



DEPARTMENT OF VETERANS AFFAIRS  
UNDER SECRETARY FOR HEALTH  
WASHINGTON DC 20420

MAR 31 2010

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Director  
VA Medical Center  
One Veterans Drive  
Minneapolis, MN 55417

Martin R. Cohen  
Assistant General Counsel  
AFGE, AFL-CIO  
8321 Roberts Road  
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Dear Mr. Kleinglass and Mr. Cohen:

As a result of the memorandum opinion and order issued on August 28, 2009, by the United States District Court for the District of Columbia in Civil Action 08-1722, enclosed is a 38 U.S.C. § 7422 decision paper that addresses the issues raised in your memoranda of February 20, 2008, and March 12, 2008, concerning the Unfair Labor Practice charges (ULPs) filed by AFGE Local 3669 concerning testimony that [redacted], R.N. and [redacted], R.N. provided on behalf of AFGE Local 3669 at a December 12, 2007, arbitration. The enclosed 38 U.S.C. § 7422 decision paper replaces the decision paper that was previously issued on September 2, 2008.

Pursuant to delegated authority, I have decided on the basis of the enclosed decision paper that the at-issue ULPs: (1) qualify as "collective bargaining" within the meaning of 38 U.S.C. § 7422(b); (2) constitute matters arising out of professional conduct or competence within the meaning of 38 U.S.C. § 7422(b) to the extent that management's letters to and investigative meetings with Ms. [redacted] and Ms. [redacted] concerned the professional conduct or competence of 38 U.S.C. § 7421(b) employees at the Minneapolis VA Medical Center; and, (3) do not constitute matters arising out of professional conduct or competence within the meaning of 38 U.S.C. § 7422(b) to the extent that management's letters to and investigative meetings with Ms. [redacted] and Ms. [redacted] addressed issues that did not concern the professional conduct or competence of 38 U.S.C. § 7421(b) employees at the Minneapolis VA Medical Center.

Sincerely yours,

Robert A. Petzel, M.D.  
Under Secretary for Health

Enclosure



**Title 38 Decision Paper<sup>1</sup>**  
**VAMC Minneapolis, MN**

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

The staff attorney who represented the MN VAMC at the arbitration, [REDACTED], claims that he contacted the Nurse Executive, [REDACTED] to inform her of the statements that were allegedly made by Ms. [REDACTED] and Ms. [REDACTED] during the arbitration and to suggest that an investigation be conducted because a nurse practicing below the standard of care places patients at risk. (Attachment A, ¶¶ 2-3). MN VAMC management alleges that Ms. [REDACTED] later expressed concern about the failure of Ms. [REDACTED] and Ms. [REDACTED] to notify management about Ms. [REDACTED] allegedly substandard nursing practices. (Attachment A, ¶ 3). Specifically, MN VAMC management alleges that Ms. [REDACTED] believed that Ms. [REDACTED] and Ms. [REDACTED] 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 substandard care. (Attachment A, ¶ 3).

Ms. [REDACTED] allegedly began an investigation by meeting with Ms. [REDACTED] and her nurse manager. (Attachment A, ¶ 3). On December 18, 2007, Ms. [REDACTED] sent separate letters to Ms. [REDACTED] and Ms. [REDACTED] informing them of their reporting obligations and asking to discuss the allegations that were allegedly made during the arbitration. (Attachments C and D). Specifically, Ms. [REDACTED] letters referred to the reporting requirements of the Minnesota Board of Nursing<sup>2</sup> and VHA Handbook 1100.18, *Reporting and Responding to State Licensing Boards*. (Attachments C and D, ¶ 2). 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

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<sup>1</sup> This decision paper replaces the Title 38 decision paper that was previously issued on September 2, 2008, concerning this same issue.

<sup>2</sup> 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.”