

JUL 20 1992

Director (00)
VA Medical Center
100 Emancipation Road
Hampton, VA 23667

Dear

I am responding to the issues raised concerning the enclosed grievances filed by the American Federation of Government Employees (AFGE) on behalf of two registered nurses.

Under 38 USC Section 7422, any matter affecting health care personnel in positions described in 38 USC 7421(b) and concerning or arising out of professional conduct or competence, including direct patient care and clinical competence, is non-negotiable. The law authorizes the Secretary, or delegatee, to determine the grievability of any matter arising under its provisions. The Secretary has delegated to my office the authority to make any such determinations, which are not subject to administrative review under the law.

Acting pursuant to this authority, I have determined that the reassignment and performance evaluation of health care personnel described in 38 USC 7421(b) are fundamental to establishing the level and quality of patient care to be provided by the Department of Veterans Affairs. Determining staffing requirements and evaluating performance concerns overall competency of the staff at each facility and their ability to perform without compromising patient care, given the staff available. Consequently, I believe any matter relating to the assignment and performance of such health care personnel at any VA facility is related to the professional competence or conduct of those employees. Accordingly, the grievances concerning reassignment and performance evaluation are not grievable.

Sincerely yours,

James W. Holsinger Jr., M.D.
Chief Medical Director

Enclosures

Title 38 Grievability
Decision Paper

FACTS:

A. Grievance of Ms. _____, R.N.

The Union on behalf of _____ R.N., wrote the Director requesting an immediate reassignment to the Outpatient Clinic. The request stated that Ms. _____ Head Nurse had taken reprisal action against her, that her supervisor had attempted to issue a counseling on her time and attendance and her performance. The request further stated that Ms. _____ had lost confidence in being able to work with her supervisor and could no longer tolerate working under the conditions set forth on her unit.

Prior to the time of the request for a reassignment there was a vacancy in Ambulatory Care (Outpatient Clinic). It was decided not to fill the position. Upon reviewing her reassignment and finding out that it was not to Ambulatory Care but rather to the Acute Surgical Unit, Ms. _____ sought to defer her transfer until a position in Ambulatory Care became available. This request was denied.

The Chief of Staff responded that patient care would best be served by the reassignment of Ms. _____ to the Acute Surgical Unit.

B. Grievance of Ms. _____, R.N.

Ms. _____ was given a performance letter critical of her interpersonal relationships with both patients and staff. The letter stated that her performance did not promote nor was it conducive to the delivery of quality patient care, and did not reflect sound nursing judgement.

The union took issue with several statements in the letter.

AFGE has requested the following remedies:

Grievance A- (1) Reassignment to the Ambulatory Care Unit or MICU;
(2) Attorney Fees;
(3) \$10,000 punitive damages for the grievant.

Grievance B- (1) Performance note be rescinded;
(2) Attorney fees.

