



DEPARTMENT OF VETERANS AFFAIRS
UNDER SECRETARY FOR HEALTH
WASHINGTON DC 20420

SEP 02 2008

Steven P. Kleinglass
Director
VA Medical Center
One Veterans Drive
Minneapolis, MN 55417

Kevin M. Grile
Assistant General Counsel
AFGE, AFL-CIO
300 South Ashland Ave., Ste. 302
Chicago, Illinois 60607

Dear Mr. Kleinglass and Mr. Grile:

I am responding to the issue raised in your memoranda of February 20, 2008, and March 12, 2008, concerning the Unfair Labor Practice charges filed by AFGE Local 3669 alleging reprisal for testimony provided by _____ RN and _____ RN on behalf of the union on December 12, 2007.

Pursuant to delegated authority, I have decided on the basis of the enclosed decision paper that the issue presented by the Unfair Labor Practices is a matter or question arising out of professional conduct or competence within the meaning of 38 U.S.C. § 7422(b).

Sincerely yours,

A handwritten signature in cursive script that reads "Michael J. Kussman".

Michael J. Kussman, MD, MS, MACP
Under Secretary for Health

Enclosure

Title 38 Decision Paper
VAMC Minneapolis, MN
VA 08-0_

On December 12, 2008, an arbitration hearing was held concerning the termination of _____, a Respiratory Therapist at the Minneapolis VA Medical Center (MN VAMC). During the arbitration, two nurses, _____ (Staff Nurse and Steward of AFGE Local 3669) and _____ (Staff Nurse in Medical Intensive Care Unit and Steward of AFGE Local 3669), allegedly made statements about the clinical competence of a fellow nurse, _____, who also testified during the arbitration. It is alleged that Ms. _____ stated that Ms. _____ was lazy and not a good nurse, or words to that effect. (Attachment A, ¶ 2) Ms. _____ allegedly stated that she believed Ms. _____ practiced sub-standard care. (Attachment A, ¶ 3)

The staff attorney representing the MN VAMC during the arbitration, _____ contacted the Nurse Executive, _____, to make her aware of the statements allegedly made by Ms. _____ and Ms. _____, and to suggest that an investigation be conducted because a nurse practicing below the standards puts patients at risk.¹ MN VAMC management alleges that Ms. _____ later expressed concern about the failure of Ms. _____ and Ms. _____ to notify management about Ms. _____ allegedly substandard nursing practices.² More specifically, MN VAMC management alleges that Ms. _____ believed that Ms. _____ and Ms. _____ may have violated VHA Handbook 1100.18, *Reporting and Responding to State Licensing Boards*, by failing to promptly notify VAMC management that another nurse was providing below substandard care. Ms. _____ allegedly began an investigation by interviewing Ms. _____ and her supervisor.³

On December 18, 2007, Ms. _____ sent separate letters to Ms. _____ and Ms. _____ informing them of their reporting obligations and asking to discuss the allegations made during the arbitration. (Attachments B and C) Specifically, Ms. _____ letters referred to the reporting requirements of the Minnesota Board of Nursing⁴ and VHA Handbook 1100.18, *Reporting and Responding to State Licensing Boards*. The letters further stated that “[i]f you have knowledge that a RN is incompetent, unprofessional, unethical or unable to practice safely, you have an obligation to report that information to me or a manager so that procedures outlined in VHA Handbook 1100.18...may be initiated.” (Attachments

¹ This information is provided in paragraphs 2 and 3 of Attachment I.

² Id.

³ Attachment I at ¶ 3.

⁴ Minn. Stat. § 148.263(3) (2007) provides: “A person licensed by a health-related licensing board as defined in section 214.01, subdivision 2, shall report to the board personal knowledge of any conduct the person reasonably believes constitutes grounds for disciplinary action under sections 148.171 to 148.285 by any nurse including conduct indicating that the nurse may be incompetent, may have engaged in unprofessional or unethical conduct, or may be mentally or physically unable to engage safely in the practice of professional, advanced practice registered, or practical nursing.”