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

In Reply Refer To:

SEP 09 1992

Mr. Jose Coronado
Director (671/00)
Audie L. Murphy Memorial Hospital
7400 Merton Minton Blvd.
San Antonio, TX 78284

Dear Mr. Coronado:

I am responding to your request for a decision concerning the grievability of the enclosed grievance filed by the AFGE professional local.

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, peer review, or the establishment, determination, or adjustment of employee compensation is nongrievable. 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 any such determinations, which are not subject to administrative review under the law.

Acting pursuant to this authority, I have determined that the grievance concerning the duplicative board action files of registered nurses involves professional conduct or competence, peer review, and compensation. The board action files contain information concerning the professional competence and conduct of registered nurses. The requested remedy of promotions with back pay involves peer review and compensation because a nurse cannot be promoted until a recommendation is made by the appropriate Nurse Professional Standards Board. Consequently, I believe that this matter relating to the board action files is related to the professional competence or conduct of these employees as well as peer review and compensation. Accordingly, the grievance concerning board action files is not grievable.

Sincerely yours,

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

Enclosure

S 10A
9/9/92

TITLE 38 GRIEVABILITY
Decision Paper

ISSUE:

On July 24, 1992, the American Federation of Government Employees (AFGE) professional local union at San Antonio, Texas, filed a third step grievance alleging that the facility has not followed regulations and the Privacy Act by maintaining a separate and additional system of records related to the performance and/or disciplinary record of registered nurses in the bargaining unit. AFGE has requested the following remedies:

(1) All nurses will receive a promotion retroactive to their first eligibility for promotion, and back pay;

(2) The Chief, Nursing Service will issue a written apology to all affected nurses for having maintained this duplicate system of files;

(3) Quarterly meetings will be initiated with all bargaining unit nurses, with the Chief, Nursing Service, in order to allow dialogue over conditions of employment to occur; and,

(4) All affected registered nurses will be made whole.

ISSUE:

Since AFGE has filed a grievance on the maintenance of an additional system of records, it is necessary for a decision to be made by the Chief Medical Director regarding whether this matter is grievable.

DISCUSSION:

Under Sec. 202 of Public Law 102-40 employees in positions described in 38 USC 7421 (b) 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 U.S.C. sec. 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 Chief Medical Director has been delegated authority to decide these matters. That decision may not be reviewed by any other agency and is not subject to collective bargaining.

This grievance concerns the effect these duplicate files had on whether or not registered nurses were recommended for promotion. Since the information in the duplicate files is already maintained in the Official Personnel Folder, the duplicate files would have had no impact on the registered nurses' promotion. The information in these files such as proficiencies, education, training, and disciplinary actions relate to issues of professional competence and conduct. The requested remedy of promotions with back pay involves peer review and compensation.

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Promotion determinations are made by a Professional Standards Board under the peer review system. A nurse cannot be promoted until a recommendation is made by the appropriate nurse professional standards board. The nurse professional standards board makes a recommendation concerning promotion to the approving official (in most cases the facility Director) on a board action form. The promotion cannot be processed until the approving official has signed the board action form. Consequently, this grievance raises "a matter or question concerning or arising out of professional conduct or competency, peer review, and compensation. Accordingly, this grievance is nongrievable under the Act.

RECOMMENDATION:

We recommend that the Chief Medical Director determine that this grievance concerns or arises out of professional competency and conduct, as well as peer review and compensation under Section 7422 of Public Law 102-40 and is outside the scope of collective bargaining.

Approve Recommendation ✓

Disapprove Recommendation _____

for [signature]
James W. Holsinger, Jr., M.D.
Chief Medical Director

9-9-92
Date