

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 9, 2006.

**Stuart Feldstein,**

*Assistant Director, Legislative and Regulatory Activities Division.*

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## DEPARTMENT OF VETERANS AFFAIRS

### VA Directive and Handbook 5021, Employee/Management Relations

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice with request for comments.

**SUMMARY:** Section 302 of the Veterans Health Care, Capital Asset and Business Improvement Act of 2003 (Pub. L. 108-170), dated December 6, 2003, authorizes the Secretary of Veterans Affairs to appoint chiropractors as permanent full-time title 38 employees under 38 U.S.C. 7401(1). Also appointed under this authority are physicians, dentists, podiatrists, optometrists, nurses, nurse anesthetists, physician assistants and expanded-function dental auxiliaries. Upon successful completion of probationary status as required by 38 U.S.C. 7403(b), these title 38 employees may file an appeal to a Disciplinary Appeals Board if they are subjected to major adverse action that is based in whole or in part on a question of professional conduct and competence.

As part of its implementation of Public Law 108-170, the Department of Veterans Affairs proposes to revise its Directive and Handbook 5021, Employee/Management Relations, to clarify that chiropractors now have the same right to appeal major adverse actions to Disciplinary Appeal Boards and grieve certain actions as other title 38 employees. The revisions that are the subject of this notice will amend portions of the following regulations: VA Directive 5021, Appendix A, sections A.3, B.1.b.(1), B.2.b, B.2.c., B.4.a-d., and B.4.f. The revisions also would amend the following portions of VA Handbook 5021: Part 1, Chapter 3, section 3.a.; Part III, Chapter 1, section 1, third note to section 2., and sections

3.a., and 3.h.(5); and Part IV, Chapter 3 (title), sections 1.b.(1), 2.b. and 2.c. In some of these sections, the word "chiropractors" has been added to a listing of occupations appointed under 38 U.S.C. 7401(1). In the other sections, Public Law 108-170 has been added to an existing list of statutory references. In all cases, the words or phrases that are proposed to be added to the regulations are shown in brackets. Only those sections of the existing regulations that contain proposed changes are included in this notice.

**DATES:** Comments must be received on or before February 16, 2006. The proposed effective date of these amendments is 30 days after publication of this notice.

**ADDRESSES:** Send written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

**FOR FURTHER INFORMATION CONTACT:** Larry Ables, Director, Employee Relations and Performance Management Service, Department of Veterans Affairs, Office of Human Resources Management and Labor Relations (051), 810 Vermont Avenue, NW., Washington, DC 20420. Mr. Ables may be reached at (202) 273-9827.

**SUPPLEMENTARY INFORMATION:** Title 38 U.S.C. 7461(e) requires that "[w]henver the Secretary proposes to prescribe regulations [relating to Disciplinary and Grievance Procedures] under this subchapter, the Secretary shall publish the proposed regulations in the **Federal Register** for notice and comment not less than 30 days before the day on which they take effect."

### Proposed Revisions to VA Directive 5021, Employee/Management Relations

#### Appendix A. Disciplinary and Grievance Procedures

#### Section A. Disciplinary and Major Adverse Actions

3. *Definitions.* Unless otherwise noted, the following definitions apply to this appendix only.

a. [*Admonishment.* An official letter of censure to an employee for minor act(s) of misconduct or deficiency in competence. This letter normally remains in the employee's personnel folder for two years].

b. [*Discharge.* The involuntary separation of an employee from employment based on conduct or performance].

c. [*Disciplinary Actions.* These are adverse actions, other than major adverse actions, which include

admonishment and reprimand based on conduct or performance].

d. [*Disciplinary Appeals Board.* The three member board designated to hear an employee's appeal of a major adverse action which is based in whole or in part on a question of professional conduct or competence].

e. [*Grade.* The established grades for the positions covered by this chapter will be as defined by 38 U.S.C. 7404, and the qualification standards issued pursuant to 38 U.S.C. 7402. (See part II of VA Handbook 5005, Staffing.)]

f. [*Major Adverse Actions.* These are suspension, transfer, reduction in grade, reduction in basic pay, and discharge based on conduct or performance].

g. [*Mixed Case.* This is a case that includes both (1) a major adverse action arising out of (or including) a question of professional conduct or competence, and (2) a major adverse action which does not arise out of a question of professional conduct or competence, or a disciplinary action].

h. [*Professional Conduct or Competence.* A question of professional conduct or competence involves direct patient care and/or clinical competence. The term clinical competence includes issues of professional judgment].

i. [*Reduction in Basic Pay.* The involuntary reduction, based on conduct or performance, of the annual rate of basic pay to which an employee is entitled under 38 U.S.C. 7404, including above minimum entrance rates and special salary rates authorized under 38 U.S.C. 7455. This does not apply to reductions in pay other than basic pay, such as the loss of physician or dentist special pay or head nurse differential, other differentials, allowances or premium pay such as standby, on-call, shift, overtime, Sunday, holiday, night work, hazardous duty, and interim geographic adjustment].

j. [*Reduction in Grade.* The involuntary assignment to a lower grade on the same pay schedule based on conduct or performance].

k. [*Reprimand.* An official letter of censure to an employee for an act of misconduct or deficiency in competence. A reprimand is a more severe disciplinary action than an admonishment. This letter normally remains in the employee's personnel folder for three years].

l. [*Suspension.* The involuntary placement of an employee, for disciplinary reasons, in a non-duty, non-pay status for a temporary period of time].

m. [*Transfer.* The involuntary movement of an employee from one VA facility to another (under separate

managerial authority) based on conduct or performance and without a break in service].

**Authority:** 38 U.S.C. 501(a), 7421.

## Section B. Grievances

### 1. Scope and Authority.

\* \* \* \* \*

#### b. Employee Coverage

(1) This section applies to all physicians, dentists, podiatrists, optometrists, [chiropractors,] nurses, nurse anesthetists, physician assistants, and expanded-function dental auxiliaries who are not on time-limited appointments.

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### 2. References.

\* \* \* \* \*

b. [Section 302 of the Veterans Healthcare, Capital Asset and Business Improvement Act of 2003 (Pub. L. 108–170).

[c.] 38 U.S.C. 501(a), 7421, [ ] 7461–7464.

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### 4. Definitions.

a. [Bargaining Unit Employee. An employee included in an appropriate unit, pursuant to 5 U.S.C. 7112 and 7135, for which a labor organization has been accorded exclusive recognition].

b. [Decision Official. An official designated to (1) receive and attempt to adjust formal grievances; (2) refer formal grievances for further review and inquiry; and (3) decide formal grievances based on the results of impartial reviews and recommendations].

c. [Employee. Any physician, dentist, podiatrist, chiropractor, optometrist, nurse, nurse anesthetist, physician assistant, or expanded-function dental auxiliary covered in the scope of this section. Former employees of the VA are also included, but only in connection with a grievance over discharges or actions resulting in loss of pay or benefits (for example, a former employee charged with 8 hours absence without leave (AWOL) who has requested that the 8 hours of pay be restored). Former employees must have filed a timely grievance in accordance with the provisions of this appendix in order to receive consideration].

d. [Grievance. A request by an employee, or group of employees, for personal relief in a matter of concern or dissatisfaction relating to employment which is subject to the control of agency

management. Matters not covered by the grievance procedure may be found in paragraph 14 of this section].

\* \* \* \* \*

f. [Personal Relief. A specific remedy directly benefiting the grievant, but may not include a request for disciplinary or other action affecting another employee].

**Authority:** 38 U.S.C. 501(a), 7421, [ ] 7461–7464.

## Proposed Revisions to VA Handbook 5021, Employee/Management Relations

### Part I. Disciplinary and Adverse Actions Under Title 5

#### Chapter 3. Adverse Actions

##### 3. Employees Excluded

a. Physicians, dentists, nurses, nurse anesthetists, expanded-function dental auxiliaries, physician assistants, podiatrists, [chiropractors,] optometrists, and other health care professionals appointed under 38 U.S.C. 74 (see part II of this handbook).

### Part III. Probationary Period Actions

#### Chapter 1. Title 38 Probationary Employees

1. *Scope.* This chapter contains the policy and procedures needed for taking actions against title 38 employees serving on a probationary period under 38 United States Code (U.S.C.) 7403(b) in the Department of Veterans Affairs (VA). This includes employees appointed under 38 U.S.C. 7401(1), i.e., physicians, dentists, podiatrists, [chiropractors,] optometrists, nurses, nurse anesthetists, physician assistants, and expanded-function dental auxiliaries. The Under Secretary for Health's designee refers to a designee in the VA Central Office. This chapter does not apply to employees appointed under 38 U.S.C., chapter 3, 38 U.S.C. 7306, 38 U.S.C. 7401(3), 38 U.S.C. 7405 or 38 U.S.C. 7406.

##### 2. Responsibilities.

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*For podiatrists, [ ] optometrists, [and chiropractors,] the appropriate service chief is the authorizing official; however, the review will be conducted by the VA Central Office Professional Standards Board.*

\* \* \* \* \*

##### 3. Summary Board Reviews.

a. *Purpose.* Summary reviews are limited to situations where summary separation from Federal service may be justified. Officials identified in paragraph 2a–2e [ ] are responsible for deciding whether to conduct a summary review of an employee's services. Supervisors may initiate requests for summary reviews at any time during the probationary period.

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#### h. Action on Board Recommendations.

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(5) *Separations Requiring VHA Approval/Review.* All field facility recommendations for separation during probation requiring VHA summary review or approval (e.g., actions related to facility directors and requests for summary reviews for podiatrists, [ ] optometrists, [chiropractors]) are to be sent through the appropriate Network (10N/051). The material forwarded will include the Director's recommendation (where appropriate) and any other applicable comments; VA Form 10–2543, Board Action, (in duplicate); one copy of all related documents, including one copy of all Proficiency Reports prepared during the probationary period; and the employee's personnel folder.

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### Part IV. Probationary Period Actions

#### Chapter 3. Title 38 Grievances

##### 1. Scope and Authority.

\* \* \* \* \*

##### b. Employee Coverage.

(1) This chapter applies to all permanent and probationary physicians, dentists, podiatrists, [chiropractors,] optometrists, nurses, nurse anesthetists, physician assistants, and expanded-function dental auxiliaries.

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##### 2. References.

\* \* \* \* \*

b. [Section 302 of the Veterans Healthcare, Capital Asset and Business Improvement Act of 2003 (Pub. L. 108–170)].

[c.] 38 U.S.C. 501(a), 512(a), 7421, [ ] 7461–7464.

Dated: January 10, 2006.

**R. James Nicholson,**  
Secretary of Veterans Affairs.

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