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

JUL 21 1993

In Reply Refer To:

Mr. Allan S. Goss
Director (00)
VA Medical Center
100 Emancipation Road
Hampton, VA 23667

Dear Mr. Goss:

I am responding to the issues raised concerning the enclosed grievance filed by the American Federation of Government Employees on behalf of a registered nurse.

Under 38 USC Section 7422, any matter affecting health care personnel in positions described in 38 USC 7421(b) and concerning or arising out of professional conduct or competence, including direct patient care and clinical competence, is outside the scope of collective bargaining and is not grievable.

Acting pursuant to this authority I have determined that this grievance, concerning actions taken by physicians in response to the performance of a nurse in an emergency room situation involves professional conduct or competence. The proper care and treatment of patients directly concerns the overall competency of the professional staff member involved. Consequently, I believe any matter relating to the treatment and care of patients is related to professional competence or conduct and direct patient care.

Accordingly, the issue raised in this grievance is outside the scope of collective bargaining under the "Department of Veterans Affairs Labor Relations Improvement Act of 1991" because it concerns a matter or question arising out of professional competence and conduct and affects direct patient care.

Sincerely yours,

James W. Holsinger Jr.

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

Title 38 Grievability
Decision Paper

Facts:

Grievance of Ms. Eula D. Davis, R.N. The union on behalf of Eula D. Davis, R.N. has filed a grievance based upon an incident in the emergency room between Ms. Davis and two physicians. A patient was brought into the emergency room because of respiratory problems. Her condition was being reported to Medical Intensive Care Unit by Ms. Davis. At this juncture the physicians felt Ms. Davis was not responding to the circumstances quickly enough and took over her care and treatment of the patient. The grievance contends that the physicians' actions were unprofessional and that she was verbally and mentally abused in the presence of patients and other staff. (Tab A)

The grievance has requested the following remedy:

(a) An apology, both verbal and in writing;
(b) Be treated with respect;
(c) There be no retaliation for the filing of the grievance;
(d) Attorney Fees.

Issue: Since American Federation of Government Employees has filed a grievance concerning Ms. Davis' professional competence in the treatment of a patient 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). (Tab B) 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. (Tab C) The Secretary's decision is not subject to collective bargaining or subject to review by any other agency. Id.

Professional conduct and competence include matters dealing with a nurse's performance. The grievance involves a nurse's performance which relates to conduct and/or performance. How a nurse performs an assignment is a matter concerning or arising out of professional conduct or competence. It is clear from the requested remedy that the grievance concerns or arises out of professional conduct or competence since it challenges the performance of a nurse. Consequently, the grievance raises "a matter or question concerning or arising out of professional conduct or competency" under Title 38. Accordingly, such grievances, are nongrievable under the Act.

Recommendation:

We recommend that the Under Secretary for Health determine that the grievance concerns or arises out of professional conduct or competency under Title 38, United States Code.

DECISION:

Approve Recommendation ✓

Disapproved Recommendation _____

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

JUL 21 1993
Date