

January 6, 2004

**VHA ALTERNATIVE DISPUTE RESOLUTION PROGRAM
FOR EEO-RELATED ISSUES**

1. PURPOSE: This Veterans Health Administration (VHA) Directive establishes VHA policy regarding the use of alternative dispute resolution (ADR) methods to resolve disputed issues pertaining only to matters involving Equal Employment Opportunity (EEO) issues.

2. BACKGROUND

a. VHA is committed to providing its employees with a work environment that enables them to deliver quality patient care and services to the Nation's veterans. To do this, employees must have access to effective and efficient mechanisms for resolving workplace disputes. In addition to the traditional administrative adjudication processes, every VHA employee must have the opportunity to utilize an ADR process to resolve workplace differences or disputes.

b. There are numerous forms of ADR currently being used in the Federal sector; however, in accordance with VHA policy, mediation is the preferred ADR process used to resolve EEO disputes and must be conducted in accordance to Title 29 Code of Federal regulations (CFR) 1614 and Equal Employment Opportunity Commission (EEOC) Management Directive (MD) 110 (EEOC MD-110).

c. Mediation is an ADR process in which a skilled, impartial third party, called a mediator, assists the parties in reaching a mutually agreeable resolution to a dispute by facilitating better communication, identifying interests, and helping explore possible solutions. Local facilities may find it beneficial to offer employees more than one type of ADR process for resolving disputes, such as conciliation, facilitation, interest-based problem solving, peer review, neutral fact-finding, and early neutral evaluation.

d. VHA encourages the use of mediation to resolve disputes as early in the process as possible; however, mediation can be offered at any stage of the complaint process.

3. POLICY: It is VHA policy to offer mediation for all appropriate EEO related issues regardless of the stage of the complaint process. These issues are reviewed on a case by case basis to determine the appropriateness for mediation. When an aggrieved employee has agreed to pursue resolution through mediation, management must participate in the process.

4. ACTION: The following process must be implemented:

THIS VHA DIRECTIVE EXPIRES MAY 30, 2007

VHA DIRECTIVE 2004-001

January 6, 2004

a. Upon verbal or written notification to the EEO Manager, the ADR Coordinator, or Veterans Integrated Services Network (VISN) Lead Coordinator that an aggrieved individual wishes mediation, a mediation session must be scheduled and management must participate. Mediation must be completed within 21 business days after an agreement to mediate has been signed.

b. In rare circumstances, certain types of allegations may not be appropriate for mediation. The following factors suggest there should be a case-by-case evaluation to determine the appropriateness of mediation:

- (1) An indication that fraud, waste or abuse has been committed;
- (2) An allegation of patient abuse;
- (3) An allegation of sustained, continuing sexual harassment;
- (4) A removal for cause, e.g., removal based upon the commission of a felony.

***NOTE:** The EEO Manager is responsible for determining the appropriateness of mediation.*

c. If mediation is refused by management, VA Form 10-0413, Notice of Refusal to Mediate, must be completed and routed through the appropriate channels as shown on the form within 5 working days following the refusal (see Att. A). A copy of VA Form 10-0413 must be provided to the EEO Counselor for the case. ***NOTE:** VA Form 10-0413 can be accessed at the following address: <http://vaww.vhaco.va.gov/eo/Documents/Refusal%20to%20Mediate.pdf>*

5. REFERENCES

a. VHA Directive 2002-028, Alternative Dispute Resolution – Mediation Program, dated May 23, 2002.

b. Title 5 United States Code (U.S.C.) 571-584.

c. VA Directive 5978, Alternative Dispute Resolution, dated February 12, 2002.

d. Equal Employment Opportunity Commission (EEOC) 29 CFR 1614.

e. EEOC MD-110.

f. VHA Mediation Handbook, dated March 2000; it can be found on the following web site: <http://www.va.gov/adr/VHAHndbk.pdf>

6. FOLLOW-UP RESPONSIBILITIES: Associate Deputy Under Secretary for Health for Operations and Management (10N) is responsible for the contents of this Directive. Questions may be referred to 202-273-8907.

7. RESCISSIONS: None. This VHA Directive expires May 30, 2007.

S/ Louise Van Diepen for
Robert H. Roswell, M.D.
Under Secretary for Health

Attachment

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