

## Title 38 Decision Paper

### VA Northern California Health Care System, Mather, California

#### I. FACTS

On March 18, 2014, management at the VA Northern California Health Care System, Mather, California (Medical Center), learned that the blood pressure readings for a surgery patient under general anesthesia were not monitored or recorded for over an hour during a surgery performed that day. Exhibit 1. This information was discovered when the anesthesiologist who relieved the responsible anesthesiologist noted there were no vital signs recorded for the last 75 minutes of the surgery case. Exhibit 22. The responsible anesthesiologist<sup>1</sup>, a bargaining unit employee, was placed on float duties and preoperative care pending an investigation into the lapse in monitoring. Id.

In an e-mail to Medical Center management on March 18, 2014, the American Federation of Government Employees, Local 1206 (Union), stated that the anesthesiologist had "invoked her right to union representation." Exhibit 2. The Union demanded that the Medical Center "**CEASE and DESIST** implementation of unilaterally changing the working conditions of the [anesthesiologist] by removing her from the Surgical Case on tomorrow 3/19/2014 and requiring her to float shift in providing relief for other providers. Please immediately return her back to status quo ante and allow her to work on assigned Surgical Case." Id. In support of its "cease and desist" demand, the Union cited Article 49, section 4, of the parties' master collective bargaining agreement: "The Department shall provide reasonable advance notice to the appropriate official(s) *prior to changing conditions of employment of bargaining unit employees*. The Department agrees to forward, along with the notice, a copy of any and all information and/or material relied upon to propose the change(s) in conditions of employment." According to the Union, once it "received and assessed the requested information," the Union would "offer tentative dates and times to meet to bargain to the fullest extent allowed by law." Id.

The following day, March 19, 2014, the anesthesiologist was provided a letter from the Medical Center Director (Director) summarily suspending a portion of<sup>2</sup> her clinical

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<sup>1</sup> The responsible anesthesiologist also held the title of "Director of Education," although she did not have any specific responsibilities related to this position, and she did not supervise anyone.

<sup>2</sup> **Summary Suspension:** Clinical privileges may be summarily suspended when the failure to take such action may result in an imminent danger to the health of any individual. Summary suspension may be applied to one or more selected privileges or all privileges depending upon the circumstances and clinical concern. If a provider is removed from clinical care during a focused clinical care review, the applicable privileges should be summarily suspended during the time of the review and longer if concern remains for imminent danger to the health of any individual. **Note:** *A summary suspension is reportable to the National Practitioner Data Bank (NPDB) if it results in a final action against the privileges of a physician or dentist.* VHA Handbook 1100.19, Section 14(l)(3)(c)(1); Exhibit 21, page 4, *Provider Competency and Clinical Care Concerns*.

privileges at the facility. Exhibit 3. The Director explained that the “action is being taken upon the recommendation of the Chief of Staff since concerns have been raised to suggest that aspects of your clinical practice do not meet the accepted standards of practice and potentially constitute an imminent threat to patient welfare.” Id. The Director further explained that the partial suspension of privileges “is in effect pending a comprehensive review” of the matter and that all her other “currently approve Anesthesiology privileges remain active.”<sup>3</sup> Id.

Prior to the summary suspension, the anesthesiologist had privileges in several different cognitive and procedural areas. Exhibit 4. The suspension of privileges included only the Anesthesiology “Cognitive Bundle #2,” which includes a number of high-level responsibilities like surgical critical care privileges, interpretation of results from monitoring devices, ventilator management, use of vaso-active medications, complete medical management of critically ill and postoperative patients, and medical preparation of patients for surgery. Id.

After receiving the notice of summary suspension of her privileges, the anesthesiologist reported to work on March 19, 2014, but has not reported to work at the Medical Center since that date. Exhibit 5. Beginning on March 20, 2014, the anesthesiologist has been absent on Family Medical Leave Act (FMLA), using a combination of annual leave, sick leave, or leave without pay, and is currently on leave without pay. Exhibit 6, Exhibit 22.

On April 9, 2014, the Union filed two unfair labor practice charges (ULP) with the Federal Labor Relations Authority (FLRA). The first ULP (ULP1) claimed that the Medical Center “bypassed the Union” when it directly notified the anesthesiologist that her privileges at the facility were being summarily suspended, after being informed that the Union represented the anesthesiologist. Exhibit 7. The second ULP (ULP2) claimed that the Medical Center “bypassed the Union” when, after summarily suspending some of the anesthesiologist’s privileges, it reassigned the anesthesiologist to other cases and float duties without notifying the Union and allowing the Union to bargain the anticipated change in the anesthesiologist’s working conditions. Exhibit 8.

In a letter dated April 18, 2014, the anesthesiologist was notified that the summary suspension of her privileges was extended to April 30, 2014, due to a delay in the comprehensive review.<sup>4</sup> Exhibit 9.

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<sup>3</sup> In the memo, the Director also stated that the comprehensive review would be completed within thirty calendar days, “with recommendations to proceed with formal procedures for reduction or revocation of privileges forwarded to me for consideration and action.” After receiving the recommendations, the Director explained that he would either restore the anesthesiologist’s summarily suspended privileges or initiate the process to reduce or revoke her Cognitive Bundle #2 privileges. Exhibit 3.

<sup>4</sup>The letter was also provided to the Union. Exhibit 10.