

**Title 38 Decision Paper  
Department of Veterans Affairs  
Wilmington VA Medical Center**

**FACTS**

On August 7, 2014, while reviewing surgery call coverage schedules, the Chief of Staff at the Wilmington VA Medical Center (Medical Center) recognized that the Medical Center's vascular surgery program was noncompliant with the Department's requirements. (Exhibit 1). VHA Directive 2010-018 requires a hospital with intermediate level surgical complexity to provide vascular surgery coverage on a 24 hour/7 day (24/7) basis within 15 minutes by phone and 60 minutes in person.<sup>1</sup> The review determined that the requisite coverage was not being provided. (Exhibit 2).

After learning of the lapse in call coverage, the Medical Center's leadership temporarily reduced the facility's surgical complexity level from intermediate to standard. (Exhibit 3). Following this decision, the Chief of Staff instructed the Chief of Surgery to take several actions: (1) provide 24/7 coverage for vascular cases scheduled for August 7-8, 2014; (2) cancel, as clinically appropriate, all surgical cases of intermediate complexity scheduled for August 8, 2014, and beyond; (3) review all intermediate cases currently scheduled at the Medical Center and triage, as clinically necessary and appropriate, to other VA facilities with vascular coverage or to non-VA care; and (4) arrange for transfer, as necessary, any patients still admitted to the Medical Center who had completed intermediate complexity surgical procedures and who would not otherwise be discharged by close of business on August 8, 2014.<sup>2</sup> (Exhibit 1). These changes inevitably impacted the schedules of Medical Center employees working in the affected areas.

On September 2, 2014, AFGE Local 0342 (Union) filed an Unfair Labor Practice charge (ULP1) with the Federal Labor Relations Authority (FLRA) on the Medical Center's reduction in surgical complexity.<sup>3</sup> (Exhibit 6). The Union claimed that the Medical Center did not provide the Union with notice of significant changes in working conditions of bargaining unit employees, bypassed the Union by meeting and speaking directly to bargaining unit employees, failed to provide the Union with notice of formal discussions, and failed to provide the Union "an opportunity to negotiate impact and appropriate arrangements for bargaining unit employees." (*Id.*).

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<sup>1</sup> VHA Directive 2010-18 is titled, "Facility Infrastructure Requirements to Perform Standard, Intermediate, or Complex Surgical Procedures." (Exhibit 2).

<sup>2</sup> In 2012, the Medical Center established an MOU with the Jefferson Medical Center to assist in providing vascular surgery coverage. The Jefferson Medical Center later rescinded the MOU, and subsequent attempts to negotiate vascular surgery coverage with other local entities were unsuccessful. (Exhibit 3).

<sup>3</sup> The FLRA designated the ULP as BN-CA-14-0548.



On September 19, 2014, the Union filed an information request for the "Required Business Plan Format for Proposed Restructuring of Clinical Programs or Services Requiring Under Secretary for Health Approval," including the "Stakeholder Involvement Report," and the "Interim Plan for Provision of Care." These documents are referenced in VHA Directive 2009-001 and are required when a facility plans a major restructuring of a clinical program. The Union stated its intent was "to use this information in representing the bargaining unit in negotiations with management and to provide evidence to the FLRA" for ULP1. (Exhibit 8).

On September 22, 2014, the Medical Center denied the Union's September 19, 2014 information request, based on the Medical Center's ongoing formal investigation into its surgical program. (Exhibit 10). Subsequently, the Union filed another ULP (ULP2).<sup>4</sup> (Exhibit 11).

On September 22, 2014, the Union filed a Step III grievance regarding a number of the Chief of Staff's actions and the downgrade in surgical complexity, claiming that the Medical Center was "permitting the undermining of a culture of safety." (Exhibit 9). The grievance stated that the Medical Center violated the parties' Master Agreement; VA Handbook 5021; JCAHO regulations; and the Medical Staff Bylaws. (*Id.*). As remedies, the Union requested that the Medical Center follow the Medical Staff Bylaws, cease and desist coercion, intimidation, and threats, provide information to the Local regarding the strategic plan for the facility, including plans concerning staffing and resource allocation, and allow local bargaining to the fullest extent of the law. (*Id.*).

The Medical Center responded to ULP1 on September 24, 2014, noting that it had kept the Union informed of all developments relating to its reduction in surgical complexity and subsequent restructuring via briefings and meetings with the Director and Chief of Staff. (Exhibit 12).

The Medical Center responded to ULP2 on October 3, 2014. (Exhibit 13). The Medical Center reiterated that it was involved in both an OIG investigation and a formal Administrative Investigation Board at the facility related to its decision to "stand down intermediate complexity surgeries." (*Id.*). The Medical Center explained that the requested information was part of the ongoing investigations, and once the investigations were complete, it would work with the Union to provide all allowable information. (*Id.*).

On November 3, 2014, the parties met to discuss the Union's September 22, 2014, Step III grievance. (Exhibit 14). On November 4, 2014, the Medical Center issued its grievance response, denying the grievance "because the Union failed to provide an oral

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<sup>4</sup> The FLRA designated the ULP as BN-CA-14-0574.

response addressing the allegations and failed to provide any evidence substantiating the allegations . . . .” (Exhibit 15).

In a matter unrelated to the facility’s surgical complexity level, a registered nurse (RN1) was detailed away from her patient care position after overscheduling dialysis patients and failing to properly treat a patient with jaundice. (Exhibit 26). The Medical Center detailed RN1 from patient care duties while it conducted an investigation into her actions. (Exhibit 5). On August 19, 2014, the Union submitted a memorandum to Medical Center management concerning the investigation of RN1. (Exhibit 4). The Union requested “a complete copy of all evidence used to support the conducting of an investigation of RN1, as per Article 22, Section 2, paragraph J.” (*Id.*). The Union also requested the reasons for RN1’s administrative reassignment and the “actions the Department intends to take to reduce the impact on the remaining Dialysis Unit employees.” (*Id.*). The Medical Center responded to this memorandum on August 22, 2014, noting that if any action was taken as a result of the investigation, RN1 would receive the findings in a timely manner. (Exhibit 5). The Union filed an information request regarding RN1’s detail on September 10, 2014. (Exhibit 7). In the information request, the Union expressed its intent to use the requested information to file a grievance on RN1’s detail.

On September 29, 2014, the Department’s Office of Labor-Management Relations received the Union’s request for a 38 U.S.C. § 7422 determination.<sup>5</sup> (Exhibit 16). The request references ULP1 and ULP2, the memorandum request and information request concerning RN1’s investigation and reassignment/detail, and the Union’s grievance filed on September 22, 2014, and asserts that they are not excluded by 38 U.S.C. § 7422. (*Id.*)

The Medical Center submitted its response to the Union’s request for determination on November 18, 2014, asserting that the issues raised in the Union’s request involve patient care and thus are excluded from the collective bargaining process by application of 38 U.S.C. § 7422.<sup>6</sup> (Exhibit 14).

## **AUTHORITY**

The Secretary has the final authority to determine whether a matter or question concerns or arises out of professional conduct or competence (i.e., direct patient care or clinical competence), peer review, or employee compensation within the meaning of 38 U.S.C. § 7422(b).

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<sup>5</sup> The request is dated September 22, 2014.

<sup>6</sup> The Medical Center requested and was granted an extension of the usual twenty-day response period.



## **ISSUES**

### **ISSUE 1**

Whether the Union's September 22, 2014, grievance concerning the Chief of Staff's actions and downgrade of the Medical Center's surgical complexity is a matter or question concerning or arising out of professional conduct or competence within the meaning of 38 U.S.C. § 7422(b).

### **ISSUE 2**

Whether the Union's ULP1, concerning claims that the Medical Center bypassed the Union, failed to notify the Union of formal discussions, did not provide the Union notice of significant changes in working conditions, and refused to bargain the impact and implementation of workplace changes, are matters or questions concerning or arising out of professional conduct or competence within the meaning of 38 U.S.C. § 7422(b).

### **ISSUE 3**

Whether the Union's August 19, 2014, request for information concerning the investigation and administrative reassignment/detail of RN1 is a matter or question concerning or arising out of professional conduct or competence within the meaning of 38 U.S.C. § 7422(b).

### **ISSUE 4**

Whether the Union's ULP2, concerning denial of a request for information on major restructuring of a VHA clinical program, is a matter or question concerning or arising out of professional conduct or competence within the meaning of 38 U.S.C. § 7422(b).

## **DISCUSSION**

The Department of Veterans Affairs Labor Relations Improvement Act of 1991, 38 U.S.C. § 7422, granted collective bargaining rights to Title 38 employees, but specifically excluded from the collective bargaining process matters or questions concerning or arising out of professional conduct or competence (direct patient care or clinical competence), peer review, or employee compensation, as determined by the Secretary.

## A. ISSUE 1

Whether the Union's September 22, 2014, grievance concerning the Chief of Staff's actions and downgrade of the Medical Center's surgical complexity is a matter or question concerning or arising out of professional conduct or competence within the meaning of 38 U.S.C. § 7422(b).

The grievance primarily focuses on the Chief of Staff's purported violations of the Medical Center's Medical Staff Bylaws (Bylaws). (Exhibit 17). However, the Union did not cite examples or provide documentation of any instance when the Chief of Staff engaged in professional misconduct or failed to facilitate effective communications between the Medical Staff and the Director. (Exhibit 9). As such, the Union has not supported its claim that the Chief of Staff violated the Bylaws.

In claim 4 of the grievance, the Union states that the Medical Center permitted "failure of the [Chief of Staff] to call an Emergency Meeting of the Medical Executive Board (MEB) to address issues surrounding Pathology and Surgical services." (*Id.*). It cites for support Article V, section 2(3)(b) and Article 6, section 2 of the Bylaws. (*Id.*). Article V, section 2(3)(b) states in part, "Emergency meetings of the MEB *may* be called by the Chief of Staff to address any issue which requires action of the Board prior to a regular meeting" (emphasis added). (Exhibit 17). Article 6, part 2 states that, "Special meetings of the Medical Staff *may* be called at any time by the Chief of Staff or at the request of the Director or the MEB" (emphasis added). (*Id.*). Both sections of the Bylaws are permissive, and allow for emergency or special meetings when deemed appropriate by the Chief of Staff. A decision not to convene an emergency or special meeting is wholly within the discretion of the Chief of Staff, and exercise of that discretion is not a violation of the Bylaws.

Claim 7 in the grievance states that the Medical Center permitted "failure to bring to the Medical Executive Board the findings of the VISN Chief Surgical Consultant's review of the surgical program prior to unilaterally implementing change." (Exhibit 9). This claim is unsupported. There is no evidence that the Chief Surgical Consultant's review should have been, but was not, brought to the attention of the Medical Executive Board.

Taken as a whole, the Union's grievance seemingly asserts that the Medical Center's actions to reduce the surgical complexity of the facility from intermediate to standard, and its impact on facility employees, are a violation of the Medical Staff Bylaws or other nonspecified "Federal regulations, laws, rules, VHA directives, Handbooks, policies, and Master Agreement articles." (*Id.*). The Secretary's Decision Document states that "the VA's failure to follow its own regulations and policies is not excluded by 7422." (Exhibit



18). However, the Union offers no evidence to support its claim that the Medical Center violated policy. (Exhibit 9). Rather, the grievance is essentially a statement of disagreement with the Medical Center's approach and actions upon recognizing its noncompliance with VHA Directive 2010-018.

As the grievance does not provide any evidence to support the claim that the Medical Center violated its own policy, it is excluded from the collective bargaining process by application of 38 U.S.C. § 7422. The grievance claims are focused on the actions taken by the Chief of Staff and the Medical Center after discovering patient care issues in the surgical department. The Medical Center's decision to quickly reduce its level of surgical complexity from intermediate to standard is a matter concerning or arising out of direct patient care. While the Union has expressed its disagreement with the decision and its impact on bargaining unit employees, the decision's impact on patient care was immediate, direct, and substantial. Approximately 14% of the Medical Center's surgeries were considered intermediate complexity. (Exhibit 1). Due to the discovered deficiencies, patients scheduled for these intermediate surgeries were immediately directed to other VA and non-VA facilities, and future intermediate-level surgeries were halted altogether. (*Id.*) Patients still at the Medical Center recovering from intermediate-level surgeries were transferred to other facilities.<sup>7</sup> (*Id.*) The Medical Center convened a Surgical Complexity Workgroup in October 2014 to identify and remedy surgery coverage gaps and provide timely and appropriate patient care at the Medical Center. (Exhibit 14, Exhibit 20). These circumstances demonstrate that the Medical Center's decision to reduce its level of surgical complexity had an impact on patient care. As a result, the Union's grievance is excluded from the parties' negotiated grievance procedure by application of 38 U.S.C. § 7422.

## B. ISSUE 2

Whether the Union's ULP1, concerning claims that the Medical Center bypassed the Union, failed to notify the Union of formal discussions, did not provide the Union notice of significant changes in working conditions, and refused to bargain the impact and implementation of workplace changes, are matters or questions concerning or arising out of professional conduct or competence within the meaning of 38 U.S.C. § 7422(b).

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<sup>7</sup> The Medical Center's stand down decision also implicated clinical competence of physicians at the facility. During the VISN 4 Chief Surgical Consultant's site visit, he learned that a doctor regularly assigned as the attending physician on the vascular on-call schedule did not have vascular privileges, that residents' names were listed on the call schedule as the "first call" for vascular surgery, and that the sole vascular surgeon employed by the Medical Center did not have phone contact information reported on the call schedule. (Exhibit 3).

## 1. Application of Bypass to Meetings Involving Title 38 Medical Professionals

ULP1 claims that the Agency bypassed the Union on August 8, 2014, when surgical physicians were informed, without notice to the Union, that intermediate level surgeries would not be permitted at the facility and patients were being redirected elsewhere for care. "Agencies unlawfully bypass an exclusive representative when they communicate directly with bargaining unit employees concerning grievances, disciplinary actions and other matters relating to the bargaining relationship." (Exhibit 21); Social Security Administration and AFGE, Local 1923, 55 FLRA 978 (1999).

Here, management did not unlawfully bypass the Union because the communication it had with employees regarding modifications to surgical procedures involved direct patient care and thus was excluded from collective bargaining by 38 U.S.C. § 7422. A prior 7422 decision found that since physician duties are assigned based on patient care needs, physician workload and scheduling are unquestionably patient care matters. VAMC Charleston (May 27, 2005). (Exhibit 35). Because these modifications and their results had a direct impact on hospital function and patient care, the Agency had no obligation to bargain this matter with the Union. As such, the Union also has no bypass claim when there is no bargaining claim available due to the 38 U.S.C. § 7422 exclusion.

## 2. Application of Formal Discussion Requirements to Meetings Involving Title 38 Medical Professionals

The Union further maintains that on August 27, 2014, senior management from the Medical Center had a formal meeting with operating room staff to discuss their new roles under the reduced level of surgical complexity. (Exhibit 6). The Union claims it was not informed about the meeting or invited to the meeting, but the Union President attended at the request of the nursing staff. Management states the Director and the Chief of Staff met with the staff on several separate occasions with the union present. (Exhibit 14).

Although the meetings described above might meet the definition of "formal discussions" under Chapter 71 of the Federal Service Labor-Management Relations Statute,<sup>8</sup> 38 U.S.C. § 7425(b) acts to exclude the meetings from the collective

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<sup>8</sup> 5 USC §§7101-7135. Under Chapter 71, in order to be considered "formal," a meeting between management and an employee must concern "any grievance or any personnel policy or practices or other general condition of employment." 5 USC § 7114(a)(2)(A).



bargaining process under 38 U.S.C. § 7422.<sup>9</sup> Since all discussions between management and employees regarding the Medical Center's change in surgical complexity specifically impact patient care, the grievance is excluded by application of 38 U.S.C. § 7422.

### 3. Medical Center Decisions Related to a Reduction in Surgical Complexity and Bed Use are Excluded from Collective Bargaining

In addition to its claims involving bypass and formal discussions, the Union contends that Medical Center management conducted a "planned facility restructuring" without allowing the Union to "negotiate impact and appropriate arrangements for bargaining unit personnel." (Exhibit 6). As noted above, the Medical Center's decision to reduce its surgical complexity level and the patient care decisions it made incident to the reduction are matters excluded from collective bargaining. In its ULP, the Union claimed that the number of beds in use at the Medical Center was lowered during this time frame, as follows: "16 medical/surgical from 20 beds, 6 Intensive Care Unit (ICU) from 8 beds, and 38 [Community Living Center] CLC from 43 beds." (Exhibit 6). According to ULP1, management met with CLC staff and explained that a trend in bed numbers was identified and "leadership thought they could shift resources to help better serve the CLC." (*Id.*). Management also fully explained the bed reduction to the Union. (*Id.*). Whether the parties previously discussed or negotiated some or all of the temporary bed reductions, bed capacity and bed reductions are matters directly related to patient care, and are, therefore, excluded from collective bargaining.<sup>10</sup>

### 4. Medical Center Decisions to Detail or Reassign Title 38 Professionals are Excluded by 38 U.S.C. § 7422

ULP1 references staffing changes by the Medical Center. (Exhibit 6). The ULP notes that both the Chiefs of Pathology and Surgery were taken out of their leadership roles. (*Id.*). It is important to note that the Chiefs of Pathology and Surgery occupy supervisory positions. The Union's bargaining authority is limited to representing bargaining unit employees. Supervisors are not in the bargaining unit.<sup>11</sup> However, even if the employees were in the bargaining unit, these matters would be excluded from the collective bargaining process by application of 38 U.S.C. § 7422. Both employees were detailed due to investigations into lab practices and surgery policies. These are patient care matters and are excluded from collective bargaining by 38 U.S.C. § 7422.

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<sup>9</sup> See VA Medical Center, Cleveland, OH, finding that when the compressed work schedule statute, 5 U.S.C. § 6131(c)(2)(A), conflicted with the 38 U.S.C. § 7422, "38 U.S.C. § 7425(b) operates to render the Title 5 provision inapplicable." (July 9, 2008).

<sup>10</sup> In addition, the Union submitted an information request regarding bed reductions on September 19, 2014. (Exhibit 24). The information request is briefly addressed in footnote 12, below.

<sup>11</sup> The Union asserted that the Chief of Pathology is a "Local 342 bargaining unit member." (Exhibit 16). While he may be in the bargaining unit now, he was in a supervisory position prior to his detail.



ULP1 also references RN1's detail from the dialysis unit to the Health Administration Service while she was under investigation for patient care issues. (*Id.*). RN1 was investigated and ultimately charged with (1) "Endangering the safety to patients on VA premises," and (2) "Negligent workmanship resulting in waste or delay." (Exhibit 26). RN1's detail was due to both direct patient care and her clinical competence in the dialysis unit. Therefore, 38 U.S.C. § 7422 excludes management's decision to detail RN1 from collective bargaining with the Union.

Finally, ULP1 names another registered nurse, RN2, who was detailed to the dialysis unit. The Medical Center explained that RN2 was voluntarily detailed to the dialysis unit based on patient care needs only after management canvassed qualified candidates, solicited volunteers, and notified the Union. The Union offered no evidence suggesting otherwise. (Exhibit 14). On October 23, 2014, RN2 was notified that his detail was extended "due to a critical need" in the dialysis clinic. (Exhibit 27). As the detail was related to a critical, identified, patient care clinical need, the detail is a matter concerning direct patient care and is excluded from collective bargaining.

### C. ISSUE 3

Whether the Union's August 19, 2014 request for information concerning the investigation and administrative reassignment/detail of RN1 is a matter or question concerning or arising out of professional conduct or competence within the meaning of 38 U.S.C. § 7422(b).

On August 19, 2014, the Union requested all evidence being used to support the investigation and reassignment of RN1. (Exhibit 4). On September 10, 2014, the Union submitted an information request to elicit information on the reassignment decision. (Exhibit 7). RN1 was administratively reassigned from patient care duties while under investigation for overscheduling dialysis patients and failing to follow correct clinical procedures for a patient. (Exhibit 26). In its September 10 request, the Union stated that it intended to file a grievance with the information it received. (Exhibit 7).

VA Handbook 5005, Part IV, Chapter 3, Section A, paragraph 4(b), provides that, in assigning, reassigning, and detailing Title 38 professionals, "primary consideration will be given to the efficient and effective accomplishment of the VA mission." (Exhibit 28). The Handbook recognizes management's obligation to arrange registered nurse assignments in a manner that ensures appropriate and professional treatment of patients. 38 U.S.C. § 7422 prohibits Title 38 professionals from grieving a directed reassignment taken for direct patient care and clinical competence reasons. (Exhibit 29).

FLRA has held that the Agency is not required to furnish information when a grievance is outside the scope of the negotiated grievance procedure. (Exhibit 30); Veterans Administration, Long Beach, California, 48 FLRA 970 (1993).

([M]atters pertaining to professional conduct or competence, peer review, or the establishment, determination, or adjustment of employee compensation are specifically excluded, by law, from coverage under negotiated grievance procedures. Consequently, to the extent the [Union] sought information in connection with a matter that could not be pursued under the negotiated grievance procedure, we find that the [facility] did not violate the Statute by refusing to provide such information.)

The Union is not entitled to obtain information under 5 U.S.C. § 7114(b) concerning the Medical Center's detail process because the investigation into RN1's actions and the decision to detail her are matters pertaining to RN1's professional conduct or competence and thus are excluded from the negotiated grievance procedure by application of 38 U.S.C. § 7422.

#### D. ISSUE 4

Whether the Union's ULP2, concerning denial of a request for information on major restructuring of a VHA clinical program, is a matter or question concerning or arising out of professional conduct or competence within the meaning of 38 U.S.C. § 7422(b).

On September 19, 2014, the Union requested copies of documents referenced in VHA Directive 2009-001.<sup>12</sup> (Exhibit 8). In its request, the Union explained that it intended to use the information to represent the bargaining unit in negotiations with the Medical Center and as evidence in support of its position in ULP1. The request specifically named the "Required Business Plan Format for Proposed Restructuring of Clinical Programs or Services Requiring Under Secretary for Health Approval," including the

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<sup>12</sup> On September 19, 2014, the Union requested information regarding reductions in bed numbers at the Medical Center. (Exhibit 25). In its request, the Union sought a copy of the "Bed Change Request Justification," which is referenced in Appendix A of VHA Handbook 1000.01. (*Id.*; Exhibit 33). Like the information request referenced in ULP2, this matter is similarly excluded from collective bargaining by application of 38 U.S.C. § 7422. In its request for a 7422 determination, the Union, for the first time, states that its ULP2 request for information and its bed reduction request for information were designed to "assess management compliance with VHA Directive 2009-001 and VHA Handbook 1000.01." (Exhibit 16). However, neither request for information suggested that the request was designed to determine or ensure Medical Center compliance with national policy. Both requests highlighted the need for the information as support for future negotiations and as evidence in support of ULP1.



“Stakeholder Involvement Report,” and the “Interim Plan for Provision of Care,” documents required under the Directive when pursuing a major restructuring of a clinical program. (Exhibit 31). VHA Directive 2009-001 addresses restructuring of VHA clinical programs, primarily the initiation of new clinical programs and services, or the expansion of existing programs. (*Id.*). It also applies to “[e]limination of a major clinical program,” and arguably applies to the Medical Center’s temporary reduction of surgical complexity from intermediate to standard. (*Id.*).

A 5 U.S.C. § 7114 information request is considered an integral component of the collective bargaining process. “Supplying information under 5 USC § 7114(b)(4) is an important part of what an agency must do in order to comply with its duty to bargain in good faith and bargaining in good faith is at the heart of collective bargaining under the Statute. Supplying requested information, when appropriate, is ‘part and parcel’ of, and ‘explicitly tied’ to, the collective bargaining process referenced in 38 USC §§ 7422(a) and (b).” (Exhibit 32); VAMC Washington DC (June 3, 2014).

The Medical Center’s reduction in surgical complexity decisions is a matter concerning direct patient care, and excluded from collective bargaining by 38 U.S.C. § 7422. Therefore, to the extent the Union sought information and demanded to be notified of the Medical Center’s decision to reduce the surgical complexity, the Medical Center was not obligated to provide the requested information as the Union’s information request and ULP2 are excluded by application of 38 U.S.C. § 7422.

## **RECOMMENDED DECISIONS**

### ISSUE 1

The Union’s September 22, 2014, grievance concerning the Chief of Staff’s actions and downgrade of the Medical Center’s surgical complexity is a matter or question concerning or arising out of professional conduct or competence within the meaning of 38 U.S.C. § 7422(b).

### ISSUE 2


The Union’s ULP1, concerning claims that the Medical Center bypassed the Union, failed to notify the Union of formal discussions, did not provide the Union notice of significant changes in working conditions, and refused to bargain the impact and implementation of workplace changes, involves matters or questions concerning or arising out of professional conduct or competence within the meaning of 38 U.S.C. § 7422 and is thus excluded from collective bargaining.


ISSUE 3

The Union's August 19, 2014, request for information concerning the investigation and administrative reassignment/detail of RN1 is a matter or question concerning or arising out of professional conduct or competence within the meaning of 38 U.S.C. § 7422(b) and is thus excluded from collective bargaining.

ISSUE 4

The Union's ULP2, concerning denial of a request for information on major restructuring of a VHA clinical program, is a matter or question concerning or arising out of professional conduct or competence within the meaning of 38 U.S.C. § 7422(b) and is thus excluded from collective bargaining.

  
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Robert A. McDonald  
Secretary of Veterans Affairs

  
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Date