into it. But nothing changed; young boys continued to work in Weber's yard after (b) (6) told Afraid of Bear about her suspicions.

**Pine Ridge:** (b) (6) warned Sophia Conroy, acting Pine Ridge CEO, that she was concerned about the frequent visits of unaccompanied boys coming to see Weber when he was Clinical Director. Conroy had no comment when Cross told her that she was anxious about the situation; that it was unusual and disturbing. Conroy, to her knowledge, never did anything about it and the steady stream of boys coming to see Weber never stopped until Weber left the facility.

**Aberdeen:** While there was a great deal of communication between Pine Ridge and the Area Commissioned Corps Liaison, Ron

Keats, there was little documented communication between Keats and others in the Aberdeen Area Office. Keats had significant email exchanges with the Service Unit and his superiors in Washington but did not appear to be as willing to keep senior IHS Area management informed.

**Pine Ridge/Aberdeen/Rockville:** In 2008, Weber was cited for DWI. In an exchange of emails, it was made clear that Weber should be disciplined for being AWOL. Those instructions were ignored because no one from IHS Headquarters demanded confirmation or saw the matter through. The issue was picked up again in March of 2009, after the Butterbrodt allegations surfaced, and Aberdeen (Keats) was told "[t]he policy does not allow for the service unit to handle the situation (the DWI/AWOL) locally." Again, the Area Office and Service Unit stalled until November 2009 when the PHS HQ finally gave up.

**Aberdeen/Denver:** In July of 2015, BIA Law Enforcement provided the Area Office with a memorandum outlining accusations against Weber. The memo was forwarded to the OGC Office in Denver who, in turn, advised the Area Office, with some degree of urgency, to remove Weber from patient care. The Area Office neglected the need for personnel action until October – almost four months later – and then only after the OIG Special Agent assigned to the investigation was in contact with the Acting Deputy Director. ICS could only speculate how long the Aberdeen Area Office would have ignored the issue had it not been for the intervention of the OIG. No extant documents reveal any action or discussion in

<sup>633</sup> It is important to note that while ICS identifies supervisors by name – consistent with what consultants were told by witnesses – it would be unfair to suggest, without more, that they were themselves derelict. Those supervisors may well have related staff concerns to service unit managers. Time constraints did not permit ICS to interview and locate every supervisor identified. Somewhere in the chain of command, however, information was either lost, ignored, or suppressed, because none of it resulted in any changes to protect the young boys of the reservation community.

those intervening months and no indication the OGC every followed up to ensure the matter was being handled.

**Browning/Billings/Pine Ridge/Aberdeen/Denver:** Since January 1981, “[a]n (HHS) employee who has information which he or she reasonably believes indicates a possible offense against the United States by an employee of the Department, or any other individual working on behalf of the Department, shall immediately report such information to his or her supervisor, any management official, or directly to the Office of the Inspector General.”<sup>634</sup> The list of IHS employees who failed to adhere to this regulation is long. Some in the Area Offices (Lewis, Jeanotte, Harris, Claymore) claim they were not informed although there is significant evidence indicating that they did have knowledge.

path to take if they were confronted with the same dilemma.



**Failure to Document**

If the Weber case is a reliable indicator, *failure to document* concerns about patient safety issues is an impediment to ensuring that the concern can be appropriately addressed. Verbal exchanges count for nothing in a functional office setting; if an observation or event is not recorded it may as well not have occurred because it is almost impossible to recapture in the event of a future need for the information. ICS found a myriad of instances where the observations and experiences of staff should have been documented regardless of whether the event, in and of itself, was actionable.<sup>635</sup> What follows is not an exhaustive list.

**Browning:** While Tim Davis was “floored” by the amount of child or teenager related items in Weber’s basement, his reports to Rottenbiller and LaFromboise were verbal. Had his concerns been recorded they would

*With the exception of Birney’s referral to Vantrease in August 2010, no known record exists that suggests any other IHS employee ever contacted the OIG.*

PHS officer Birney did email the OIG on August 3, 2010, but no one from the IHS ever made any similar report. This conclusion is based on available documentation. ICS cannot represent with certainty that someone from the IHS did not contact the OIG without there being a record of the contact. However, no witness claimed to have contacted the OIG, and only Foster, (b) (6) and Butterbrodt initiated any report to any law enforcement office.

ICS found that the significant confusion about who they should contact -- claimed by managers such as Rottenbiller and LaFromboise -- was common. In answer to the question of to whom such allegations should be referred, many witnesses identified a variety of recipients before agreeing that they were unsure of the proper

<sup>634</sup> 45 CFR § 73.735-1301.

<sup>635</sup> ICS bases its conclusions that none of these events were memorialized – as opposed to documented and the document not found – based on the admissions of the witnesses who when asked indicated that no extant record was made or that they could not recall that such a record was made.

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have provided important support to reports from a tribal member that her son had spent the night at Weber's home; a fact which also should have been documented by LaFromboise.

**Browning:** By late 1994 or early 1995, LaFromboise and Rottenbiller had been made aware of the following details: *a)* clinic nurses (and the Drs. Foster) had observed and documented that Weber was "selecting" teenage males as patients and that unaccompanied minors were in Weber's office late in the evenings; *b)* maintenance staff had reported that Weber had unaccompanied minor boys in his home at night; *c)* Weber had been seen by staff and tribal members taking groups of boys off the reservation for pizza or other unsupervised outings; and *d)* that Weber had been assaulted, at least once. None of this was documented by LaFromboise or Rottenbiller.

**Browning:** Just before his departure, Weber was so drunk and belligerent that he had to be forcibly removed from the Emergency Room at the Blackfeet Hospital. Weber had responded to a Child Protection Team issue involving a boy brought to the ER by his grandmother. Dr. Rottenbiller made a "judgment call" not to file a Quality of Care incident report because Weber had not been on-call when he was notified that the boy was at the ER and presenting signs of possible abuse.

**Billings:** If the allegations were not documented on the front end in Browning, they could have been and should have been documented on the receiving end in Billings. Jeanotte told Rottenbiller that he had received a call from a tribal member. LaFromboise, (b) (6) Rottenbiller, and Foster all indicated that they "called the BAO (Billings Area Office)". (b) (6) identified the two Deputy Area Directors by name. No one

from the Service Unit or the Area Office documented what, if anything, was reported from Browning.

**Pine Ridge:** While numerous relevant concerns, events, and allegations were documented – 1995 allegation referred to FBI, assaults against Weber handled by IHS Security and tribal police – these were not documented in the files of the Pine Ridge Service Unit. While Dr. Butterbrodt documented his concerns and observations, probably out of a sense of self-preservation, he was alone in doing so. What nurses observed -- selecting patient charts for adolescent boys, insisting on unsupervised examinations, STD tests for every patient regardless of complaint, distributing drugs without a prescription, etc. – all went unrecorded.

**Pine Ridge:** When Weber was beaten and robbed by three young men – two of which he had victimized – CEO Pourier did nothing to investigate the matter; receiving permission from Weber's reluctance to provide details about the incident seems to have absolved him of any further duty to inquire. The least that could have been done was a written memorandum about the incident. Reporting it to his superiors, which he claims to have done, was as simple as a phone call – avoiding the inconvenience of paperwork – and left no trace that he had done anything at all in response to the severe beating of one of his doctors.

**Pine Ridge:** Numerous "reports" were made to supervisors. (b) (6) reported her concerns regarding Weber's insistence on STD tests without justification to her supervisor, Mary American Horse. (b) (6) said she told Marge Murdock, Director of Nursing, and Doris Thibeault, Acting Assistant Director of Nursing about the boys coming to see Weber unaccompanied.

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*Many witnesses claimed they related their concerns to a supervisor, and nothing happened. For the manager disinclined to address the concern, having no record of a complaint makes it much easier to ignore.*

Nurse (b) (6) recalled being told by her supervisor “you should have put your complaints about Dr. Weber in writing.”<sup>636</sup>

The same is true between Unit leadership and their Area managers. In Montana, LaFromboise and Rottenbiller insist that they told the Area Office about the allegations against Weber. Jeanotte and Lewis are equally insistent that they were told nothing. There are no extant records to assess with confidence where accountability rests. In South Dakota, Colton and Pourier insist that the Area Office was fully informed, but Harris and Claymore are equally insistent that the Service Unit never related any concerns to Aberdeen. In the case of Pine Ridge, there is documentation in the form of emails that shows that Keats was intimately involved in the Weber case and that both Harris and Claymore were sufficiently informed that any ignorance as to the details would be willful ignorance rather than genuine ignorance. But a more fully written record would have made for a more thorough review and analysis.

Management in both Montana and South Dakota displayed an alarming tendency to claim ignorance and blame others for their lack of awareness.

*If the IHS managers who vehemently deny knowledge, and therefore responsibility, were as dedicated to the mission of the agency as they are quick to flee from any accusations of negligence, many of the communication problems of the agency would be solved. It is a simple analysis. Managers who really did not know, should have known*

All employees – both reporters and supervisors to whom the report is made – must recognize the obligation to document patient safety issues. “Documentation about employees, when necessary, is ... factual, not judgmental... Without documentation, making a case for any of these actions [discipline, removal, advancement] is difficult, and potentially risky for the employer.”<sup>637</sup> Facts can be documented without a design to take action; managers can obtain not only the allegation, but the provider’s response so that the record is complete. Weber was never without an explanation.

Managers like Pourier and Keats regularly indicated that the allegations were unfounded. But they were not unfounded – they were not even particularly disputable. A reasonable manager may have disagreed with what Butterbrodt’s facts implied, but had there been an attempt to verify the factual foundation of his claims it would have been determined that they were accurate: Weber did have an unusually high density of teenage boys as patients; Weber did order STD exams for all teenage boys

<sup>636</sup> ICS interview of (b) (6), (b) (6), Pine Ridge, South Dakota, November 27, 2019.

<sup>637</sup> Susan M. Heathfield, “The Importance of Documentation in Human Resources”, thebalancecareers.com, Updated June 25, 2019.

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regardless of the medical purpose which brought them to the hospital; Weber did see unaccompanied teenage patients after hours. Rather than insisting that the allegations were unfounded, IHS managers should have informed their superiors of the facts of Butterbrodt's complaints so that their decisions would be fully informed, not merely rubber-stamps of the self-interested judgments of underlings.

**As difficult as it is to discipline federal employees, or remove them from federal service, it is impossible without a written record of conduct justifying the removal.**<sup>638</sup>

**The agency must consider this a priority and matter of self-protection.** Recently the VA had to pay nearly \$7 million to veterans who had been sexually abused by a medical provider at the Dwight D. Eisenhower Department of Veterans Affairs Medical Center in Leavenworth, Kansas. "Dozens of lawsuits filed by his [PA Mark Wisner's] victims alleged the U.S. government, which operates the VA hospital, knew or should have known that Wisner was a danger to patients, had a history of providing improper medical care and had previously victimized patients."<sup>639</sup> The Wisner case is, in most respects, the same as the Weber case. "Multiple times, the VA administration at that hospital had reports that Wisner was behaving inappropriately. ... Someone needed to connect the dots."<sup>640</sup> The ability to

"connect the dots" is rendered infinitely more difficult when the connections rely on word-of-mouth and office chatter.

There were no memoranda discovered by, or provided to, ICS which represented a formal internal discussion of the allegations against Weber from either Browning or Pine Ridge. If any record was created it cannot be found; but whether no record was ever made, or made and later removed, the result is the same – the sanitized version of Weber's career left no path to follow and allowed those intent on protecting him to always claim that "[a]llegations and innuendos were found, but no concrete evidence."<sup>641</sup>

**The moral of the Weber story – and that of Wisner – is that the agency cannot connect the dots without dots.**

There is a circularity discussed in the *Analysis* section on *Investigation* that is equally resonant here. If something is not reduced to writing, there is no record. If there is no record, there was nothing wrong (or at least managers can claim there was nothing wrong – that THEY were aware of). If nothing was wrong, there was nothing to address. If there is nothing to address, there is nothing which needs to be recorded.

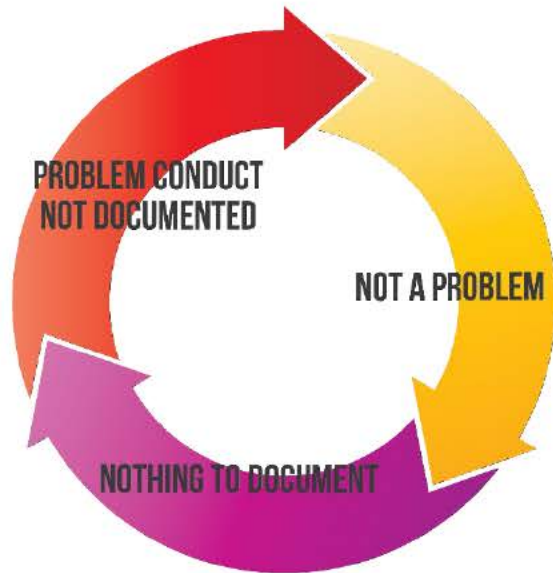
<sup>638</sup> Even as the consultants write this obvious maxim, they are reminded that the IHS has a history of swift and drastic punishment when it suits a manager's purpose. Consider, Butterbrodt's reassignment to Turtle Mountain, Tilus's reassignment to Aberdeen. See also *IN CRITICAL CONDITION: THE URGENT NEED TO REFORM THE INDIAN HEALTH SERVICE'S ABERDEEN AREA*, Report of the Senate Committee on Indian Affairs, December 28, 2010. "Between 2002 and August 2010 there were a total of 364 reassignments, 235 details and 31 employee transfers. Additionally, the available documentation suggests that employees who filed EEO complaints were more likely to be detailed or reassigned compared to those that did not." Id, pp. 6-7.

<sup>639</sup> Dan Margolies, "U.S. Pays \$7 Million To Veterans Who Were Sexually Molested At The Leavenworth VA Hospital", National Public Radio, KCUR 89.3FM, June 10, 2019.

<sup>640</sup> Id., quoting Dan Curry, attorney for the plaintiffs (ICS emphasis added).

<sup>641</sup> Pourier letter to (b) (6) dated June 19, 2009.

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**No record. Nothing wrong. Nothing to address. No record. And, worst of all, no accountability.**

### ***Failure to Preserve Documents***

While the most prevalent communications deficit was the failure to document the concerns about Weber, in some instances concerns were documented but the record no longer exists or cannot be found; *a failure to preserve*.<sup>642</sup>

**Browning:** Maintenance employee (b) (6) saw Weber, after hours, taking an unaccompanied male teenager into his office, then dragging a couch from the reception area into the office, and closing the door. (b) (6) was sufficiently concerned that he wrote a memo to his supervisor. The memo was never found during the OIG investigation, the request for

production from IHS Headquarters, or during the course of the ICS review.

**Browning:** (b) (6) wrote a Quality of Care Incident Report when he found Weber was visibly intoxicated on the job. The Incident Report was never found during in the request for production from IHS Headquarters or during the course of the ICS review.

**Pine Ridge:** In 2009, Clinical Director Dr. Jan Colton assigned an *ad hoc* committee of three to inquire into Dr. Butterbrodt's allegations. She recalled that a written report resulted from the work of that Committee and that it was maintained in the Administrative Offices at Pine Ridge and a copy had been provided to the Area Office in Aberdeen. The report was never found during the OIG investigation, the request for production from IHS Headquarters, or during the course of the ICS review. It was not produced from either the Service Unit or the Area Office. Colton also sent a letter to (b) (6) at (b) (6) wherein she warned that the *ad hoc* committee approach was not working.<sup>643</sup> There is no doubt that such a letter existed and should have been in the custody of the Service Unit, the Area Office, and the Office of General Counsel. The letter was not found at the Service Unit or the Area Office. The IHS, at the request of ICS, asked that OGC provide documentation in OGC's possession, such as Colton's letter to (b) (6)/(b) (6) relating to Weber. Whether by intention or simple dismissiveness of its client agency's request, OGC elected to not comply or cooperate with the ICS review. Whether or not the Colton letter to (b) (6) which would have

<sup>642</sup> ICS acknowledges that these witnesses are recalling events that occurred years and even decades ago. However, the number of witnesses who recalled a written record being created would suggest that memoranda documented at least some events and that no records at all now exist.

<sup>643</sup> Colton email to Keats, dated April 10, 2009. "I sent a letter to (b) (6) (with a copy to Mr. Pourier and Ms. Shelly Harris) stating that the Medical Executive committee was not, in my opinion, the appropriate body to investigate such allegations."

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been critical to evaluating the events of 2009, still exists in the files of the OGC is unknown. From a records management perspective it should have been available in all three places. Through IHS, ICS also requested an interview with (b) (6). The purpose of the interview would be discussion regarding his interaction with Colton and others at the Pine Ridge Service Unit and Great Plains Area Office during Weber's assignment in Pine Ridge. As with the document request, OGC did not respond to IHS' request.

**Pine Ridge:** At some point in his tenure, Weber was found, after hours, sitting in bed with a young male patient in the Acute Care Unit. According to (b) (6) a nurse in the Unit filed a formal written Incident Report with her supervisor. (b) (6) recalled the same episode but was unsure if the report was in writing.<sup>644</sup> The Incident Report was never found during the OIG investigation, the request for production from IHS Headquarters, or during the course of the ICS review.

**Pine Ridge:** According to Dr. Fernando Cosme, who served for a time as the Acting Clinical Director in 2010 or 2011 (before Weber became Acting Clinical Director in 2011), there were files in the Clinical Director's Office that documented complaints, internal investigations, and disciplinary action against Pine Ridge Hospital medical providers, including Weber. In 2019, Cosme told ICS that he knew that those files no longer existed in the CD's office. (b) (6) came to work on a Sunday in May 2016 and found Weber shredding documents and thought to herself "he's shredding the evidence". The OIG

arrived soon thereafter and could find few records relating to Weber.

ICS cannot provide an explanation for the absence of records it knows at one point existed, but there is no question that document preservation makes reviews better informed, more complete, and more credible. Historical reviews are a necessary component of organizational integrity; recreating events to establish what was done (or not done), when it was done (or not done), why it was done (or not done) and who made the decisions. Although redundancy in documentation creates its own issues with regard to storage and space, disciplinary records ought not be maintained where people with incentive to remove them or destroy them may have access.

The absence of records -- either because they were not created or not preserved -- is the optimal condition for bad management. Holding managers accountable for documenting the business of the agency, and properly storing those documents so that they can be readily retrieved, serves to make those managers accountable for their decisions.

### *Failure to Locate Documents*

What cannot be retrieved may as well not exist. There are three hurdles that must be overcome.

- The requirement to document events.
- The preservation of what has been documented.
- The retrieval of what has been preserved.

<sup>644</sup> If there was no written Incident Report submitted -- but only a verbal rendition -- then there was still a significant communication failure. (b) (6) told ICS that she did not know if law enforcement was contacted or whether an investigation was conducted, but emphasized that, at the very minimum, there should have been an internal Incident Report prepared. ICS interview of (b) (6), Rapid City, South Dakota, October 23, 2019.

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In the first of the two incidents described below, there is evidence that there were documents available to be retrieved. In the second and third instances, ICS concluded that the records likely existed at some point and should have been, with a conscientious commitment to do so, retrievable.

**Browning:** During the criminal investigation by the OIG, Special Agent Muller requested all records pertaining to Weber stored at the Browning Service Unit be produced. In an email responding to the request, Agent Muller's contact in the Billings Office was told that "[w]e were unable to find information pertaining to Stanley J. Weber with in the documentation from either Box 1 or Box 2 located in the storage room as well as anything in the Risk Management Office." Agent Muller later performed his own search for the documents while on site at the Browning facility and discovered hundreds of critical records that should have been produced as responsive to his 2016 request.

**Pine Ridge:** In October 2019, ICS interviewed Credentialing Specialist Tammy Bailey and at the end of the interview asked her to locate the Credentialing Committee minutes for 2009, and the Committee's by-laws and charter for 2009 for review by the ICS Team on their next visit to Pine Ridge. In November, Bailey reported that she was unable to locate any of these requested materials.

**Pine Ridge:** In November 2019, during an interview with Administrative Support Assistant Diane Little Hawk, ICS consultants asked Little Hawk to search her archives for the 2009 MEC meeting

minutes. After a short break, Little Hawk reported that she could not locate the 2009 MEC meeting minutes and was uncertain where these minutes are currently located.<sup>645</sup>

**Aberdeen:** On July 28, 2016, a Columbia University student filed a Freedom of Information (FOIA) request for "a full list of all complaints, instances of misconduct, and personnel actions filed against eight current or former providers at the Indian Health Service." The eight individuals identified included Weber, Keats, Delgado, and Ahsan. In response to her FOIA request the IHS claimed that none of these doctors had complaints or disciplinary actions against them, writing that "[t]he Great Plains Area Human Resources office searched their files and [found] no records responsive to your request exist." Keats and Delgado had been prosecuted for felony crimes. Weber was under investigation at the time, and the IHS had a history of complaints against him that are extensively documented in this report.

The inability to retrieve relevant records – where records likely or certainly existed – may be due to poor organization and storage, making retrieval difficult and overly time-consuming at a time when resources, particularly at the unit level are stretched thin. Relevant records were dispersed widely – emails, MEC minutes, department files, etc. The task of reviewing records from a variety of locations could be a daunting mission. Certainly, the fact that the requests were for records created years and decades ago contributed to the failure of the searcher to provide documents in response. It may also be in some cases, and to some extent, lack of motivation or ineptitude.

<sup>645</sup> ICS does not fault either Bailey or Little Hawk for their inability to locate records from a decade ago when neither was in the position they currently hold. The fault lies in the organizational responsibility more broadly where regularly created books and records are not maintained in a manner which permits their ready access, or, at least, common knowledge of where they would be stored. Disciplinary records should be particularly well maintained and not available to anyone with a motive to remove or destroy them.

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The focus of this report is limited to serious patient safety allegations and does not seek to address the broader record-keeping and/or record-retrieval problems that may permeate the organization. **Starting with those allegations, the agency must develop a records system that centralizes all documents relevant to those complaints.**

### *Conclusion*

While good communication is critical to the success of the organization, it is only as good as the use members make of it. Like a chain with a weak link, communication tends to break down when it hits resistance. To avoid those breakdowns the agency would benefit from redundancy – giving information a secure channel, or several alternative secure channels, from employees to management, and a verification system, or systems, from management to subordinates.

## PART III: RECOMMENDATIONS

Recommendations made as part of this report are intended to specifically address the issues discovered by ICS during its medical quality assurance review. The recommendations are informed by a variety of sources.

- *The observations of ICS key personnel based upon their experience, the review of IHS documents, and the conduct of interviews as part of their review.*
- *Input from current and former IHS employees regarding problems within the agency and proposals to improve its functions.*
- *Prior findings from organizations involved in the oversight of IHS, e.g. the U.S. Senate Committee on Indian Affairs and the U.S. Department of Health and Human Services, Office of Inspector General (including HHS/OIG Report OEI-06-19-00330).*

Recommendations are categorized as either general recommendations or recommendations associated with one of review's four root causes.

### General Recommendations

#### *IHS Internal Administrative Reviews/Compliance Reviews*

The agency should create a robust compliance review program in order to ensure appropriate conformity with HHS and agency policies and procedures. These reviews would include on-site examinations of a small number of service units and area offices each year. Areas of assessment

would include some medical issues such as patient protection and review of committee meeting minutes (credentialing committee, medical executive committee, etc.). Other areas of assessment would include human resources, whistleblower protection, budget compliance, contract oversight, acquisition compliance, and tribal relations. As an example, the Albuquerque Area Office currently covers many of these areas in their semiannual meetings with service units.

The agency should consider the creation of a self-assessment document or guide which would be completed and certified annually by the service units and area offices. This guide would require the submission of compliance information from those components. The guide, in turn, would be used as the foundation for the conduct of the on-site reviews.

The agency should consider the use of an outside contractor to assist with the creation of the self-assessment guide and the conduct of a limited number of reviews annually. The use of an outside entity, even for a small percentage of reviews, provides the agency with credibility regarding their program. (ICS personnel have an immense amount of experience in compliance review and can provide additional information.)

#### *Human Resources Review*

The agency should review the current human resources structure. Throughout the ICS review, interviewees regularly introduced issues involving human resources and its current structure within the agency. The current state does not seem to lend itself

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to optimal operation and consistency. Human resources is comprised of headquarters and five regions throughout the country, versus the area office structure used for other programs. The regional human resource directors are responsible for a region, yet they sit in a particular area office and report to an area director. As such, many areas see these individuals as simply the individual in charge of human resources in that particular area, not the entire region. With the agency organized by area, the regional structure of human resources does not appear to be the most conducive to streamlined operations. As such, many interviewees complained about the inconsistent application of human resource policies and classification of positions. Many employees are confused about the lines of reporting for human resource issues. They question the regional structure and are unsure of the role of human resources at headquarters.

### ***Additional/Updated Policies Regarding Abuse of Patients***

In early 2019, IHS issued a new policy and training module regarding the sexual abuse of children by health care providers. This policy reinforced mandatory reporting and reporting procedures. While the agency is complimented for the new policy and training module, additional policies or an expansion of the current policy is needed. This expansion should reference additional types of abuse other than just sexual abuse. The new policies should address all types of victims and not simply children. The policies should reference all agency employees as mandatory reporters, not just medical providers. It is noted that the most recent version of the training module references reporting by all employees and contractors. (This recommendation is also

referenced by the OIG, Office of Evaluation and Inspection (OEI).)

In addition to expanding the number of mandatory reporters, consideration should be given to working with the applicable parties to make nonreporting a felony violation versus its current status as a misdemeanor. The statute of limitations regarding nonreporting violations should also be reviewed for possible extension.

### ***Stronger Reporting Requirement***

The new agency policy expands the number of mandatory reporters and requires that all IHS staff document “the report in the IHS Incident Reporting System within five business days.” (Indian Health Manual, Part 3, Chapter 20, Section 3-20.2)

This requirement to document should be extended to Part 3, Chapter 23 of the Indian Health Manual which addresses required reporting of allegations of ethical misconduct. This chapter currently allows for the required reporting of allegations to be written or oral. Given the requirements in Chapter 20 of required documentation and following best practices of documenting events generally, Chapter 23 should be rewritten to require written documentation of allegations versus written or oral.

### ***Blue Ribbon Panel***

IHS should consider the creation of a blue-ribbon panel which would review the history of IHS, its current composition, and how successful the agency is in addressing its mission. The goal of this group would be high-level recommendations about funding, potential reorganization, and options for mission optimization. This panel would include a number of the agency’s stakeholders to include, among others: IHS

senior leadership, the OIG, representatives from other relevant HHS agencies (Center for Medicare and Medicaid Services, National Institutes of Health, Centers for Disease Control and Prevention, Substance Abuse and Mental Health Services Administration, etc) tribal representatives, healthcare providers groups, and U.S. Congressional professional staffers. (ICS has experience moderating this type of panel and is available for further discussions.)

### Recommendations Regarding Root Cause #1

*Leadership Failures, Failure to Serve the Mission, Self-Interest and Refusal to Accept Responsibility*

#### ***Management/Supervisory Training***

The agency should invest in additional management/supervisory training for all individuals who are promoted into a supervisory role. This training for first line managers should be provided contemporaneous with the individual's promotion.

#### ***Leadership Training***

The agency should invest in additional leadership training for individuals who are promoted to senior leadership positions within the agency, e.g. service unit CEOs.

#### ***Mentor Program***

IHS should consider the creation of a mentor program for mid-level and upper-level managers. This program not only provides positive instruction to those managers, but also helps to ensure consistency across the enterprise.

### ***Minimize the Use of Acting Positions***

The agency should utilize fewer acting positions, particularly for key medical provider positions such as CMO, CEO, Clinical Director, and Director of Nursing. Individuals in acting positions lack accountability and fail to enforce accountability in others. Acting positions do not afford the temporary leader the ability to institute new policies and procedures. Problem employees will often attempt to "wait out" an acting leader. While there is a recognition that there are sometimes few options to some period of acting, these should be kept to a minimum. Vacancies should be advertised quickly, and selections made.

#### ***Financial Disclosure Forms***

In order to increase transparency and accountability, the agency should expand the number of employees who are required to complete the annual Confidential Financial Disclosure Form (Form OGE-450).

### Recommendations Regarding Root Cause #2

*Failure to Disclose, Ineffective or Insufficient Reporting, Concealment from Management Superiors*

#### ***Additional Training for Employees***

Despite the fact that whistleblower training is provided to employees on an annual basis through the learning management system, additional training is needed. Training should include examples of whistleblowers who provided information which resulted in change. The training should also reference

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the accountability expected of managers so that employees are aware of and comfortable with not only their responsibilities but also those of management. Additional modalities of training should also be explored in order to increase the effectiveness of training.

### ***Additional Training for Managers***

Specific training on the issues of whistleblowing and retaliation should be provided to managers. This training should include the expectations for managers as well as the employees' whistleblower rights. Managers should be trained on how to handle reports of wrongdoing. Training should include real-life examples where retaliation was taken against employees for coming forward with allegations of misconduct.

### ***Performance Plan Modification***

Consideration should be given to incorporating compliance with whistleblower laws, policies and procedures into managers' performance plans. The managers would acknowledge that they have received training and could report on what actions they have taken to create and maintain a robust program.

### ***Whistleblower Protection Coordinators***

If positions are not already in place, the agency should develop collateral duty Whistleblower Protection Coordinators at the area office level and possibly at the service unit level. These individuals would be responsible for educating employees and assisting employees as needed; ensuring that policies are correctly followed.

### ***APAC Pilot Project***

IHS should consider the implementation of a pilot program under which employees in a particular area or service unit are assigned an Anonymous Personal Accountability Code (APAC). This number would be used by employees when reporting suspect behaviors or misconduct. The APAC numbers would only be used when reporting and should be tied to a whistleblower system at agency headquarters. Only specific program owners at headquarters would have the APAC list to link the code to an employee. The use of this code would provide employees with some assurance that their anonymity is being protected.

### ***Display Items***

IHS should produce mandatory reporting requirements posters to display in service units. The agency should also produce OIG reporting posters for display in service units and area offices.

### ***Cultural Change***

The agency should take additional steps as needed to create a culture of transparency where employees feel safe to report issues and allegations. A "see something, say something" campaign would help to improve reporting to supervisors and law enforcement.

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*A number of the aforementioned recommendations regarding root cause #2 address barriers referenced by the OIG, OEI including: concerns about lack of anonymity, fear of retaliation, traditional power discrepancies between doctors and other staff, and lack of trust in proper action from supervisors.*

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## Recommendations Regarding Root Cause #3

*Failure to Investigate Credible Allegations, Ineffective and Inconclusive Internal Investigations*

### *External Investigative Response Team (Pilot Project)*

IHS should create an investigative response team to address allegations of misconduct. Defects in the current system of internal review of serious patient safety allegations – lack of investigatory expertise, lack of objectivity, lack of clear protocols, time and resource limitations, lack of finality, and lack of credibility – invites a separate investigative mechanism inherent to the agency but coordinated with the OIG. This response team is referred to by ICS as the Safety of Patients Allegation Response, Review and Conclusion (SPARRC) Team. The SPARRC Team is an IHS-contracted group of experienced investigators.

When a priority allegation is identified and after coordination with the OIG, a 2-4 person team would be dispatched to the service unit to a) clarify and define the allegation, b) conduct interviews and gather documents, and c) complete the review so that administrative determinations can be made within a time window that corresponds to applicable personnel guidance. Once a report is presented to headquarters it can be used administratively and/or for a referral to law enforcement or a licensing authority.

The use of a contracted team ensures that investigations can be completed in a timely, thorough manner. An outside entity also ensures the credibility of the process. This is an external solution. (ICS has significant experience in this area and is available to discuss this recommendation in more detail.)

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### *Internal Investigative Program*

Without the external solution referenced above, the agency should provide additional training and resources for internal administrative investigations. Policies and procedures regarding the conduct of these investigations should be significantly refined with the input of stakeholders. This an internal solution. (Again, ICS is available for additional discussions on this internal solution.)

### *Confidentiality Rules*

IHS should establish confidentiality rules that apply for the duration of any IHS internal investigation, so employees feel comfortable coming forward without fear of retaliation or dissemination of their personal information. The reasons underlying an employer's need for confidentiality during an ongoing investigation are: 1) to ensure the integrity of the investigation; 2) to obtain and preserve evidence while employees' recollection of relevant facts are fresh; 3) to encourage prompt reporting of a range of potential workplace issues – criminal misconduct, unsafe conditions or practices, bullying, sexual harassment, harassment based on race, religion or natural origin; and 4) to protect employees from dissemination of their sensitive personal information.

### *Annual Waiver for Medical Providers*

The agency should establish an annual signed, written waiver for all medical providers which authorizes the release of information as needed from licensing boards, regulatory investigations, or other types of inquiries. The waiver would grant access to relevant information from external sources needed by the agency in order to

conduct administrative inquiries in accordance with its responsibility to effectively manage its workforce and protect its employees and patients.

### Recommendations Regarding Root Cause #4

*Ineffective or Inconsistent Communication, Failure to Document, Failure to Preserve, Failure to Locate*

#### ***Creation of Administrative Investigation Tracking System***

IHS should consider the procurement of a secure case management system which would serve as a repository of information regarding administrative investigations. This system would house allegations of wrongdoing as well as all information derived from the investigation of said allegations. Should the case warrant further action, this system would allow for the case file to “move through the pipeline” of the required involved entities, e.g. the service unit, area office, employee relations/labor relations, human resources, QARM, etc. The system would sit within a specific office at IHS headquarters so that there is a central owner. The system would also allow for the movement of information between IHS and the OIG. The system would be searchable and would allow the agency to effectively respond to information requests.

ICS is aware of the agency’s new incident reporting system, I-Star; but is not aware of the entire functionality of this system. This system may be an excellent incident reporting system but does not appear to be a case management system.

The creation of this case management system, along with I-Star, would address recently articulated shortcomings and potential risks of current IHS systems by the HHS, OIG, OEI: 1) no central “owner” or dedicated resources causes a risk of overlooked reports and duplicative or inefficient efforts; 2) not designed for patient abuse allegations causes risks of inadvertently missing reports; 3) lacks capability to track, categorize and query data which causes inefficiency, risks of ineffective oversight and response, and errors in data management; and 4) systems and data may not be secure which creates risks of inappropriate access, misuse of information, inadvertent or intentional overwriting or deleting information. (There are a number of systems on the market and ICS can provide additional consultation on options.)

#### ***OIG Training***

IHS should work with the OIG to provide training to employees on how to report and document suspected abuse and/or other misconduct and what type of information to include when making a referral to the OIG for review to determine whether an investigation should be initiated. This training should include scenarios and past case examples where possible.

#### ***Database of Required Meeting Minutes***

The agency should establish a shared-access database for the storage of various types of meeting minutes required by the agency and facility bylaws. This system could be accessed by specific individuals at the service unit level, the area office, and at headquarters. Regular population of the system and review ensures that required



meetings are taking place and preserves the activity during those meetings. The ICS review was severely hampered by the lack of preserved meeting documentation. ICS is not aware of the capabilities of the new I-Star system to house this type of information.

### ***Storage and Retrieval of Electronic Mail***

IHS should take action to preserve employee electronic mail for a longer, specified period of time (e.g. ten years). Current policies do not adequately address the preservation of emails by employees, particularly those below the Senior Executive Service level. Emails should be backed up on agency or department servers so that messages are easily retrieved and searchable.

### ***Robust Communication***

The agency should stress more robust communication between headquarters, area offices and service units. This communication should be proactive in nature versus reactive. This issue was discussed by a large number of interviewees during the ICS review. This type of communication is present in some areas, but severely lacking in others. The OIG/OEI has also noted this issue: previous OIG work found that IHS organizational culture did not always encourage candid discussion of problems and communication breakdowns between HQ, Area Offices and facilities inhibited effective problem-solving.

### ***Clarification of Reporting***

IHS should review its website and coordinate with the OIG on needed changes to information about reporting. It should be clear that the OIG accepts all allegations of

wrongdoing, including patient abuse, and not just allegations of fraud, waste, abuse and mismanagement. The information regarding the IHS Hotline should also be reviewed. In order to avoid confusion, consolidation of all reporting under one OIG hotline number which would capture all information should be considered. The OIG already has a triage system in place for this type of incoming information.

### ***Limited Reporting for Remote Areas***

The agency should take steps to ensure that adequate avenues are available and publicized for individuals in remote areas to communicate information or allegations of wrongdoing. The OIG/OEI noted that there are several barriers to reporting by individuals in remote areas: lack of internet service, language issues, perceived power imbalance between medical providers and patients, and stigmas surrounding sexual abuse.

### ***Training of Employees Regarding Grooming***

IHS should provide specific training to employees regarding the grooming process used by sexual perpetrators as part of their victimization process. Knowledge of the grooming process is another way that employees can recognize that patients or others may be victims of a perpetrator inside the agency or within the community.