DEPARTMENT OF VETERANS AFFAIRS
Veterans Health Administration
Washington DC 20420

In Reply Refer To:

AUG 31 1994

Mr. Jule D. Moravec, Ph.D.
Director (00)
VA Medical Center
5901 East Seventh St
Long Beach, CA 90822

Dear Dr. Moravec:

On August 17, 1992, the Chief Medical Director determined that failing to timely provide proficiency ratings is a matter of professional conduct or competence and, therefore, not grievable under 38 USC 7422.

The VA Office of the General Counsel has, at the request of the General Counsel, American Federation of Government Employees (AFGE), reviewed and reconsidered the issue and has now advised that a grievance over when, and if, a proficiency rating is performed, concerns a narrow procedural requirement and does not affect the substance of the decision underlying the employee's proficiency. Therefore, timely providing proficiencies is not properly excluded from collective bargaining under 38 USC 7422. (See Enclosed Memorandum)

Having reviewed the opinion of the Office of the General Counsel, I have determined that the failure to timely provide proficiency ratings to nurses is not a matter of professional conduct or competence, peer review, or the establishment, determination, or adjustment of employee compensation under 38 USC 7422. Accordingly, the grievance concerning the timeliness of providing proficiency ratings is grievable.

Sincerely yours,

John T. Farrar

John T. Farrar, M.D.
Acting Under Secretary for Health

Enclosure

Title 38 Grievability
Decision Paper

Facts:

On July 22, 1992, the American Federation of Government Employees (AFGE) Local union at Long Beach, California, filed a third step grievance alleging that the facility has not followed and is not following regulations as outlined in MP-5, Part II, Chapter 6 in providing timely proficiency ratings.

AFGE requested as one of the remedies that all nurses will receive an annual proficiency on or before the due dates.

Issue:

The VA Office of the General Counsel has, at the request of the General Counsel, AFGE, reviewed and reconsidered this issue whether failing to timely provide proficiency ratings is a matter of professional conduct or competency.

Discussion:

In a letter dated Aug 17, 1992, to the Director, Medical Center, Long Beach (TAB A) the Chief Medical Director determined that failing to timely provide proficiency ratings is a matter of professional conduct or competence and therefore not grievable under collective bargaining agreements.

The Office of the General Counsel has now advised that a grievance over when, and if, a proficiency requirement is performed, concerns a narrow procedual requirement and does not affect the substance of the decision underlying the employees proficiency. Based on the OGC opinion, timely performing proficiencies is not properly excluded from collective bargaining under 38 USC 7422 (TAB B).

Recommendation:

We recommend that the Acting Under Secretary for Health determine that timely performing proficiencies is not properly excluded from collective bargaining under 38 USC 7422.

Approve Recommendation ✓

Disapprove Recommendation _____

John T. Farrar

John T. Farrar, M.D.
Acting Under Secretary for Health