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CHAPTER 9. SEPARATIONS

9.01 SCOPE

This section contains procedures for the separation of individuals appointed under authority of 38 U.S.C. 7306, 7401(1), 7405 and 7406. Separations of probational employees because they are not fully qualified and satisfactory are covered in MP-5, part II, chapter 4. Discharges for disciplinary reasons of employees with permanent status appointed under section 7401(1) are covered under MP-5, part II, chapter 8, and the term involuntary separations as used in this section does not include such discharges. As used in this section, the term designee refers to a designee in Central Office. The term employee includes all employees covered by this chapter.

9.02 REFERENCES

- a. 38 U.S.C., ch 73 and 74.
- b. MP-5, part II, ch. 9

9.03 AUTHORITY AND RESPONSIBILITY

- a. **Secretary.** As prescribed by MP-5, part II, chapter 9, approves involuntary separations of employees appointed under authority 38 U.S.C. 7306.
- b. **Under Secretary for Health or Designees.** Except as indicated above, approves all involuntary separations of Central Office employees and Distinguished Physicians.
- c. **Directors of Health Care Facilities.** Approve separations of employees, other than those listed in subparagraphs a and b above, and all voluntary separations of employees except for resignations and retirements.
- d. **Human Resources Management Officers.** Determine that separations and other actions comply with applicable regulations and procedures, assist management officials with these actions, and advise employees about separations and review rights.

Authority: 38 U.S.C. 7304 and 7421

9.04 GENERAL

- a. Effective dates are discussed under the paragraphs covering each of the various types of separation actions. The Office of Personnel Management (OPM) Operating Manual "Guide to Processing Personnel Actions" provides further instructions regarding establishment of effective dates, nature of actions, and amendment and cancellation of separation actions.
- b. All employees should be informed of the rights and benefits to which they may be entitled upon leaving the VA.

c. Exit interviews with employees who are voluntarily separated should be conducted by human resources officials. Supervisors may also interview employees to determine if the reasons for leaving relate to dissatisfaction with working conditions or personnel practices. This information may be used to identify possible problems which may impede the effective and efficient management of the unit and adversely affect employee retention.

Authority: 38 U.S.C. 7304, 7421

9.05 RESIGNATION

- a. Employee will be neither requested nor advised to resign.
- b. Employees have the right to resign and may be advised of this right. An employee whose services are being reviewed for possible involuntary separation may resign at any time, and the resignation may not be delayed by administrative action.
- c. Resignations may not be conditional.
- d. The provisions of VHA Handbook 1100.18, regarding reporting to State licensing boards and license monitoring entities, must be followed in all instances after an employee whose standards of clinical practice are in questions resigns. Also, in accordance with VHA Handbook 1100.18, VA officials may not enter into any written or oral agreement which would prohibit or restrict the release of information to a State licensing board or license monitoring entity.
- e. Resignations are processed according to instructions contained in MP-5, Part I, chapter 715. The reasons for an employee's resignation will be documented on Standard Form 50-B, Notification of Personnel Action, in accordance with instructions contained in OPM's Operating Manual "Guide to Processing Personnel Actions.

Authority: 38 U.S.C. 7304, 7421

9.06 RETIREMENT

- a. **Disability**
 - (1) Employees covered by the Civil Service System (CSRS) who have 5 or more years of civilian service may file for disability retirement under the provisions of 5 CFR 831.
 - (2) Employees covered by the Federal Retirement System (FERS) who have at least 18 months of civilian service may file for disability retirement under the provisions of 5 CFR 845. FERS employees may also be eligible for disability benefits under the Old-Age, Survivors, and Disability Insurance (OASDI) program administered by the Social Security administration.
 - (3) When an employee applies for disability retirement, the Human Resources Management Officer will process the application and forward it to the OPM. For centralized employees, the appropriate Headquarters officials will be notified.

b. **Other Retirement.** The retirement provisions of title 5 U.S.C., including those for agency-initiated disability retirement, apply to employees covered by this chapter.

c. The provisions VHA Handbook 1100.18, relating to reporting to State licensing boards and license monitoring entities, must be followed in all instances in which an employee whose standards of clinical practice are in question retires.

Authority: 38 U.S.C. 7304 and 7421

9.07 SEPARATION FOR DISABILITY

a. When a decision to separate an employee for disability is made under the provisions of chapter 10 of this supplement, the facility Director will inform the employee in writing, specifying the reasons for the separation and the date of the separation. The notice will either be given directly to the employee and the employee requested to acknowledge receipt, or mailed by certified mail at least 15 days in advance of the separation date. During the notice period the employee should be placed on sick leave, annual leave, or leave without pay, as appropriate. Employees who meet service requirements will be notified of disability retirement eligibility and procedures. The separation will not be delayed if the employee applies for retirement.

b. An employee in a noncentralized position may, within 10 days of the notice of separation, request a review of the action by the VISN. If a review is requested, the complete record of the case along with any statement or other evidence the employee desires to submit will be forwarded to the appropriate VISN director. The VISN director may request additional information and/or medical evidence. If the employee requests review, the facility Director may choose to postpone the separation until a decision is reached.

c. The procedures of VHA Handbook 1100.18, regarding reporting to State licensing bodies and license monitoring entities, are for consideration whenever an employee is separated for disability and the nature of the disability may affect standards of clinical practice.

Authority: 38 U.S.C. 7304 and 7421

9.08 FAILURE TO MEET STATUTORY OR REGULATORY REQUIREMENTS

Employees are responsible for maintaining all qualifications required for appointment and for providing evidence of these qualifications, e.g., full and unrestricted licensure in a State, when requested. An employee who fails to meet or who fails to present evidence of meeting the statutory, e.g., 38 U.S.C.7402, or regulatory requirements for appointment will be separated. If it is determined that the employee willfully concealed the lack of or loss of a qualification, e.g., full and unrestricted license in a State, the separation will be made retroactive to the date the qualification was lost; otherwise the separation will be effected upon determination that the statutory or regulatory requirement is not met. The appointment of an individual who did not fully meet all statutory and regulatory requirements at the time of appointment will be canceled immediately upon

discovery of the disqualification. The following provisions apply to separations or cancellations for disqualification:

- a. The employee will be notified in writing of the separation or cancellation and, when applicable, of the right of review in subparagraph c below by the facility Director. For Central Office employees, the notification will be made by the Under Secretary for Health or designee. The notification should be given directly to the employee and the employee requested to acknowledge receipt, or mailed to the employee by certified mail.
- b. In the case of the facility employees in positions centralized to the Under Secretary for Health, the facility Director will immediately notify the VISN director and appropriate headquarters official of the separation or cancellation for failure to meet statutory or regulatory requirements for appointment.
- c. Facility employees, whose separations are approved by the facility Director, have the right to seek a post-separation or post-cancellation review of the action by the VISN director. A request for review must be made in writing through the facility Director. It must be delivered to the facility Director or designee by hand or postmarked within 15 calendar days of the date the notification of separation or cancellation was given to the employee or mailed by certified mail. The request for review must be based solely on evidence relating to the failure to meet statutory or regulatory requirements for appointment. If such a review is requested, the facility will forward a complete record of the case along with evidence submitted by the employee to the appropriate VISN director.
- d. If there is some doubt as to the legality of a facility employee's appointment, the facility Director may request a review by the Under Secretary for Health or designee. Requests for review should be submitted through the appropriate VISN to the Chief Network Officer (10N_/051). If review is requested by the facility, the Director may choose to defer separation of the employee. The employee will be detailed to nonpatient care duties while the decision of the reviewing official is pending.
- e. Individuals who knowingly and willfully conceal their failure to meet statutory and regulatory requirements may be subject to repayment of monies and benefits received as a result of this concealment.

Authority: 38 U.S.C. 7304, 7402, 7421

9.09 PRE-EMPLOYMENT SUITABILITY SEPARATIONS

a. **General.** This paragraph contains procedures which will be used to separate employees appointed under 38 U.S.C. 7306 and 7401(1), for pre-employment suitability reasons unknown to VA officials at the time of appointment; i.e., pre-employment misconduct which is judged to make the employee unsuitable for employment. Pre-employment misconduct includes delinquency or misconduct in prior employment; criminal, dishonest, infamous or notoriously disgraceful conduct; intentional false statement or deception or fraud on the employment application; habitual use of intoxicating beverages to excess; abuse of narcotics, drugs, or other controlled substances; reasonable doubt as to the loyalty of the person involved to the Government of the United States.

Criteria contained in 5 CFR 731 should be used as a guide in determining if a particular act constitutes pre-employment misconduct. The procedures provided in this paragraph pertain only to pre-employment suitability matters and do not relate to an individual's conduct or performance as a VA employee.

b. Procedures

(1) **Standards Board.** Employees, whose pre-employment suitability is in question, will be given the opportunity to have their case reviewed by a Professional Standards Board. If an employee requests such review, the Board will be designated by the appointing official. The employee's immediate and higher-level supervisors may not serve on the Board.

(2) **Notice to the Employee.** The Chief Network Officer 10N or the facility Director, as appropriate, will give written notice as described below. The notice will contain the following information:

(a) Notice of the opportunity for Board review and the pre-employment suitability allegation(s).

(b) The fact that separation may result if the allegations are sustained.

(c) The fact that the employee may choose to respond to the allegations:

1. Directly to the Chief Network Officer 10N or the facility Director, as appropriate;
or

2. Before a Professional Standards Board either orally or in writing and that an oral response may be made informally before the Board or in a full evidentiary hearing.

(d) The fact that the employee may be represented by counsel throughout the proceedings.

(e) The fact that if the employee chooses to respond orally before the Board, either informally or in a full evidentiary hearing, the employee must so notify the official designated in the notice within three workdays of receipt of the notice so that hearing arrangements can be made. The employee will, however, be given at least the full 15 workday notice period in which to prepare a response before the Board is scheduled.

(3) The employee will be given 15 days from receipt of the notice of refusal to accept receipt of the notice to submit a reply.

(4) **Procedural Options.** The employee will be given the option of responding to the allegation(s) orally or in writing before a Board or personally to the Chief Network Officer 10N or designee or the facility Director as appropriate. Regardless of the option selected, the employee will have the right to be represented by counsel. If the employee chooses to respond orally before a Board, the employee may elect to do so informally before the Board or in a full evidentiary hearing. An employee who chooses a full evidentiary hearing before the Board is entitled to challenge the

evidence against the employee, to present evidence, and to call witnesses in the employee's own behalf.

c. Review

1. If the employee did not elect a Board review, a designee of the Chief Network Officer 10N or facility Director, as appropriate, will review the evidence including any submitted by the employee. If the pre-employment suitability allegation(s) are supported, this official will recommend to the appointing official whether or not the employee should be separated. The recommendation will be based on the nature of the pre-employment misconduct and the implications it may have for the individual's conduct and performance as a VA employee. For facility employees, the recommendation will be forwarded through the VISN Director (10N__/051).

2. If the employee elected a Board review, the Board will review all evidence including any presented by the employee. If the Board finds that the pre-employment suitability allegations(s) are supported, it will recommend whether or not the employee should be separated. The Board should base its recommendation on the nature of the pre-employment misconduct and the implications it may have for the individual's conduct and performance as a VA employee. The Board's findings and recommendations will be documented on VA Form 10-2543, Board Action. The Board Action and supporting evidence, along with comments, will be forwarded to the appropriate approving official (i.e., the appointing official).

d. Decision. A decision by the approving official to separate will be effected within five workdays of the decision. There shall be no further appeal or review.

Authority: 38 U.S.C. 7304, 7421

9.10 ABANDONMENT OF POSITION

a. When an employee appointed under 38 U.S.C 7306 or 7401(1) has been absent from duty without authorization for more than five consecutive workdays and all efforts to communicate with the individual have been unsuccessful, a letter signed by the official authorized (see par. 9.03) to approve separation will be sent to the employee's last known address by certified mail, return receipt requested. The letter will contain:

- (1) The date unauthorized absence began and efforts made to contact the employee.
- (2) Notice that if, within 10 days of the date the letter was mailed by certified mail, the employee does not return to duty or make satisfactory arrangements to do so, the employee will be separated for abandonment of position.
- (3) A statement that if the employee does not wish to return to duty, the employee may resign if the resignation is submitted within 10 days specified in subparagraph (2).
- (4) Statement that the employee is currently being carried in an absence without leave status.

(5) Notification that if separated for abandonment of position, the employee may request in writing a review of the action by the Under Secretary for Health or designee.

b. If the employee does not return to work or does not, in the judgment of the approving official, make satisfactory arrangement to do so, the separation will be effected at the end of the 10-day notice period. The approving official should take into consideration any presentation by the employee as to illness or disability or emergency circumstances preventing the employee from returning to work.

c. If, at any time prior to or during the 10-day notice period, the employee returns to duty or makes satisfactory arrangements to do so, the employee will be restored to duty or carried in an appropriate leave status. If appropriate, disciplinary action may be taken by processing the case under the provisions of MP-5, part II, chapter 4 or 8 and its VHA supplement. If arrangements are made to return the employee to duty, the individual will normally forfeit pay for the period of unauthorized absence. If warranted, however, substitution of annual or sick leave may be authorized.

d. An individual separated for abandonment of position by decision of a facility director may request a review of the action by the Under Secretary for Health or designee. If the Under Secretary for Health or designee determines that the employee did not abandon the position, the employee will be restored to duty. The decision of the Under Secretary for Health or designee is final.

Authority: 38 U.S.C. 7304 and 7421

9.11 FAILURE TO ACCEPT REASSIGNMENT

If separation for failure to accept reassignment is approved under VHA Directive 5111, the facility Director will give the employee an advance written notice of at least 30 calendar days. The notice of separation should either be given directly to the employee and the employee requested to acknowledge receipt or mailed to the employee by certified mail. The 30-day notice period begins on the day the employee is given the notification or on the date it is mailed.

Authority: 38 U.S.C. 7304 and 7421

9.12 SEPARATION FOR MILITARY SERVICE

Procedure involving separation for military service prescribed in MP-5, part I, chapter 353, will be followed for employees appointed under authority of 38 U.S.C. 7306 and 7401(1) and non-full-time employees appointed without time limit under authority of 38 U.S.C. 7405(a)(1)(A).

Authority: 38 U.S.C. 7304 and 7421

9.13 INVOLUNTARY SEPARATION OF EMPLOYEES APPOINTED UNDER 38 USC 7405(a)(1)(A)

- a. In effecting involuntary separations of employees serving under 38 U.S.C. 7405(a)(1)(A), the procedural requirements prescribed for separations, such as reviews by Professional Standards Boards or Disciplinary Boards, do not apply.
- b. Although not required, employees should, where feasible, be given such advance notice of separation as determined appropriate by the approving official.
- c. The employee will not be entitled to a review of the involuntary separation.
- d. The provisions of VHA Handbook 1100.18, relating to reporting to State licensing boards and license monitoring entities, must be followed in all instances in which an employee is separated whose standards of clinical practice are in question.

Authority: 38 U.S.C. 7304, 7405 and 7421

9.14 TERMINATION OF APPOINTMENTS MADE UNDER 38 U.S.C. 7306

- a. Appointments or designations made under authority of 38 U.S.C. 7306, terminate on completion of the approved term of service unless terminated sooner for such cause as will promote the efficiency of the service or at the request of the employee.
- b. Normally, employees whose appointments will terminate on completion of the approved term of service should be notified at least 30 calendar days in advance as to whether their appointments will be terminated, extended, or converted. (See ch. 2, this supplement.)

Authority: 38 U.S.C. 7306, 7304 and 7421

9.15 TERMINATION OF APPOINTMENTS OF CONSULTANTS, ATTENDING, AND FEE-BASIS PERSONNEL

- a. Appointments under authority of 38 U.S.C. 7405(a)(1)(A) and (a)(2) of consultants and attendings serving on a per annum or lump-sum fee basis expire at close of business September 30 each year. They may, however, be terminated upon notice at any time by the facility Director.
- b. Appointments of fee-basis personnel appointed in accordance with instructions contained in VHA Supplement, MP-5, part II, chapter 2, will terminate on the date of termination specified in time-limited appointments or at discretion of the appointing authority when the services of fee-basis personnel are no longer needed. Whenever possible, advance notice of termination should be given.

Authority: 38 U.S.C. 7304 and 7421

9.16 SEPARATION OF MEDICAL AND DENTAL RESIDENTS APPOINTED UNDER 38 U.S.C. 7406

- a. When a noncareer medical or dental resident in an independent training program (accredited in the name of the VA facility) is proposed for separation because of deficiencies in performance, suitability, or conduct, the resident will be entitled to a review of the proposed termination by a

House Staff Review Committee. The composition of the Committee will be as indicated in M-8, part II, chapter 1, except that persons in a position to prejudice the action of the Committee, such as immediate or higher-level supervisors, may not serve on the Committee. The procedures to be followed will be similar to those for probationary employees contained in VHA Supplement, MP-5, part II, chapter 4, except as indicated below:

(1) The findings and recommendation of the House Staff Review Committee will be sent, through the Deans Committee for their review and comments, to the facility Director for final decision. If the decision is to separate the individual, the separation will be effected within 15 calendar days after approval of the action.

(2) The resident will not be entitled to a further review of the separation decision.

b. When it is determined that a noncareer medical or dental resident in an integrated program (accredited in the name of the affiliated non-VA institution) should be separated for deficiencies in performance, suitability, or conduct, the VA clinical supervisor under whom the resident is assigned at the VA facility will prepare a separation recommendation and will send it, through the Chief of Staff and program director of the affiliated program for review and comment, to the VA facility Director for a decision. The recommendation must be supported by a thorough documentation of the individuals deficiencies. If the decision is to separate, the separation will be effected within 15 days after approval. (These procedures do not apply when a resident is no longer an approved participant in an integrated program. Such employees should be separated immediately upon notice from the affiliated institution.)

c. Facility Directors may modify the provisions of this paragraph to meet the requirements of accrediting bodies.

d. Under normal conditions, the appointments of the residents will terminate on completion of the approved term of service.

Authority: 38 U.S.C., 7304 7405, 7406 and 7421