TITLE 38 NEGOTIABILITY
Decision Paper

BACKGROUND:

On May 7, 1991, the President signed the "Department of Veterans Affairs Labor Relations Improvement Act of 1991". This Act gives Title 38 employees the same rights to engage in collective bargaining with respect to conditions of employment as Title 5 employees. However, collective bargaining and any grievance procedure for Title 38 employees may not cover 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.

The Act also provides that the Secretary of Veterans Affairs, or designee, has the authority to determine whether a matter or question concerns any of the above issues and that his decision may not be reviewed by any other agency. Review is limited to judicial review in the U.S. Court of Appeals for the District of Columbia Circuit.

We have received a request for a decision from the VA Medical Center Leavenworth, Kansas, concerning the negotiability of 12-hour tours for Registered Nurses.

ISSUE:

Are 12-hour tours for Registered Nurses a permissible subject for collective bargaining under Section 7422 of Public Law 102-40?

ANALYSIS:

Approximately two years ago management implemented 12-hour shifts in the ICU at the request of the staff nurses. They agreed that it would be a pilot and would be continued if it worked. The program was successful and it was decided that it would also be implemented on 5W which was a Nursing Home Care and Intermediate Care ward. The union submitted a request to management to negotiate on the substance and impact and implementation of the change in tour. They submitted the following proposals:

1. The policy should be fair and equitable for all affected shifts and address problem areas of unfairness. (Example: allowing one shift to have a paid lunch hour and another taking lunch in a non-pay status.)

2. Shifts have a reasonable overlap period to aid patient care.

Under Section 7422 of Public Law 102-40 collective bargaining for Registered Nurses may not cover or have any applicability to any matter or question concerning or arising out of professional conduct or competence which means any of the following: (1) Direct patient care, or (2) Clinical competence.

Professional conduct includes the scope, nature, and manner of performance of duties. The VA is responsible for the delivery and direction of the conduct of professional duties and services by Title 38 employees. This responsibility encompasses the establishment of tours of duty and directly impacts on patient care. The union acknowledges that fact in its second proposal. The length of tours and how coverage is provided also involves professional competence considerations. Management must decide whether competent care can be provided within twelve hour tours, as well as whether it is advisable, due to patient care requirements, to include a paid or non-paid lunch period during certain tours.

RECOMMENDATION:

We recommend that the Chief Medical Director determine that the matter concerning 12-hour shifts for Registered Nurses applies to a matter or question concerning or arising out of professional conduct or competence. Therefore, it is not subject to collective bargaining under Section 7422 of Public Law 102-40.

Approved/ Disapproved: James W. Holsinger Jr. MAY 13 1992

James W. Holsinger Jr., M.D. Date
Chief Medical Director