

Title 38 Decision Paper
Department of Veterans Affairs (VA)
VA Long Beach Healthcare System, Long Beach, California

FACTS

In January 2014, the VA Long Beach Healthcare System (Medical Center) became aware of inconsistent nursing practices. These practices resulted in errors related to the second verification process for administration of high alert medications, such as insulin. Exhibit 1. As part of a performance improvement review, , Medical Center management determined that the process of performing a visual second verification of administration of high alert medications was not consistently documented by licensed nurses. Id. As a result, the Medical Center implemented a new process for its nurses that required a second nurse to verify the administration of high alert medication and to document the second verification using Bar Code Medication Administration (BCMA), an automated program already in use at the facility.¹ Id.

In August 2014, prior to implementation of the new process, all licensed nurses at the Medical Center were informed of the new requirement and received BCMA training for documenting second verifications. Id. The new requirement was implemented by the facility on September 2, 2014. Exhibit 2.

The Medical Center explained that the requirement for licensed nurses to document second verification in BCMA was necessary “to minimize any potential medication administration errors and to ensure consistent, safe and accurate patient care. The requirement to document the second verification of high-alert medication in BCMA is a de minimus change and a matter involving direct patient care.” Exhibit 1.

On September 15, 2014, the American Federation of Government Employees, Local 1203 (Union) filed an unfair labor practice charge (ULP) with the Federal Labor Relations Authority (FLRA). Exhibit 3. The ULP states that the Medical Center “initiated a new software program requiring all licensed LVNs and RNs to double document insulin administration with the access and verify code from another licensed staff. This adds a tremendous burden on the medication nurses, forcing them to search for another nurse during medication administration.” Id. According to the Union, “This change in working conditions was made without notification or negotiation with AFGE Local 1203.” Id.

The Medical Center responded to the ULP on November 21, 2014. Exhibit 4. It first argued that the change in medication administration verification was “de minimis”

¹ The new process and requirement impacted both licensed vocational nurses (LVNs) and registered nurses (RNs) at the facility. Exhibit 1.

because the only change was a new requirement to document second verification in BCMA.² *Id.* In addition, the Medical Center claimed that the “matter is outside the scope of collective bargaining under Title 38 U.S.C. 7422 because it involves matters related to direct patient care.” *Id.* The Medical Center requested that the FLRA stay its ULP decision pending a determination by the Secretary concerning the applicability of 38 U.S.C. § 7422 to the new medication administration verification requirement. *Id.*

The Medical Center submitted its request for a 38 U.S.C. § 7422 determination on December 19, 2014.³ Exhibit 1. The facility provide a copy of its request and supporting documentation to the Union on December 18, 2014, and notified the Union that it could submit a response to the Medical Center’s request. Exhibit 5.

The Union did not submit a response to the Medical Center’s request for a 38 U.S.C. § 7422 determination.

AUTHORITY

The Secretary of the Department of Veterans Affairs has final authority to decide whether a matter or question concerns or arises out of professional conduct or competence, peer review, or employee compensation within the meaning of 38 U.S.C. § 7422(b).

ISSUE

Whether a ULP charge claiming that the Medical Center was required to provide the Union notice and an opportunity to bargain the Medical Center’s decision to modify its second verification process for administration of high alert medications is a matter or question concerning or arising out of professional conduct or competence within the meaning of 38 U.S.C. § 7422(b).⁴

DISCUSSION

The Department of Veterans Affairs Labor Relations Improvement Act of 1991, codified in part at 38 U.S.C. § 7422, granted limited collective bargaining rights to Title 38 employees and specifically excluded from collective bargaining any matter or question

² Prior to the change, the Medical Center asserted that the licensed nurses at the facility performed second verification of high alert medication administration in accordance with the facility’s local policy. Exhibit 7. They were not, however, required to document second verification in a software program. Exhibit 1.

³ The request for determination is dated December 10, 2014. Exhibit 1.

⁴ “Professional conduct or competence” is further defined to include “direct patient care” and “clinical competence.” 38 U.S.C. § 7422(c).

concerning or arising out of professional conduct or competence, peer review, or employee compensation, as determined by the Secretary.

Here, the Medical Center, during the course of a performance improvement review, determined that its verification process for delivery of high alert drugs to patients was not consistently and appropriately documented. Exhibit 1. As a result, the Medical Center introduced a second verification process, which includes documenting a second nurse verification in the facility's BCMA. Id. All licensed nurses at the facility were trained in the new process and the second verification requirement was implemented in September 2014. Id.

AFGE Local 1203 filed a ULP, claiming that the Medical Center was required to bargain with the Union prior to implementing the new second verification process.⁵ Exhibit 3. However, 38 U.S.C. § 7422 excludes from collective bargaining any matter or question concerning or arising out of direct patient care or clinical competence. The Medical Center explained that the new verification requirement was necessary to minimize errors in administration of high alert medications, like insulin, and "to ensure consistent, safe, and accurate patient care." Exhibit 1.

Clearly, careful monitoring and recording of dosages of high alert medications is an important component of direct patient care at the Medical Center. As a result, collective bargaining concerning the Medical Center's decision to implement a new second verification process is excluded by 38 U.S.C. § 7422.

CONCLUSION

We conclude that a Medical Center requirement designed to ensure proper administration of insulin and other high alert medications by registered nurses is a matter or question concerning or arising out of professional conduct or competence, and is not subject to collective bargaining.

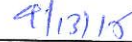
DECISION

⁵ The ULP mentions, and the new second verification requirement affects, both RNs and LVNs at the Medical Center. AFGE Local 1203, however, represents only professional employees, including RNs; a separate organization, AFGE Local 1061, represents LVNs at the facility. Exhibit 6. The collective bargaining rights of LVNs are not impacted by the section 7422 exclusions, and this decision has no application to the Medical Center's LVN training or second verification requirements. See 38 U.S.C. § 7422(b) (limiting application of the collective bargaining exclusion to the eight professional occupations enumerated in 38 U.S.C. § 7421(b)).

A ULP charge claiming that the Medical Center was required to provide the Union notice and an opportunity to bargain the Medical Center's decision to modify its second verification process for administration of high alert medications is a matter or question concerning or arising out of professional conduct or competence within the meaning of 38 U.S.C. § 7422(b)



Robert A. McDonald
Secretary of Veterans Affairs



Date