



DEPARTMENT OF VETERANS AFFAIRS  
Veterans Health Services and Research Administration  
Washington DC 20420

APR 13 1993

In Reply Refer To:

Director (00)  
VA Medical Center  
P.O. Box 1034  
Portland, OR 97207

Dear

This is in response to your request under the provisions of MP-5, Part II, Chapter 14 for a review and decision regarding the enclosed grievance filed by the American Federation of Government employees (AFGE) local union.

Under 38 USC Section 7422, any matter affecting registered nurses hired pursuant to Title 38 and concerning or arising out of professional conduct or competence is outside the scope of collective bargaining and is not subject to review by any other agency. The law authorizes the Secretary, or delegatee, to determine the grievability of any question arising under its provisions. The Secretary has delegated to my office the authority to make such determinations which are not subject to administrative review under the law.

Acting pursuant to this authority, I have determined that this grievance concerning a registered nurse's patient abuse involves professional conduct and competence. The strict prohibitions against patient abuse, both verbal and physical are known to all employees, certainly including registered nurses. Compliance with this prohibition is critical to the VA health care mission for our veteran patients. Consequently, I believe the issue of patient abuse relates to professional conduct and competence. Accordingly, the issues in this grievance are non-grievable under the "Department of Veterans Affairs Labor Relations Improvement Act of 1991" because they concern a matter or question of professional competence and conduct.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "J. W. Holsinger, Jr.", is written over the typed name and title.

James W. Holsinger, Jr., M.D.  
Under Secretary for Health

Enclosure

Title 38 Grievability  
Decision Paper

FACTS:

VAMC Portland Bargaining unit employee  
grieved a counseling letter dated December 18, 1992, from  
Clinical Manager MICU, which accused her of  
"unjustified and non-factual conduct between nurse and patient."  
alleges this was an unwarranted action affecting  
conditions of employment. requests that management  
remove the counseling letter from her records and assure her that  
such "unwarranted actions" will not occur in the future. On  
December 12, 1992, gave nursing care to a patient. The  
wife of the patient reported to the nurse on the evening shift  
that had been verbally abusive to her husband and told  
him "don't be throwing kleenex on my floor", "don't be blowing  
your nose on my sheets" and "be sure you put your kleenex in the  
bag on the bed." The spouse also told the nurse that she was  
extremely upset with the verbal treatment given her husband and  
felt it was inappropriate. The next day another nurse also  
reported that the spouse was still upset at the verbal  
interaction had with her husband.

Several days later the Clinical Manager also spoke with the  
spouse. The spouse again stated that her husband was very upset  
with the care given him and that the comments made to him were  
abusive and rude.

The letter of counseling given was not the first  
counseling given her regarding the issue of verbal interaction  
with patients.

ISSUE:

Since AFGE has filed a grievance resulting from a letter of  
counseling given to an R.N. resulting from speaking to a patient  
in an abusive manner, it is necessary for a decision to be made  
by the Under Secretary for Health whether this matter is  
grievable.

DISCUSSION:

Under the "Department of Veterans Affairs Labor Relations  
Improvement Act of 1991" (the Act), persons hired pursuant to  
Title 38, United States Code, have the right to engage in  
collective bargaining pursuant to the Federal Labor-Management  
Relations Statute, except as to any matter or question concerning  
or arising out of (1) professional conduct or competence, (2)  
peer review, or (3) the establishment, determination, or  
adjustment of employee compensation (38 USC 7422). The Act also  
authorizes the Secretary of Veterans Affairs, or designee, to  
decide any issue of whether a matter or question concerns or

arises from any of these issues. The Secretary's decision is not subject to collective bargaining or subject to review by any other agency. Id

This grievance concerns a letter of counseling given to a staff nurse. The written counseling was the result of a report of possible patient abuse brought to management by staff nurses and based upon the statements of a patient's wife. The dealings between patient care employees, especially nurses, require behavior that is not abusive in any manner. This high standard of conduct is required by both management and professional organizations and is recognized in the community. Patient abuse both verbal and physical by its very nature concerns both professional conduct and competence. Consequently this grievance raises "a matter or question concerning or arising out of professional conduct and competency." Accordingly this grievance is nongrievable under the Act.

RECOMMENDATION:

We recommend that the Under Secretary for Health determine that this grievance concerns or arises out of professional competency and conduct under Section 7422 of Public Law 102-40 and is outside the scope of collective bargaining.

Approve Recommendation \_\_\_\_\_ ✓

Disapprove Recommendation \_\_\_\_\_

  
James W. Holsinger, Jr., M.D.  
Under Secretary for Health

Date APR 13 1993