

EMPLOYEE/MANAGEMENT RELATIONS

- 1. REASON FOR ISSUE:** To revise Department of Veterans Affairs (VA) delegations of authority for title 38 appeals to a Disciplinary Appeals Board (DAB).
- 2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This directive contains VA policies on employee/management relations. The pages in this directive replace the corresponding page numbers in VA Directive 5021 dated April 15, 2002. They incorporate a change that revises coverage based on the addition of Chiropractors as a new Title 38 occupation. They also incorporate technical amendments to properly reflect the Secretary's authority to issue regulations under 38 U.S.C. 7421. These changes will be incorporated into the electronic version of VA Directive 5021 that is maintained on the [Office of Human Resources Management Web site](#).
- 3. RESPONSIBLE OFFICE:** The Employee Relations and Performance Management Service (051), Office of Human Resources Management.
- 4. RELATED HANDBOOK:** VA Handbook 5021, Employee/Management Relations.
- 5. RESCISSIONS:** None.

CERTIFIED BY:

**BY DIRECTION OF THE SECRETARY
OF VETERANS AFFAIRS:**

/s/Robert T. Howard
Assistant Secretary for
Information and Technology

/s/Paul J. Hutter
Executive in Charge of the
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APPENDIX A. DISCIPLINARY AND GRIEVANCE PROCEDURES

SECTION A. DISCIPLINARY AND MAJOR ADVERSE ACTIONS

1. SCOPE AND AUTHORITY

a. This section governs disciplinary and major adverse actions based on conduct or performance in the Department of Veterans Affairs (VA). The provisions of this section apply to VA employees holding a full-time, permanent appointment under 38 U.S.C. 7401(l) who have satisfactorily completed the probationary period required by 38 U.S.C. 7403(b). Included in this category are: physicians, dentists, podiatrists, optometrists, [chiropractors,] nurses, nurse anesthetists, physician assistants and expanded- function dental auxiliaries. Henceforth, "employee(s)" will be the term used to refer to the above categories in this section, unless otherwise specified.

b. This chapter does not apply to employees appointed under 38 U.S.C., chapters 3, 71 or 78, or to employees appointed under 38 U.S.C. 7306, 38 U.S.C. 7401(3), 38 U.S.C. 7405, or 38 U.S.C. 7406.

(Authority: 38 U.S.C. 501(a), 7401, 7403(b), 7405, 38 U.S.C. 7461-7464.)

2. REFERENCES

a. Section 203 of the Department of Veterans Affairs Health-Care Personnel Act of 1991 (Pub. L. 102-40).

b. Section 302 of the Veterans Healthcare, Capital Asset and Business Improvement Act of 2003 (Pub. L. 108-170).

c. Section 3 of the Department of Veterans Affairs Health Care Personnel Act of 2004 (Pub. L. 108-445).

d. Title 38, United States Code, chapter 74.

3. DEFINITIONS. Unless otherwise noted, the following definitions apply to this appendix only.

a. **Admonishment.** An official letter of censure to an employee for minor act(s) of misconduct or deficiency in competence. This letter normally remains in the employee's personnel folder for two years.

b. **Discharge.** The involuntary separation of an employee from employment based on conduct or performance.

c. **Disciplinary Actions.** These are adverse actions, other than major adverse actions, which include admonishment and reprimand based on conduct or performance.

d. **Disciplinary Appeals Board.** The three member board designated to hear an employee's appeal of a major adverse action which is based in whole or in part on a question of professional conduct or competence.

- e. **Grade.** The established grades for the positions covered by this chapter will be as defined by 38 U.S.C. 7404, and the qualification standards issued pursuant to 38 U.S.C. 7402. (See part II of VA Handbook 5005, Staffing.) []
- f. **Major Adverse Actions.** These are suspension, transfer, reduction in grade, reduction in basic pay, and discharge based on conduct or performance.
- g. **Mixed Case.** This is a case that includes both (1) a major adverse action arising out of (or including) a question of professional conduct or competence, and (2) a major adverse action which does not arise out of a question of professional conduct or competence, or a disciplinary action.
- h. **Professional Conduct or Competence.** A question of professional conduct or competence involves direct patient care and/or clinical competence. The term clinical competence includes issues of professional judgment.
- i. **Reduction in Basic Pay.** The involuntary reduction, based on conduct or performance, of the annual rate of basic pay to which an employee is entitled under 38 U.S.C. 7404, including above minimum entrance rates and special salary rates authorized under 38 U.S.C. 7455. This includes a reduction in the market pay of a physician or dentist as a result of an involuntary reassignment or change in assignment when taken for disciplinary reasons. However, this does not apply to reductions in pay other than basic pay, such as the loss of or reduction in physician or dentist performance pay, nurse executive special pay, head nurse differential, other differentials, allowances or premium pay such as standby, on-call, shift, overtime, Sunday, holiday, night work, hazardous duty, and interim geographic adjustment. A reduction in market pay for a physician or dentist is considered a reduction in basic pay for purposes of this appendix only when the reduction results from an involuntary reassignment or change in assignment for conduct or performance reasons. A change in assignment refers to a permanent change in official duty station, change in duty basis (i.e. to/from full-time, part-time or intermittent), change in tier, or a significant change in the duties of the position as determined by an appropriate management official.
- j. **Reduction in Grade.** The involuntary assignment to a lower grade on the same pay schedule based on conduct or performance.
- k. **Reprimand.** An official letter of censure to an employee for an act of misconduct or deficiency in competence. A reprimand is a more severe disciplinary action than an admonishment. This letter normally remains in the employee's personnel folder for three years.
- l. **Suspension.** The involuntary placement of an employee, for disciplinary reasons, in a non-duty, non-pay status for a temporary period of time.
- m. **Transfer.** The involuntary movement of an employee from one VA facility to another (under separate managerial authority) based on conduct or performance and without a break in service.

(Authority: 38 U.S.C. 501(a), 7421.)

4. RESPONSIBILITIES AND AUTHORITIES. The Under Secretary for Health or designee will appoint Disciplinary Appeals Boards to hear appeals of major adverse actions and will review and take appropriate action on all decisions rendered by Disciplinary Appeals Boards.

(Authority: 38 U.S.C. 501(a)[, 7421, 7461, 7462, and 7464].)

5. DISCIPLINARY ACTIONS

a. **Types of Disciplinary Actions.** This paragraph applies to adverse actions, other than major adverse actions, which include admonishment and reprimand based on conduct or performance (refer to paragraph 3 of this section for definitions).

b. **Procedural Entitlements**

(1) Prior to taking disciplinary action, employees must be given:

SECTION B. GRIEVANCES

1. SCOPE AND AUTHORITY

a. **General.** This section governs employee grievances under the VA grievance procedure.

b. **Employee Coverage**

(1) This section applies to all physicians, dentists, podiatrists, optometrists, [chiropractors,] nurses, nurse anesthetists, physician assistants, and expanded-function dental auxiliaries who are not on time-limited appointments.

(2) A bargaining unit employee may elect to use the VA grievance procedure described in this section or the negotiated grievance procedure, but not both, in the case of a disciplinary or major adverse action covered under section A of this appendix which does not involve a question of professional conduct or competence.

c. **Disciplinary and Adverse Actions Covered.** Disciplinary and major adverse actions, other than major adverse actions which involve questions of professional conduct or competence, are covered by the grievance procedures described in this section.

(Authority: 38 U.S.C. 501(a), 7421, 38 U.S.C. 7461-7464.)

2. REFERENCES

a. Section 203 of the Department of Veterans Affairs Health-Care Personnel Act of 1991 (Pub. L. 102-40).

b. Section 302 of the Veterans Healthcare, Capital Asset and Business Improvement Act of 2003 (Pub. L. 108-170).

c. Section 3 of the Department of Veterans Affairs Health Care Personnel Act of 2004 (Pub. L. 108-445).

d. 38 U.S.C. 501(a), 7421, [] 7461-7464.

3. RESPONSIBILITIES. The Under Secretary for Health and other key management officials are responsible for delegating authority to appropriate officials to decide grievances. The Under Secretary for Health and facility directors, as appropriate, will designate such officials in writing.

(Authority: 38 U.S.C. 501(a), 7421, 38 U.S.C. 7461-7464.)

4. DEFINITIONS

a. **Bargaining Unit Employee.** An employee included in an appropriate unit, pursuant to 5 U.S.C. 7112 and 7135, for which a labor organization has been accorded exclusive recognition.

b. **Decision Official.** An official designated to (1) receive and attempt to adjust formal grievances; (2) refer formal grievances for further review and inquiry; and (3) decide formal grievances based on the results of impartial reviews and recommendations.

c. **Employee.** Any physician, dentist, podiatrist, [chiropractor,] optometrist, nurse, nurse anesthetist, physician assistant, or expanded-function dental auxiliary covered in the scope of this section. Former employees of VA are also included, but only in connection with a grievance over discharges or actions resulting in loss of pay or benefits (for example, a former employee charged with 8 hours absence without leave (AWOL) who has requested that the 8 hours of pay be restored). Former employees must have filed a timely grievance in accordance with the provisions of this appendix in order to receive consideration.

d. **Grievance.** A request by an employee, or group of employees, for personal relief in a matter of concern or dissatisfaction relating to employment which is subject to the control of agency management. Matters not covered by the grievance procedure may be found in paragraph 14 of this section.

e. **Grievance File.** A separate file subject to the Privacy Act which contains all documents related to the grievance, including, but not limited to, statements of witnesses, records or copies thereof, the report of the hearing if one is held, statements made by the parties to the grievance, and the decision.

f. **Personal Relief.** A specific remedy directly benefiting the grievant, but may not include a request for disciplinary or other action affecting another employee.

(Authority: 38 U.S.C. 501(a), 7421, 38 U.S.C. 7461-7464.)

5. REPRESENTATION

a. **Election of Representation.** An employee may present a grievance with or without representation.

b. **Designation of Representative.** An employee has the right to be accompanied, represented, and advised by a representative of his or her choice at any stage of the procedure. If a grievance is presented under the formal grievance procedure, designation of a representative, will be in writing and will be submitted to the decision official. Any change of representative will be in writing.

c. **Disallowance of Designated Representative.** An employee's representative who is employed by VA may be disallowed by the facility Director because of conflict of position, or conflict of interest. The disallowance of a designated representative may be challenged in accordance with part IV, chapter 3, paragraph 4 of VA Handbook 5021.

(Authority: 38 U.S.C. 501(a), 7421, 38 U.S.C. 7461-7464.)

6. TIME LIMITS FOR PROCESSING GRIEVANCE

a. **Time Limits.** A decision on a grievance will be issued within the shortest time frame possible. To ensure timely and orderly processing, the following time limits are established for each stage of the grievance procedure:

SECTION C. APPEALS TO THE DISCIPLINARY APPEALS BOARD

1. SCOPE, AUTHORITY AND DEFINITIONS. This section governs appeals of major adverse actions which arise out of, or which include, a question of professional conduct or competence in the Department of Veterans Affairs (VA). Major adverse actions are suspensions (including indefinite suspensions), transfers, reductions in grade, reductions in basic pay, and discharges. A question of professional conduct or competence involves direct patient care and/or clinical competence. The term clinical competence include issues of professional judgment. This section applies to VA employees holding a full-time, permanent appointment under 38 U.S.C. 7401(l) who have satisfactorily completed the probationary period required by 38 U.S.C. 7403(b). Included in this category are: physicians, dentists, podiatrists, optometrists, [chiropractors,] nurses, nurse anesthetists, physician assistants and expanded-function dental auxiliaries. The (preceding) categories of individuals are included in the term "employee(s)" as used in this section unless otherwise specified.

(Authority: 38 U.S.C. 501(a), 7401, 7403(b), 7421, 38 U.S.C. 7461-7464.)

2. REFERENCES

- a. Section 203 of the Department of Veterans Affairs Health-Care Personnel Act of 1991 (Pub. L. 102-40).
- b. Section 302 of the Veterans Healthcare, Capital Asset and Business Improvement Act of 2003 (Pub. L. 108-170).
- c. Section 3 of the Department of Veterans Affairs Health Care Personnel Act of 2005, (P.L. 108-445).
- d. 38 U.S.C. 501(a), 7421, 7461, 7462, 7464.

3. FILING AN APPEAL TO THE DISCIPLINARY APPEALS BOARD

a. **Initiating an Appeal.** An employee subjected to a major adverse action [] which is based in whole or in part on a question of professional conduct or competence, may file a written notice of appeal to the Disciplinary Appeals Board under the provisions of this section. The employee may request a hearing before the Board. Any such request must be submitted in writing and accompany the employee's notice of appeal. The appeal must contain (1) the appellant's name, address, telephone number, designation of representative (if any), (2) a copy of the notice of action proposed and decision letter, (3) a statement as to whether the employee is requesting a hearing before the Board, (4) why the appellant believes the major adverse action taken was in error or should not have been taken, and (5) a statement describing the expected relief. The original appeal and the request for hearing, if any, must be submitted to the Under Secretary for Health or designee so as to be received within 30 days after the date of service of the written decision on the employee. Submission of the appeal must be by personal service, facsimile, or certified mail -return receipt requested. A copy of the appeal must be served on the decision official who took the action being appealed and any management representative of record.