

SEPARATION PROCEDURES FOR CERTAIN TITLE 38 PROBATIONARY EMPLOYEES

1. **PURPOSE.** This notice replaces the provisions outlined in VA Handbook 5021, Part III, Chapter 1, in its entirety.
2. **POLICY.** This notice provides the procedures for the separation of Veterans Health Administration (VHA) title 38 employees serving a probationary period under [38 U.S.C. § 7403\(b\)](#) in the Department of Veterans Affairs (VA). (See [VA Handbook 5005, Staffing](#), for information regarding probationary periods.)
3. **DEFINITIONS.** For this notice, the following terms apply:
 - a. **Active-Duty Status.** Pay status including authorized overtime, holiday pay or premium pay.
 - b. **Approving Official.** The management official designated, as described in [paragraph 9.e.](#), to receive and take action regarding the findings and recommendations of a Summary Review Board (SRB), as described in [paragraph 9.f.](#)
 - c. **Authorizing Official.** The management official designated, as described in [paragraph 8.a.](#), to appoint SRB members and to convening and coordinating SRBs.
 - d. **Calendar Day.** Every day of the week including weekends and holidays.
 - e. **Senior Leader.** The management officials covered by this notice for which the Office of Accountability and Whistleblower Protection (OAWP) has authority to investigate for misconduct, retaliation or poor performance pursuant to [38 U.S.C. § 323](#), as defined in [VA Directive 0500](#), Office of Accountability and Whistleblower Protection: Investigation of Whistleblower Disclosures and Allegations Involving Senior Leaders or Whistleblowing Retaliation. This includes but is not limited to Veterans Integrated Service Network (VISN) and VA Medical Center (VAMC) Directors and Deputy Directors, VISN and VAMC Chiefs of Staff or equivalent positions (e.g., Chief Medical Officers) and VISN and VAMC Associate Directors for Patient Care Services or equivalent positions (e.g., nurse executives) or Senior Executive Service Equivalents (SES EQV) appointed under [38 U.S.C. § 7401\(1\)](#).
 - f. **Separation.** The involuntary discharge of an employee from employment based on conduct and/or performance.
 - g. **Summary Review Board (SRB).** A group of title 38 employees who assess the separation or retention of a probationary title 38 employee.

- 4. EMPLOYEES COVERED.** These procedures apply to the following employees serving a probationary period unless excluded under [paragraph 5](#), or the action is excluded under [paragraph 6](#):
- a. Those employees appointed under [38 U.S.C. § 7401\(1\)](#), e.g., physicians; dentists; podiatrists; chiropractors; optometrists; registered nurses, (RNs); advanced practice registered nurses (APRNs) (e.g., certified nurse practitioner (CNP), clinical nurse specialist (CNS), certified registered nurse anesthetists (CRNAs), certified nurse midwife (CNM)); physician assistants; and expanded-function dental auxiliaries. For the purposes of this notice, all personnel appointed under 38 U.S.C. § 7401(1) are covered by 38 U.S.C. § 7403(b)(4).
 - b. Part-time RNs and APRNs, including intermittent, serving on a temporary or permanent appointment under [38 U.S.C. § 7405\(a\)\(1\)\(A\)](#). (See paragraph 6.b. and 6.c.)
- 5. EMPLOYEES EXCLUDED.** These procedures do not apply to the following:
- a. Employees appointed under [38 U.S.C., Chapter 3](#), or [38 U.S.C. §§ 7306, 7401\(2\), 7401\(3\), 7401\(4\)](#) or [7406](#).
 - b. Employees appointed under [38 U.S.C. § 7405](#), except part-time RNs and APRNs serving on a temporary or permanent appointment.
 - c. Employees occupying positions described in [38 U.S.C. § 7405\(g\)\(3\)](#).
 - d. Employees appointed under title 5; including those in the Senior Executive Service.
- 6. ACTIONS EXCLUDED.** This notice does not apply to the following:
- a. Separation of an RN or APRN who is serving on a temporary full-time appointment under [38 U.S.C. § 7405](#).
 - b. Separation of temporary part-time RNs or APRNs appointed under [38 U.S.C. § 7405](#) with an established not to exceed (NTE) date of less than two years, who is being separated on the NTE date, and who has not completed a two-year probationary period. (See [VA Handbook 5005](#).)
 - c. Separation of an intermittent temporary RN or APRN appointed under [38 U.S.C. § 7405](#) with an established NTE date, who is being separated on the NTE date, and who has not completed a probationary period. (See [VA Handbook 5005](#).)
 - d. Separation under provisions of [VA Handbook 5021](#), Part II, if applicable.
- 7. RESPONSIBILITIES.**
- a. **Supervisors** will:

- (1) Continually observe and evaluate the performance and conduct of employees serving in a probationary status.
 - (2) Promptly submit a request for an SRB to be convened when an employee engages in misconduct or is not performing at a level commensurate with the needs of the VA to the appropriate Authorizing Official for action.
- b. **Authorizing Officials** will review requests from supervisors to convene an SRB, and if they concur with the request, appoint, convene, and coordinate an SRB.
- c. **SRBs** will determine if a probationary employee is fully qualified and satisfactory to continue to work for the VA and submit its findings and recommendations to the Approving Official.
- d. **Approving Officials** will review the findings and recommendations from the SRB and modify, approve or disapprove the Board Action, if applicable, as described in [paragraphs 9.e.](#) and [9.f.](#)
- e. **VHA Chief, Human Resources (HR) Management or designee** will:
- (1) Assist management officials with probationary procedures;
 - (2) Review probationary actions for conformance with VA policies and procedures;
 - (3) Advise employees about probationary procedures;
 - (4) Serve as technical advisor to SRBs. This includes advising SRB members on policies and procedures related to conducting probationary reviews; and
 - (5) Ensure copies of permanent records relating to periodic and summary reviews are included in the Health Care Provider Credentialing and Privileging Records of personnel with clinical privileges. (Consult with the appropriate VHA office responsible for credentialing and privileging records regarding inclusion of these records.)

8. AUTHORIZING OFFICIALS AND SRB MEMBERS.

- a. The following identifies the appropriate Authorizing Officials and those responsible for coordinating and approving the appointment of SRB members pursuant to the probationary employee's occupation or organizational assignment:
- (1) For probationary employees in the Veterans Health Administration Central Office (VHACO):
 - (a) The Authorizing Official is the appropriate service director and equivalent positions or above.

- (b) The appointment of SRB members by the Authorizing Official will be coordinated with VHA Workforce Management and Consulting Office Center of Expertise (VHA WMC COE).
- (2) For probationary VISN Directors:
 - (a) The Authorizing Official is the Assistant Under Secretary for Health for Operations (AUSHO).
 - (b) The appointment of SRB members by the Authorizing Official will be coordinated with VHA WMC COE.
- (3) For probationary VISN Chief Medical Officers (CMO), Quality Management Officers (QMO) or Chief Nursing Officers (CNO), or equivalent:
 - (a) The Authorizing Official is the VISN Director.
 - (b) The appointment of SRB members by the Authorizing Official will be coordinated with VHA WMC COE.
- (4) For probationary employees in a VISN, except the CMOs, QMOs or CNOs, or equivalent:
 - (a) The Authorizing Official is the CMOs, QMOs or CNOs, or equivalent, depending on the probationary employee's organizational alignment.
 - (b) The appointment of SRB members by the Authorizing Official will be coordinated with VHA WMC COE.
- (5) For probationary VHA Facility/Medical Center Directors or Deputy VISN Directors (if appointed under [38 U.S.C. § 7401\(1\)](#) or other covered appointment authority; if appointed under [38 U.S.C. § 7401\(4\)](#) or other excluded authority, then they are excluded from this notice as discussed in paragraph 5):
 - (a) The Authorizing Official is the VISN Director.
 - (b) The appointment of SRB members by the Authorizing Official will be coordinated with the VHA WMC COE.
- (6) For probationary Medical Center Chief of Staffs (COS), or equivalents:
 - (a) The Authorizing Official is the Facility Director.
 - (b) The appointment of SRB members by the Authorizing Official will be coordinated with VHA WMC COE.
- (7) For probationary Associate Directors for Patient Care Services (ADPCS), or equivalents:

- (a) The Authorizing Official is the Facility Director.
 - (b) The appointment of SRB members by the Authorizing Official will be coordinated with the VHA WMC COE.
- (8) For probationary Assistant/Associate Chiefs, Nursing Services, and RNs, Grade IV:
- (a) The Authorizing Official is the ADPCS, or equivalent.
 - (b) The appointment of SRB members by the Authorizing Official will be coordinated with the VISN CMO, QMO, or CNO, depending on the ADPCS's organizational alignment.
- (9) For all other VHA probationary facility employees:
- (a) The Authorizing Official is the appropriate service chief, or equivalent.
 - (b) The appointment of SRB members by the Authorizing Official will be coordinated with the COS or ADPCS, or equivalent, depending on the probationary employee's organizational alignment.

b. Composition of the SRB.

- (1) The SRB will be comprised of a minimum of three Board members.
- (2) Persons selected to serve on the SRB will be fair, impartial, and objective.
- (3) The Authorizing Official should attempt to convene an SRB with three VA title 38 employees in the same occupation as the probationary employee being reviewed. However, if that is not possible or practical, at least one SRB member will be in the same title 38 occupation at the same grade or higher than the probationary employee being reviewed. The other two members must also be in a title 38 occupation. In the case of RNs, at least two SRB members will be in the same occupation. (When convening an SRB for a senior leader, the Authorizing Official must consult with WMC for assistance.)

c. Other Considerations.

- (1) If an Authorizing Official determines a local SRB meeting the requirements of this notice cannot be properly established, the Authorizing Official and the servicing HR office will facilitate the process for obtaining members from facilities other than the employee's facility to serve on an SRB.

- (2) Persons in a position to prejudice the action of an SRB, such as an employee's immediate or second-level supervisor, may not serve on an SRB.

9. SUMMARY REVIEW PROCEDURES.

a. Initiating a Summary Review.

- (1) Summary reviews are limited to situations in which management is considering separating a probationary employee from Federal service due to performance and/or conduct deficiencies.
- (2) If a probationary employee's performance and/or conduct is deficient, the supervisor will submit a written request through supervisory lines to the appropriate Authorizing Official (see [paragraph 8](#) of this notice) that an SRB be convened.
- (3) An unsatisfactory proficiency rating is not required to separate a probationary employee. However, if the request is based on performance, sufficient documentation outlining the performance deficiencies must be included with the supervisor's request as well as any information regarding the supervisor's efforts to address the deficiencies (e.g., counseling, training, modification of assignments, use of preceptors), if applicable.
- (4) Evidence of the performance and/or conduct deficiencies must be included with the request submitted by the supervisor for the summary review by the SRB.
- (5) Supervisors can initiate a request for a summary review by an SRB at any time during the probationary period but must ensure there is sufficient time to conduct the review and process the separation, if applicable, prior to the expiration of the employee's probationary period.
- (6) Supervisors will, in addition to requesting an SRB, refer the following types of allegations to OAWP pursuant to VA Directive 0500:
 - (a) Allegations of misconduct, poor performance or whistleblower retaliation made against a probationary Title 38 senior leader; or
 - (b) Allegations of whistleblower retaliation made against probationary employees who are supervisors.
 - (c) When referring the allegations, the supervisor should notify OAWP that an SRB has also been requested. Such a referral should be described and included in the supervisor's request.
- (7) If a supervisor receives an OAWP recommendation for disciplinary action regarding a title 38 probationary employee's performance and/or conduct

deficiencies, including retaliation, the supervisor will request an SRB and attach OAWP's recommendation, and the referenced supporting documentation, to the request. If there was a prior request for an SRB before the conclusion of OAWP's investigation (e.g., if there was a referral to OAWP contemporaneous with a prior SRB request regarding the same employee as described in paragraph [9.a.\(6\)](#), a new request for an SRB will be made based on OAWP's recommendation).

- b. **Employee's Status During Review.** Employees will normally be retained in an active-duty status in their current assignment during the summary review. See [VA Handbook 5021, Part II](#) in those instances where it is determined the employee's continued presence at the work site might pose a threat to patient care, employees or others, result in loss of damage to Government property, or otherwise jeopardize legitimate Government interests.
- c. **Conducting a Summary Review.**
 - (1) If the Authorizing Official concurs with the request from the supervisor that a summary review is warranted, an SRB will be convened. Authorizing Officials will consult with the servicing HR office, who will facilitate the SRB process.
 - (2) If there was a contemporaneous referral to OAWP with the request for an SRB, as described in paragraph [9.a.\(6\)](#), to ensure timely action is taken, an Authorizing Official should, if they concur with the request, convene an SRB without awaiting the outcome of the OAWP referral or investigation. When convening an SRB for a senior leader, the Authorizing Official must consult with WMC.
 - (3) Written notification to the appointed SRB members will be completed via memorandum or email by the Authorizing Official.
 - (4) The primary purpose of the SRB is to review the evidence submitted by the supervisor and determine whether the employee is fully qualified and satisfactory to continue to work for the VA.
 - (5) The Chief, HR Management, or designee will serve as the technical advisor to the SRB.
 - (6) After review of the evidence submitted by the supervisor with their request, the SRB members and HR Technical Advisor will convene at least once in person, telephonically or via video teleconference to discuss the evidence, findings, and recommendations.
- d. **Findings and Recommendations of the SRB.** Upon completion of the review, the SRB may recommend separation or retention of the employee. The SRB's findings and recommendation will be recorded on [VA Form 10-2543](#), Board Action. The Board Action must contain the following:

- (1) A brief summary of the performance and/or conduct deficiencies;
- (2) An analysis of material evidence relating to the asserted deficiencies described in the supervisor's request;
- (3) A finding, based on that analysis, of whether the probationary employee is fully qualified and satisfactory, including which deficiencies, if any, were supported by the evidence and contributed to that finding; and
- (4) A recommendation to separate or retain the employee based on the findings resulting from the analysis.

NOTE: Adverse (e.g., admonishments and reprimands) and major adverse (e.g., suspensions, reduction in grade/pay) actions may not be issued to probationary title 38 employees. The SRB's recommendation will be to retain or separate the employee based on the findings of each issue.

- e. **Approving Authority on SRB Recommendation.** This section provides guidance regarding the appropriate designated Approving Official and actions to be taken when an SRB is convened to conduct a review of the following employees covered by this Notice:

- (1) VHACO Employees.
 - (a) The completed Board Action and evidence will be sent to the service director in VHACO or equivalent positions or above, for review. The reviewer may comment on the SRB's recommendation prior to forwarding the Board Action and related documents to the Deputy Under Secretary for Health (DUSH), who is the Approving Official.
 - (b) The DUSH will review the Board Action and evidence to ensure the SRB has provided a thorough analysis of the performance and/or conduct deficiencies and provided an explanation of its findings and recommendation. If the SRB does not provide sufficient analysis to support its findings and recommendations, the Board Action should be returned to the SRB with the deficiencies identified for modification.
 - (c) Upon review and consideration of the Board Action and evidence, the DUSH must approve, on the Board Action, a recommendation from the SRB to separate a probationary employee. If the recommendation is retention, the appointing authority may accept, reject, or modify the Board's recommendation on the Board Action. ([See NOTE below.](#))

- (2) VISN Directors.
 - (a) The completed Board Action and evidence will be sent to the AUSHO. They may comment on the SRB's recommendation prior to forwarding the Board Action and related documents to the DUSH, who is the Approving Official.
 - (b) The DUSH will review the Board Action and evidence to ensure the SRB has provided a thorough analysis of the performance and/or conduct deficiencies and provided an explanation of its findings and recommendation. If the SRB does not provide sufficient analysis to support its findings and recommendations, the Board Action should be returned to the SRB with the deficiencies identified for modification.
 - (c) Upon review and consideration of the Board Action and evidence, the DUSH must approve, on the Board Action, a recommendation from the SRB to separate a probationary employee. If the recommendation is for retention, the appointing authority may accept, reject, or modify the Board's recommendation on the Board Action. (See NOTE below.)
- (3) VISN CMOs, QMOs and CNOs, or equivalent.
 - (a) The completed Board Action and evidence will be sent to the VISN Director for review. They may comment on the SRB's recommendation prior to forwarding the Board Action and related documents to the AUSHO, who is the Approving Official.
 - (b) The AUSHO will review the Board Action and evidence to ensure the SRB has provided a thorough analysis of the employee's performance and/or conduct deficiencies and provided an explanation of its findings and recommendation. If the SRB does not provide sufficient analysis to support its findings and recommendation, the Board Action should be returned to the SRB with the deficiencies identified for modification.
 - (c) Upon review and consideration of the complete Board Action and evidence, the AUSHO must approve, on the Board Action, a recommendation from the SRB to separate a probationary employee. If the recommendation is for retention, the AUSHO may approve, disapprove, or modify the SRB's recommendation on the Board Action. (See NOTE below.)
- (4) VISN Employees, except for the CMOs, QMOs and CNOs.
 - (a) The completed Board Action and evidence will be sent to the CMO, QMO, or CNO, as applicable, for review. The reviewer may

comment on the SRB's recommendation prior to forwarding the Board Action and related documents to the VISN Director, who is the Approving Official.

- (b) The VISN Director will review the Board Action and evidence to ensure the SRB has provided a thorough analysis of the employee's performance and/or conduct deficiencies and provided an explanation of its findings and recommendation. If the SRB does not provide sufficient analysis to support its findings and recommendation, the Board Action should be returned to the SRB with the deficiencies identified for modification.
 - (c) Upon review and consideration of the complete Board Action and evidence, the VISN Director must approve, on the Board Action, a recommendation from the SRB to separate a probationary employee. If the recommendation is for retention, the VISN Director may approve, disapprove, or modify the SRB's recommendation on the Board Action. ([See NOTE below.](#))
- (5) Facility/Medical Center Directors/Deputy VISN Directors (if appointed under [38 U.S.C. § 7401\(1\)](#) or other covered appointment authority; if appointed under [38 U.S.C. § 7401\(4\)](#) or other excluded authority, then they are excluded from this notice as discussed in [paragraph 5](#)).
- (a) The completed Board Action and evidence will be sent to the VISN Director for review. They may comment on the SRB's recommendation prior to forwarding the Board Action and related documents to the AUSHO, who is the Approving Official.
 - (b) The Board Action and evidence will be submitted to the AUSHO to ensure the SRB has provided a thorough analysis of the performance and/or conduct deficiencies and provided an explanation of its findings and recommendation. If the SRB does not provide sufficient analysis to support its findings and recommendations, the Board Action should be returned to the SRB with the deficiencies identified for modification.
 - (c) Upon review and consideration of the Board Action and evidence, AUSHO must approve, on the Board Action, a recommendation from the SRB to separate a probationary employee. If the recommendation is for retention, the appointing authority may accept, reject, or modify the Board's recommendation on the Board Action. ([See NOTE below.](#))
- (6) Medical Center COS, or equivalent, and ADPCS, or equivalent appointed under an authority covered by this notice ([see paragraph 4](#)).

- (a) The completed Board Action and evidence will be sent to the Facility/Medical Center Director for review. They may comment on the SRB's recommendation prior to forwarding the Board Action and related documents to the VISN Director, who is the Approving Official.
 - (b) The Board Action and evidence will be submitted to the VISN Director to ensure the SRB has provided a thorough analysis of the performance and/or conduct deficiencies and provided an explanation of its findings and recommendation. If the SRB does not provide sufficient analysis to support its findings and recommendations, the Board Action should be returned to the SRB with the deficiencies identified for modification.
 - (c) Upon review and consideration of the Board Action and evidence, the VISN Director must approve, on the Board Action, a recommendation from the SRB to separate a probationary employee. If the recommendation is for retention, the VISN Director may approve, disapprove, or modify the Board's recommendation on the Board Action. ([See NOTE below.](#))
- (7) Employees other than those specifically addressed in paragraphs [9.e.\(1\)](#) through (6).
- (a) The completed Board Action and evidence will be sent to the facility COS or ADPCS, as appropriate, for review. The reviewer may comment on the SRB's recommendation prior to forwarding the Board Action and related documents to the Facility/Medical Center Director, who is the Approving Official.
 - (b) The Board Action and evidence will be submitted to the Facility/Medical Center Director to ensure the SRB has provided a thorough analysis of the performance and/or conduct deficiencies and provided an explanation of its findings and recommendation. If the SRB does not provide sufficient analysis to support its findings and recommendations, the Board Action should be returned to the SRB with the deficiencies identified for modification.
 - (c) Upon review and consideration of the Board Action and evidence, the Facility/Medical Center Director must approve, on the Board Action, a recommendation from the SRB to separate a probationary employee. If the recommendation is for retention, the Facility/Medical Center Director may approve, disapprove, or modify the SRB's recommendation on the Board Action. ([See NOTE below.](#))

NOTE: The administrative review and action on Board recommendations specified in paragraph [9.e.\(1\) through \(7\)](#) do not

apply to VHA facilities in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota and South Dakota. The recommendations resulting from summary reviews conducted by SRBs at facilities in these states must be implemented without modification. While notification to the employee of any decision of the SRB should be signed by an appropriate official, such notification should reflect that the decision was made by the SRB.

f. Action by Approving Official.

- (1) The Approving Official (see [paragraph 9.e.](#) of this notice) will indicate final approval of the SRB's recommendation by completing items 14, 15 and 16 on [VA Form 10-2543](#), Board Action, when:
 - (a) The recommendation by an SRB is to separate a probationary employee; or
 - (b) Where the SRB's recommendations are final without modification at VHA facilities in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota, and must be approved and so noted on the form.
- (2) If the SRB's recommendation is to retain the employee and the employee is not in those states where the SRB's recommendation is final, the designated approving authority may modify or disapprove the SRB's recommendation by annotating their decision to modify or reject the SRB's recommendation on the Board Action, completing items 14, 15 and 16 on [VA Form 10-2543](#), Board Action, and annotating that a memorandum justifying the modification is attached.
- (3) If the Approving Official is aware of an ongoing review or investigation by OAWP, including via a referral made contemporaneously with the SRB request per [paragraph 9.a.](#), the Approving Official must notify OAWP of the SRB recommendation and whether they approved or disapproved (i.e., whether the probationary employee will be separated or retained).

g. Effecting Recommendation.

- (1) Separation. Separations under these procedures must be effected before completion of the probationary period but no later than seven calendar days from the date of the approved Board Action. The employee will be provided a separation memorandum and a copy of the Board Action.
- (2) Retention. A decision by the Approving Official, or by the SRB in those VHA facilities in states listed in the [NOTE](#) paragraph below paragraph [9.e.\(5\)](#), to retain the employee does not preclude initiation of a subsequent summary review prior to completion of the probationary period. The

employee will be provided a separation memorandum and a copy of the Board Action.

- h. **Reporting Separated Licensed Employees to State Licensing/Registration Boards and License Monitoring Entities.** Designated Approving Officials are responsible for determining whether to report a current employee or a former employee, who may have separated, resigned or retired, to appropriate licensing/registration boards or license monitoring entities. In making such determinations, designated Approving Officials must ensure adherence to the required procedures and time standards for VA-initiated reporting as prescribed in VHA policies or standard operating procedures.
- i. **Reporting to the National Practitioners Data Bank (NPDB).** If a Licensed Independent Practitioner with privileges is separated during their probationary period due to substandard care, professional misconduct, or professional incompetence, the procedures in VHA policies or standard operating procedures should be followed regarding the employee's right to a fair hearing prior to filing a report with the NPDB.

10. RESPONSIBLE OFFICE. Human Resources and Administration/Operations, Security and Preparedness (006), Office of the Chief Human Capital Officer (05), Employee Relations & Performance Management Service (051).

11. RESCISSION. This notice will be rescinded and guidance incorporated into VA Handbook 5021, Employee Management/Relations, no later than one year after the date of publication.

CERTIFIED BY:

**BY DIRECTION OF THE SECRETARY OF
VETERANS AFFAIRS:**

/s/
Shana Love-Holmon
Acting Assistant Secretary for
Enterprise Integration

/s/
Gina M. Grosso
Assistant Secretary for
Human Resources and Administration/
Operations, Security and Preparedness

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