

## EMPLOYEE/MANAGEMENT RELATIONS

**1. REASON FOR ISSUE:** To implement provisions of the “Department of Veterans Affairs (VA) Health Care Personnel Enhancement Act of 2004” (Public Law 108-445, dated December 3, 2004) as it relates to pay for Veterans Health Administration (VHA) physicians and dentists.

**2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This Handbook contains VA policy on employee/management relations. The pages in this transmittal replace the corresponding page number in Appendix A of VA Directive 5021 and Part II, IV, and V of VA Handbook 5021, dated April 15, 2002. These changes will be incorporated into the electronic version of the VA Handbook 5021 that is maintained on the [Office of Human Resources Management and Labor Relations Web site](#). Significant changes include:

- a. Clarifies the definition of “reduction in basic pay” for purposes of a major adverse action in regards to market pay for physicians and dentists and special pay for nurse executives.
- b. Clarifies the grievance/appeal processes available to physicians and dentists as a result of an involuntarily reassignment when such action results in a reduction in market pay.
- c. Excludes from the title 38 administrative grievance procedures the right to grieve the reduction of market pay or the amount of the reduction for physicians and dentists and the approval, disapproval, or amount of special pay granted to nurse executives.

**3. RESPONSIBLE OFFICE:** The Human Resources Management Employee Relations and Performance Management Service (051), Office of the Deputy Assistant Secretary for Human Resources Management and Labor Relations.

**4. RELATED HANDBOOK:** VA Handbook 5021, Employee/Management Relations.

**5. RESCISSIONS:** None

**CERTIFIED BY:**

/s/Robert N. McFarland  
Assistant Secretary for  
Information and Technology

**BY DIRECTION OF THE SECRETARY  
OF VETERANS AFFAIRS:**

/s/R. Allen Pittman  
Assistant Secretary for  
Human Resources and Administration

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d. [Section 3 of the Department of Veterans Affairs Health Care Personnel Act of 2004 Public Law (Pub. L.) 108-445].

e. [VA Standards of Conduct].

[f.] Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR 2635.

**3. POLICY**

a. Employees are expected to maintain the highest standards of honesty, integrity, impartiality, conduct, and effectiveness. Whenever an employee's performance of duty or professional competence is determined to be unsatisfactory; or when an employee's professional or personal conduct is not satisfactory, prompt and appropriate, disciplinary or major adverse action, or other corrective action will be taken. The policy of VA is to maintain standards of conduct and efficiency which will promote the best interests of VA.

b. Disciplinary or major adverse actions will be taken when it is evident that other supervisory techniques have failed to correct a given problem, or would be inappropriate. Actions taken should be consistent with the precept of like penalties for like offenses, with due consideration of any extenuating circumstances.

c. Employees are entitled to be represented by an attorney or other representative of the employee's choice at all stages of the case. Employees must identify their chosen representative in writing. A representative who is employed by VA may be disallowed by the facility Director because of:

(1) Conflict of position, or

(2) Conflict of interest.

d. Actions covered under this part are subject to the prohibited personnel practices listed in 5 U.S.C. 2302, prohibiting:

(1) Discrimination because of race, color, religion, sex, national origin, age, disabling condition, marital status, or partisan political reasons; and

(2) Reprisal for the proper exercise of an employee's legal or administrative appeal rights.

**4. DEFINITIONS.** Unless otherwise noted, the following definitions apply to this part only:

a. [**Admonishment.** An official letter of censure to an employee for minor act(s) of misconduct or deficiency in competence. This letter normally remains in the employee's personnel folder for 2 years].

b. [**Discharge.** The involuntary separation of an employee from employment based on conduct or performance].

c. [**Disciplinary Actions.** These are adverse actions, other than major adverse actions, which include admonishment and reprimand based on conduct or performance].

d. [**Disciplinary Appeals Board.** The three member Board designated to hear an employee's appeal of major adverse action which is based in whole or in part on a question of professional conduct or competence].

e. [**Grade.** The established grades for the positions covered by this chapter will be as defined by 38 U.S.C. 7404, and the qualification standards issued pursuant to 38 U.S.C. 7402. (See VA Handbook 5005, Staffing.)]

f. [**Indefinite Suspension.** The involuntary placement of an employee in a non-duty, non-pay status for a temporary indefinite period of time pending investigation, inquiry, or further management action.

g. [**Major Adverse Actions.** These are suspension (including indefinite suspension), transfer, reduction in grade, reduction in basic pay, and discharge based on conduct or performance. For purposes of this Handbook, a reduction in basic pay includes a reduction in the market pay of a physician or dentist as a result of an involuntary reassignment or change in assignment when taken for disciplinary reasons, i.e. conduct or performance reasons].

h. [**Mixed Case.** This is a case that includes both:

(1) A major adverse action arising out of, or including, a question of professional conduct or competence, and

(2) A major adverse action which does not arise out of a question of professional conduct or competence, or a disciplinary action.]

i. [**Official Time.** Time granted to an employee and/or representative to review the material relied upon to support a proposed action, to prepare a reply, and to secure affidavits, if the employee is otherwise in a duty status].

[ ]

j. [**Professional Conduct or Competence.** A question of professional conduct or competence involves direct patient care and/or clinical competence. The term clinical competence includes issues of professional judgment].

k. [**Reduction in Basic Pay.** The involuntary reduction, based on conduct or performance, of the annual rate of basic pay to which an employee is entitled under 38 U.S.C. 7404, including above minimum entrance rates and special salary rates authorized under 38 U.S.C. 7455. This includes a reduction in the market pay of a physician or dentist as a result of an involuntary reassignment or change in assignment when taken for disciplinary reasons. However, this does not apply to other reductions in pay, such as the loss or reduction of:

(1) Physician and dentist performance pay, and

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(2) Physician and dentist market pay, unless the reduction in market pay is the result of an involuntary reassignment or change in assignment taken for disciplinary reasons, i.e. conduct or performance reasons (Note: Reductions in market pay that are not the result of an involuntary reassignment or change in assignment for conduct or performance reasons are not covered by this chapter.),

(3) Head nurse differential,

(4) Nurse Executive Special Pay,

(5) Other differentials,

(6) Allowances, or

(7) Premium pay such as:

(a) Standby,

(b) On-call,

(c) Shift,

(d) Overtime,

(e) Sunday,

(f) Holiday,

(g) Night work,

(h) Hazardous duty, and

(i) Interim geographic adjustment.]

1. [**Reduction in Grade.** The involuntary assignment to a lower grade on the same pay schedule based on conduct or performance].

m. [**Reprimand.** An official letter of censure to an employee for an act of misconduct or deficiency in competence. A reprimand is a more severe disciplinary action than an admonishment. This letter normally remains in the employee's personnel folder for 3 years.]

[ ]

n. [**Suspension.** The involuntary placement of an employee, for disciplinary reasons, in a non-duty, non-pay status for a temporary period of time].

o. [**Transfer.** The involuntary movement of an employee from one VA facility to another (under separate managerial authority) based on conduct or performance and without a break in service].

## 5. RESPONSIBILITIES

a. The Under Secretary for Health, Deputy Under Secretary for Health, Assistant Deputy Under Secretary for Health, other officials in the Office of the Under Secretary (38 U.S.C. 7306(a)), network directors, other key Veterans Health Administration (VHA) officials and field facility directors are responsible for:

(1) Administering policy concerning disciplinary and major adverse actions in conformance with requirements of statute and this chapter, and reviewing existing policies and recommending appropriate changes.

(2) Delegating to supervisors authority for the direction and discipline of employees under their jurisdiction, as appropriate, and assuring proper supervisory training.

(3) Ensuring that supervisors properly exercise their disciplinary and major adverse action authorities.

(4) The employee may, after 6 months, make a written request to the supervisor that the admonishment be withdrawn. The employee may, after 2 years, make a written request to the supervisor that the reprimand be withdrawn.

(5) Once an admonishment or reprimand is withdrawn, it may not be used as a past disciplinary record in connection with any future proposed disciplinary or major adverse action. This should be considered in determining whether a disciplinary action should be withdrawn early, particularly with respect to actions which were based on patient abuse.

(6) When a disciplinary action has expired or has been withdrawn early and destroyed, the supervisory official will so inform the employee. In order to assure the employee that no record remains in the personnel folder, the supervisor may wish to destroy it in the employee's presence or give it to the employee for disposition.

(7) Since the admonishment or reprimand may be appealed under the grievance procedure initially and, except in patient abuse cases, will automatically be removed from the personnel folder after 2 or 3 years, respectively, a grievance may not be filed based on a supervisor's decision not to remove it earlier than the expiration date.

## 9. MAJOR ADVERSE ACTIONS

a. **Types of Actions.** This paragraph applies to suspensions, transfers, reductions in grade, reductions in basic pay [(including reduction in physician and dentist market pay as a result of involuntary reassignment or change in assignment when taken for conduct or performance reasons)] and discharges.

### b. Burden of Proof and Appropriateness of Penalty

(1) Prior to initiating a major adverse action, officials involved in the decision making process must consider the burden of proof which must be met in order to sustain the action on appeal. When taking a major adverse action against an employee, the Department bears the burden of proving by a preponderance of evidence the charges that form the basis for the action.

(2) The Department must establish that the penalty chosen is within the tolerable limits of reasonableness.

### c. Notice of Proposed Action

(1) Prior to taking a major adverse action, the employee must be given 30 calendar days advance written notice of the action proposed.

(2) Before being released to the employee, a notice of proposed action will be reviewed by the Human Resources Management office for compliance with statutes, regulations, VA policies and other applicable requirements. Human resources management officials will review the evidence and, as appropriate, provide guidance concerning the propriety of the action.

(k) A statement that the employee will be given a written decision within 21 days of receipt of the employee's reply, if any, or of the expiration of the reply period if no reply is made.

(l) A statement advising the employee of the duty and pay status in which the employee will be carried during the notice period.

(m) A statement that if it is decided to take the proposed action, such action will be effective not less than 30 days from the day following the date the employee receives the notice, except when invoking the crime provision (see paragraph 9e of this chapter).

(n) A statement informing the employee where the material relied upon to support the reason(s) for the proposed action will be available for review by the employee and or the employee's designated representative. Generally, the evidence file should be maintained in the Human Resources Management office.

(o) A statement that informs the employee that:

1. The employee will be allowed a specific number of hours of official duty time (if otherwise in an active duty status) for:

a. Reviewing the notice;

b. Preparing a written and/or oral reply; and

c. Securing affidavits.

2. Identifies the person with whom the employee should make arrangements for the use of official time.

[(p) For physicians and dentists, if the proposed action will result in a reduction in market pay, a statement that their market pay may be reduced should this proposed action be made effective.]

(4) Policies relating to notice requirements regarding reductions and revocations of privileges, reporting to the State Licensing Boards and National Practitioners Data Bank (NPDB), should be reviewed to determine their applicability to specific cases. Statements regarding such should be included, as appropriate.

d. **Past Discipline.** Management should consider the recency of any past disciplinary actions that form part of the basis for the proposed action. Consideration should be given to the use of any actions which are more than 3 years old, even if they have remained in the personnel folder. They should be examined closely to ensure their relevance to the proposed action before they are used to support such action:

(1) If cited, the previous disciplinary record will not be set forth as a current charge(s), but will be stated in a paragraph separate from the current charge(s).

(2) Counselings and charges of Absence Without Leave (AWOL) without concurrent disciplinary action are not disciplinary actions and may not be included in the past record paragraph.

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(d) If a record of prior disciplinary actions was cited in the advance notice, the decision will indicate how the past record, as cited in the advance notice, was taken into consideration in determining the proper action.

(e) A statement of the effective date (not less than 30 days from receipt of notice of proposed action), if the action imposed is a major adverse action. In the case of a suspension, the inclusive dates of the suspension will be stated. [In the case of an indefinite suspension, the ending date is determined by the completion of specified conditions and/or events.](#)

(f) A statement specifying the employee's appeal rights, and the time limits within which any appeal must be filed.

[\(g\) A statement advising the employee that a further explanation of the employee's appeal rights may be obtained by consulting the Human Resources Management office.](#)

**j. Appeals of Major Adverse Actions**

[\(1\) The filing of an appeal under a grievance procedure or to the Disciplinary Appeals Board will not affect the implementation of the major adverse action. The action should be effected on the date specified in the decision letter regardless of whether an appeal is filed.](#)

(2) If the [action involves an involuntary reassignment or change in assignment of a physician or dentist based on conduct or performance and which results in a reduction in market pay, only the involuntary reassignment or change in assignment is subject to grievance or appeal. Neither the decision to reduce market pay as a result of an involuntary reassignment nor the amount of such reduction is subject to grievance or appeal [under this chapter or Part V of this handbook. Refer to VA Handbook 5007, Part IX, paragraph 11, for more information regarding the right to request reconsideration of a tier determination](#)].

[ ]

[(3) If the major adverse action does not involve or include a question of professional conduct or competence, an employee may elect to seek review of the decision under the grievance procedure described in part IV, chapter 3 of this handbook. However, if the employee is covered by a collective bargaining agreement under 5 U.S.C., chapter 71 and the negotiated grievance procedure includes disputes over these actions within its scope, the employee may elect to appeal the action through the negotiated grievance procedure or the grievance procedure in part IV, chapter 3 of this handbook, but not both.]

(a) The employee shall elect which grievance procedure will be used.

(b) The timely filing of a grievance under either procedure shall constitute an irrevocable election. Time limits for filing a grievance under the VA procedure are governed by the provisions of part IV, chapter 3 of this handbook. Grievances filed under the negotiated grievance procedure must be filed in accordance with the provisions of the applicable negotiated agreement.

[\(c\) The employee must be advised of the right to request a hearing in connection with a grievance, and, advised that the request for a hearing must be submitted with the grievance.](#)

(3) If the major adverse action is based in whole, or in part on a question of professional conduct or competence, the employee may appeal to the Disciplinary Appeals Board [under the provisions in appendix A of VA Directive 5021 and part V, chapter 1 of this handbook.](#)

(a) An employee must be advised of the right to request a hearing before the Board, and advised that the request for a hearing must be submitted with the notice of appeal. If the employee does not request a hearing in the request for an appeal, the Board may elect to conduct a hearing or make a decision based on a review of the record.

(b) The employee must be provided with a copy of part V, chapter 1 of this handbook which specifies the content requirements of an appeal.

(c) Appeals to the Disciplinary Appeals Board must be submitted to the Under Secretary for Health, or designee, so as to be received within 30 days after the date of service of the written decision on the employee. The 30-day time limit may not be extended.

(d) An issue of whether a matter or question concerns, or arises out of, professional conduct or competence is not itself subject to any grievance procedure provided by law, regulation, or collective bargaining and may not be reviewed by any other agency.

**10. SERVICE OF DOCUMENTS.** It is best for a supervisor to deliver a notice to the employee personally and to obtain the employee's dated, written acknowledgment of receipt so as to show the date and fact of receipt. Supervisors may wish to have a witness present in order to corroborate delivery of the notice.

a. If the employee refuses to sign, the supervisor should so note this on the acknowledgment copy.

b. In those instances where the letter cannot be personally delivered to the employee, it should be sent by certified mail-return receipt requested, in order to establish that the letter was received. A copy should also be sent by regular mail in the event the certified mail is not delivered and/or the employee fails to obtain it from the Postal Service after being notified to do so. In these instances, date of service will be presumed to be 5 days after posting the letter.

## CHAPTER 2. DELEGATIONS

**1. SCOPE.** This chapter contains the authorities as delegated by the Under Secretary for Health for proposing and deciding on disciplinary and major adverse actions. The Under Secretary for Health retains the authority to appoint individuals as members of the Disciplinary Appeals Board Panel.

### 2. AUTHORITY

- a. Title 38, U.S.C., chapter 74.
- b. 38 U.S.C. 7304
- c. VA Directive 5021.

### 3. RESPONSIBILITIES

**a. Delegations of Proposing and Decision Authorities for Disciplinary Actions (Admonishments and Reprimands).**

#### (1) Field Employees

(a) Non-centralized positions:

- 1. Proposing Official: Immediate supervisor.
- 2. Decision Official: Service Chief or equivalent or senior medical officer.

(b) Service Chiefs and equivalent positions below the level of Chief of Staff or senior medical officer:

- 1. Proposing Official: Chief of Staff or senior medical officer.
- 2. Decision Official: Facility Director.

(c) Chiefs of Staff or senior medical officer:

- 1. Proposing Official: Facility Director.
- 2. Deciding Official: Network Director.

**[NOTE:** Facility directors may issue supplemental delegations of authority to propose and decide disciplinary actions involving employees in non-centralized positions under their jurisdiction. However, the authority to propose disciplinary action may not be delegated to an official at a lower level than the immediate supervisor, and the authority to decide disciplinary action may not be delegated to an official at a lower level than the service chief or equivalent or senior medical officer. Delegations must be in writing and may be issued as the Director deems appropriate. In exercising supplement delegation authority, directors must ensure that delegations are consistent with the statutory requirement that the decision official in a major adverse action must be at a higher level than the proposing official.]

**(2) Title 38 Medical Center Directors**

(a) Proposing Official: Network Director.

(b) Decision Official: [ ] Deputy Under Secretary for Health [for Operations and Management].

**(3) Title 38 Employees in the Office of the Network Director**

(a) All employees except VISN chiefs of staff or senior medical officer:

1. Proposing Official: VISN Chief of Staff or senior medical officer or VISN Associate Director, as appropriate.

2. Decision Official: Network Director.

(b) VISN Chiefs of Staff:

1. Proposing Official: Network Director.

2. Decision Official: [ ] Deputy Under Secretary for Health [for Operations and Management].

**(4) Title 38 Employees in VA Central Office**

(a) Proposing Official: Immediate supervisor.

(b) Decision Official: Next higher level official.

**b. Delegations of Proposing and Decision Authorities for Major Adverse Actions Involving Reduction in Grade, Reduction in Pay [(including reduction in physician and dentist market pay as defined in Chapter 1, paragraph 4 of this Handbook)], Suspension, or Discharge.**

**(1) Field Employees**

(a) Non-centralized positions:

1. Proposing Official: Service chief or equivalent.

2. Decision Official: Facility Director (except that transfers will require the concurrence of the [ ] Deputy Under Secretary for Health [for Operations and Management]).

(b) Service Chiefs and equivalent positions below the level of Chief of Staff or senior medical officer:

1. Proposing Official: Chief of Staff or senior medical officer.

2. Decision Official: Facility Director.

(c) Chiefs of Staff or senior medical officer:

1. Proposing Official : Field Facility Director .
2. Decision Official: Network Director.

[**NOTE:** Facility directors may issue supplemental delegations of authority to propose and decide major adverse actions involving employees in non-centralized positions under their jurisdiction. However, the authority to propose major adverse actions may not be delegated to an official at a lower level than the service chief or equivalent, and the authority to decide major adverse action may not be delegated to an official at a lower level than the facility director. Delegations must be in writing and may be issued as the Director deems appropriate. In exercising supplement delegation authority, directors must ensure that delegations are consistent with the statutory requirement that the decision official in a major adverse action must be at a higher level than the proposing official.]

(2) **Title 38 Medical Center Directors**

- (a) Proposing Official: [ ] Deputy Under Secretary for Health [for Operations and Management].
- (b) Decision Official: Under Secretary for Health.

(3) **Title 38 Employees in the Office of the Network Director**

(a) Non-centralized positions:

1. Proposing Official: VISN Chief of Staff or senior medical officer or VISN Associate Director, as appropriate.
2. Decision Official: Network Director.

(b) Centralized positions (to include VISN chiefs of staff or senior medical officer):

1. Proposing Official: [ ] Deputy Under Secretary for Health for [Operations and Management].
2. Decision Official: Deputy Under Secretary for Health.

(4) **Title 38 Employees in VA Central Office**

- (a) Proposing Official: Service director level or above.
- (b) Decision Official: Under Secretary for Health, or designee.

c. **Supplemental Delegations.** Facility directors may issue supplemental delegations of authority to propose and/or decide actions involving employees in non-centralized positions under their jurisdiction. However, such authority may not be delegated to officials at lower levels than those authorized to propose and/or decide the action in paragraphs 3a and 3b [ ].

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(1) Delegations must be in writing and may be issued as the Director deems appropriate.

(2) In exercising this authority, directors must ensure that delegations are consistent with the statutory requirement that the decision official in a major adverse action must be at a higher level than the proposing official.

**APPENDIX D.**  
**TITLE 38 – SAMPLE NOTICE OF PROPOSED MAJOR ADVERSE ACTION**

**NOTE:** *This letter is applicable for suspensions, transfers, reductions in grade, reductions in basic pay [(including reductions in physician and dentist market pay when resulting from involuntary reassignments or changes in assignment for conduct or performance reasons)], and discharges.*

**FOR OFFICIAL USE ONLY**

(Name of Employee)  
(Organizational Element)  
(VA Office or Field Facility)  
(City, State and Zip Code)

SUBJECT: Proposed Discharge

1. It is proposed to discharge you from employment with VA based on the following reasons:

I. On (date), at approximately 9:00 a.m. you allowed patient John Doe to bring a bottle of whiskey on the hospital premises despite the fact that it was your duty to prevent patients from introducing alcoholic beverages on the hospital premises. Your action violated (cite specific section of CFR which has been violated).

*The practice of grouping reasons under general headings, such as “Neglect of Duty,” “Insubordination,” etc. is discouraged.*

II. At 10:00 a.m., approximately one hour after the incident, you were ordered by your immediate supervisor Mr. John Smith, to report at once to the Chief, Security Service, and explain your neglect of duty. However, you told Mr. Smith that you refused to do so. Although he repeated the order, you still did not report to the Chief.

*If applicable, cite a specific law, regulation or policy that was violated (e.g., your actions, as described above, violated 38 CFR 0.735-10(a)).*

III. At 10:00 a.m., immediately following your refusal to carry out the above-mentioned order, you struck Mr. Smith several times with your fists and knocked him down onto the floor. Your action violated (if applicable)

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2. You have the right to reply to this notice orally, or in writing, or both orally and in writing, and to submit affidavits and other documentary evidence in support of your reply, showing why the charge(s) is (are) unfounded and any other reasons why your discharge should not be effected. You will be given until the close of business (date) to reply to these reasons orally or in writing, or both orally and in writing, and to submit any affidavits or other documentary evidence. Your written reply should be submitted to the (deciding official). The (deciding official) will receive your oral reply or will designate an official or officials to receive it.

*At least 7 calendar days is required, but no more than 30, unless good cause is shown.*

3. The evidence on which this notice of proposed action is based will be available for your review in the Human Resources office, Room\_\_\_\_. You will be allowed \_\_\_ hours of official duty time for reviewing the evidence relied on to support the reason(s) in this notice, preparing a written reply, securing affidavits, and for making a personal reply. Arrangements for the use of official time or requests for additional time should be made with me.

*Only applies when employee is in an active duty status. The number of hours of official time to review the evidence would not normally exceed 8 hours. A reasonable amount of time should be granted based on the individual circumstance.*

4. On two previous occasions you refused to follow orders given to you by your supervisor. After the first occasion you were admonished by letter of (date) and after the second you were reprimanded by letter of (date). This past record will be taken into account in determining proper disciplinary action, if one or more of the above reasons is sustained. You may reply orally or in writing, or both orally and in writing, with respect to these previous infractions and penalties and you may submit supporting evidence, including affidavits. In this regard, you may make a statement expressing your views as to the consideration to be given such past record in determining proper action.

*Citation of past record is not considered a current reason. Copies of the past record must be included in the evidence file, if used.*

5. You may be represented by an attorney or other representative of your choice at all stages of this matter. Any representative must be designated in writing.

6. The final decision to effect the action proposed has not been made. The (deciding official), who will make the final decision, will give full and impartial consideration to your reply(ies), if submitted.

7. If it is the decision of the (deciding official) that you be discharged, your discharge will be effective not less than 30 calendar days from the day after the date of receipt of this notice.

8. You will be given a written decision within 21 days of the receipt of your reply(ies) or, the close of business on (same date as in paragraph 2), if you do not reply.

9. Consistent with the mandate in the Department of Veterans Affairs Health-Care Amendments Act of 1985 (Pub. L. 99-166), it is the-policy of VA to report to the State licensing boards those terminated (voluntarily or otherwise) health-care professionals whose professional clinical practice appears to have so significantly failed to conform to generally accepted standards of clinical professional practice as to raise reasonable concerns for the safety of patients. Please be advised that, in the event you are found not to meet standards of care, consideration will be given whether, under these criteria, you should be reported to the State licensing board(s).

*This paragraph is to be used only in a proposed discharge.*

10. [Based on a review and determination by the appropriate compensation panel, your market pay may be reduced should this proposed action be made effective].

*[This paragraph is to be used only for physicians and dentists when the action being proposed is an involuntary reassignment or change in assignment and where it has been determined by a compensation panel that a reduction in market pay will be warranted.]*

[11.] You will be retained in an active duty status during the advance notice period (indicate duty status, i.e., leave, non-pay, or other status as appropriate).

\*[12.] If you have any questions about the reasons why your discharge is proposed, contact me or the Human Resources office (give location) for further explanation.

(Signature of appropriate official)

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\*In cases of proposed discharges or suspensions involving issues of professional conduct or competence, the following paragraph should be included, (renumber paragraph [12], as appropriate):

[12.] Should a decision be made to discharge you (or suspend you for more than 30 days) on the basis of professional conduct or competence, the discharge may be concurrent with the revocation (or suspension) of your clinical privileges. This information may be reported through the State Licensing board(s) to the National Practitioner Data Bank (NPDB).

**APPENDIX E.**  
**TITLE 38 – SAMPLE DECISION LETTER FOR MAJOR ADVERSE ACTIONS  
INVOLVING A QUESTION OF PROFESSIONAL CONDUCT OR COMPETENCE**

**FOR OFFICIAL USE ONLY**

TO: (Name of Employee)  
(Organizational Element)  
(VA Office or Field Facility)  
(City, State and Zip Code)

**SUBJECT: Discharge**

1. In connection with the notice of proposed discharge dated \_\_\_\_\_, a decision has been made to discharge you from employment with VA, effective (date), based on the following reasons:

Reason number one as stated in the notice of proposed discharge is sustained.

2. In reaching this decision, your oral and written replies were carefully considered along with all the evidence developed. This decision also takes into consideration your past disciplinary record as cited in your notice of proposed discharge. Your previous record was an aggravating factor in determining an appropriate penalty.

3. I have also considered other factors including your years of service, your past work record, the seriousness of the offense(s) with which you have been charged, and whether there are any mitigating or extenuating circumstances which would justify mitigation of the proposed penalty. I have concluded that the sustained charge(s) against you is(are) of such gravity that mitigation of the proposed penalty is not warranted, and that the penalty of discharge is appropriate and within the range of reasonableness.

*Whenever possible the decision should be delivered at least 5 days prior to the effective date of a major adverse action. In every case, the date set must provide for receipt of the decision letter at or prior to the time the action will be effective.*

*CITE THE SUSTAINED REASON(S)*

*Applicable only if action considers past record.*

*This sample wording pertaining to the decision official's consideration of mitigating and aggravating factors should be modified according to the specific factors considered, and the final decision on the action proposed.*

*[For involuntary reassignment or changes in assignment resulting in the reduction in market pay of a physician or dentist, this paragraph should address the factors considered in making the decision to effect the reassignment or change in assignment.]*

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4. Since reason number one as stated in the notice of proposed discharge involves a question of professional conduct or competence, you have the right to appeal this decision to the Disciplinary Appeals Board and to request a formal hearing before the Board. Your request for a formal hearing must be submitted in writing in conjunction with your appeal. The appeal must be submitted through the Office of Human Resources Management and Labor Relations, Human Resources Management Employee Relations and Performance Management Service (051) to the Under Secretary for Health, (address), so as to be received no later than 30 calendar days after your receipt of this decision. The Office of Human Resources Management and Labor Relations (051) may be contacted via phone (202-273-[9827]) or fax (202-273-9776 or 202-273-7607).

*Even though only one of the reasons sustained provides the right to appeal this decision to a Disciplinary Appeals Board, all sustained reasons will be considered by the Board.*

[5. Your right to appeal to the Disciplinary Appeals Board includes only the right to appeal the decision to involuntarily reassign you (or change your duties). The decision to reduce your market pay or the amount of the reduction is not appealable. However, you may request that I reconsider the tier determination made by the compensation panel. This request for reconsideration of the tier determination must be submitted in writing to me within 30 days of the end of the pay period in which your reduction in pay is made effective. Your request must cite specific facts and circumstances that support your belief that the tier determination is inappropriate.]

*[This paragraph is to be used only with involuntary reassignments or changes in assignment for physicians and dentists when the action will result in a reduction in market pay, as determined by a compensation panel review and approved by the appropriate official.]*

\*[6.] If you believe that this personnel action is based on discrimination because of your race, color, religion, sex, national origin, age, or handicap, you may file a complaint of discrimination with VA in accordance with Office of Resolution Management (ORM) discrimination complaint procedures. Should you elect to do so, you may appeal this action by contacting ORM at 1-888-737-3361 within 45 calendar days of the date you receive this letter.

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[7.] A copy of VA Directive 5021, part V, chapter 1 is enclosed to provide you with necessary information regarding an appeal to the Disciplinary Appeals Board. A further explanation of your appeal rights may be obtained by consulting the Human Resources office.

(Signature of appropriate official)

Enclosure

**FOR OFFICIAL USE ONLY**

\*Paragraph [6] should only be used if allegations of discrimination have been raised by the employee.

**APPENDIX F.**  
**TITLE 38 – SAMPLE DECISION LETTER FOR MAJOR ADVERSE ACTIONS**  
**NOT INVOLVING A QUESTION OF PROFESSIONAL CONDUCT OR COMPETENCE**

**FOR OFFICIAL USE ONLY**

TO: (Name of Employee)  
(Organizational Element)  
(VA Office or Field Facility)  
(City, State and Zip Code)

SUBJECT: Discharge

1. In connection with the notice of proposed discharge dated \_\_\_\_\_, a decision has been made to discharge you from employment with VA, effective(date), based on the following reason(s):

Reasons number one and two as stated in the notice of proposed discharge are sustained.

2. In reaching this decision, your oral and written replies were carefully considered along with all the evidence developed. This decision also takes into consideration your past disciplinary record as cited in your notice of proposed discharge. Your previous record was an aggravating factor in determining an appropriate penalty.

3. I have also considered other factors including your years of service, your past work record, the seriousness of the offenses with which you have been charged, and whether there are any mitigating or extenuating circumstances which would justify mitigation of the proposed penalty. I have concluded that the sustained charges against you are of such gravity that mitigation of the proposed penalty is not warranted, and that the penalty of discharge is appropriate and within the range of reasonableness.

*Whenever possible the decision should be delivered at least 5 days prior to the effective date of a major adverse action. In every case, the date set must provide for receipt of the decision letter at or prior to the time the action will be effective.*

*CITE THE SUSTAINED REASON(S)*

*Applicable only if action considers past record.*

*This sample wording pertaining to the decision official's consideration of mitigating and aggravating factors should be modified according to the specific factors considered, and the final decision on the action proposed.*

*[For involuntary reassignment or change in assignment resulting in a reduction in market pay, this paragraph should be limited to a general statement as to the factors considered in making the decision to take the action.]*

**PART II**  
**APPENDIX F**

4. Since reasons number one and number two as stated in the notice of proposed discharge do not involve a question of professional conduct or competence, you may appeal this action under the VA grievance procedure or the negotiated grievance procedure, but not both. You shall be deemed to have exercised your option to appeal this action at such time as you timely file a grievance under either procedure. Your grievance must be submitted to (decision official) no later than (number of days) after you receive this letter. If you elect to file a grievance through the VA grievance procedure in connection with this action, you have the right to request a hearing. Any request for a hearing must be submitted in your grievance. For further information about the grievance procedure, you may consult the Human Resources Management Service.

*The grievance procedure is an option only when the action does not involve a question of professional conduct or competence. Language may vary based on specific provisions of the negotiated grievance procedure. If the employee has option to appeal under either a negotiated grievance procedure or the VA grievance procedure, include time frames for submission for both procedures.*

[5. Your right to file a grievance includes only the right to grieve the decision to involuntarily reassign you (or change your duties). The decision to reduce your market pay or the amount of the reductions is not grievable. However, you may request that I reconsider the tier determination made by the compensation panel. This request for reconsideration of the tier determination must be submitted in writing to me within 30 days of the end of the end of the pay period in which your reduction in pay is made effective. Your request must cite specific facts and circumstances that support your belief that the tier determination is inappropriate.]

*[This paragraph is to be used only with involuntary reassignment or change in assignment for physicians and dentists when the action will result in a reduction in market pay, as determined by a compensation panel review and approved by the appropriate official.]*

\*[6.] If you believe that this personnel action is based on discrimination because of your race, color, religion, sex, national origin, age, or handicap, you may file a complaint of discrimination with VA in accordance with Office of Resolution Management (ORM) discrimination complaint procedures. Should you elect to do so, you may appeal this action by contacting ORM at 1-888-737-3361 within 45 calendar days of the date you receive this letter.

(Signature of appropriate official)

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\*Paragraph [6] should only be used if allegations of discrimination have been raised by the employee.

## CHAPTER 3. TITLE 38 GRIEVANCES

### 1. SCOPE AND AUTHORITY

a. **General.** This chapter governs employee grievances under the VA grievance procedure.

b. **Employee Coverage**

(1) This chapter applies to all permanent and probationary physicians, dentists, podiatrists, chiropractors, optometrists, nurses, nurse anesthetists, physician assistants, and expanded-function dental auxiliaries.

(2) A bargaining unit employee may elect to use the VA grievance procedure described in this chapter or the negotiated grievance procedure, but not both, in the case of a disciplinary or adverse action covered under part II of this handbook which does not involve a question of professional conduct or competence.

c. **Disciplinary and Adverse Actions Covered.** Disciplinary and [major] adverse actions [(as defined in Part II, Chapter 1 of this handbook)] other than title 38 [major] adverse actions which involve questions of professional conduct or competence, are covered by the grievance procedures described in this chapter.

### 2. REFERENCES

a. Section 203 of the Department of Veterans Affairs Health-Care Personnel Act of 1991 (Pub. L. 102-40).

b. [Section 302 of the Veterans Healthcare, Capital Asset and Business Improvement Act of 2003 (Pub. L. 108-1701).

c. Section 3 of the Department of Veterans Affairs Health Care Personnel Act of 2004 Public Law (Pub. L.) 108-445.

d.] 38 U.S.C. 501(a), 512(a), 7421, 38 U.S.C. 7461-7464.

### 3. OFFICIALS AUTHORIZED TO SETTLE GRIEVANCES

a. **Informal Grievance Procedure.** The official who will make a decision on grievances filed at the informal stage will be the immediate supervisor, or lowest level official with authority to settle the issue.

b. **Formal Grievance Procedure.** Authority to make a decision when the formal stage of the grievance procedure is reached will be exercised as follows:

(1) **Grievances of Facility Employees.** The facility Director will be the decision official on a grievance from an employee under the facility Director's jurisdiction provided the matter to be resolved is one which is under the Director's authority. In grievances where one of the exceptions identified in subparagraph (3) of this paragraph exist, the grievance will be decided by the next higher level official with the authority to resolve the issue.



(2) **Grievances of VA Central Office Employees.** The Under Secretary for Health, or designee, will decide the formal grievance of VA Central Office employees unless one of the exceptions in subparagraph (3) of this paragraph applies. (VA Central Office employees include those individuals whose names appear on VA Central Office employment listings, but may be physically located in a different geographic location.) In those cases, where exceptions exist, the Secretary is responsible for designating an appropriate official who may decide the formal grievance.

(3) **Exceptions.** The normal decision official, as designated in paragraph 3b, will not decide the grievance when that official:

- (a) Is the official with whom the employee would take up the initial grievance at the informal stage;
- (b) Does not have the authority to make a determination on the grievance issues; or
- (c) Made the decision or took the action on which the employee's grievance is based.

#### 4. REPRESENTATION

a. **Election of Representation.** An employee may present a grievance with or without representation.

b. **Designation of a Representative.** An employee has the right to be accompanied, represented, and advised by a representative of choice at any stage of the procedure. If a grievance is presented under the formal grievance procedure, designation of a representative will be in writing and will be submitted to the decision official. Any change of representative will be in writing.

##### c. Disallowance of a Designated Representative

(1) **Conflict of Position or Conflict of Interest.** An employee's representative who is employed by VA may be disallowed by the decision official because of conflict of position or conflict of interest. The disallowance of a representative will be in writing, and will be issued within 5 days of receipt of the employee's written designation of representative. The notice of disallowance will inform the employee of the basis on which the determination to disallow is made, and the right of the employee to challenge the determination.

(2) **Challenge of Disallowance of Designated Representative.** If informed that a designated representative has been disallowed, an employee may, within 5 days, challenge the disallowance in writing to the decision official. A challenge should state the reason for disagreeing with the disallowance, and whether the employee wishes to proceed with the grievance or wait for a decision on the challenge. The grievance decision official will make a final decision on a challenge of disallowance of a representative no later than 10 days after receipt of the challenge.

d. **Change of Designated Representative.** In the event that an employee changes representatives during the proceeding, any disallowance of representative or challenge regarding a disallowance will be resolved in the manner identified in paragraph 4c.

v. [Determinations and authorizations, including those delegated by the Secretary, [regarding the approval, disapproval, or amount of market or performance pay granted to a physician or dentist in the Veterans Health Administration. Refer to VA Handbook 5007, part IX, paragraph 11 for information regarding the right to request reconsideration of a tier determination].

w. [Determinations and authorizations, including those delegated by the Secretary, regarding the approval, disapproval, or amount of special pay granted to a nurse executive in the Veterans Health Administration].

x [Designations of employees to serve on the panel from which members of Disciplinary Appeals Boards are selected and the selection of employees to serve on Disciplinary Appeal Boards, professional standards boards, compensation panels, or the appointment of a grievance examiner].

y. [All matters for which review procedures are already established in VA policy].

[z.] A decision not to remove an admonishment or reprimand from an employee's personnel folder prior to the expiration date.

**PART V. TITLE 38 APPEALS TO THE DISCIPLINARY APPEALS BOARD****CHAPTER 1. GENERAL**

**1. SCOPE, AUTHORITY AND DEFINITIONS.** This chapter applies to Department of Veterans Affairs (VA) employees holding a full-time, permanent appointment under 38 U.S.C. 7401(l) who have satisfactorily completed the probationary period required by 38 U.S.C. 7403(b). Included in this category are: physicians, dentists, podiatrists, optometrists, nurses, nurse anesthetists, physician assistants and expanded-function dental auxiliaries. These categories of individuals are included in the term "employee(s)" as used in this chapter unless otherwise specified. This chapter governs appeals of major adverse actions which arise out of, or which include, a question of professional conduct or competence in VA. Major adverse actions are suspensions (including indefinite suspensions), transfers, reductions in grade, reductions in basic pay [(including reductions in market pay for physicians and dentists resulting from involuntary reassignments or changes in assignments when taken for conduct and performance reasons)] and discharges. A question of professional conduct or competence involves direct patient care and/or clinical competence. The term clinical competence includes issues of professional judgment.

**2. REPRESENTATION.** An employee of the Department may be designated by the decision official to represent management in any case before a Disciplinary Appeals Board. The decision official should direct requests for legal representation to the General Counsel or Regional Counsel, as appropriate.

**3. FILING AN APPEAL TO THE DISCIPLINARY APPEALS BOARD**

**a. Initiating an Appeal.** An employee subjected to a major adverse action which is based in whole or in part on a question of professional conduct or competence, may file a written notice of appeal to the Disciplinary Appeals Board under the provisions of this part. The employee may request a hearing before the Board. Any such request must be submitted in writing and accompany the employee's notice of appeal. The appeal must contain (1) the appellant's name, address, telephone number, designation of representative (if any), (2) a copy of the notice of action proposed and decision letter, (3) a statement as to whether the employee is requesting a hearing before the Board, (4) why the appellant believes the major adverse action taken was in error or should not have been taken, and (5) a statement describing the expected relief. The original appeal and the request for hearing, if any, must be submitted to the Under Secretary for Health or designee, through the Office of Human Resources Management and Labor Relations (051), so as to be received within 30 days after the date of service of the written decision on the employee. Submission of the appeal must be by personal service, facsimile, or certified mail return receipt requested. A copy of the appeal must be served on the decision official who took the action being appealed and any management representative of record at the time of filing.

**b. Establishing Timeliness of an Appeal.** For purposes of computing the 30-day period for filing an appeal, the date of service of the written decision on the employee will be determined by the date of receipt by the employee of the personal delivery, the signed receipt of certified mail, or presumed to be 5 days after depositing the decision in the U.S. mail if no acknowledged receipt is available. The Deputy Under Secretary for Health for Operations and Management will make a final decision regarding the determination that an appeal is filed untimely. The employee will be notified in writing, by letter, of this final determination. There are no further administrative appeal rights regarding the issue of timeliness.