

**Supplementary Table 3
VA Medical Facility Locations, Three-Digit ZIP Codes,
and Provider-Based/Non-Provider-Based Designations
As of December 5, 2003**

RC V2p0 Facility List 2003-12-05 FR.xls

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<u>Sta #</u>	<u>VA Facility Location</u>	<u>ST</u>	<u>ZIP 3</u>	<u>VN</u>	<u>Type</u>	<u>PB</u>
695	MILWAUKEE, WI	WI	532	12	VAMC	PBH
695BY	APPLETON, WI	WI	549	12	CBOC	NPB
695GA	UNION GROVE, WI	WI	531	12	CBOC	NPB
695GC	CLEVELAND, WI	WI	530	12	CBOC	NPB
695HK	MILWAUKEE MOC, WI	WI	532	12	CBOC	NPB
756	EL PASO, TX	TX	799	18	IOC	PBO
756GA	LAS CRUCES, NM	NM	880	18	CBOC	NPB
757	COLUMBUS, OH	OH	432	10	IOC	PBO
757GA	ZANESVILLE, OH	OH	437	10	CBOC	NPB
757GB	GROVE CITY, OH	OH	431	10	CBOC	NPB

Abbreviations
ST = State
ZIP 3 = First three digits of ZIP Code
VN = Veterans Integrated Service Network
VAMC = VA Medical Center
CBOC = Community-Based Outpatient Clinic
PB = Provider-Based/Non-Provider-Based Designation
PBH = Provider-Based - Hospital
PBO = Provider-Based - Outpatient
NPB = Non-Provider-Based

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**DEPARTMENT OF VETERANS
AFFAIRS**

**Disciplinary Appeals Board
Procedures; VA Directive and
Handbook 5021**

AGENCY: Department of Veterans Affairs.

ACTION: Notice with request for comments.

SUMMARY: The Department of Veterans Affairs (VA) is revising VA Directive and Handbook 5021, Employee/Management Relations, dated April 15, 2002, to include the delegation from the Under Secretary for Health to the Deputy Under Secretary for Health the authority to accept, reject, or remand findings and decisions of Disciplinary Appeals Boards (DABs) involving major adverse actions taken against title 38 employees who have completed the probationary period and the delegation from the Under Secretary for Health to the Deputy Under Secretary for Health for Operations and Management the

authority to make the final decision regarding the timeliness of appeals to a DAB. This notice announces that the revisions to the amended regulations are available for review and comment.

DATES: Comments must be received on or before December 19, 2003. The proposed effective date of these amendments is 30 days after publication of this notice.

ADDRESSES: Send written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Robert MacDonald, Employee Relations Team Leader, Department of Veterans Affairs, Office of Human Resources Management (051E), 810 Vermont Avenue, NW., Washington, DC 20420. Mr. MacDonald may be reached at (202) 273-9707.

SUPPLEMENTARY INFORMATION: The Under Secretary for Health has delegated to the Deputy Under Secretary for Health the authority to accept, reject, or remand findings and decisions of Disciplinary Appeals Boards (DAB) in connection with non-probationary title 38

employees' appeals of major adverse actions. The Under Secretary for Health has also delegated authority to the Deputy Under Secretary for Health for Operations and Management the authority to make the final decision regarding the timeliness of appeals to a DAB. These delegations will alleviate the need to convene a DAB to determine timeliness and provide more timely decisions of DAB findings.

Dated: November 20, 2003.

Anthony J. Principi,
Secretary of Veterans Affairs.

March 24, 2003.

**Appendix A—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, 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. 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.

b. *Establishing Timeliness of an Appeal.* For purposes of computing the 30-day period for filing an appeal, the date of service of the written decision on the employee will be determined by the date of receipt by the employee of the personal delivery, the signed receipt of certified mail, or presumed to be 5 days after depositing the decision in the U.S. mail if no acknowledged receipt is available. The Deputy Under Secretary for Health for Operations and Management will make a final decision regarding the determination that an appeal is filed untimely. The employee will be notified in writing, by letter, of this final determination. There are no further administrative appeal rights regarding the issue of timeliness.

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8. Formal Hearing.

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b. *Exclusion of Individuals During Proceeding.* Prior to testifying or, if subject to recall, no witness will be permitted to hear

the testimony being given by another witness unless the witness is the appellant, or is assisting in the representation of either party. In any event, the Chairman of the Board will make the final determination on exclusion of individuals during any phase of the proceeding.

c. *Oaths.* The Chairman and Secretary of the Board shall have the authority to administer oaths or affirmations which will be made by all individuals giving testimony.

d. *Verbatim Record.* A verbatim record shall be maintained of Board hearings (see subparagraph g below for further details).

e. *Witnesses.* Both the appellant and management will have the right to call witnesses. The Chairman will, on his/her own initiative, call such witnesses on behalf of the Board as the Chairman deems necessary. The Chairman has the final authority to determine the acceptability of any witness.

f. *Scheduling of Hearing.* The hearing will be conducted on official Government time, and normally, without charge to leave of the employee(s) concerned.

g. *Record of Hearing.* (1) A verbatim record of the hearing proceedings will be prepared.

(2) The employee and/or his/her representative shall be provided a copy of the transcript of the formal hearing after authentication.

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

9. *Disciplinary Appeals Board Decisions.* a. *Findings.* The Board shall, with respect to each charge appealed, sustain the charge, dismiss the charge, or sustain the charge in part and dismiss the charge in part.

b. *Decision.* The Board has full authority to render a decision on an appeal. The Board shall reach a decision within 45 calendar days of completion of the hearing, if a hearing is convened. In any event, a decision will be made by the Board no later than 120 calendar days after the appeal is received by the Under Secretary for Health or designee.

(1) If any charge is sustained in whole or in part, the Board shall approve the action as imposed; approve the action with modification, reduction, or exception; or reverse the action.

(2) If none of the charges are sustained in whole or in part, the Board will reverse the decision.

c. *Action by the Deputy Under Secretary for Health.* The Under Secretary for Health has delegated the authority to execute decisions made by Disciplinary Appeals Boards to the Deputy Under Secretary for Health. The Deputy Under Secretary for Health shall execute the Board's decision in a timely manner, but in no case later than 90 calendar days after the Board's decision is received by the Deputy Under Secretary for Health. Pursuant to the Board's decision, the Deputy Under Secretary for Health may order reinstatement, award back pay in accordance with the Back Pay Act, and provide such other remedies as the Board found appropriate relating directly to the proposed action, including expungement of records relating to the action.

(1) However, if the Deputy Under Secretary for Health finds a decision of the Board to be clearly contrary to the evidence or unlawful the Deputy Under Secretary for Health may:

(a) Reverse the decision of the Board; or
(b) Vacate the decision of the Board and remand the matter to the Board for further consideration.

(2) If the decision, while not clearly contrary to the evidence or unlawful, is found to be not justified by the gravity of the charges, the Deputy Under Secretary for Health may mitigate the adverse action imposed.

(3) The Deputy Under Secretary for Health's execution of a Board's decision, or the mitigated action if appropriate, shall be the final administrative action in the case.

d. *Case Record.* The case record will consist of the notice of proposed adverse action, appellant's reply, if any, all evidence (documents or testimony) relied upon by the Board in reaching its decision, notice of decision to appellant, appellant's request for a hearing, Deputy Under Secretary for Health's or designee's appointment of Board, Board communications and notices related to the hearing, any Board rulings or submissions of the parties, verbatim record of any formal hearing, Board Action (VA Form 10-2543), Deputy Under Secretary for Health's execution of the Board's recommendation, and any Notification of Personnel Action (SF-50B).

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

10. *Review of Records.* The Chairman of a Board may review records or information covered by 38 U.S.C. 5701 and 1332 in accordance with 7464(c)(1) of title 38.

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

VA Handbook 5021/Part V, Chapter 1

Part V. Title 38 Appeals to the Disciplinary Appeals Board, Chapter 1. General

1. *Scope, Authority and Definitions.* This chapter applies to Department of Veterans Affairs (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, nurses, nurse anesthetists, physician assistants and expanded-function dental auxiliaries. These categories of individuals are included in the term "employee(s)" as used in this chapter unless otherwise specified. This chapter governs appeals of major adverse actions which arise out of, or which include, a question of professional conduct or competence in 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 includes issues of professional judgment.

2. *Representation.* An employee of the Department may be designated by the decision official to represent management in any case before a Disciplinary Appeals Board. The decision official should direct requests for legal representation to the General Counsel or Regional Counsel, as appropriate.

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 part. 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, through the Office of Human Resources Management (051), 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 at the time of filing.

b. *Establishing Timeliness of an Appeal.* For purposes of computing the 30-day period for filing an appeal, the date of service of the written decision on the employee will be determined by the date of receipt by the employee of the personal delivery, the signed receipt of certified mail, or presumed to be 5 days after depositing the decision in the U.S. mail if no acknowledged receipt is available. The Deputy Under Secretary for Health for Operations and Management will make a final decision regarding the determination that an appeal is filed untimely. The employee will be notified in writing, by letter, of this final determination. There are no further administrative appeal rights regarding the issue of timeliness.

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6. *Powers of the Chairperson of the Disciplinary Appeals Board.*

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- a. Taking proper steps to expedite the hearing of evidence, and speaking and acting for the Board;
- b. Ruling on all questions arising during the proceedings, such as admissibility of evidence offered during the hearing, calling of witnesses, order of introduction of witnesses, etc.;
- c. Obtaining further evidence concerning any issue under consideration by the Board at any stage of the proceedings;
- d. Acting as the presiding officer, directing the regular and proper conduct of the proceedings, and authenticating, by his or her signature, instructions and proceedings of the Board;
- e. Ruling on questions of disqualification of any member of the Board. In cases where the Chairperson is the challenged member,

the question shall be resolved in accordance with paragraph 7e of this chapter;

- f. Scheduling the specific hour and dates of hearings;
- g. Closing the record;
- h. Administering oaths or affirmations made by individuals giving testimony;
- i. Ruling on motions from the parties; and
- j. Calling witnesses on behalf of the Board.

7. *Procedure.* a. *Determining Jurisdiction.* When a Board is convened to consider an appeal, the Board shall first determine whether the case is properly before it prior to considering the merits of the appeal. The Board shall determine whether the matter appealed is a major adverse action as defined in part II of this handbook, and whether it arises out of or includes a question of professional conduct or competence. The determination of jurisdiction will be made as soon as practicable. The Board will make a record of its determination.

- (1) The record of decision in any mixed case shall include a statement by the Board of its exclusive jurisdiction, citing 38 U.S.C. 7462(a) as the authority and the basis for such exclusive jurisdiction. A mixed case is one that includes both (a) a major adverse action arising out of, or including, a question of professional conduct or competence, and (b) a major adverse action which does not arise out of a question of professional conduct or competence or a disciplinary action.
- (2) If necessary, the Board may develop the record to establish jurisdiction.
- (3) If the Board determines that the appeal is not properly before it, e.g., that it lacks jurisdiction, the Board shall fully set forth its reasons, including a statement of the appropriate appeal procedure. The Deputy Under Secretary for Health will take appropriate action on the decision of the Board as described in paragraph 9e of this chapter.

(2) If necessary, the Board may develop the record to establish jurisdiction.

(3) If the Board determines that the appeal is not properly before it, e.g., that it lacks jurisdiction, the Board shall fully set forth its reasons, including a statement of the appropriate appeal procedure. The Deputy Under Secretary for Health will take appropriate action on the decision of the Board as described in paragraph 9e of this chapter.

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8. *Formal Hearings.*

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(e) Technical advisors are not members of the Board and, therefore, do not possess any voting power.

9. *Disciplinary Appeals Board Decisions.*

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c. *Decision.* The Board has full authority to render a decision on an appeal. The Board shall reach a decision within 45 calendar days of completion of the hearing, if a hearing is convened. In any event, a decision will be made by the Board no later than 120 calendar days after the appeal is received by the Under Secretary for Health or designee.

- (1) If any charge is sustained in whole or in part, the Board shall approve the action as imposed; approve the action with modification, reduction, or exception; or reverse the action.
- (2) If none of the charges are sustained in whole or in part, the Board will reverse the action.

d. *Preparation of VA Form 10-2543.* Following deliberation and voting on the findings and any penalty, VA Form 10-2543 will be prepared by the Disciplinary Appeals Board considering the case. The Chairperson of the Board will forward the complete

record, including its findings and decision, signed and dated by all members of the Board and the technical advisor, through the Office of Human Resources Management (051) to the [Deputy] Under Secretary for Health for appropriate action. VA Form 10-2543 will contain supporting rationale for each of the findings.

e. *Action by the Under Secretary for Health.* The Under Secretary for Health has delegated the authority to execute decisions made by Disciplinary Appeals Boards to the Deputy Under Secretary for Health. The Deputy Under Secretary for Health shall execute the Board's decision in a timely manner, but in no case later than 90 calendar days after the Board's decision is received by the Deputy Under Secretary for Health. Pursuant to the Board's decision, the Deputy Under Secretary for Health may order reinstatement, award back pay in accordance with the Back Pay Act, and provide such other remedies as the Board found appropriate relating directly to the proposed action, including expungement of records relating to the action.

(1) However, if the Deputy Under Secretary for Health finds a decision of the Board to be clearly contrary to the evidence or unlawful, the Deputy Under Secretary for Health may:

- (a) Reverse the decision of the Board; or
- (b) Vacate the decision of the Board and remand the matter to the Board for further consideration.

(2) If the decision, while not clearly contrary to the evidence or unlawful, is found to be not justified by the gravity of the charges, the Deputy Under Secretary for Health may mitigate the adverse action imposed.

(3) The Deputy Under Secretary for Health's execution of a Board's decision, or the mitigated action, if appropriate, shall be the final administrative action in the case.

f. *Remands.* In circumstances where the Deputy Under Secretary for Health vacates the Board's decision and remands the matter for further consideration, the Board shall normally render its subsequent decision within 45 calendar days of the completion of the hearing, if a hearing was convened after the remand.

(1) In any event, the Board's decision will be made no later than 90 calendar days after the remand is received by the Board Chairperson.

(2) If the remand is related solely to jurisdictional issues, then the Deputy Under Secretary for Health may establish a shorter resolution period.

g. *Case Record.* (1) The case record will consist of the notice of proposed adverse action, appellant's reply, if any, all evidence (documents or testimony) relied upon by the Board in reaching its decision, notice of decision to appellant, appellant's request for a hearing, Deputy Under Secretary for Health's or designee's appointment of Board, Board communications and notices related to the hearing, any Board rulings or submissions of the parties, verbatim record of any formal hearing, Board Action (VA Form 10-2543), Deputy Under Secretary for Health's execution of the Board's recommendation, and any Notification of Personnel Action (SF-50B).

(2) Major adverse action files, which have been involved with an appeal to the Disciplinary Appeals Board will be maintained by the Office of Human Resources Management, Human Resources Management Programs and Policies Service (051). Records are maintained and disposed of in accordance with the records disposition authorities found in General Records Schedule 1 and VA Records Control Schedule 10-1, except where otherwise required to be retained for a longer period of time.

(3) One copy of notice of decision will be provided to the employee, the employee's

representative, and the official who decided the adverse action. Any SF-50B, Notification of Personnel Action, will be filed in the employee's personnel folder.

10. *Review of Records.* a. The Board Chairperson, upon request of an appellant (or the appellant's designated representative), may, in connection with the considerations of the Board, review confidential records or information covered by 38 U.S.C. 5701 and 7332 in accordance with 38 U.S.C. 7464(c)(1).

(1) The Board Chairperson may authorize the disclosure of such records or information to that employee (or representative) to the

extent the Board considers appropriate for purposes of the proceedings of the Board.

(2) Decisions on requests to disclose records or information will be in writing.

b. In any such case, the Chairperson may direct that measures be taken to protect the personal privacy of individuals whose records are involved. * * *

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