

EMPLOYEE/MANAGEMENT RELATIONS

1. REASON FOR ISSUE: To implement provisions of the “Caregivers and Veterans Omnibus Health Services Act of 2010” (Public Law 111-163, dated May 5, 2010) as it relates to due process rights for certain registered nurses within the Veterans Health Administration (VHA).

2. SUMMARY OF CONTENTS/MAJOR CHANGES: This handbook contains mandatory VA procedures on title 38 disciplinary/adverse action procedures. The pages in this issuance replace the corresponding page numbers in VA Handbook 5021. Revised text is contained in [brackets]. These changes will be incorporated into the electronic version of VA Handbook 5021 that is maintained on the [Office of Human Resources Management web site](#). Significant changes include:

- a. Establishes due process rights for part-time and intermittent registered nurses serving a probationary period;
- b. Establishes due process rights for part-time and intermittent registered nurses who have completed a probationary period;
- c. Clarifies delegation authorities;
- d. Revises matters excluded from the agency grievance procedure; and
- e. Revises Part VI with regard to special procedures used in the separation of part-time and intermittent registered nurses.

3. RESPONSIBLE OFFICE: The Employee Relations and Performance Management Service (051), Office of the Deputy Assistant Secretary for Human Resources Management.

4. RELATED HANDBOOK: VA Handbook 5021, Employee/Management Relations.

5. RESCISSIONS: None.

CERTIFIED BY:

/s/Roger W. Baker
Assistant Secretary for
Information and Technology

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

/s/Rafael A. Torres
Acting Assistant Secretary for
Human Resources and Administration

ELECTRONIC DISTRIBUTION ONLY

PART II. DISCIPLINARY PROCEDURES UNDER TITLE 38

CHAPTER 1. DISCIPLINARY AND MAJOR ADVERSE ACTIONS

1. SCOPE

a. This part governs disciplinary and major adverse actions based on conduct or performance in the Department of Veterans Affairs (VA).

(1) The provisions of this chapter apply to:

(a) VA employees holding a full-time, permanent appointment under 38 United States Code (U.S.C.) 7401(l) who have satisfactorily completed the probationary period required by 38 U.S.C. 7403(b). Included are:

1. Physicians,
2. Dentists,
3. Podiatrists,
4. Chiropractors,
5. Optometrists,
6. Nurses,
7. Nurse anesthetists,
8. Physician assistants, and
9. Expanded-function dental auxiliaries.

(2) [The provisions of this chapter apply to part-time registered nurses, including those with an intermittent duty basis, appointed under 38 United States Code (U.S.C.) 7405(a)(1)(A) who have satisfactorily completed the probationary period required by 38 U.S.C. 7403(b).

(3)] Henceforth, "employee(s)" will be the term used to refer to the covered occupations in this chapter, unless otherwise specified.

[(4)] Except for employees appointed under 38 U.S.C. 7306, this part should be used in conjunction with VA Directive 5021.

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. 7401(3), 38 U.S.C. 7405, [except part-time registered nurses,] or 38 U.S.C. 7406.

2. AUTHORITY

a. Section 203 of the Department of Veterans Affairs Health Care Personnel Act of 1991 Public Law (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 601 of the Caregivers and Veterans Omnibus Health Services Act of 2010 Public Law (Pub. L.) 111-163.

d.] 38 U.S.C. 501(a), 38 U.S.C. 7421.

[e.] Title 38, U.S.C., chapter 74.

[f.] Section 3 of the Department of Veterans Affairs Health Care Personnel Act of 2004 Public Law (Pub. L.) 108-445.

[g.] VA Standards of Conduct.

[h.] Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR 2635.

3. POLICY

a. Employees are expected to maintain the highest standards of honesty, integrity, impartiality, conduct, and effectiveness. Whenever an employee's performance of duty or professional competence is determined to be unsatisfactory; or when an employee's professional or personal conduct is not satisfactory, prompt and appropriate, disciplinary or major adverse action, or other corrective action will be taken. The policy of VA is to maintain standards of conduct and efficiency which will promote the best interests of VA.

b. Disciplinary or major adverse actions will be taken when it is evident that other supervisory techniques have failed to correct a given problem, or would be inappropriate. Actions taken should be consistent with the precept of like penalties for like offenses, with due consideration of any extenuating circumstances.

c. Employees are entitled to be represented by an attorney or other representative of the employee's choice at all stages of the case. Employees must identify their chosen representative in writing. A representative who is employed by VA may be disallowed by the facility Director because of:

(1) Conflict of position, or

(2) Conflict of interest.

d. [Actions covered under this part are subject to the prohibited personnel practices listed in 5 U.S.C. 2302, prohibiting:]

(1) Discrimination because of race, color, religion, sex, national origin, age, disabling condition, marital status, or partisan political reasons; and

(2) Reprisal for the proper exercise of an employee's legal or administrative appeal rights.

4. DEFINITIONS. Unless otherwise noted, the following definitions apply to this part 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 2 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 [a full-time permanent] employee's appeal of 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 VA Handbook 5005, Staffing.)

f. **Indefinite Suspension.** The involuntary placement of an employee in a non-duty, non-pay status for a temporary indefinite period of time pending investigation, inquiry, or further management action.

g. **Major Adverse Actions.** These are suspension (including indefinite suspension), transfer, reduction in grade, reduction in basic pay, and discharge based on conduct or performance. For purposes of this Handbook, a reduction in basic pay 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, i.e. conduct or performance reasons.

h. **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.

i. **Official Time.** Time granted to an employee and/or representative to review the material relied upon to support a proposed action, to prepare a reply, and to secure affidavits, if the employee is otherwise in a duty status.

j. **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.

k. **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 other reductions in pay, such as the loss or reduction of:

- (1) Physician and dentist performance pay, and

(4) The employee may, after 6 months, make a written request to the supervisor that the admonishment be withdrawn. The employee may, after 2 years, make a written request to the supervisor that the reprimand be withdrawn.

(5) Once an admonishment or reprimand is withdrawn, it may not be used as a past disciplinary record in connection with any future proposed disciplinary or major adverse action. This should be considered in determining whether a disciplinary action should be withdrawn early, particularly with respect to actions which were based on patient abuse.

(6) When a disciplinary action has expired or has been withdrawn early and destroyed, the supervisory official will so inform the employee. In order to assure the employee that no record remains in the personnel folder, the supervisor may wish to destroy it in the employee's presence or give it to the employee for disposition.

(7) Since the admonishment or reprimand may be appealed under the grievance procedure initially and, except in patient abuse cases, will automatically be removed from the personnel folder after 2 or 3 years, respectively, a grievance may not be filed based on a supervisor's decision not to remove it earlier than the expiration date.

9. MAJOR ADVERSE ACTIONS

a. **Types of Actions.** This paragraph applies to suspensions, transfers, reductions in grade, reductions in basic pay (including reduction in physician and dentist market pay as a result of involuntary reassignment or change in assignment when taken for conduct or performance reasons) and discharges.

b. Burden of Proof and Appropriateness of Penalty

(1) Prior to initiating a major adverse action, officials involved in the decision making process must consider the burden of proof which must be met in order to sustain the action on appeal. When taking a major adverse action against an employee, the Department bears the burden of proving by a preponderance of evidence the charges that form the basis for the action.

(2) The Department must establish that the penalty chosen is within the tolerable limits of reasonableness.

c. Notice of Proposed Action

(1) Prior to taking a major adverse action, [a full-time permanent] employee must be given 30 calendar days[, and part-time registered nurses must be given 14 calendar days,] advance written notice of the action proposed.

(2) Before being released to the employee, a notice of proposed action will be reviewed by the Human Resources Management office for compliance with statutes, regulations, VA policies and other applicable requirements. Human resources management officials will review the evidence and, as appropriate, provide guidance concerning the propriety of the action.

(k) A statement that the [full-time permanent] employee will be given a written decision within 21 days of receipt of the employee's reply, if any, or of the expiration of the reply period if no reply is made. [There is no statutory requirement for a decision to be issued within 21 days of a part-time registered nurse's reply, but a timely decision should be issued.]

(l) A statement advising the employee of the duty and pay status in which the employee will be carried during the notice period.

(m) A statement that if it is decided to take the proposed action, such action will be effective not less than 30 days from the day following the date the [full-time permanent] employee receives the notice, except when invoking the crime provision (see paragraph 9e of this chapter). [Such action will be effective not less than 14 days from the day following the date the part-time registered nurse received the notice, except when invoking the crime provision.]

(n) A statement informing the employee where the material relied upon to support the reason(s) for the proposed action will be available for review by the employee and or the employee's designated representative. Generally, the evidence file should be maintained in the Human Resources Management office.

(o) A statement that informs the employee that:

(p) For physicians and dentists, if the proposed action will result in a reduction in market pay, a statement that their market pay may be reduced should this proposed action be made effective.

1. The employee will be allowed a specific number of hours of official duty time (if otherwise in an active duty status) for:

a. Reviewing the notice;

b. Preparing a written and/or oral reply; and

c. Securing affidavits.

2. Identifies the person with whom the employee should make arrangements for the use of official time.

(4) Policies relating to notice requirements regarding reductions and revocations of privileges, reporting to the State Licensing Boards and National Practitioners Data Bank (NPDB), should be reviewed to determine their applicability to specific cases. Statements regarding such should be included, as appropriate.

d. Past Discipline. Management should consider the recency of any past disciplinary actions that form part of the basis for the proposed action. Consideration should be given to the use of any actions which are more than 3 years old, even if they have remained in the personnel folder. They should be examined closely to ensure their relevance to the proposed action before they are used to support such action:

(1) If cited, the previous disciplinary record will not be set forth as a current charge(s), but will be stated in a paragraph separate from the current charge(s).

(2) Counselings and charges of Absence Without Leave (AWOL) without concurrent disciplinary action are not disciplinary actions and may not be included in the past record paragraph.

(a) Counselings may be cited in a separate paragraph and may be considered in determining appropriate action against an employee. If such counselings are cited, the counseling must have been in writing and must be included in the evidence file used to support the proposed action.

(b) Any reference to letters or memoranda of counseling in the proposal letter must be sufficiently clear so as to enable the employee to comment on the consideration that should be given to the counseling in determining the final action.

e. **Exceptions to 30-day Advance Notice.** The requirement for a 30-day advance notice period [for full-time permanent employees appointed under 38 U.S.C. 7401(1)] may be shortened if there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed (38 U.S.C. 7462(b)(1)(A)). [This exception is also applicable to the 14-day advance notice period for part-time registered nurses appointed under 38 U.S.C. 7405.] This exception is concerned solely with shortening the advance notice period. In order for the "crime provision" or "crime exception" to be invoked, there must be reasonable cause to believe that the employee has committed a crime for which the employee may be imprisoned. The employee must still be afforded a reasonable amount of time, but not less than 7 days, to reply orally and/or in writing to a notice of proposed action.

(1) Normally, this provision would be used in conjunction with a proposal to remove or suspend indefinitely while awaiting a final disposition of a case. In those situations in which the retention of the employee in an active duty status would be inappropriate, but where management wishes to defer final judgment until completion of judicial proceedings, or where usable evidence to substantiate a discharge is not yet available, an indefinite suspension should be proposed (see paragraph 6(b)3 of this chapter).

(2) To invoke the crime provision and process a discharge or indefinite suspension with a curtailed notice period, the following actions should be taken:

(a) If not otherwise in a previously approved leave status, notify the employee in writing that the employee is being put immediately in a non-duty status with pay.

(b) Give the employee a notice either of proposed indefinite suspension pending further investigation or pending disposition of the criminal action, or of proposed discharge when there is sufficient evidence to warrant discharge. The notice will advise the employee of a reasonable period to respond orally and/or in writing (not less than 7 days).

(c) Issue a decision on the proposed action after the employee has had the stated opportunity to respond orally and/or in writing, and the response, if any, has been considered.

(d) With the exception of the shortened notice period and any enforced non-duty status, the proposed adverse action and decision notices must conform in all other aspects to the requirements for initiating and taking major adverse actions.

PART II

CHAPTER 1

(e) Any case involving the crime provision should be discussed with the Regional Counsel or General Counsel's office, as appropriate. This will prove helpful in obtaining official information regarding an arrest, the charges, indictment, arraignment, etc., needed to establish justification for use of the "crime provision."

(8) Officials involved in taking a major adverse action against an employee must observe the prohibitions against improper "ex parte" communications. Department officials may communicate with each other during the decision-making process; however, it is improper for an interested party (e.g., supervisor, proposing official), to pressure the decision official into making a particular decision. Such communications may support reversal of the action upon appeal.

i. **Decision.** The deciding official shall render a decision in writing within 21 days of the deciding official's receipt of the [full-time permanent] employee's reply(ies) or close of business following the date identified to reply if the employee does not reply. [There is no statutory requirement for a decision to be issued within 21 days of a part-time registered nurse's reply, but a timely decision should be issued.] The decision will be delivered to the employee at least 5 days prior to the effective date of the action, whenever possible. The 5 day period does not apply in cases where there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed (see paragraph 9e of this chapter).

(1) Before the decision is released to the employee, it will be reviewed by Human Resources Management Service for compliance with statutes, regulations, VA policies, and other applicable requirements. Any comments the Human Resources Management office may have concerning technical aspects of the case will be presented to the deciding official.

(2) A decision on a proposed major adverse action may be held in abeyance at the -request of the employee and agreement by the deciding official, in order for the employee to seek counseling or treatment for a condition covered under the Rehabilitation Act of 1973 (see 29 U.S.C. Section 701, et seq.).

(a) The employee must provide acceptable documentation for this request which, at a minimum, establishes both a qualifying disabling condition and a causal connection between the disabling condition and the cited misconduct and/or deficiency in performance.

(b) An abeyance of this nature may not exceed 1 year.

(3) The decision letter must contain the following:

(a) A statement of the specific charges that are sustained and those that are not sustained.

(b) A statement, when a major adverse action is imposed, as to whether any of the charges sustained arose out of a question of professional conduct or competence.

(c) A statement that consideration has been given to all evidence developed, including the employee's reply:

1. If the employee replies both orally and in writing, both must be mentioned.

2. A written reply made by an authorized representative on behalf of the employee is considered to be an employee's reply.

PART II

CHAPTER 1

3. It is good practice for a statement to be made regarding consideration that was given to any aggravating or mitigating factors.

(d) If a record of prior disciplinary actions was cited in the advance notice, the decision will indicate how the past record, as cited in the advance notice, was taken into consideration in determining the proper action.

(e) A statement of the effective date (not less than 30 days from receipt of notice of proposed action [for full-time permanent employees and not less than 14 days from receipt of notice of proposed action for part-time registered nurses]), if the action imposed is a major adverse action. In the case of a suspension, the inclusive dates of the suspension will be stated. In the case of an indefinite suspension, the ending date is determined by the completion of specified conditions and/or events.

(f) A statement specifying the employee's appeal rights, and the time limits within which any appeal must be filed.

(g) A statement advising the employee that a further explanation of the employee's appeal rights may be obtained by consulting the Human Resources Management office.

j. Appeals of Major Adverse Actions

(1) The filing of an appeal under a grievance procedure or to the Disciplinary Appeals Board will not affect the implementation of the major adverse action. The action should be effected on the date specified in the decision letter regardless of whether an appeal is filed.

(2) If the action involves an involuntary reassignment or change in assignment of a physician or dentist based on conduct or performance and which results in a reduction in market pay, only the involuntary reassignment or change in assignment is subject to grievance or appeal. Neither the decision to reduce market pay as a result of an involuntary reassignment nor the amount of such reduction is subject to grievance or appeal under this chapter or Part V of this handbook. Refer to VA Handbook 5007, Part IX, paragraph 11, for more information regarding the right to request reconsideration of a tier determination.

[(3) If the major adverse action involves or includes a question of professional conduct or competence, a part-time registered nurse may elect to seek review of the decision under the grievance procedure described in part IV, chapter 3 of this handbook.

(4)] If the major adverse action does not involve or include a question of professional conduct or competence, an employee may elect to seek review of the decision under the grievance procedure described in part IV, chapter 3 of this handbook. However, if the employee is covered by a collective bargaining agreement under 5 U.S.C., chapter 71 and the negotiated grievance procedure includes disputes over these actions within its scope, the employee may elect to appeal the action through the negotiated grievance procedure or the grievance procedure in part IV, chapter 3 of this handbook, but not both.

(a) The employee shall elect which grievance procedure will be used.

(b) The timely filing of a grievance under either procedure shall constitute an irrevocable election. Time limits for filing a grievance under the VA procedure are governed by the provisions of part IV, chapter 3 of this handbook. Grievances filed under the negotiated grievance procedure must be filed in accordance with the provisions of the applicable negotiated agreement.

(c) The employee must be advised of the right to request a hearing in connection with a grievance, and, advised that the request for a hearing must be submitted with the grievance.

[(5)] If the major adverse action is based in whole, or in part on a question of professional conduct or competence, the [full-time permanent] employee may appeal to the Disciplinary Appeals Board under the provisions in appendix A of VA Directive 5021 and part V, chapter 1 of this handbook.

(a) An employee must be advised of the right to request a hearing before the Board, and advised that the request for a hearing must be submitted with the notice of appeal. If the employee does not request a hearing in the request for an appeal, the Board may elect to conduct a hearing or make a decision based on a review of the record.

(b) The employee must be provided with a copy of part V, chapter 1 of this handbook which specifies the content requirements of an appeal.

(c) Appeals to the Disciplinary Appeals Board 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. The 30-day time limit may not be extended.

(d) An issue of whether a matter or question concerns, or arises out of, professional conduct or competence is not itself subject to any grievance procedure provided by law, regulation, or collective bargaining and may not be reviewed by any other agency.

10. SERVICE OF DOCUMENTS. It is best for a supervisor to deliver a notice to the employee personally and to obtain the employee's dated, written acknowledgment of receipt so as to show the date and fact of receipt. Supervisors may wish to have a witness present in order to corroborate delivery of the notice.

a. If the employee refuses to sign, the supervisor should so note this on the acknowledgment copy.

b. In those instances where the letter cannot be personally delivered to the employee, it should be sent by certified mail-return receipt requested, in order to establish that the letter was received. A copy should also be sent by regular mail in the event the certified mail is not delivered and/or the employee fails to obtain it from the Postal Service after being notified to do so. In these instances, date of service will be presumed to be 5 days after posting the letter.

CHAPTER 2. DELEGATIONS

1. SCOPE. This chapter contains the authorities as delegated by the Under Secretary for Health for proposing and deciding on disciplinary and major adverse actions. The Under Secretary for Health retains the authority to appoint individuals as members of the Disciplinary Appeals Board Panel.

2. AUTHORITY

- a. Title 38, U.S.C., chapter 74.
- b. 38 U.S.C. 7304, 38 U.S.C. 7421
- c. [Section 601 of the Caregivers and Veterans Omnibus Health Services Act of 2010 Public Law (Pub. L.) 111-163.
- d.] VA Directive 5021.

3. RESPONSIBILITIES

a. Delegations of Proposing and Decision Authorities for Disciplinary Actions (Admonishments and Reprimands).

(1) Field Employees

(a) Non-centralized positions:

1. Proposing Official: Immediate supervisor.
2. Decision Official: Service Chief or equivalent or senior medical officer.

(b) Service Chiefs and equivalent positions below the level of Chief of Staff or senior medical officer:

1. Proposing Official: Chief of Staff or senior medical officer.
2. Decision Official: Facility Director.

(c) Chiefs of Staff or senior medical officer:

1. Proposing Official: Facility Director.
2. Deciding Official: Network Director.

NOTE: *Facility directors may issue supplemental delegations of authority to propose and decide disciplinary actions involving employees in non-centralized positions under their jurisdiction. However, the authority to propose disciplinary action may not be delegated to an official at a lower level than the immediate supervisor, and the authority to decide disciplinary action may not be delegated to an official at a lower level than the service chief or equivalent or senior medical officer. Delegations must be in*

writing and may be issued as the Director deems appropriate. In exercising supplement delegation authority, directors must ensure that delegations are consistent with the statutory requirement that the decision official in a major adverse action must be at a higher level than the proposing official. [(See paragraph 3(b) below.)]

PART III. PROBATIONARY PERIOD ACTIONS**CHAPTER 1. TITLE 38 PROBATIONARY EMPLOYEES**

1. SCOPE. This chapter contains the policy and procedures needed for taking actions against title 38 employees serving on a probationary period under 38 United States Code (U.S.C.) 7403(b) in the Department of Veterans Affairs (VA). This includes employees appointed under 38 U.S.C. 7401(1), i.e., physicians, dentists, podiatrists, chiropractors, optometrists, nurses, nurse anesthetists, physician assistants, and expanded-function dental auxiliaries[, and part-time registered nurse serving on a temporary or permanent appointment under 38 U.S.C. 7405(a)(1)(A). Part-time includes those registered nurses assigned to an intermittent tour of duty]. The Under Secretary for Health's designee refers to a designee in VA Central Office. This chapter does not apply to employees appointed under 38 U.S.C., chapter 3, 38 U.S.C. 7306, 38 U.S.C. 7401(3), 38 U.S.C. 7405[, except part-time registered nurses serving on a temporary or permanent appointment,] or 38 U.S.C. 7406.

2. RESPONSIBILITIES**a. VA Central Office Assignments**

(1) **Authorizing Official.** Appropriate service director and equivalent positions or above

(2) **Review Board.** Appropriate Central Office Professional Standards Board (PSB)

b. Facility Director

(1) **Authorizing Official.** Network Director

(2) **Review Board.** Appropriate Central Office PSB

c. Chief of Staff

(1) **Authorizing Official.** Facility Director

(2) **Review Board.** Appropriate Central Office Board

d. Facility Employees, except Assistant/Associate Chiefs, Nursing Service

(1) **Authorizing Official.** Appropriate Service Chief (or equivalent)

(2) **Review Board.** Local PSB

e. Assistant/Associate Chiefs, Nursing Service

(1) **Authorizing Official.** Chief, Nursing Service

(2) **Review Board.** VISN Nurse PSB

CHAPTER 3. TITLE 38 GRIEVANCES

1. SCOPE AND AUTHORITY

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

b. **Employee Coverage**

(1) This chapter applies to all permanent and probationary physicians, dentists, podiatrists, chiropractors, optometrists, nurses, nurse anesthetists, physician assistants, and expanded-function dental auxiliaries [appointed under 38 U.S.C. 7401(1) and part-time registered nurses, including those with an intermittent duty basis, appointed under 38 U.S.C. 7405(a)(1)(A)].

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

c. **Disciplinary and Adverse Actions Covered.** Disciplinary and major adverse actions [issued to full-time permanent employees] (as defined in Part II, Chapter 1 of this handbook), other than title 38 major adverse actions which involve questions of professional conduct or competence, are covered by the grievance procedures described in this chapter. [These procedures also cover disciplinary and major adverse actions (as defined in Part II) issued to permanent and probationary part-time registered nurses appointed under 38 U.S.C. 7405(a)(1)(A). Part-time includes those registered nurses with an intermittent duty basis.]

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 Public Law (Pub. L.) 108-445.

d. [Section 601 of the Caregivers and Veterans Omnibus Health Services Act of 2010 Public Law (Pub. L.) 111-163.

e.] 38 U.S.C. 501(a), 512(a), 7421, 38 U.S.C. 7461-7464.

3. OFFICIALS AUTHORIZED TO SETTLE GRIEVANCES

a. **Informal Grievance Procedure.** The official who will make a decision on grievances filed at the informal stage will be the immediate supervisor, or lowest level official with authority to settle the issue.

PART IV

CHAPTER 3

b. **Formal Grievance Procedure.** Authority to make a decision when the formal stage of the grievance procedure is reached will be exercised as follows:

(1) **Grievances of Facility Employees.** The facility Director will be the decision official on a grievance from an employee under the facility Director's jurisdiction provided the matter to be resolved is one which is under the Director's authority. In grievances where one of the exceptions identified in subparagraph (3) of this paragraph exist, the grievance will be decided by the next higher level official with the authority to resolve the issue.

(1) If the decision official modifies or rejects the examiner's recommendation(s), the written decision will include a specific statement of the reason(s) for the modification or rejection. Modification or rejection of recommendations of the grievance examiner will be limited to the following grounds:

- (a) The recommendation(s) are contrary to law, regulation, or published Department policy; and/or
- (b) The recommendation(s) are not supported by the preponderance of the evidence.

(2) The decision official may elect to grant the relief sought by the employee without regard to the examiner's recommendation(s).

14. TRAVEL EXPENSES. Authorized travel expenses for grievance examiners will be borne by the VA facility employing the grievant in accordance with Government travel regulations. Travel expenses of grievants and witnesses will be paid by VA where it is determined by a VA official or the grievance examiner that travel in connection with a grievance is necessary.

15. INFORMING EMPLOYEES. The information contained in this chapter will be brought to the attention of all employees. The text of this chapter is available electronically to all employees or hard copies may be reviewed in the Human Resources Management office.

16. MATTERS EXCLUDED FROM COVERAGE UNDER THE AGENCY GRIEVANCE PROCEDURE. The following actions and complaints are excluded from coverage under the grievance procedure:

- a. Adverse actions taken under part II of this handbook which involve a question of professional conduct or competence [unless issued to a part-time registered nurse under 38 U.S.C. 7405(a)(1)(A)].
- b. Disputes over whether a matter or question concerns, or arises out of, professional conduct or competence.
- c. Separation during probationary period.
- d. Complaints arising from failure to receive special advancement.
- e. Complaints arising from failure to receive a promotion or reassignment.
- f. Complaints arising from dissatisfaction with grade or pay on initial appointment.
- g. Complaints arising from actions taken due to the individual's physical or mental condition.
- h. Complaints arising from dissatisfaction with proficiency rating.
- i. An action which terminates a temporary promotion within a maximum period of 2 years and returns the employee to the position from which the employee was temporarily promoted, or reassigns the employee to a different position that is not at a lower grade or pay than the position from which the employee was temporarily promoted.

**PART VI. TITLE 38 SEPARATIONS NOT COVERED BY
PARTS II OR III OF THIS HANDBOOK**

1. SCOPE. This part contains procedures for the separation of individuals appointed under authority of 38 U.S.C. 7306, 7401(1), 7405(a)(1)(A), and 7406. Separations of probationary employees because they are not fully qualified and satisfactory are covered in part III, chapter 1 of this handbook. Discharges for disciplinary reasons of employees with permanent status appointed under section 7401(1) [and part-time registered nurses who have successfully completed a probationary period] are covered under part II of this handbook, and the term involuntary separations as used in this part does not include such discharges. As used in this part, the term designee refers to a designee in Central Office. The term employee includes all employees covered by this part. This part does not apply in any way to employees appointed under 38 U.S.C. 7401(3) or 38 U.S.C. 7405(a)(1)(B). These employees are covered by applicable provisions of title 5, U.S.C.

2. POLICY

a. Separations and other actions under this part will be effected uniformly and fairly in accordance with management needs, the rights of the affected employees, and the requirements of applicable laws and regulations.

b. There will be no discrimination because of race, color, religion, national origin, sex or sexual orientation, lawful political affiliation, membership or nonmembership in a labor organization, marital status, nondisqualifying disability, age, or other irrelevant factors in any separation or other action under this part.

c. Appointments or designations under authority of 38 U.S.C. 7306 terminate on completion of the approved term of service unless sooner terminated for such cause as will promote the efficiency of the service. Normally employees whose appointments will terminate on the completion date should be informed at least 30 calendar days in advance as to whether their appointments will be terminated, extended, renewed, or converted, as appropriate.

d. The Secretary is the approving authority for involuntary separations under this part of employees in positions centralized to the Secretary.

3. REGULATIONS AND PROCEDURES. The Under Secretary for Health shall promulgate regulations and the Under Secretary for Health and designees shall establish procedures for the following actions under this part: separations because of resignation, retirement, disability, disqualification, abandonment of position, failure to accept reassignment, military service, and pre-employment suitability.

4. REFERENCES. 38 U.S.C., chapter 73 and 74.

5. AUTHORITY AND RESPONSIBILITY

a. **Secretary.** Approves involuntary separations of employees appointed under authority 38 U.S.C. 7306.

8. 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 Central Office 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 part.

c. **Reporting to Licensing Boards.** 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.

9. SEPARATION FOR DISABILITY

a. [The procedures under part III of this handbook can be used for the separation of probationary employees appointed under 38 U.S.C. 7401(1) or non-probationary, part-time registered nurses appointed under 38 U.S.C. 7405(a)(1)(A) due to disability. The procedures regarding reasonable accommodation are applicable for all employees appointed under 38 U.S.C. 73 and 74.

b.] When a decision to separate an employee for disability is made under the provisions of VA Handbook 5019, 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.

[c]. 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 Network director. The Network 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.

[d]. 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.

11. PRE-EMPLOYMENT SUITABILITY SEPARATIONS

a. **General.** This paragraph contains procedures which will be used to separate employees appointed under 38 U.S.C. 7306[,] 7401(1), [or part-time registered nurses appointed under 38 U.S.C. 7405(a)(1)(A)] 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

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 Assistant Deputy Under Secretary for Health (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 Network 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.

12. ABANDONMENT OF POSITION

a. When an employee appointed under 38 U.S.C 7306[,], 7401(1)[,], or a part-time registered nurse appointed under 38 U.S.C. 7405(a)(1)(A)] 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 paragraph 5 of this part) 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 parts II and III of this handbook. 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.

13. FAILURE TO ACCEPT REASSIGNMENT. If separation for failure to accept reassignment is approved under VA Handbook 5005, part IV, 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.

14. SEPARATION FOR MILITARY SERVICE. Procedure involving separation for military service prescribed in VA Handbook 5005 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) and (B).

15. INVOLUNTARY SEPARATION OF EMPLOYEES APPOINTED UNDER 38 USC 7405(a)(1)(A)[, EXCLUDING PART-TIME REGISTERED NURSES]

a. In effecting involuntary separations of employees serving under 38 U.S.C. 7405 (a)(1)(A), [excluding temporary or permanent part-time registered nurses,] the procedural requirements prescribed for separations, such as reviews by Professional Standards Boards or Disciplinary Boards, do not apply. [The procedures for the separation of a probationary part-time registered nurse, including those with an intermittent duty basis, appointed under 38 U.S.C. 7405(a)(1)(A), are covered in part III, chapter 1 of this handbook or other applicable section of this chapter, i.e. failure to meet statutory or regulatory requirements, pre-employment suitability separations, etc. The procedures for the separation of a non-probationary part-time registered nurse, including those with an intermittent duty basis, appointed under 38 U.S.C. 7405(a)(1)(A), are covered in part II, chapter 1 of this handbook, or other applicable section of this chapter, i.e. failure to meet statutory or regulatory requirements, pre-employment suitability separations, etc.]

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[s 1100.17 and] 1100.18, relating to reporting to State licensing boards[, the National Practitioner Data Bank,] and license monitoring entities, must be followed in all instances in which an employee is separated whose standards of clinical practice are in question.