

**Title 38 Decision Paper**  
**Department of Veterans Affairs (VA)**

**FACTS**

The Department of Veterans Affairs (VA) is comprised of three administrations: Veterans Health Administration (VHA); Veterans Benefits Administration (VBA); and the National Cemetery Administration (NCA). (Attachment A). VA is the second largest Federal Department and has a workforce of approximately 351,540 full-time employees. *Id.* At present, the VA employs approximately 108,606 Title 38 personnel appointed under 38 U.S.C. § 7401(1)<sup>1i</sup>. (Attachment B). VHA is America's largest integrated health care system, providing care at 1,255 health care facilities, including 170 medical centers and 1,074 outpatient sites of care of varying complexity (VHA outpatient clinics), serving 9 million enrolled Veterans each year. (Attachment C).

On March 15, 2011, a Master Collective Bargaining Agreement (2011 VA-AFGE Master Agreement) by and between the American Federation of Government Employees/National Veterans Council (Union or AFGE), and the VA was approved, signed, and effectuated. (Attachment D). The 2011 VA-AFGE Master Agreement includes Article 55, *VHA Physician and Dentist Pay*. (Attachment E).

On December 15, 2017, the VA provided notification to the Union to "reopen and renegotiate the 2011 VA-AFGE Master Agreement." (Attachment F).

On May 2, 2019, the VA and AFGE Master Agreement bargaining teams exchanged initial contract proposals in order to negotiate a successor VA-AFGE Master Agreement (Successor VA-AFGE Maser Agreement). (Attachment G). In the exchanged proposals for Successor VA-AFGE Master Agreement, the Union included a proposal covering Article 55, *VHA Physician and Dentist Pay*. *Id.*

On September 10, 2019, Richard A. Stone, the Executive in Charge of VHA, submitted a Request for a 38 U.S.C. § 7422(b) determination by the VA Secretary on Article 55 in the 2011 VA-AFGE Master Agreement and the Successor VA-AFGE Master Agreement negotiations. (Attachment H).

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<sup>1</sup> The employees described in 38 U.S.C. § 7421(b), Physicians, Dentists, Podiatrists, Optometrists, Registered Nurses, Physician Assistants, Expanded-duty dental auxiliaries, and Chiropractors, are appointed under 38 U.S.C. § 7401(1).

## **AUTHORITY**

The VA Secretary<sup>2</sup> has the final authority to decide 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**

- (1) Whether Article 55, *VHA Physician and Dentist Pay*, of the 2011 VA-AFGE Master Agreement is a matter or question concerning or arising out of the establishment, determination, or adjustment of employee compensation within the meaning of 38 U.S.C. § 7422(b) and is thus excluded from collective bargaining and review by any other agency pursuant to 38 U.S.C. § 7422(d).
- (2) Whether the Union's contract proposal for Article 55, *VHA Physician and Dentist Pay*, which the Union submitted to the Agency during the collective bargaining negotiations over a Successor VA-AFGE Master Agreement covers a matter or question concerning or arising out of the establishment, determination, or adjustment of employee compensation within the meaning of 38 U.S.C. § 7422(b), and thus, is excluded from collective bargaining and review by any other agency pursuant to 38 U.S.C. § 7422(d).

## **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 under 38 U.S.C. § 7422(a) and specifically excluded from the collective bargaining process matters or questions concerning or arising out of professional conduct or competence (i.e., direct patient care or clinical competence), peer review, or any matter or question concerning or arising from employee compensation, as determined by the Secretary. 38 U.S.C. § 7422(b). "Professional conduct or competence" is defined to mean "direct patient care" and "clinical competence." 38 U.S.C. § 7422(c).

Article 55, *VHA Physician and Dentist Pay*, of the 2011 VA-AFGE Master Agreement opens with the following in Section 1:

"A. Compensation is excluded from negotiation under 38 USC 7422. Physician

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<sup>2</sup> The term Secretary used herein also encompasses any delegee acting on the Secretary's behalf.

and dentist pay in the VHA is governed by Title 38 of the United States Code and VA Handbook 5007, Part IX. Physician and dentist pay in the VHA is governed by Title 38 of the United States Code and VA Handbook 5007, Part IX." (Attachment E).

Section 1 goes on to include the following in part B: "The following language in Sections 2 through 3 is purely for informational purposes and is not itself subject to collective bargaining or grievable under the negotiated grievance procedure. The Secretary's pay policies will control this matter." (Id.)

Despite clearly establishing that the subject matter of Title 38 compensation is excluded from collective bargaining under 38 U.S.C. § 7422, Article 55 in the 2011 VA-AFGE Master Agreement goes on at length regarding the subject of physician and dentist pay. (Attachment E). Article 55 in the 2011 VA-AFGE Master Agreement includes five sections spanning seven pages and includes one full page of definitions and four full pages explaining Title 38 pay components. (Id.) As noted in Section 1, part B, of Article 55 of the 2011 VA-AFGE Master Agreement, the information mirrors the information covered in Part IX of VA Handbook 5007, titled "Pay for VHA Physicians and Dentists." (Id.; see also, Attachment I).

On May 2, 2019, the bargaining teams from VA and the Union negotiating the VA-AFGE Master Agreement exchanged initial contract proposals. (Attachment G). The Union's proposal covering Article 55, *VHA Physician and Dentist Pay*, for the Successor VA-AFGE Master Agreement states as follows:

Section 1 - General

- A. Compensation is excluded from negotiation under 38 USC 7422. Physician and dentist pay in the VHA is governed by Title 38 of the United States Code and VA Handbook 5007, Part IX. The Handbook is available by accessing the following link on the VA intranet and clicking on Directives and Handbooks: <http://vaww1.va.gov/ohrm/HRLibrary/HRLibrary.htm>
- B. The following language in Sections 2 through 3 is purely for informational purposes and is not itself subject to collective bargaining or grievable under the negotiated grievance procedure. The Secretary's pay policies will control this matter.

Section 2 - Definitions

For informational purposes the Department provides the following references for definitions related to physician pay. It should be noted that the entirety of the definitions are found in VA Handbook 5007 Part IX:

**A. Aggregate Pay:**

The sum of all payments made to a physician or dentist in a calendar year exclusive of lump sum annual leave, reimbursement of travel, backpay, and severance. Physicians and dentists appointed under 38 USC 7305, 7306, 7401(1), and 7405(a)(1)(A) may not be paid aggregate compensation in a calendar year higher than the annual pay (excluding expenses) received by the President of the United States.

**B. Annual Pay:**

The sum of base pay rate and market pay. Annual pay is basic pay only for purposes of computing:

1. Civil service retirement benefits;
2. Lump sum annual leave payments;
3. Life insurance;
4. Thrift savings plan;
5. Work injury compensation claims;
6. Severance pay;
7. Recruitment;
8. Relocation;
9. Retention incentives;
10. Continuation of pay; and,
11. Advances in pay.

**C. Base and Longevity Pay:**

A table consisting of 15 rates designated as steps 1 through 15. Physicians and dentists advance on the table at the rate of one step for every two years of VHA service.

**D. Basic Pay:**

The rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusions of additional pay of any kind (e.g., market pay, performance pay, recruitment incentive etc.) as prescribed under 38 USC 7431. In no instance is performance pay considered part of any individual's rate of basic pay. However, annual pay is basic pay only for purposes of computing:

1. Civil service retirement benefits;
  2. Lump sum annual leave payments;
  3. Life insurance;
  4. Thrift savings plan;
  5. Work injury compensation claims;
  6. Severance pay;
  7. Recruitment;
  8. Relocation;
  9. Retention incentives;
  10. Continuation of pay; and,
  11. Advances in pay.
- E. Longevity Step Increase:  
Advancement to the next higher step of the grade based upon completing the required waiting period of two years (104 weeks) of creditable service,
- F. Market Pay:  
A component of basic pay intended to reflect the recommitment and retention needs for the specialty, or assignment of a particular VHA physician or dentist.
- G. Performance Pay:  
A component of compensation paid to recognize the achievement of specific goals and performance objectives prescribed on a fiscal year basis by an appropriate management official. Performance pay is paid as a lump sum.
- H. Tier:  
A level within the annual pay range for an assignment or specialty.

### Section 3 - Pay Components

- A. Base Pay:  
The Longevity pay schedule contains 15 rates of base pay, designated as steps 1 through 15. The rates of pay that correspond to each step are published annually on the ~~Labor Management Relations~~ Office of Human Resources Management web site. The location is <http://www1.va.gov/lmr/>. The base pay rate payable to a physician or dentist is determined by the

number of total years of service the physician or dentist has worked in VHA as reflected by his/her VA service date. At the same time as rates of basic pay are increased for a year under 5 USC 5303, the Secretary shall increase the amount of base pay payable under this subsection for that year by a percentage equal to the percentage by which rates of basic pay are increased under such section for that year. Longevity step increases (LSI) will be granted to physicians and dentists that are receiving less than the maximum step (Step 15). If such an increase would cause the employee's annual pay (sum of base and market pay) to exceed the amount of annual pay (excluding expenses) received by the President of the United States as specified in 3 USC 102, the employee will only receive the portion of the increase that does not exceed the annual limitation.

**B. Effective Date:**

Longevity step increases are effective on the first day of the first pay period following completion of the required waiting period. When a step increase is delayed beyond its proper effective date solely through an administrative error or oversight, the step increase shall be made retroactively effective as of the date it was properly due.

**C. Market Pay:**

Each VHA physician and dentist is eligible for market pay. Market pay is intended to reflect the recruitment and retention needs for the specialty or assignment of a particular physician or dentist at a Department facility.

**D.** At least once every two years, the Secretary prescribes nationwide minimum and maximum amounts of annual pay (base pay and market pay). These amounts are published in the Federal Register for not less than 60 days prior to the effective date. In determining pay ranges at least two or more national surveys of pay for physicians and dentists are consulted. National surveys consulted include data that describes overall physician and dentist income by specialization or assignment and benefits in broad geographic scope. Annual pay ranges approved by the Secretary are available on the Office of Human Resources Management (OHRM) web site, <http://vaww1.va.gov/ohrm/>

**E.** For informational purposes, when the Department increases the nationwide minimum and/or maximum amounts of annual pay under this paragraph, physicians and dentists are not automatically entitled to a corresponding increase in their individual annual pay rates. Only physicians and dentists whose existing rate of annual pay falls below the newly prescribed nationwide minimum for their designated pay range will automatically receive an increase in market pay to make their annual pay rate equivalent to the new nationwide minimum.

- F. There may be up to four tiers of annual pay for each specialty or assignment for which a separate range of pay has been approved. Each tier reflects different professional responsibilities, professional achievements, or administrative duties. The two tier definitions, that are typically designed for bargaining unit positions for the annual pay ranges established for individual clinical specialty schedules are as follows:
1. Tier 1 Staff
  2. Tier 2 Service chiefs, section chiefs and other supervisors or program managers.
- G. ~~Compensation Panels~~ The appropriate management official recommends the appropriate pay table, tier level and market pay amount for individual physicians and dentists. The ~~Compensation Panel(s)~~ appropriate management official is ~~are~~ also responsible for evaluating the ~~market pay~~ annual pay (base pay and market pay) and tier of each physician and dentist under ~~its~~ their jurisdiction at least once every 24 months and at such other times deemed necessary by the appropriate Department official. A change in duty basis (i.e., to/from full-time, part-time, or intermittent), change in tier, or a significant change in duties or assignments as determined by an appropriate management official, such as call duty rotations, or assignment to/from a Community Based Outpatient Clinic will also require a re-evaluation of the market pay and tier by ~~the Compensation Panel~~ an appropriate management official. Additionally, if it is anticipated that a change in assignment may result in a market pay or tier change, ~~the Compensation Panel must be consulted.~~
- H. ~~The Compensation Panel~~ Annual pay recommendations are taken into consideration by the appropriate approving official. The approving official determines the amount of market pay to be paid a physician or dentist after consideration of the recommendation of the appropriate management official ~~range and tier recommended by the Panel~~. The approving official's decision is final. The Medical Center Director is the approving official for annual pay up to \$300,000. The Network Director is the approving official for annual pay greater than \$300,000, not to exceed \$350,000. The Under Secretary for Health is also the approving official for annual pay in excess of \$350,000.
- I. ~~The Compensation Panel~~ appropriate management official will recommend the following to the approving official in regard to the pay for individual physicians or dentists:
1. The appropriate specialty or assignment pay schedule;
  2. The appropriate tier for the physician or dentist using the tier definitions;
  3. A rate or an appropriate range of market pay for a physician or dentist,

considering the nationwide minimum and maximum amounts of annual pay prescribed by the Secretary for the specialty or assignment.

~~J. Compensation Panels:~~

- ~~1. Composition of Panels—Each panel is comprised of at least three physicians one of whom is designated as chairperson. Compensation Dentists Panels are comprised of two dentists. Panel members must be in a tier equal to or higher than the tier for which the physician or dentist is being considered.~~
  - ~~a. Pursuant to 38 USC 7431(e)(4)(B)(iii):  
“The Secretary should, to the extent practicable, ensure that a panel or board consulted under this subparagraph includes physicians or dentists (as applicable) who are practicing clinicians and who do not hold management positions in the medical facility of the Department at which the physician or dentist subject to the consultation is employed.”~~
  - ~~b. When the Network Director or Facility Director solicits physicians to serve on the Compensation Panel, the Director should also include written notice for recommendations from the local union or VISN labor-management forums.~~
  - ~~c. J. Upon request, Within 30 days of the execution of this Agreement, and upon any changes thereafter, the Department will provide the local union will receive with written notification and information on the identity of the appropriate management official for each specialty at the facility, who currently serves on the local and network physician Compensation Panels and the expected term.~~
  - ~~d. If the Facility or Network Director denies a physician eligibility to be a member based on the physician being a union representative, he/she should do so in writing. The notice shall include the rationale.~~
2. At least once every 24 months, the market pay of each physician and dentist is reviewed by the appropriate approving official Compensation Panel in accordance with the criteria noted in VHA Handbook 5007 and Title 38 such as:
  - a. Experience in assignment or specialty;
  - b. The need for the specialty;
  - c. Health care labor market for the specialty;
  - d. Board certifications;
  - e. Accomplishments; etc.

f. Prior experience as a VHA employee; etc.

3. Each physician and dentist will be provided a written notice of the results of the review, even if the review does not result in a pay adjustment. The Notification of Personnel Action, SF-50 (or successor form) and VA ~~Compensation Panel~~ Market Pay Review and Approval form VA 10-0432A (or successor form) will serve as the written notice. If an adjustment is made as a result of the biennial review, the effective date of such change will be retroactive to the first pay period following the biennial review due date.

K. Reconsideration:

1. If a physician or dentist believes that his/her tier determination is improper based on the nature of his/her assignment, the employee may submit a request for reconsideration to the official that approved the tier recommendation. The market pay amount authorized by the approving official is a final decision. However, employees may request reconsideration of a tier determination.
2. The request for reconsideration must be submitted in writing within 30 days of the end of the pay period in which the notice was received. The request must cite why the employee believes that his/her tier determination is inappropriate. ~~If the request is referred to a Compensation Panel, the approving official will consider and record his/her decision and copy the employee. If the approving official determines that review by the Compensation Panel is not necessary, the employee will be notified of the decision in writing.~~ If the facility director was the approving official on the original action, the facility director will consult with the VISN Chief Medical Officer regarding the reconsideration request. The facility director will consider the recommendation of the Chief Medical Officer and make a final decision regarding the tier reconsideration request. The facility director will provide a decision to the employee in writing. The facility director's final decision will be filed with the VA Form 10-0432A (or successor form). If the original action was taken at the Network level or above, the approving official's decision is final.

L. Changes in Assignment:

1. Same facility or to a different facility:
  - a. If an assignment is involuntary, the Department may offer retention of market pay if a reduction would be against equity and good conscience or against the public interest.
2. Temporary Assignments and Details:

- a. Pursuant to VHA Handbook 5007, individuals temporarily assigned to a position with a different pay range or tier may receive a market pay adjustment after serving in the assignment for ~~90~~ 60 days or more. Temporary assignments and details that result in a change in market pay must be documented and may not result in a reduction of an individual's existing market pay rate. Upon termination of a temporary assignment or detail, an individual's market pay is returned to the amount payable prior to the temporary assignment or detail.

**M. Change in Duty Status:**

When a physician converts from part-time to full-time, or from full-time to part-time he/she will retain his/her step on the base and longevity pay scale. However, the market pay and tier are re-evaluated by the ~~Compensation Panel~~ appropriate management official. The employee who contemplates such voluntary decision shall have the right to have a written advisory opinion from the ~~Compensation Panel~~ appropriate management official of the possibility of such market reduction, prior to making this personnel decision.

**N. Notice Requirements:**

Physicians and dentists must be notified in writing when an involuntary assignment in connection with a disciplinary action will result in a reduction in market pay. The notice must be provided at least 30 days in advance of the effective date of the reduction, and include the amount of the reduction, and any appropriate appeal rights with regard to the new assignment. The local union will be notified of any involuntary assignments as related to reduction of market pay and local union representation.

**O. Performance Pay:**

Physicians and dentists must be advised of the specific goals and objectives that will be measured in determining their eligibility for performance pay and the maximum monetary value associated with those goals and objectives. These goals and objectives and the maximum amount of performance pay available in connection with achieving the specified goals and objectives should be communicated by an appropriate Department official to the individual physician or dentist within 90 days of the beginning of the fiscal year. For the fiscal year that starts on October 1<sup>st</sup>, this date is January 1<sup>st</sup> ~~July 3<sup>rd</sup>~~. Physicians and Dentists hired after July 1<sup>st</sup> are not eligible for performance pay per the Department's regulations. Physicians and dentists who separate from VA employment prior to September 30 are not eligible for performance pay based on their performance within that fiscal year. The amount is determined solely at the discretion of the approving official based on the achievement of the specified goals and objectives and is paid annually

as a lump sum. Performance goals and objectives are generally developed locally and will differ from performance standards used for the Executive Career Field or proficiency rating systems. Performance payments should be disbursed to employees as soon as possible after the end of the fiscal year but must be made no later than March 31 of the following year.

- P. As related to their representational duties, required under 38 USC 7433(a), at the same time as provided to the physician or dentist, the Department ~~local union, upon request, will be forwarded~~ copies of sanitized versions of performance pay goals and objectives and associated pay amounts to the local union. For informational purposes, performance pay for a physician is not construed as "award" monies designated under Article 16 - Employee Awards and Recognition.
- Q. Title 38 employees covered by this chapter are entitled to back pay under this chapter if an appropriate authority finds that an unjustified or unwarranted personnel action resulted in the withdrawal, reduction or denial of all or a part of pay, allowances or differentials otherwise due the employee. This includes, among other things, basic pay for physicians and dentists. Basic pay includes the market pay component, additional pay, premium pay, leave, cost-of-living allowances, and post differentials. The appropriate authority is typically the official having authority to approve the applicable personnel action. Network Directors and VHA equivalents may authorize backpay for employees occupying non-centralized positions in their organizations.

#### Section 4 - Labor Input into Biennial Review of Pay Ranges

In accordance with 38 USC 7431(e)(1)(A), the Secretary must prescribe minimum and maximum amounts of annual pay for VHA physicians and dentists not less than every two years. VHA will provide the Union with the data and other information prepared for the analysis of the biennial review which relates to the bargaining unit employees. VHA will then facilitate a meeting with three designated representatives to solicit timely comments and input regarding the physician and dentist pay system.

#### Section 5 - Availability of Data Regarding VHA Physician and Dentist Average Salaries

Any data concerning bargaining unit physicians and dentists obtained by VHA for general distribution or posted on websites will also be made available to the Union upon request. (Attachment G).

Subchapter III of Chapter 74 of Title 38 addresses pay for physicians, podiatrists, and dentists. 38 U.S.C. §§ 7431-7433. 38 U.S.C. § 7431 sets forth the three elements of physician and dentist pay in the Veterans Health Administration as base pay, market pay, and performance pay. (Attachment J). 38 U.S.C. § 7433 empowers the Secretary "to prescribe regulations relating to the pay of physicians, podiatrists, and dentists in the

Veterans Health Administration.” (Attachment K; see also Attachment L, 38 U.S.C. § 7421(a)). VA Directive and Handbook 5007, entitled “Pay Administration,” addresses physician and dentist pay. (Attachment I, VA Handbook 5007, Part IX).

While 38 U.S.C. § 7422(a) states “the authority of the Secretary to prescribe regulations under section 7421 of [title 38] is subject to the right of Federal employees to engage in collective bargaining with respect to conditions of employment through representatives chosen by them...”, 38 U.S.C. § 7422(b) specifically prohibits those collective bargaining rights with respect to matters that concern or arise out of the establishment, determination, or adjustment of Title 38 employee compensation. 38 U.S.C. § 7422(b)(3). Although both the 2011 VA-AFGE Master Agreement and the Union’s proposal for Article 55 in the Successor VA-AFGE Master Agreement clearly state that “Physician and dentist pay in the VHA is governed by Title 38 of the United States Code and VA Handbook 5007, Part IX”<sup>3</sup> and that the language in sections 2 and 3<sup>4</sup> is for “informational purposes only” and not “subject to collective bargaining or grievable...,” the inclusion of Article 55 in the 2011 and the Successor VA-AFGE Master Agreements is still prohibited because 38 U.S.C. § 7422(b) explicitly states “collective bargaining ...may not cover, or have any applicability to, any matter concerning or arising out of ... (3) the establishment, determination, or adjustment of employee compensation under [title 38].” Article 55 of the 2011 VA-AFGE Master Agreement and the Union’s proposal for Article 55 in the Successor VA-AFGE Master Agreement directly address matters concerning or arising out of physician and dentist pay by, among other things, defining the various types of pay available, describing the different pay components and compensation panels, and addressing union input on and access to pay information for VHA physicians and dentists. Because Article 55, *VHA Physician and Dentist Pay*, in the 2011 VA-AFGE Master Agreement and the Union’s proposal covering Article 55, *VHA Physician and Dentist Pay*, for the Successor VA-AFGE Master Agreement concern or arise out of physician and dentist compensation, their inclusion in the 2011 and Successor VA-AFGE Master Agreements constitutes collective bargaining over the compensation of employees listed in 38 U.S.C. § 7421(b), which is inconsistent with 38 U.S.C. § 7422(b)(3).

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<sup>3</sup> VA Handbook 5007 addresses Title 38 physician and dentist pay and provides that “[T]his policy is intended to make possible the recruitment and retention of the best qualified workforce capable of providing high quality care for eligible veterans. VA is committed to assuring that the levels of annual pay (base pay plus market pay) for VHA physicians and dentists are fixed at levels reasonably comparable with the income of non-VA physicians and dentists performing like services.” (Attachment I, VA Handbook 5007, Part IX). The remainder of the VA Handbook 5007 section on physician and dentist pay covers the policies and procedures related to physician and dentist pay. (Id.)

<sup>4</sup> Sections 4 and 5, which address union rights concerning physician and dentist pay, do not have a similar language.

The Secretary has addressed matters pertaining to physician pay in previous decisions. In VAMC North Texas, the union requested that the VAMC bargain over the criteria used for performance awards for physicians. (Attachment M, VAMC North Texas (March 15, 2018)). The Secretary determined that in accordance with Section 1 of Article 55 of the Master Agreement "[C]ompensation is excluded from negotiation under 38 USC 7422" and that "physician and dentist pay in the VHA is governed by Title 38 of the United States Code and VA Handbook 5007, Part IX." (Id.) Additionally, the Secretary noted that the VA-AFGE Master Agreement in and of itself sets forth that the language in Sections 2 through 3 is purely "for informational purposes and is not itself subject to the collective bargaining or grievable under the negotiated grievance procedure" and thus, the "Secretary's pay policies will control," notwithstanding Sections 2 and 3. (Id.) Ultimately, the Secretary determined that the VAMC was not obligated to bargain over the criteria used for performance awards for physicians because the matter was excluded from collective bargaining pursuant to 38 U.S.C. § 7422. (Id.)

Based on the foregoing, the subject matters covered by Article 55, *VHA Physician and Dentist Pay*, in both the 2011 VA-AFGE Master Agreement and the Union's proposal for the Successor VA-AFGE Master Agreement address Title 38 physician and dentist compensation in detail. Therefore, Article 55 in the 2011 VA-AFGE Master Agreement and the Union's proposal for Article 55 in the Successor VA-AFGE Master Agreement involve matters concerning or arising out of the establishment, determination or adjustment of employee compensation within the meaning of 38 U.S.C. § 7422(b) and are excluded from collective bargaining.

### **RECOMMENDED DECISION**

Article 55, *VHA Physician and Dentist Pay*, of the 2011 VA-AFGE Master Agreement, concerns or arises out of the establishment, determination or adjustment of employee compensation within the meaning of 38 U.S.C. § 7422(b), and is thus excluded from collective bargaining and review by any other agency pursuant to 38 U.S.C. §7422(d).

RW

Approved

Disapproved

The Article 55, VHA Physician and Dentist Pay, contract proposal submitted by the Union for the Successor VA-AFGE Master Agreement concerns or arises out of the establishment, determination or adjustment of employee compensation within the meaning of 38 U.S.C. § 7422(b) and is thus excluded from collective bargaining and review by any other agency pursuant to 38 U.S.C. § 7422(d).

RLW  
Approved

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Disapproved

Robert L. Wilkie  
Robert L. Wilkie  
Secretary of Veterans Affairs  
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25 OCT 19  
Date