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

APR 13 1993

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

In Reply Refer To:

Dear Mr. Bell:

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,

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

Enclosure

Title 38 Grievability
Decision Paper

FACTS:

VAMC Portland Bargaining unit employee Ms. Sharon Knapp, R.N., grieved a counseling letter dated December 18, 1992, from Rebecca Baker, R.N., Clinical Manager MICU, which accused her of "unjustified and non-factual conduct between nurse and patient." Ms. Knapp alleges this was an unwarranted action affecting conditions of employment. Ms. Knapp 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, Ms. Knapp gave nursing care to a patient. The wife of the patient reported to the nurse on the evening shift that Ms. Knapp 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 Ms. Knapp 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 Ms. Knapp 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