



DEPARTMENT OF VETERANS AFFAIRS  
Under Secretary for Health  
Washington DC 20420

October 31, 2017

Colleen Evans, RN  
Executive Vice President  
AFGE, Local 2028  
VA Pittsburgh Healthcare System  
University Drive  
Pittsburgh, PA 15240

Dear Ms. Evans:

I am responding to your January 13, 2015, request for a 38 United States Code (U.S.C.) § 7422 decision, regarding the VA Pittsburgh Healthcare System's decision to reprimand a nurse for failing to complete a behavioral health nursing admission assessment for a patient.

I have determined, on the basis of the enclosed Decision Paper that this matter raises issues of professional conduct and competence (i.e. direct patient care or clinical competence) and is thus exempted from collective bargaining under 38 U.S.C. § 7422(b). Please review the enclosed Decision Paper for a more complete explanation of my decision.

Sincerely,

A handwritten signature in black ink, reading "Carolyn M. Clancy, M.D.", is positioned above the typed name. The signature is cursive and includes a small "M.D." at the end.

Carolyn M. Clancy, M.D.  
Executive in Charge

Enclosures



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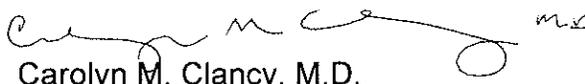
Ms. Karin McGraw  
Director  
VA Pittsburgh Healthcare System  
University Drive  
Pittsburgh, PA 15240

Dear Ms. McGraw:

I am responding to the AFGE Local 2028 Executive Vice President's January 13, 2015, request for a 38 United States Code (U.S.C.) § 7422 decision, regarding the VA Pittsburgh Healthcare System's decision to reprimand a nurse for failing to complete a behavioral health nursing admission assessment for a patient.

I have determined, on the basis of the enclosed Decision Paper that this matter raises issues of professional conduct and competence (i.e. direct patient care or clinical competence) and is thus exempted from collective bargaining under 38 U.S.C. § 7422(b). Please review the enclosed Decision Paper for a more complete explanation of my decision.

Sincerely,

  
Carolyn M. Clancy, M.D.  
Executive in Charge

Enclosures

**Title 38 Decision Paper  
Department of Veterans Affairs  
VA Pittsburgh Healthcare System**

**FACTS**

On August 22, 2014, management at the VA Pittsburgh Healthcare System (Medical Center) issued a proposed removal to one of its registered nurses (nurse). Exhibit 1. The proposal included a single charge, "Neglect of Duties," supported by five separate specifications. Id. On October 10, 2014, the deciding official, the Acting Medical Center Director (Director), presided over the nurse's oral reply to the proposal. Id.

The Director considered the nurse's oral and written responses and the evidence and mitigated the proposed removal to a reprimand. The Medical Center issued the nurse the reprimand on October 31, 2014. Exhibit 3. It stated that the nurse, while assigned to the facility's inpatient psychiatric unit, "failed to complete a behavioral health nursing admission assessment." Id. The reprimand explained that the nurse's actions were "in direct violation of memorandum PE-004, which states in pertinent part, 'the behavioral health tab in the nursing admission assessment will be completed by the RN on the inpatient psychiatric units on each admission/transfer. The tab addresses the needs of this special population.'" Id. The reprimand provided that the nurse could "appeal the action under the negotiated grievance procedure," and had the right to union representation. Id.

In a letter dated November 17, 2014, the Director rescinded the October 31, 2014, reprimand. Exhibit 4. On November 25, 2014, the nurse was issued a modified reprimand. The revised reprimand set out the single, sustained specification and grouped the remaining specifications from the proposal notice under the heading "SPECIFICATIONS – NOT SUSTAINED." Exhibit 5. As in the initial reprimand, the nurse was notified that he could appeal "under the negotiated grievance procedure" and was entitled to union representation. Exhibit 3; Exhibit 5.

On December 16, 2014, the American Federation of Government Employees, Local 2028 (Union) filed a Step III grievance to challenge the reprimand. Exhibit 6. In the grievance, the Union acknowledged that the nurse did not complete the "behavioral nursing admission template," but stated that the nurse assessed the patient and did "ask and chart his findings reflective of template questions." Id.

On December 23, 2014, the Director issued an Addendum to the reprimand. Exhibit 7. The Addendum included a statement that paragraph 5 of the revised reprimand was replaced by the following:

5. The sustained reason involves a question of professional conduct or competence. Therefore, if you believe this reprimand is unjustified, you may appeal the action under the VA grievance procedures outlined in VA Handbook 5021, Part IV, Chapter 3 and VA Directive 5021, Appendix A, Section B. Your grievance must be submitted to me within 15 calendar days after you receive this reprimand. Id.

The Medical Center emailed the following explanation to the Union: "The attached addendum serves as your response to the Step 3 grievance filed on December 16, 2014 .... If [the nurse] would like to file a grievance through the VA grievance procedure, he can do so within 15 days of receiving this notice. The Agency grievance would be heard by a VISN 4 disciplinary appeals board certified grievance examiner." Exhibit 8.

The Union responded on January 2, 2015, stating that it was incorrect to limit the employee's redress to the VA grievance procedure. Exhibit 9. The Union also noted, "We do not agree that the employee, who did assess the transferred patient and documented the patients status, during what was an active psychiatric unit with high patient acuity and condition C's being called, rises to the level of PCC because of an oversight in completing the template." Exhibit 11.

On January 13, 2015, the Union submitted a request for a 38 U.S.C. § 7422 determination. Exhibit 12. The Union requested that the reprimand not be excluded from collective bargaining and the parties' negotiated grievance procedure. Id. The Medical Center submitted its response to the Union's request for 7422 determination on January 28, 2015. Exhibit 2.

### **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).

### **ISSUE**

Whether the Union's December 16, 2014, grievance concerning the reprimand of a registered nurse for failing to complete a behavioral health nursing admission assessment 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 limited collective bargaining rights to Title 38 employees and specifically excluded from the collective bargaining process, and the parties' negotiated grievance procedure, matters or questions concerning or arising out of professional conduct or competence, peer review, or employee compensation, as determined by the Secretary or his designee.

Depending upon the nature of the matter that results in a reprimand or other disciplinary action , a nurse may challenge a disciplinary action through either the negotiated grievance procedure or the Department's administrative grievance procedure. For disciplinary actions that do not involve a question of professional conduct or competence, a nurse may pursue a grievance through either option.<sup>1</sup> Exhibit 13. When a disciplinary action involves professional conduct or competence; however, a nurse may only pursue a grievance through the Department's administrative grievance procedure. *Id.*

A decision letter must include a "statement of whether any of the charges sustained arose out of a question of professional conduct or competence" and a "statement concerning the employee's rights to file a grievance and the time limit within which it must be filed." Exhibit 15. In this matter, the initial reprimand mistakenly notified the nurse that he could challenge it through the negotiated grievance procedure. Exhibit 3. This provision was unchanged in the re-issued reprimand. Exhibit 5.<sup>3</sup> The Union filed a grievance on December 16, 2014. Exhibit 6. One week later, the Medical Center replaced the notice provision in the reprimand with an Addendum characterizing the underlying action as a "question of professional conduct or competence," and limiting the nurse's appeal option to an administrative grievance with the Department. Exhibit 7.

The nurse's failure to complete a behavioral health nursing admission assessment is a matter or question concerning or arising out of direct patient care or clinical

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<sup>1</sup> See also VA Handbook 5021, Part II, Chapter 1, 1J8(f)(2): "If the employee is covered by a collective bargaining agreement under 5 U.S.C., chapter 71 , and the negotiated grievance procedure includes disputes over these actions within its scope, the employee may elect to appeal the action through the negotiated grievance procedure or the grievance procedure in part IV, chapter 3 of this handbook, but not both." Exhibit 14.

<sup>2</sup> See also VA Handbook 5021, Part II, Chapter 1, 1J8(f)(1) : "If the disciplinary action involves or includes a question of professional conduct or competence, the employee may appeal it under the grievance procedures contained in part IV, chapter 3 of this handbook." Exhibit 14.

<sup>3</sup> In its request for determination, the Union suggested that the Medical Center bypassed the Union by discussing or negotiating directly with the nurse concerning the rescission of the original reprimand and its replacement with the revised reprimand. The Union, however, offered no support for its proposition. Consequently, the bypass claim will not be further addressed in this decision. Exhibit 12.

competence. The nurse violated the Medical Center's policy, "PE-004 Assessments of Patients." PE-004 requires the following: "The Behavioral Health tab in the nursing admission assessment will be completed by the RN on the inpatient psychiatric units on each admission /transfer. This tab addresses the needs of this special population." Exhibit 16. The Medical Center determined that the nurse did not address several critical assessment areas when he first admitted a transferred psychiatric patient to the unit, including "Suicide Screening for Behavioral Health, Behavioral Health Section, Psychiatric Advance Directives, Contraband and Valuables, and Restraint/Seclusion." The facility emphasized that these areas "are essential when admitting a patient to a behavioral health unit due to the special needs of these patients." Exhibit 2. The nurse acknowledged in his written reply that he did not follow the policy: "I did not complete the nursing addendum template. I either forgot to do that part or may have accidentally written in another patient's record." Exhibit 2.

A Nurse Manager at the Medical Center explained that a registered nurse "uses a systematic, dynamic way to gather and analyze information about a patient," which is "the first step in delivering nursing care." Exhibit 17. An initial assessment includes "not only physiological data, but also psychological, sociocultural, spiritual, economic, and lifestyle factors as well. Therefore, assessing patients is a critical component to nursing care." *Id.* At the Medical Center, psychiatric assessments are accomplished electronically by completing the Behavioral Health tab on the assessment screen and entering the information into the facility's Computerized Patient Records System (CPRS). Exhibit 2.

According to the Nurse Manager, when an assessment is not properly completed and entered, the health and safety of both patients and staff can be at risk and early stage problems may be overlooked or exacerbated. Exhibit 17. "In addition, baseline information will not be available regarding the patient, if a change of condition occurs. Therefore, admission assessments directly impact[] the care of the patients, and [are] a priority for all nurses." *Id.* A full and complete patient assessment upon admission is a critical aspect of patient care. It serves as an initial comprehensive understanding and explanation of a patient's immediate situation and medical requirements. In addition, the assessment serves as a baseline to measure a patient's progress and a guide to establishing a patient's future care needs.

In VAMC Huntington (January 29, 2014), the Secretary determined that "completing the initial [nursing] notes in CPRS and updating those notes as the patient progresses

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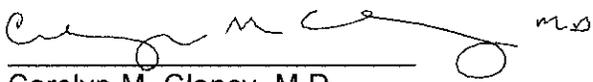
<sup>4</sup> The Medical Center determined that the nurse did not complete the initial assessment, and, "[a]s a result, no physical and emotional baseline for treatment was submitted to the patient's electronic [] file." Exhibit 2.

through treatment is unquestionably an important component of the patient's care." Exhibit 18. In VAMC Southern Arizona (June 20, 2013), the Secretary concluded that the facility's hand-off communication procedure when transferring care of a patient between providers was a matter concerning professional conduct or competence. Exhibit 19.

**DECISION**

The Medical Center's policy requiring registered nurses to conduct initial assessments of transferred psychiatric patients and communicate the assessment results in the Medical Center's electronic patient records is an essential component of patient care. The failure of a registered nurse to conduct an assessment consistent with the policy is a matter concerning both direct patient care and clinical competence. As a result, the negotiated grievance procedure provided under the parties' Master Agreement does not cover the Medical Center's decision to reprimand the registered nurse for failing to comply with its behavioral health admission assessment policy.

The Union's December 16, 2014, grievance concerning the reprimand of a registered nurse for failing to complete a behavioral health nursing admission assessment is a matter or question concerning or arising out of professional conduct or competence within the meaning of 38 U.S.C. § 7422(b).

  
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Carolyn M. Clancy, M.D.  
Executive in Charge  
Office of the Under Secretary for Health

10/31/17  
Date