

EMPLOYEE/MANAGEMENT RELATIONS

- 1. REASON FOR ISSUE:** To revise Department of Veterans Affairs (VA) policy regarding the separation of medical and dental residents appointed under 38 U.S.C. 7406.
- 2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This handbook contains VA policies on employee/management relations. The pages in this handbook replace the corresponding page numbers in VA Handbook 5021. Revised text is contained in [brackets]. This revision provides clarification regarding the appropriate procedures for the separation of medical and dental residents appointed under 38 U.S.C. 7406. 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](#).
- 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:

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

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

/s/Rafael A. Torres
Acting Assistant Secretary for
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16. 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 VA Handbook 5005.)

17. TERMINATION OF APPOINTMENTS OF CONSULTANTS, ATTENDING, AND FEE-BASIS PERSONNEL. Appointments of fee-basis personnel appointed in accordance with instructions contained in VA Handbook 5005 will terminate on the date of termination specified in any time-limited appointment 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.

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

a. [When it is proposed by a supervising attending or VA Program or Site Director to separate a noncareer medical or dental resident because of deficiencies in performance, suitability, or conduct, the resident will be entitled to due process, including a review of the proposed termination. The facility Director will appoint an Ad Hoc Resident Review Committee for this purpose. The composition of the Committee will be as specified in VHA policy (VHA Handbook, Education of Physicians and Dentists). Persons in a position to prejudice the action of the Committee, such as immediate or higher-level supervisors, may not serve on the Committee, but may be called by the Committee to provide information. A resident may be placed on immediate administrative leave during the fact-finding investigation whenever there is a perceived threat to patient or public safety.

b. The due process procedures to be followed will be similar to those for title 38 probationary employees contained in part III, chapter 1 of this handbook, except as indicated below:

(1) The following procedures for due process must be followed in the event that dismissal proceedings are initiated involving a resident in an accredited, VA-sponsored program:

(a) Opportunity for the trainee to learn the allegations being investigated or remediated;

(b) Opportunity to respond orally and/or in writing to the allegations;

(c) Assistance by an individual of the resident's choice (independent faculty, peer, or other), provided the choice would not create a conflict of interest. This process is not an adversarial procedure. The assistant's role is limited to aiding the resident in responding orally and/or in writing to the reasons for the review and providing assistance to, but not answering questions on behalf of, the resident.

(d) The findings and recommendation of the Ad Hoc Review Committee will be sent to the facility Director for final decision. The recommendation must be supported by a thorough documentation of the individual's deficiencies.

(e) The facility Director's written decision will be issued to the resident.

(2) Appeal process for any adverse decision.

(a) If a decision is made to separate, the resident will have five working days to submit a written response, and any other relevant information, to the facility Director for reconsideration.

(b) The Director and Chief of Staff, in consultation with the facility's designated educational officer, i.e. Associate Chief of Staff for Education, will hear the appeal.

(c) If the decision to separate is sustained after reconsideration, the resident will be notified in writing and the decision to separate will be effected within 15 calendar days.

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

(3) The following procedures for due process must be followed in the event that dismissal proceedings are initiated involving a noncareer medical or dental resident in an integrated program (accredited in the name of the affiliated non-VA institution):

(a) The Ad Hoc committee's findings and recommendations will be sent 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 thorough documentation of the individual's deficiencies.

(b) If the decision is to separate the resident from VA's program, the separation will be effected within 15 days after approval.

(c) A resident in an affiliated program will not be entitled to further VA review of the separation decision.

NOTE: *Further investigation and action will be at the discretion of the sponsoring institution and program. VA cannot terminate individuals in an affiliated program from the training program but may prohibit them from training at the VA. Dismissal from the training program is at the discretion of the sponsoring institution, which will be required to afford appropriate due process and appeal procedures.*

(d) A resident who is no longer enrolled in an approved, affiliated program (due to dismissal, suspension or other adverse actions) may not be engaged in VA clinical activities and will be dismissed from the VA assignment immediately. Per VHA Handbook 1400.1, VA expects that changes in a resident's status or performance issues that occur at a non-VA site be communicated to the VA in a timely manner as these may impact eligibility for VA clinical rotations.

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

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