

GAO

Report to the Chairman, Committee on  
Veterans' Affairs, House of  
Representatives; and the Honorable  
Tim Hutchinson, U.S. Senate

---

April 1998

# VETERANS HEALTH ADMINISTRATION

## Performance and Conduct Issues Involving Senior Managers at VA Medical Centers



---

---

**General Government Division**

B-276217

April 30, 1998

The Honorable Bob Stump  
Chairman, Committee on Veterans' Affairs  
House of Representatives

The Honorable Tim Hutchinson  
United States Senate

This report was prepared in response to your requests that we undertake a study of how the Department of Veterans Affairs (VA) manages the performance of senior executives and deals with instances of poor performance and misconduct. As agreed, we focused on the operations of one component of VA, the Veterans Health Administration (VHA), during fiscal years 1994 through 1996. Our objectives were to determine the following:

- How was the VHA performance management system identifying and dealing with poor and marginal performers at the senior management levels of medical center director, associate or assistant director, and chief of staff?
- What effects, if any, have changes in organizational structure, policies, and procedures instituted by VHA in fiscal year 1996 had on its ability to identify and deal with poor and marginal performers?
- How was VHA identifying and dealing with instances of misconduct at the senior management levels of medical center director, associate or assistant director, and chief of staff?

---

## Background

VHA, with a fiscal year 1998 budget of over \$18.5 billion and a workforce of about 190,000 employees, is charged with providing health care to the nation's veterans and operates an integrated health care system that includes medical centers, outpatient clinics, nursing homes, and counseling centers. In October 1995, the House Committee on Veterans' Affairs held a hearing on issues related to the management of VA's health care system. The hearing raised concerns about how VHA manages the performance of its senior executives and deals with instances of poor performance and misconduct, particularly at the 173 medical centers.

In October 1995, VHA implemented a major restructuring designed to address problems in operational efficiency, accountability, and the provision of quality health care. A significant component of that restructuring was the realignment of VHA's management and field structure from 4 regional offices, each headed by a regional director who supervised

---

the operation of 36 to 45 medical care facilities in his or her region, to 22 regional Veterans Integrated Service Networks. VHA designed the networks so that each, headed by a network director, is intended to coordinate the organization of various medical facilities in order to improve the efficiency of medical care provided to veterans in a geographic region.

Typically, a medical center director, an associate or assistant director, and a chief of staff (collectively the “management triad”) have senior management responsibilities at each medical center. Medical center directors and network directors are senior executives who are appointed under either the Senior Executive Service (SES) or the Title 38 personnel system.<sup>1</sup> Associate and assistant medical center directors are general schedule (GS) employees in grades 13 through 15. Chiefs of staff are appointed under Title 38. For purposes of this report, we referred to chiefs of staff as SES equivalents because of the breadth of their responsibilities and total pay.

The appraisal systems governing the job-related performance of members of the management triads provide for an annual summary rating of one of five levels: Outstanding, Excellent, Fully Successful, Minimally Satisfactory, and Unsatisfactory. For the purposes of this report, we defined “poor or marginal performers” as those employees who, in the network directors’ view, performed at the Minimally Satisfactory or Unsatisfactory levels, whether or not they actually received such performance appraisal ratings. The appraisal systems also have provisions for managers to assist employees in improving their performance and to take formal, performance-based actions, such as demotions and removals, when their performance is rated less than Fully Successful.

Like all VA employees, management triad members are expected to maintain high standards of conduct. Instances of misconduct, which we define as actions that would violate statutes, regulations, or VA policies, are subject to a departmental process of investigation and discipline calibrated to the offense. Misconduct includes, but is not limited to, such actions as misuse of government property, sexual harassment, and violations of travel regulations.

---

## Results in Brief

None of the 477 management triad members received a performance appraisal of less than Fully Successful during the 1994 through 1996 rating

---

<sup>1</sup>The Title 38 personnel system, created under the Act of January 3, 1946, 59 Stat. 677, as amended, governs VA’s health care workers in such occupations as physician, dentist, and nurse.

---

periods. This is not much different from how other executive agencies rated their senior management employees during this 3-year period. Office of Personnel Management (OPM) data showed that during this same period, about one-tenth of 1 percent of an average of 5,066 senior executives received a rating of less than Fully Successful. The OPM data also showed that of an average of 126 employees in other executive agencies who were in positions comparable to the associate and assistant medical center directors, about eight-tenths of 1 percent received a less than Fully Successful rating.

The network directors acknowledged in interviews, however, that the record of the performance appraisals did not capture the actual performance of all the management triad members. Two-thirds of the network directors reported they had considered at least one member of the management triads within their networks a poor or marginal performer at some time during the period. The aggregate number of poor or marginal performers reported by the network directors was 37. Various information VHA headquarters provided showed that the performance of an additional 10 triad members was considered to be marginal or poor some time during the 3-year period. Thus, 47 (or 10 percent) of the 477 triad members were viewed as performing at a less than Fully Successful level at some time during this period. Over half of the network directors believed that the number of poor or marginally performing triad members within VHA over the fiscal year 1994 through 1996 period was relatively small overall. They attributed this to VA's selection process, which, in their view, weeds out the poor performers before they reach the senior executive level.

Most network directors agreed that they did not identify poor or marginal performance in the performance appraisals, because those ratings necessitate formal actions to remedy performance problems. The network directors perceived those actions as time-consuming and distracting, burdensome, and unlikely to produce a desired result. Most network directors believed that formal actions based on an official performance appraisal of less than Fully Successful created an adversarial and unproductive relationship between management and the employee and were unlikely to either improve performance or lead to removal. However, because the network directors and other VHA senior managers had not given the triad members an official rating that identified their performance as poor or marginal, it would have been difficult for them to take formal, performance-based actions against the employees.

---

Although network directors did not use formal means to deal with poor or marginal performers, they said they effectively managed poor performers through informal means.<sup>2</sup> These informal measures, they said, included informal counseling, reassigning a triad member to a position more suited to an individual's talents (without officially noting that the reassignment was related to poor performance), and circumspectly encouraging the individual to retire or resign. Almost all of the network directors agreed that informal means of managing performance at the triad level were effective means for dealing with poor or marginal performers. Almost all of the network directors also stated that passing along poor performers to unwitting colleagues is not now used as a technique for managing poor performers, although they said it was formerly done under the regional structure that existed prior to October 1995.

The network directors' propensity to use informal, rather than formal, means to address performance problems is not unique to them. Prior studies by GAO and the Merit Systems Protection Board (MSPB) have shown that managers and supervisors governmentwide have avoided taking formal actions against less than satisfactory performers for some of the very same reasons cited by the network directors. In its oversight capacity for federal personnel issues, OPM has included in its strategic plan for fiscal years 1997 through 2002 efforts to improve the capacity of managers to identify and resolve performance problems.

The network directors were nearly unanimous in asserting that the changes VHA recently implemented, particularly the reduction in the number of triad members for whom they were responsible, were helping them to identify and deal with poor performance. They also generally agreed that VHA's new, more quantifiable performance measures were having, or would likely have, a positive effect on assessment and management of performance at the triad level.

Most network directors did not consider misconduct to be a widespread problem among management triad officials, although they did acknowledge that instances of misconduct by employees at that level had occurred. Departmental records showed 14 substantiated cases of misconduct by triad members during fiscal years 1994 through 1996. In 6 of the 14 cases, VHA took disciplinary action, which ranged from a letter of

---

<sup>2</sup>For purposes of this report, we defined formal means as performance-based adverse actions, such as demotions or removals, that are taken on the basis of an official rating of less than Fully Successful. We defined informal means as actions that are taken on the basis of an employee voluntarily agreeing to them following management's informal assessment of, rather than an official rating of, his or her performance as poor or marginal.

---

admonishment to a demotion. For the remaining eight cases, no disciplinary actions were taken. Rather, the employees either retired, resigned, or were counseled.

The disciplinary actions that VHA took to address the misconduct created some controversy that primarily revolved around one sexual harassment case. The controversy about how VHA handled this case as well as concerns about the effectiveness of VA's "zero tolerance" policy for sexual harassment and employment discrimination led to administrative and statutory changes. In March 1997, VA changed its policy and procedures for handling and resolving misconduct that involves senior VA officials. This new policy required that a panel of senior VA executives would be responsible for ensuring departmentwide consistency in dealing with allegations of misconduct. Also, legislation was enacted in November 1997 that established a new process and structure for investigating and resolving employment discrimination complaints. Under this legislation, VA is planning to change the procedure for investigating allegations of discrimination and sexual harassment.

---

## Scope and Methodology

To meet our objective of determining how VHA was identifying and dealing with poor and marginal performers at the triad level, we analyzed data obtained from VHA's Management and Administrative Support Office on performance ratings, reassignments, and other performance-related actions. We did not verify the accuracy or completeness of these data, but we did follow up on the readily apparent omissions and inconsistencies we found in the data provided on ratings and other performance-related actions.

Because VHA rating data indicated that no triad members received an official summary appraisal rating of less than Fully Successful during the 1994 through 1996 rating periods, we interviewed the 21 VHA network directors who were in their positions when we did the interviews during April to July 1997. Although VHA has 22 networks, we were able to interview only 21 of the 22 directors of these networks, because 1 had resigned from VA at the time we began our interviews in April. We did face-to-face interviews with 19 of the 21 network directors. For the remaining two directors, we did a teleconference with one and a videoconference with the other.

We interviewed the network directors because they are directly responsible for rating and managing the medical center directors'

---

performance and are expected to be knowledgeable about, and ultimately responsible for, the ratings and performance of the associate and assistant medical center directors and chiefs of staff. Our purpose in interviewing the network directors was to (1) determine whether they believed some triad members were not performing to the Fully Successful level, despite what their official ratings showed; (2) identify what actions, if any, were taken to deal with the triad members whom they believed performed at a less than Fully Successful level; and (3) get their views on the effectiveness of the actions in dealing with the performance problems. We did not interview affected employees or representatives of VHA employee organizations. Consequently, we do not know whether their views on the effectiveness of the actions for dealing with poor or marginal performance would be similar to or different from the views expressed by the network directors.

To facilitate the network directors being open and candid with us, we asked them to identify individuals, by position rather than by name, in their own networks whom they believed were poor or marginal performers, despite what the official ratings showed for 1994 through 1996. We also agreed to report the information that the network directors shared with us in a manner that would not identify them or their network. On the basis of the views expressed by the network directors during the interviews, we developed our definition of poor or marginal performers.

To confirm our understanding of and obtain a consensus of the opinions expressed during the interviews, we sent a survey instrument to the network directors in July 1997 that summarized various opinions we had discerned in the interviews. All 21 network directors responded to the survey. We asked them if they agreed or disagreed with the 57 opinions or had “no basis” for comment because they either had no knowledge of the particular matter addressed in the opinion or believed they had not worked long enough at VHA to comment. We excluded the “no basis” responses in reporting the survey results, because we wanted to report the opinions of only network directors who had a basis for either agreeing or disagreeing with the opinions. We also excluded the “no responses” in order to use a more precise respondent base in reporting the survey results. The number of network directors who indicated “no basis” responses and “no responses” varied. For example, the number of network directors who indicated “no basis” ranged from no directors on 6 opinions to 10 directors on 1 opinion. Five network directors did not respond to 19 of the opinions. The average number of “no basis” and “no responses” was about four network directors per opinion.



---

We also interviewed personnel officials in VHA's Management and Administrative Support Office; VHA's former Chief Network Officer, who was responsible for rating and managing the performance of the network directors; and officials at OPM who oversee agencies' operation of the SES program. The purpose of the interviews with VHA officials was to corroborate the information provided by the network directors and to gather additional information about the number and management of poor and marginal performers at the management triad level the official record did not reflect, because the network directors were relatively new to their positions. At the time of our interviews with the network directors, nearly all of them had been in their positions 18 months. The purpose of our interviews with OPM officials was to help us determine whether actions taken by VHA to deal with poor or marginal performers were consistent with regulatory and statutory requirements. We did not attempt to judge the merits of the specific informal, performance-based actions taken.

We asked officials of VHA's Management and Administrative Support Office to confirm that the triad members whom the network directors identified to us by position and whom they believed were poor or marginal performers occupied those positions. We also asked them to provide information, if any, on other triad members not identified by the network directors who performed at a less than Fully Successful level at some point during fiscal years 1994 through 1996. VHA provided various documents that contained data on reassignments and other actions taken to address performance-related problems of triad members who had not been identified by the network directors.

We also followed up on the informal, performance-based actions that VHA took during fiscal years 1994 through 1996 to deal with triad members who, according to the network directors' views and data provided by VHA's Management and Administrative Support Office, had been informally judged to be performing at a less than Fully Successful level. We did so by reviewing official personnel and employee performance files and collecting data from VHA's Management and Administrative Support Office to determine whether (1) the less-than-satisfactory performers had been subjects of other informal actions or formal, performance-based actions as triad members during the 5-year period ending September 30, 1996; and (2) inconsistent personnel actions had occurred, such as less-than-satisfactory performers receiving performance awards in the same year that informal actions had been taken to deal with their performance.

---

To meet our second objective of determining the effects, if any, of changes in organizational structure, policies, and procedures recently instituted by VHA on managing performance at the triad level, we interviewed personnel officials in VA's Office of Human Resources Management (OHRM) and VHA's Management and Administrative Support Office to identify the changes. We also reviewed various VHA documents to confirm that the recent changes had been implemented. These documents included samples of the network directors' performance plans that contained new performance measures and directories and organization charts of VHA's restructured field facilities. Finally, we asked the network directors for their views on the effects of these changes during our interviews and in our follow-up survey with them. We did not do an independent assessment of the effects of the changes.

To meet the third objective of determining how VHA was identifying and dealing with instances of misconduct at the triad level, we reviewed VA and VHA manuals that (1) detail the policy and procedures that managers are required to follow in cases of alleged misconduct and (2) specify in a table of penalties the range of penalties available for specific types of misconduct. We analyzed data on the number, nature, and disposition of misconduct cases addressed in fiscal years 1994 through 1996, which we obtained from the records of VA's Office of Inspector General (OIG), Office of Equal Opportunity (OEO), and OHRM. We also interviewed officials from these three organizations to clarify our understanding of the data provided and to obtain their insights regarding VHA's practices in dealing with offenses of misconduct. We obtained the perspectives of the network directors on how misconduct was identified and dealt with at the triad level during our interviews and in a follow-up survey with them.

We were not able to determine whether the number and types of misconduct complaints VHA received and substantiated involving its triad members were comparable governmentwide, because OPM's Central Personnel Data File (CPDF) does not contain a record of misconduct complaints. Misconduct complaints are not contained in the CPDF, because they are not personnel actions.

We compared the range of penalties available at VA for handling instances of misconduct with the range of penalties available at two judgmentally selected executive agencies—the Department of Commerce and the Department of Agriculture—because a governmentwide table of penalties does not exist. The number of executive branch agencies precluded us from doing a detailed comparison of the tables of penalties available at all

---

of them. For that reason, we chose two large federal agencies to serve as points of comparison with VA and to provide a general illustration of the penalties that other government agencies use to address misconduct.

A draft of this report was given to the Acting Secretary of VA and the Director of OPM for their review and comment. On March 31, 1998, designees of the Acting Secretary of VA, which included the director of VHA's Management and Administrative Support Office and several VA officials from various offices, such as the Office of the Assistant Secretary for Human Resources and Administration and OIG, provided us with oral comments. Their comments are discussed on page 36. The Director of OPM provided us written comments on a draft of this report in a letter dated April 6, 1998. These comments are also discussed on page 36 and are reprinted in appendix I.

We did our work in Washington, D.C., from March 1997 to January 1998 in accordance with generally accepted government auditing standards.

---

## Managers Said They Used Informal Rather Than Formal Means to Deal With Poor or Marginal Performers

VHA's network directors did not use certain aspects of the formal performance management system to identify and deal with triad members whom they believed performed poorly or marginally. This is partially supported by the fact that rating data for the 3-year period ending September 30, 1996, showed that no triad members received a less than Fully Successful rating. The majority of the triad members received ratings of Outstanding or Excellent during 1994 through 1996. Consequently, VHA could not take any formal, performance-based actions on the basis of the triad members' official performance ratings. The network directors cited several reasons, such as organizational culture and systemic problems, for not using the official performance appraisal and other formal means to identify and deal with less-than-satisfactory performers. Nevertheless, the network directors said they took actions to deal with triad members whom they believed performed poorly or marginally. According to the network directors, they used informal, rather than formal, means to deal with poor or marginal performers because they believed the informal means were effective, less time consuming, and less administratively burdensome.

The network directors' avoidance of the formal system to address less than Fully Successful performance is not unique to them. Prior to passage of the Civil Service Reform Act (Reform Act) (P. L. 95-454, Oct. 13, 1978), it was recognized that managers rarely gave unsatisfactory ratings, because the follow-on actions for dealing with unsatisfactory performance were

---

viewed as time-consuming and expensive. We reported in 1990 that governmentwide, poor performers were not necessarily documented through the appraisal process and that supervisors were unwilling to use the formal process to deal with them.<sup>3</sup> MSPB reported in 1995 and 1997 that supervisors perceived disincentives to using the formal system to deal with performance problems.<sup>4</sup> For example, MSPB reported that supervisors were discouraged from taking formal actions against employees who performed at an unacceptable level, because they perceived the process for doing so as too complicated, time consuming, or onerous.

The Reform Act revised the procedures for taking actions against poor performers to make it easier for managers to do so. However, the results of this study and our 1990 study and of recent MSPB studies indicate that managers perceive that this goal has not been achieved.

---

### Formal Performance Management System Was Not Used to Identify and Deal With Poor Performers

Our review of VHA performance appraisal data revealed that none of the 477 management triad members received a rating lower than Fully Successful during the 1994 through 1996 rating periods. However, in responding to our survey, 20 of the network directors agreed (and 1 disagreed) that VHA had some poor or marginal performers within the management triads during that 3-year period. Fourteen of the 21 network directors said they had poor or marginal performers in their networks. The aggregate number of poor or marginal performers, according to the network directors, was 37. Also, VHA headquarters provided various documents, compiled in response to requests from us and from Senate and House congressional staff, that identified an additional 10 triad members whose performance was considered to be less than Fully Successful at some point during the 3-year period. Thus, VHA considered that 47 (or 10 percent) of the VHA management triad members performed below the Fully Successful level at some point during the 3-year period. According to the network directors and documents provided by VHA headquarters, the actions taken to address the performance-related problems of these 47 triad members included demotion, reassignment, and placement on a performance improvement plan (PIP).

The fact that VHA officials did not rate any of their triad members as less than Fully Successful is not much different from what occurs governmentwide and in VA as a whole. Very few senior executives

---

<sup>3</sup>Performance Management: How Well Is the Government Dealing With Poor Performers? (GAO/GGD-91-7, Oct. 2, 1990).

<sup>4</sup>Adherence to the Merit Principles in the Workplace: Federal Employees' Views, MSPB, September 1997; and Removing Poor Performers in the Federal Service, MSPB, September 1995.

governmentwide received ratings of less than Fully Successful, according to data from OPM's Executive Information System. The data showed that for the 1994 and 1995 rating periods, which ended September 30, eight senior executives each year received a rating of Unsatisfactory or Minimally Satisfactory. For the fiscal year 1996 rating period, five senior executives received a rating of less than Fully Successful. The number of executives who received a rating of less than Fully Successful during the 3-year period represented about one-tenth of 1 percent of an average of 5,066<sup>5</sup> senior executives rated during that period. OPM's executive database system also showed that no senior executives in VA received a rating of Unsatisfactory or Minimally Satisfactory during the 3-year period. Data from OPM's CPDF showed that of an average of 126 employees in other executive agencies who were in the same job series and grades as VHA's associate and assistant medical center directors, 1 employee (or eight-tenths of 1 percent) received a rating of less than Fully Successful during the 3-year period.

Also, the distribution of VHA's ratings for its triad members at and above the Fully Successful level during the same 3-year period did not differ greatly from what occurred elsewhere in the government and in VA as a whole. VHA rating data showed that from 75 percent to 85 percent of the triad members were rated either Outstanding or Excellent during the 3-year period; 15 to 25 percent were rated Fully Successful. OPM's data showed that for this same period, 91 percent of an average of 5,066 senior executives received either an Outstanding or Excellent rating, and about 9 percent received a Fully Successful rating. OPM's data also showed that of an average of 288 VA senior executives rated during the 3-year period, 83 percent received ratings of Outstanding or Excellent. Of an average of 126 employees in other executive agencies who were in positions comparable to VHA's associate and assistant medical center directors, OPM data showed that 85 percent of these employees received a rating above the Fully Successful level during 1994 through 1996.

According to the network directors, informal means were used to deal with poor or marginal performers after holding frank, but generally undocumented, discussions with the employees. In responding to our survey, the majority of the network directors agreed that the following four informal means had been used at VHA, and about one-third to one-half

<sup>5</sup>This figure excludes an average of 1,235 senior executives in agencies with a three-level rating system who received a Fully Successful rating during fiscal years 1994 through 1996. We excluded these executives from our comparison, because VHA's senior executives are rated under a five-level rating system. According to an OPM official, the three rating levels consist of Unsatisfactory, Minimally Satisfactory, and Fully Successful. He cited the Department of Defense as an example of an agency with a three-level rating system.

---

of them also indicated that they had used these informal means within their networks to deal with poor or marginally performing triad members:

- reassigning an individual to a position more suitable to his or her skills,
- encouraging an employee to retire if eligible,
- encouraging an employee to accept another position (sometimes as part of a negotiated settlement), and
- using the opportunity of organizational consolidations to leave a poor or marginal performer out of the new structure.

Other informal means that some network directors noted in the interviews included informally assigning a mentor to a struggling employee, detailing the employee to another position, and deferring a rating while the employee completed a PIP. However, in their responses to our survey, network directors said that one informal means that is not used is the passing along of poor performers to unwitting colleagues. The network directors were nearly uniform in stating that this method, although used in the past, was not now an option. Most network directors agreed that they now have an understanding among themselves that they will not pass marginal or poor performers to one another without first discussing the reasons and circumstances.

Data provided by VHA headquarters officials confirmed that the types of informal actions identified by the network directors and earlier defined in this report had been taken with respect to triad members. The data VHA provided also identified action plans as a means for dealing with poor or marginally performing triad members. The action plans were designed to ensure that triad members implemented recommendations made as a result of reviews of their management of the medical centers.

In total, the VHA data showed a record of 7 types of actions taken with respect to 29 of the 47 triad members identified by the network directors and VHA headquarters records. The VHA data did not show a record of actions (such as assignment of a mentor) that the network directors said were taken to deal with the performance of the remaining 18 triad members. For 11 of the 29 triad members, informal actions were initiated to address their performance problems after September 30, 1996, the end of our review period. According to our interviews with the network directors and data obtained from VHA's Management and Administrative Support Office, the performance of the 11 triad members was considered poor or marginal at some point during fiscal years 1994 through 1996; however, the informal actions were initiated after September 30, 1996.

For 19 of the 29 triad members, VHA took only 1 type of action; for 10 triad members, VHA took 2 types of actions. Table 1 shows the types of actions taken with respect to the 19 triad members.

**Table 1: Actions Taken to Address Performance Problems of 19 Triad Members**

Type of action	Number of triad members
Reassigned	4
Demoted	5
Placed on a PIP <sup>a</sup>	4
Deferred rating while negotiating actions to address the performance problem	0
Detailed to other positions or duties	1
Retired voluntarily following performance counseling	5
Placed on an action plan	0
<b>Total</b>	<b>19</b>

<sup>a</sup>Three of the four triad members were not rated at the end of the appraisal cycle. Instead, their rating periods were extended until they completed a PIP. The rating period for the remaining triad member was not extended. He was placed on a PIP before the appraisal cycle ended and rated at the end of it.

Source: GAO's analysis of data provided by VHA's Management and Administrative Support Office.

Of the remaining 10 triad members for whom 2 actions were taken, 5 were initially detailed and later retired or were reassigned, demoted, or placed on an action plan. For 4 of the 10, the rating periods were deferred or extended, and they later resigned or were demoted or reassigned. The remaining triad member was demoted and later voluntarily decided to retire.

Of the four triad members whose rating periods were deferred, none received a formal performance appraisal for the rating period that had been deferred. One of the four triad members resigned from his position. According to a VHA Management and Administrative Support Office official, one of the remaining three triad members should have received a rating but apparently did not because of an administrative oversight. This official also said that the remaining two triad members were not rated, because there was no practical point in doing so once they had agreed to removal from their positions.

We followed up on the 29 triad members (15 medical center directors, 5 associate directors, and 9 chiefs of staff) who had been subjected to these informal actions to determine if (1) they had been subjected to any other

---

informal actions or any formal, performance-based actions during the 5-year period ending September 30, 1996; and (2) any apparently inconsistent personnel actions had occurred, such as a triad member receiving a performance-based award in the same year that the informal action was taken.

In our review of the official personnel and performance files on the 15 medical center directors, we found that 1 of the 15 medical center directors had been subjected to another performance-based action during the 5-year period. After receiving performance counseling, the medical center director was placed on a PIP during the fiscal year 1993 rating period. For the remaining 14 medical center directors, the files did not contain evidence of informal or formal actions being taken or proposed to address performance problems from October 1, 1991, to September 30, 1996.

For the remaining 14 triad members (the 5 associate directors and 9 chiefs of staff), data provided by VHA's Management and Administrative Support Office did not indicate that any of the 14 had been subjected to other informal actions or to formal, performance-based actions during the 5-year period that ended September 30, 1996. However, data provided by VHA's Management and Administrative Support Office showed that since September 30, 1996, one of the nine chiefs of staff has been subjected to a formal, performance-based action. The chief of staff was placed on a PIP and subsequently given a Minimally Satisfactory rating for the 1997 rating period. The VHA data also showed that the chief of staff was removed and downgraded from the position effective January 18, 1998.

None of the 15 medical center directors received a performance award or a pay advancement in the year that informal action was taken. Also, none of the nine associate directors received a performance award in the same year that informal actions were taken. According to VHA officials, chiefs of staff do not receive performance awards because they receive special pay.

---

### Most Network Directors Viewed Informal Means as Effective for Dealing With Poor and Marginal Performers

During the interviews and follow-up survey with the network directors, they gave several reasons for avoiding rating triad members as less than Fully Successful and avoiding taking formal actions to remedy performance problems. The network directors described numerous instances during our interviews in which they had undertaken informal measures to improve poor performance. In responding to our survey, 15 network directors agreed (and 1 disagreed) with the opinion that informal



means are more effective than formal means for dealing with poor or marginal performers. They also generally agreed with the opinion that informal means of dealing with performance problems were less adversarial (14 agreed and 4 disagreed) and less administratively burdensome than the formal means (18 agreed and 1 disagreed).

Among the reasons cited by the network directors during the interviews for avoiding rating triad members as less than Fully Successful were the following:

- Three network directors said that it was especially difficult to lower a rating when the performance level had not changed and the adjustment was solely to correct the general problem of rating inflation that exists at the triad level in VHA. Another network director added that a factor contributing to rating inflation is that an individual's prior performance rating greatly influenced his or her current year's rating.
- A rating of less than Fully Successful requires that a formal remedial action be taken; when a formal action is invoked, it turns the problem into a dispute, according to six other network directors. Three of these six network directors also said that employees view ratings of less than Fully Successful and evidence in the personnel file of formal, performance-based actions as serious matters worth fighting. Thus, the directors were reluctant to give marginal and poor performance ratings and take formal performance-based actions, because this can result in an adversarial atmosphere, which they believe might hinder resolution of performance issues.

One of the network directors recognized that the practice of not giving accurate appraisals can lead to certain problems. This director indicated during our interview that as a result of not formally identifying poor or marginal performers with the appropriate rating, it becomes difficult to differentiate among individual employees because the appraisals are so similar. This director, who has a private sector background, also noted during the interview that this practice does not occur just in VHA. He said that performance appraisals in many parts of the private sector were just as benign as those he had observed in VHA. In both the public and private sectors, he said, managers show little willingness to write accurate performance appraisals.

Nine of the network directors also noted in the interviews that they believed that undertaking formal performance actions imposes a heavy administrative burden. One of the nine network directors noted that the

formal process often transformed an effort to establish an employee’s lack of satisfactory performance into a legal dispute, where the objective became the resolution of a dispute. Thus, the formal process often led to a compromise, which two of the nine directors believed did not necessarily lead to the best or the desired result.

As shown in table 2, in responding to our follow-up survey, the network directors also cited additional reasons that contributed to managers not giving less than Fully Successful ratings to triad members who should have received such ratings and not taking formal actions to remedy performance problems.

**Table 2: Reasons Cited by the Network Directors for Not Using Formal Means to Identify and Deal With Poor or Marginal Performers**

	Number of network directors who:	
	Agreed	Disagreed
The network directors either agreed or disagreed that the following reasons contributed to managers not giving less than Fully Successful ratings.		
VHA’s culture is not to give a less than Fully Successful rating.	11	6
Historically, the triad members had received ratings of Fully Successful or higher.	16	1
The former performance measures for medical center directors were too broad and subjective for identifying performance problems.	15	3
The network directors either agreed or disagreed that the following reasons contributed to managers not taking formal actions.		
The processes for taking formal actions were too lengthy, paper-intensive, and time-consuming.	18	2
The burden of proof needed to take formal actions is perceived to be too great.	16	3
A formal action can result in the poor or marginal performers pursuing the various avenues of appeal available to them.	17	2
The performance problem had to reach extreme proportions in order for managers to be willing to pursue the formal process.	14	4
Managers have concerns about being accused of poor supervision, discrimination, or slander.	6	11
Managers have concerns about whether or not the VA central offices (e.g., personnel and VHA headquarters officials) would support them in dealing with poor performers.	14	4

Source: GAO’s survey of the network directors.

---

## Use of Informal Means to Address Poor or Marginal Performance Carries Certain Risks for the Agency

Because none of the triad members identified by the network directors or VHA headquarters as poor or marginal performers had been officially rated as such, it made it more difficult for the network directors and other VHA senior managers to take certain formal, performance-based actions against the employees in dealing with the performance problems. For example, the reassignment, transfer, or removal of an SES employee for unsatisfactory performance is permitted under 5 U.S.C. 4314(b). However, because VHA officials gave triad members satisfactory or better ratings of record even though they viewed their performance as poor or marginal, the law did not permit the officials to take performance-based actions against the triad members. Thus, VHA could not take any action against the triad members unless they voluntarily agreed to the action VHA proposed to take, because the action was based on an informal assessment of their performance, not on an official rating of less than Fully Successful. This use of informal means to identify and deal with poor or marginally performing triad members can carry certain risks for the agency, especially when the agency has not documented the poor or marginal performance.

The failure to accurately evaluate the performance of an employee is a failure to follow the requirements of the performance appraisal systems mandated by law. For example, performance appraisal standards for SES employees in chapter 43 of the United States Code require an accurate evaluation of performance that is based on criteria related to the job or position.

Although the VHA network directors and the top VA human resource officials with whom we spoke said that the informal means have helped them to successfully deal with poor or marginal performers, reliance on these means carries certain risks for the agency. One of the two top human resource officials at VA with whom we spoke also recognized that risks are associated with using informal means, because such means generally do not preclude the employee from taking action against the agency. For example, triad members who were encouraged to retire and did so because the network directors perceived their performance to be poor or marginal but had not officially rated them as such could later appeal the

---

actions taken regarding them.<sup>6</sup> These employees could allege that their retirement resulted from coercion, deception, or misinformation from the network directors. In such cases, VHA would have to prove that the network directors had a valid basis for assessing the employees' performance as unacceptable and that the employees retired voluntarily and not because of coercion, deception, or misinformation from the agency. As of the time we completed our audit work, one of the triad members had filed an appeal with MSPB regarding the informal action taken with respect to him. The triad member alleged that he was reassigned in retaliation for whistleblowing.

We discussed VHA's practice of relying on the informal system to identify and deal with poor or marginal performers with VA's two top human resource management officials. They believed that the practice was appropriate in cases where the network directors were informally taking action to address a decline in the employee's performance that had occurred at some point during an appraisal period, even though the employee had received a Fully Successful or higher rating for the prior appraisal period. These officials said that it is better to deal with a performance problem as it occurs rather than wait until the end of a performance appraisal period to deal with it. We agree that taking action under such circumstances is appropriate. We also note from our interviews with the network directors that there is a general aversion to documenting less than Fully Successful performance in official performance appraisals.

The officials also recognized, however, that less-than-accurate appraisals of employees' performance do occur and are inconsistent with performance appraisal policy. One of the officials characterized the performance appraisal system as cumbersome and ineffective in its outcomes and recognized that most VHA managers do not rely on it to address perceived problem deficiencies. He said that this approach may change over time as VHA develops more objective, quantifiable performance measures. Both officials expressed the view that reliance on informal means to address performance problems as well as a general

---

<sup>6</sup>Because each of the triad members is appointed under separate personnel systems, their avenues of appeal differ. Medical center directors appointed under the SES personnel system may request an informal hearing before MSPB when a performance-based action, such as a removal, is taken against them. This informal hearing is not considered a formal appeal. Medical center directors and chiefs of staff appointed under the Title 38 personnel system generally do not have appeal rights to MSPB. They may appeal actions to a VHA impartial examiner, a VHA Disciplinary Appeals Board, or the courts. The associate and assistant medical center directors, who are appointed under the GS system, have appeal rights to MSPB and the courts.

---

aversion to documenting poor performance on official ratings is a governmentwide phenomenon and is not restricted to VHA.

We also discussed with OPM officials VHA's practice of relying on the informal system to identify and deal with poor or marginal performers. These officials said that supervisors should give honest and accurate appraisals. They also agreed that it is proper to informally deal with an employee's decline in performance during an appraisal period rather than waiting until the end of a period and documenting the decline in an official appraisal. The OPM officials did not specifically address VHA's practice, because they said they would need to know the details of individual cases. For example, was the unacceptable performance extended over a period of time during which the employee received inflated ratings, or did the unacceptable performance occur during the rating period in which the performance-based action was taken? The OPM officials pointed out that performance management can be difficult and human nature sometimes results in managers avoiding confrontation or giving an employee the benefit of the doubt. They suggested, however, that if a system is flawed, or perceived to be flawed, it should be examined with the objective of making it more usable by managers while providing appropriate protections to the employees.

We recognize that the network directors' avoidance of the formal system for identifying and dealing with unacceptable performance is not unique to them. Far less than 1 percent of employees governmentwide in positions comparable to those of the triad members received ratings below Fully Successful during fiscal years 1994 through 1996. In 1990, we reported in a governmentwide study that all poor performers were not necessarily documented through the appraisal process. Supervisors who responded to our questionnaire estimated that 89,500 (or 5.7 percent) of the estimated 1.57 million employees they supervised performed below the Fully Successful level at some time during fiscal year 1988. Yet, OPM data for that same year showed that about 0.6 percent of federal employees were rated below the Fully Successful level. We also reported that poor performers were sometimes not formally designated as such in a rating but instead were given a Fully Successful, because supervisors did not want to use the formal process to deal with them. In responding to our survey, the supervisors indicated that they would not likely use the formal process, because it took too long and used too much of their time.

Even prior to passage of the Reform Act in 1978, managers rarely gave an unsatisfactory rating, because the follow-on actions for dealing with the

---

unsatisfactory performance were viewed as time-consuming, expensive, and aggravating for all parties. Because the process for taking action on the basis of unsatisfactory performance was viewed as slow and burdensome, it deterred managers from taking action that might otherwise have been appropriate. To make the process for taking actions against poor performers easier for managers, the Reform Act changed the standard of evidence for taking actions on the basis of unacceptable performance from a “preponderance of evidence” to “substantial evidence.”

However, the results of our study of VHA, our 1990 governmentwide study, and recent MSPB studies indicate that managers do not perceive that the process for dealing with poor performers is easy enough to use. MSPB reported in 1995 that very few federal managers used the procedures established by the Reform Act for taking performance-based actions against poor performers. Instead, some managers were able to work around the deficiencies of their poor performers by controlling assignments and using other strategies, such as reassigning them to other offices where they might improve. In responding to an MSPB survey, managers and supervisors cited various factors that discouraged them from taking formal actions. These factors were very similar to the reasons given by VHA’s network directors for not using the formal system to deal with performance problems. Managers and supervisors cited the following factors in response to MSPB’s survey:

- Most supervisors perceived the procedures established by the Reform Act to be too complicated, time-consuming, or onerous.
- Many supervisors were reluctant to create an unpleasant work environment and believed that if they took formal action against a poor performer, it was very possible that (1) higher level management would not support them, (2) their decision would be reversed upon review or appeal, or (3) they would be falsely accused of having acted for discriminatory reasons.
- About a third of the supervisors said they had difficulty relating performance deficiencies to their employees’ critical elements, and over a third (39 percent) found it difficult to document employee performance.

Also, a 1997 MSPB study corroborated its 1995 findings on supervisors’ and managers’ reluctance to take formal, performance-based actions. According to MSPB’s 1997 report, 43 percent of second-level and higher supervisors believed that their organizations had a major problem in taking appropriate steps to correct inadequate performance. Fifty-nine

---

percent of the second-level and higher supervisors also believed that their organizations had a major problem separating employees who could not or would not improve their performance to meet the required standards. VA supervisors and nonsupervisors responding to MSPB's survey also believed that their agency had a major problem with correcting inadequate performance (41 percent) and separating poor performers (51 percent).

OPM's strategic plan for fiscal years 1997 through 2002, in part, calls for continuing its efforts to improve the capacity of managers to identify and resolve performance problems effectively. One of the strategies outlined in OPM's plan for achieving this objective was to distribute by 1998 multimedia instructional materials to federal managers and supervisors on how to identify and resolve performance problems, including how to take successful action to remove a poor performer. On February 4, 1998, OPM's director provided the heads of departments and independent agencies with a booklet and CD-ROM on addressing and resolving poor performance. According to OPM's director, this material is designed to provide managers and supervisors with the information needed to understand the process of dealing with unacceptable performance and taking action when necessary.

We recognize the importance of distributing instructions and guidance on how to identify and resolve performance problems. As previously discussed, VHA managers as well as managers at other executive agencies were reluctant to use the formal system, because they perceived the system as overly burdensome, complex, and time-consuming. For the VHA managers, their reluctance did not appear to relate to a lack of knowledge on how to identify and deal with poor performers using the formal system. However, to the extent VHA and other managers' negative perception of the formal system is attributable to a lack of knowledge on how to identify and deal with poor performers, OPM's instructions and guidance may help managers to overcome their reluctance to use the formal system.

---

## Network Directors View the Recent Changes in VHA's Organizational Structure and Performance Measures as Improvements

Over the last 2-1/2 years, VHA's environment and organizational structure have been undergoing rapid change. In October 1995, VHA implemented a major restructuring that was designed to improve the efficiency of, access to, and quality of care provided to the nation's veterans. A major component of the restructuring was the realignment of VHA's management and field structure, which resulted in "the span of control" of the most senior-level field executive positions being substantially reduced. Also in fiscal year 1996, VHA implemented new, more quantifiable performance measures for evaluating and holding its senior executives accountable for their performance. According to the network directors, these changes have improved how VHA operates and will help them to identify and deal with poor or marginal performers. In responding to our survey, 19 network directors agreed (and 2 disagreed) that, overall, these changes would help in identifying and dealing with poor or marginal performers. The network directors recognized, however, that the new changes have also had an impact on how the triad members' performance is now viewed under VHA's new system of operating.

Under the new system of 22 Veterans Integrated Service Networks that was created in October 1995, each network director is now responsible for approximately 24 triad members; under the old, "regional director" system, the director was responsible for at least 80 triad members. The network directors frequently emphasized in the interviews that the reduction in the number of triad members for whom they were responsible significantly improved their ability to gauge and manage performance. Network directors said they believed they now have the opportunity to become more familiar with all their triad members and to make their own assessments of their performance, rather than relying on the appraisals provided by the medical center directors. Management triad members would no longer, as one director put it, "have a place to hide."

The new, more quantifiable performance measures were first incorporated into the network directors' performance plans in the Spring of 1996. For example, in order for a network director to be considered Fully Successful under the fiscal year 1997 outpatient surgery performance measure, 65 percent of the surgical procedures performed in the director's network must be done on an outpatient basis. According to a VHA official, the network directors are responsible for meeting the performance measures, and how they elect to do so is up to them. The network directors may choose to include the performance measures in the medical center directors' performance plans, but they are not required to do so. The VHA official also said that the performance measures are not a required part of



---

the performance plans of the other triad members—the associate director and chief of staff. In responding to our survey, all 21 network directors indicated that they had included the same or similar performance measures in the medical center directors' performance plans.

The network directors generally agreed that VHA's new, more quantifiable performance measures are an improvement on the former, more subjective measures. Several directors believed, however, that it was too early to tell exactly how well the new measures would work, because they had received their individual performance measures too late in the last two appraisal cycles to completely implement them. The performance measures were issued to the network directors about 6 months after the 1996 and 1997 rating periods began. One director cautioned that the performance measures could be unreasonable and cited the performance goal of "over 90 percent patient satisfaction with care" as an example. Nineteen directors agreed (and 2 disagreed) with the opinion that the new performance measures need some fine-tuning.

The network directors recognized that the recent changes under VHA's new operating environment—more quantifiable performance measures and reduced span of control over the medical centers as a result of the transition from a regional to a network structure—have altered how the performance of triad members is now viewed. For example, two network directors told us in the interviews that medical center directors who were once considered outstanding performers under the old environment are no longer considered to be such performers under the new environment. In responding to our survey, 11 network directors agreed (and 6 disagreed) that the recent changes in VHA's operations and organizational structure have led to a decline in the performance appraisals of some triad members. For example, their performance appraisals may have dropped from the Outstanding or Exceptional level to the Fully Successful level. However, one of the six network directors who disagreed with this opinion said that it should not be presumed that a drop from Outstanding or Exceptional to Fully Successful reflects a drop in performance. Rather, this network director said that in some cases, it is more reflective of a difference in the network director's management philosophy, particularly when the director was hired from outside the VA system.

The triad members' performance under the new environment also requires a new set of managerial and technical skills, according to another two network directors. For example, one network director said that it is becoming increasingly difficult for senior executives to perform at the

satisfactory level if they do not possess certain technological or computer skills. The other network director said that the medical center directors today will need to have been exposed to doing cost-benefit analysis and profit and loss statements. This network director also indicated that a medical center director's lack of the new skills, reluctance to adapt to the new changes, or lack of an understanding of what is required under VHA's new environment can lead to him or her being considered a poor performer.

Our analysis of the distribution of the medical center directors' ratings for fiscal years 1994 through 1997 indicates that the recent changes in VHA, such as the new performance measures, have not led to an overall decline in their performance ratings.<sup>7</sup> As shown in table 3, the percentage of medical center directors rated at or below the Fully Successful level did not increase over the 4-year period. Instead, there was generally a steady increase in the percentage of medical center directors who received either an Excellent or an Outstanding rating during this period. The table shows that nearly 78 percent of medical center directors were rated above Fully Successful in 1996, the first year that the changes were implemented, which is slightly lower than the percentage rated above the Fully Successful level in 1995. In 1997, 86 percent of the medical center directors were rated above Fully Successful, which represents a 7 percentage point increase over the percentage rated above the Fully Successful level in 1995, before the changes were implemented.

**Table 3: Distribution of Medical Center Directors' Performance Ratings—1994 Through 1997**

Rating year	Total number rated	Percent of total rated			
		Below Fully Successful	Fully Successful	Excellent	Outstanding
1994	117	0	32.5	38.5	29.0
1995	126	0	20.6	43.7	35.7
1996	125	0	22.4	41.6	36.0
1997	133	0	13.5	47.4	39.1

Source: GAO's analysis of rating data provided by VHA's Management and Administrative Support Office.

The director of VHA's Management and Administrative Support Office attributed the upward trend in the medical center directors' ratings to the

<sup>7</sup>Although the scope of our review was primarily fiscal years 1994 through 1996, we included fiscal year 1997 in our analysis because the requesters' staffs asked us to review the 1997 rating data to see whether or not the new performance standards would result in any medical center directors receiving a less than Fully Successful rating. Since performance measures had not been uniformly given to chiefs of staff and associate or assistant directors, we did not request 1997 rating data regarding them.

networks' overall progress in achieving the performance measures. For example, he said that VHA's 1997 Network Performance Agreement Report showed that the percentage of surgeries and diagnostic procedures performed on an outpatient basis increased to 69 percent, which represented a 33-percent increase over the 1996 rate of 52 percent. Also, the patients' overall quality rating of these outpatient services increased slightly from 61 percent to 63 percent. This VHA official also believes that the upward trend in the medical center directors' ratings may have been affected by the retirement of several poor or average performing medical center directors over the last 4 years, thus leaving a cadre of high-performing executives.

## Disciplinary Actions Taken for Misconduct, but Not Without Controversy

VHA network directors did not consider misconduct to be a widespread problem within the management triad at VHA medical centers, although some directors acknowledged that instances of misconduct had occurred. In their survey responses, all but one of the network directors agreed that misconduct is not considered a widespread problem within the management triad at VHA's medical centers. Misconduct offenses involving triad members had not occurred in most networks; 13 of 21 network directors agreed that "within the past 3 fiscal years, no conduct problems occurred within my network that involved triad members."

The network directors' perception is confirmed by data compiled by VHA. According to these data, VA authorities received a total of 35 allegations of misconduct by management triad members during fiscal years 1994 through 1996. VA investigators substantiated 14 of the 35 allegations.<sup>8</sup> As a result, VHA took disciplinary actions that ranged from a letter of admonishment to a demotion. Even so, VHA has been criticized for being too lenient in punishing some instances of misconduct. As a result of such criticism, VA has established a new procedure to give closer scrutiny to proposed disciplinary actions for misconduct. In addition, Congress recently passed the Veterans' Benefits Act of 1997, which established a new process and structure for handling equal employment opportunity (EEO) complaints.

<sup>8</sup>A substantiated allegation means that the entity, such as the OIG or an administrative review board, that investigated the allegation confirmed that the particular situation existed as alleged, according to a top VA management official. However, substantiation of an allegation does not necessarily result in a disciplinary action or a finding that something improper or inappropriate was done, according to this official.

---

## VHA's Response to Allegations of Misconduct

Allegations of triad member misconduct, as well as misconduct by other VA employees, may surface through the EEO process, through management channels, or through the VA OIG.<sup>9</sup> Investigations of such allegations may be conducted by OIG, EEO investigators designated by VA's OEO, the Veterans Integrated Service Networks, or by administrative review boards established by VHA to address specific cases. Administrative review boards normally consist of senior officials outside the medical facility where the alleged misconduct occurred. Investigating misconduct allegations generally entails collecting and reviewing relevant documents as well as obtaining information from the employee identified in the allegation as having perpetrated the offense and from other individuals considered to have information pertinent to the case. The investigations are designed to obtain the facts of the case so that management can determine (1) if the allegation can be substantiated; (2) whether action is warranted; and (3) what type of disciplinary action, if any, should be taken.

Regardless of what organization conducts the investigations, an investigative report is normally prepared and provided to senior VHA officials, usually the network director. The investigative reports generally do not recommend that specific disciplinary actions be taken on substantiated allegations of misconduct. Decisions on whether to take adverse or disciplinary actions, and the specific action that is appropriate, are generally made by the VHA officials who supervise the employee in question. In the case of triad members, that individual has been the cognizant network director, following consultation with senior VHA headquarters officials.

VA investigations substantiated 14 of the 35 allegations. The 14 substantiated allegations involved 13 management triad members. For 6 of the 14 allegations, VHA took disciplinary action, which ranged from a letter of admonishment to a demotion. For the remaining eight allegations, no disciplinary actions were taken. Instead, five of the eight allegations resulted in the employees either retiring or resigning, and three resulted in the employees receiving counseling. Appendix II provides further details on the nature and disposition of each of the substantiated allegations. According to a VHA official, 2 allegations of misconduct were substantiated against 1 of the 13 triad members, a medical center director, during fiscal

---

<sup>9</sup>VA does not keep consolidated statistics on the number of misconduct allegations received. An OIG official estimated that OIG annually receives approximately 20,000 contacts through OIG's telephone hotline alone. The OIG official said that the majority of the 20,000 contacts do not represent misconduct allegations. Instead, most of the contacts represent concerns about other matters, such as veterans' benefits and compensation, he said. An average of 700 of the 20,000 contacts result in cases that are investigated; and 25 percent (or about 175) of those 700 investigated cases are substantiated, the OIG official said.

---

years 1994 through 1996. One of the two allegations involved installing a video camera in a restroom. The medical center director installed the video camera to discourage racial graffiti, according to another VHA official. The other allegation involved the medical center director lobbying his local congressman for funds to renovate buildings that would be given to a medical school affiliated with the medical center. In the 2 fiscal years preceding the period of our review, none of the 13 management triad members had been named in any allegations of misconduct, according to a VHA official.

The number of disciplinary actions taken for misconduct at VHA and governmentwide, in proportion to the size of their respective workforces, was comparable during fiscal years 1994 through 1996.<sup>10</sup> VHA data showed that 1 triad member was demoted during the 3-year period, which represented two-tenths of 1 percent of an average of 421 triad members employed as of the end of each fiscal year during that period. None of VHA's triad members were suspended or discharged because of misconduct during this time period, according to VHA's data. OPM's CPDF showed that during this same 3-year period, a total of 11 actions were taken governmentwide, excluding VA. The 11 actions affected less than one-tenth of 1 percent of an average of 7,292 employees who were in similar positions governmentwide.

In deciding on the appropriate disciplinary action to take, management officials are to consult a table of penalties, included in VA's policy manual, which describes the disciplinary penalties appropriate for most types of misconduct. The table is not all-inclusive, because it is intended as a guide for managers to use in administering disciplinary and major adverse actions. Management officials generally retain the discretion to tailor disciplinary actions to the incident of misconduct by considering a variety of factors, both mitigating and aggravating. Such factors include the employee's length of service, past disciplinary record, the severity of the misconduct, and whether the misconduct was intentional or inadvertent. However, in cases where a specific penalty is required by statute (such as a 30-day suspension for misuse of a government vehicle), such factors are not to be considered.

One of 14 substantiated allegations involved a medical center director's misuse of a government vehicle while on official business. Although VHA

---

<sup>10</sup>We limited our comparison to discharges, suspensions, and demotions, because these types of disciplinary actions result in a personnel action and thus are to be recorded in the CPDF. Although a letter of admonishment is a disciplinary action, it does not result in a personnel action and thus is not recorded in the CPDF.

---

procedures require a mandatory minimum penalty for a first offense of this misconduct, VHA did not impose the penalty. Under the law, 31 U.S.C. 1349(b), “An officer or employee who willfully uses or authorizes the use of a passenger motor vehicle or aircraft owned or leased by the United States Government (except for an official purpose authorized by section 1344 of this title) or otherwise violates section 1344 shall be suspended without pay by the head of the agency. The officer or employee shall be suspended for at least one month, and when circumstances warrant, for a longer period or summarily removed from office.”

In this case, the Deputy Under Secretary for Health decided that a reprimand was the appropriate corrective action, even though VHA’s table of penalties included the mandatory suspension. According to a VHA official, clear evidence did not exist that would have proven the medical center director’s action as a “willful” misuse of the government vehicle.

Because a governmentwide, standard table of penalties does not exist, we compared VA’s table of penalties, which is applicable at VHA, with the tables of penalties of two other judgmentally selected executive branch departments—the Department of Commerce and the Department of Agriculture. The purpose of our comparison was to see if the range of penalties at VHA on the treatment of various instances of misconduct was similar to the range of penalties at those two departments. Specifically, we compared VA’s range of penalties for the types of misconduct involved in the 14 substantiated cases at VHA. The types of misconduct included sexual harassment, improper use of a government vehicle, fighting, participation in an activity that created the appearance of a conflict of interest, abusive language or behavior, and violations of the Privacy Act and merit system principles.

This comparison showed no appreciable difference between the range of penalties available at VA and those available at the other two executive branch departments. For example, VA’s range of penalties for the first and second offenses of misuse of a government vehicle is identical to the range of penalties at Agriculture and Commerce. None of the three agencies’ tables of penalties list a penalty for a third misuse of government vehicle offense. Depending on whether the misconduct represented an employee’s first, second, or third offense, the range of penalties in some instances at VA was either slightly harsher or less punitive than the range of penalties available at Commerce and Agriculture. For example, VA’s suggested penalty for a third offense involving conflict of interest is more punitive than the penalty at Commerce. VA can remove an employee for a third

---

conflict of interest offense, whereas Commerce's penalty for a third offense of this same misconduct ranges from a 30-day suspension to a removal. On the other hand, VA's suggested penalty for a second offense of fighting ranged from a 10-day suspension to a discharge. Agriculture's penalty for the same offense ranged from a 14-day suspension to a removal. Viewed in this context, VA's penalties generally conform to those provided for at the two other executive branch departments. Appendix III contains a table comparing the range of penalties available at each of the three departments.

---

### Controversy Over VHA's Handling of Misconduct Led to Revisions in VA's Policy and Procedures for Responding to Misconduct

Although VHA took disciplinary actions to address instances of misconduct, these actions were not without controversy. VHA's handling of 1 highly publicized case, which is among the 14 substantiated allegations listed in appendix II, led to VA changing its policy and procedures for handling conduct and performance problems that involve senior VA officials.

The highly publicized case involved a former medical center director who allegedly committed sexual harassment. VA's OIG investigated the sexual harassment allegations and determined that the former medical center director sexually harassed one of the three female employees who had alleged sexual harassment and that there was insufficient evidence to support a finding that the director sexually harassed the other two female employees. However, the OIG concluded that the former director's behavior toward the two other women was abusive, threatening, and inappropriate.

The OIG provided a draft report to the network director for review and comment in September 1996 and recommended that given the findings of misconduct by the former director, appropriate administrative action should be taken. The network director concurred with the OIG's findings and recommendations and initially proposed removing the director from federal service. However, in December 1996, the network director rescinded the proposed adverse action, referring to a lack of evidence and doubts that a case would hold up on appeal. As a result, a negotiated settlement was reached that ensured the former director's removal from the facility and SES. The former director resigned from SES, was downgraded to a GS-14 nonsupervisory position, and was reassigned to another VA medical center in a different state. He was allowed to permanently retain his SES pay and was transferred at government expense to another medical center.

---

Some VHA employees, Members of Congress, and the media criticized the settlement as too lenient. However, a VHA official with whom we spoke believed that the settlement was made in the best interests of the department and avoided further disruption at the former medical center director's facility. He acknowledged, however, that the decisionmaking process should have been better coordinated with VHA headquarters senior officials and the Office of General Counsel (OGC).

Because there was additional evidence of possible misconduct by the former medical center director that was unrelated to the original allegations, the OIG opened a second investigation in May 1997. That investigation substantiated numerous incidents of misconduct by the employee. As a result, on August 1, 1997, VHA notified the employee of its intent to remove him from federal service. The employee retired on August 15, 1997.

In the wake of the criticism received regarding the initial settlement with this employee, VA instituted a new policy in March 1997 designed to ensure more effective communication and coordination among top management officials when conduct problems that involve triad members and other VA executives are handled. VA revised its procedures for responding to allegations of improper conduct by establishing a panel composed of senior VA executives whose objective, among other things, would be to ensure departmentwide consistency in dealing with allegations of misconduct and to discuss the appropriate penalties for confirmed allegations of misconduct.

Under these revised procedures, all proposed actions are to be reviewed by the respective VA administration head or Assistant Secretary, OGC, and the Office of the Assistant Secretary of Human Resources and Administration. After this review, the Office of the Secretary is to be informed of the results and is to consult with the Office of Public and Congressional Affairs before clearing the proposed action for implementation.

Before VA implemented the new policy, authority to approve and implement such actions had been delegated solely to administration heads, Assistant Secretaries, or other key officials. The new policy does not differ dramatically from the old one it replaced, according to a VHA official. However, "It . . . systematizes the process," ensuring more effective communication, coordination, and cooperation among VA's senior management, the VHA official said. The new policy was designed to ensure



---

that management coordination in handling misconduct cases that involve VA senior executives is more effective, the VHA official said.

Most of the network directors believed that the recently instituted policy on how to handle and reach resolution of conduct problems that involve triad members and other VA executives will help ensure that such matters are consistently dealt with. This viewpoint was held by 12 of the 21 network directors, according to our survey.

The new policy may facilitate the handling of conduct problems in the future. However, it is not clear whether or not the policy applies to all VHA medical center triad members. As worded, the new policy applies to occupants of positions “centralized” to the VA Secretary, which includes medical center directors who are members of SES as well as associate medical center director GS-15 employees. However, the wording does not specify whether or not the new policy covers Title 38 employees, who include medical center directors and chiefs of staff, and assistant medical center directors at the GS-13 or GS-14 grade level.

According to the director of VHA’s Management and Administrative Office, all triad members are to be covered by the new policy. He said that Title 38 medical center directors are considered centralized to the Secretary by virtue of the positions they occupy. This official also said that the intent of the new policy is to include all members of management triads, including medical center directors, associate and assistant medical center directors, and chiefs of staff.

---

## New Law Designed to Improve EEO System at VA

In response to concerns about the effectiveness of VA’s policy of “zero tolerance” for sexual harassment and its handling of discrimination complaints, the Congress enacted and the President approved legislation in November 1997 designed to improve VA’s EEO system. The new law, entitled the “Veterans’ Benefits Act of 1997 (P.L. 105-114, Nov. 21, 1997), requires VA to (1) establish a new employment discrimination complaint resolution system to encourage timely and fair resolution of concerns and complaints, including those related to allegations of sexual harassment; and (2) submit reports to Congress on the implementation and operation of the new EEO system on April 1, 1998; January 1, 1999; and January 1, 2000.

The law establishes an Office of Employment Discrimination Complaint Adjudication within VA. The Director of this office is to be responsible for

---

making final agency decisions on the merits of any unlawful employment discrimination complaints filed by a VA employee, a function that is currently performed by VA's OGC. The Director is also to be responsible for submitting reports to the Secretary of VA and to Congress on the implementation and operation of the Office of Employment Discrimination Complaint Adjudication. The law requires the Secretary of VA to enter into an agreement with a private entity to review and report to the Senate and House Committees on Veterans' Affairs on the employment discrimination complaint resolution system within VA.

VA is establishing a new organization, the Office of Resolution Management (ORM), to replace OEO's Discrimination Complaint Service. Establishing ORM will effectively separate the function for adjudicating complaints from the line management function, according to the former Deputy Assistant Secretary for EEO, thereby providing greater assurances that VA employees perform the EEO complaint counseling and investigating functions in a professional and independent manner. The new organization eventually will establish 12 field offices located around the United States. ORM is expected to begin operation in April 1998 with the opening of 2 of the 12 field offices, according to the VA official responsible for coordinating the transition to the new EEO structure and process. Plans call for completing the implementation of ORM by the end of 1998.

VA's current process for handling sexual harassment complaints and other EEO discrimination complaints will change under the planned ORM framework. For example, VA's Assistant Secretary for Human Resources and Administration, the Deputy Assistant Secretary for Resolution Management, ORM District Managers, and ORM Field Managers will serve as VA's EEO officers, and the newly designed complaint resolution management structure will be linked to them. VA facility directors and heads of VA Central Office organizations will no longer serve as EEO officers under the new structure, which situates them outside the EEO complaint process. However, these officials will continue to be held accountable for maintaining a workplace free of discrimination.

Also, the directors of VHA's networks and medical centers, as well as directors of other headquarters and field offices, will no longer have authority to establish administrative review boards to investigate discrimination and sexual harassment complaints filed against members of the senior management teams, such as medical center directors, associate directors, assistant directors, and chiefs of staff, according to VA's Deputy Assistant Secretary for Human Resources. Instead, these complaints and

---

other complaints of serious misconduct will be investigated by rapid response teams, a concept that has been in use since the spring of 1997. These teams will be deployed by the Assistant Secretary for Human Resources and Administration. Procedures regarding the use of rapid response teams are under development, according to this VA official. As of March 4, 1998, the procedures had not been finalized.

Depending on the nature of the allegations, the rapid response teams will generally consist of human resource specialists, attorneys, EEO specialists, and other officials deemed appropriate for the investigation, according to the VA official responsible for coordinating the transition to the new EEO structure and process. This VA official also said that the rapid response team, on the basis of its findings, will be responsible for identifying a range of penalties for management officials to consider in determining the appropriate disciplinary or adverse action. However, the final decision on what disciplinary action to take against the employee will be made by the appropriate supervisory official.

This VA official also said that VA's OIG authority to investigate complaints received directly from employees about sexual harassment, discrimination, and other activities that constitute a violation of law, rule, or abuse of authority will continue under VA's new EEO process. According to this VA official, OIG prefers not to be involved in individual EEO cases, because it does not have authority to grant relief to complainants or take specific types of disciplinary or adverse actions. However, this VA official said that to the extent permissible, OIG and ORM will coordinate the investigation of EEO complaints more closely.

---

## Conclusions

VHA officials did not officially rate any triad member as less than Fully Successful during the 1994 through 1996 rating periods. At first glance, this fact would suggest that either VHA experienced no performance problems among its medical center executives during that period, or that VHA officials were not addressing performance problems. Our work has shown that neither is true.

Rather, VHA network directors responsible for triad members acknowledged that the record of performance ratings did not capture the actual performance of all triad members and that poor performers did exist. But the network directors collectively held that identifying poor performers in official ratings is not an effective way to address the problem because, among other things, it necessitates formal actions that

---

they perceived to be time-consuming, burdensome, and unlikely to produce the desired results. Instead, the network directors believed they had effectively managed poor performance through informal means.

The network directors' recognition that poor performers do exist, but are not identified as such on official ratings because of negative perceptions toward the formal system, raises an important question. Was the attempt in 1978 with the Civil Service Reform Act to make performance management systems more "user friendly" to managers in identifying and dealing with poor performers successful? When the Reform Act was passed, there was general recognition that managers rarely gave unsatisfactory ratings, because the system was viewed as time-consuming and aggravating to all parties. Our "case study" at VHA, our 1990 governmentwide study, and MSPB's 1995 and 1997 surveys all suggest that little has changed in the 20 years since enactment of the Reform Act.

We do not know for certain whether executives in other government agencies share the VHA network directors' perceptions and also rely on an informal system to address performance. However, governmentwide OPM statistics and our prior work, which showed that far less than 1 percent of employees received less than Fully Successful ratings, suggest that such perceptions are not limited to VHA.

Our overall impression is that VHA has taken seriously its responsibility to identify and deal with performance problems among triad members. However, our findings also suggest a problem exists. The problem is not necessarily with VHA or the network directors but with the federal performance management systems. Research has shown that when systems do not work, or are perceived not to work, employees find ways to work around the systems. This appears to be what is occurring at VHA. The network directors have adapted and worked around a system they have deemed to be a failure. Although this adaptation has apparently enabled network directors to take performance-based actions, it carries with it some significant implications for policymakers who are again considering civil service reform. Performance appraisal system requirements call for honest and accurate appraisals. A system that discourages such appraisals contradicts the fundamental premise of performance management and compromises the integrity of federal personnel management.

OPM's strategic plan for fiscal years 1997 through 2002 calls for, among other things, continuing OPM efforts to improve the capacity of managers

---

to effectively identify and resolve performance problems. As part of this effort, OPM has distributed instructional materials to federal managers on how to identify and resolve performance problems. These are important efforts that may help alter managers' existing perceptions that the formal performance management systems are not helpful in this regard. To facilitate its efforts, it would be useful for OPM to develop and monitor data showing the extent to which such negative perceptions change over the 6-year period covered by the strategic plan.

OPM might use positive results showing that managers' perceptions have improved to encourage other federal managers to make greater use of the formal performance management system for identifying and dealing with performance problems. Negative results showing that managers continue to believe that the system is not working as intended could form the basis for OPM, working with Congress, to develop and test alternative approaches to identifying and dealing with performance problems.

VHA has also taken actions to discipline triad members who have engaged in misconduct. However, some of the actions that VHA took resulted in much controversy and concern about how effectively misconduct, especially sexual harassment, is dealt with at the senior management levels within VHA. Thus, VA implemented a new policy and process for handling conduct problems that involve VA senior management. However, we believe that VA needs to change the wording of its policy to clarify that all triad members are covered by it. VA also is in the process of establishing a new office and process for handling employment discrimination complaints as a result of legislation enacted in November 1997. We believe that VA's final policy regarding the use of administrative review boards should clearly reflect, as currently intended by VA, that complaints of sexual harassment and discrimination made against any triad member cannot be investigated by an administrative review board. The changes VA is making in its EEO process, as well as those we suggest here, should lead to improvements in how VHA responds to and resolves misconduct at the senior management levels.

---

## Recommendations

Although OPM has developed training materials to help improve managers' performance in identifying and dealing with poor performers, we believe that data are needed to show whether the training changes managers' negative perceptions of the formal performance management system. Thus, we recommend that the Director of OPM develop data to show by 2002 whether managers' perceptions of the formal performance

---

management system improve following training and experience in proper use of the system. If perceptions improve, we recommend that the Director of OPM advertise this information and further encourage managers to use the formal performance management system. However, if the data developed by OPM continue to show that managers perceive that the formal system is too burdensome and unlikely to produce the desired results, we recommend that the Director of OPM work with Congress to develop and test alternative approaches that may be more effective than the existing performance management system.

Although the intent of VA's March 1997 policy on handling instances of misconduct that involve VA senior management is to include all triad members, in practice this may not occur. Thus, to avoid any potential confusion on which positions in the management triad are covered by the March 1997 policy, we recommend that the Secretary of VA revise the policy to specifically include all chiefs of staff who are appointed under Title 38 and associate and assistant medical center directors who are at the GS-13 and GS-14 levels. We also recommend that the Secretary's policy on the use of administrative review boards clearly reflect that VHA officials cannot convene such boards to investigate employment discrimination complaints made against any triad member.

---

## Agencies' Comments

We provided a draft of this report to the Acting Secretary of VA and the Director of OPM for comment. On March 31, 1998, we met with the director of VHA's Office of Management and Administrative Support and other VA officials to obtain oral comments. In a letter dated April 6, 1998, the Director of OPM provided comments on a draft of our report. (See app. I.)

The VA officials said that VA agrees with the two recommendations we made to the Secretary and considers both recommendations to be consistent with the policy direction in which VA is moving. The VA officials characterized our report as fair, objective, balanced, and thorough. They also commented that VHA managers, like managers elsewhere in the federal government, know how to use the formal system to deal with performance problems but are reluctant to use it and instead rely on the informal measures.

The Director of OPM said that our findings showing that VHA managers tend to deal with employees who have performance and conduct problems in

---

an informal manner before invoking formal systems are not surprising.<sup>11</sup> She recognized that prior studies by us, MSPB, and OPM have shown that managers and supervisors in many agencies avoid taking formal actions, because they perceive the formal system as administratively burdensome, time-consuming, and not as effective as informal methods. She pointed out, however, that regardless of how simple or how well-designed a system is, it can be effective only if it is used.

The Director of OPM said that our recommendation that OPM assess the effectiveness of its recently developed training materials aimed at helping to improve managers' performance in identifying and dealing with poor performers is a good one, and OPM will assess the effectiveness of these and other materials used to help managers address performance and conduct issues. The Director said that OPM is working with its stakeholders to improve individual and organizational performance, including strengthening ways to hold executives and managers accountable for producing results and providing them tools to identify and rectify performance deficiencies. She said that OPM is encouraged that VHA managers are addressing performance and conduct problems.

---

We are sending copies of this report to the Acting Secretary of VA and the Director of OPM. We are also sending copies to the Ranking Minority Member of the House Committee on Veterans' Affairs, the Chairman and Ranking Minority Member of the Senate Committee on Veterans' Affairs, other appropriate congressional committees, and other interested parties. Copies will be made available to others on request.

---

<sup>11</sup>Although our report did not specifically depict VHA's handling of misconduct as informal, the manner in which some incidents of misconduct were resolved—employees deciding to voluntarily resign or retire—avoided the formal system.

---

The major contributors to this report are listed in appendix IV. Please contact Michael Brostek, Associate Director, or me at (202) 512-8676 if you have any questions.

A handwritten signature in black ink that reads "L. Nye Stevens". The signature is written in a cursive style with a large initial "L" and a long horizontal stroke at the end of the word "Stevens".

L. Nye Stevens  
Director, Federal Management  
and Workforce Issues



---

---

---

# Contents

---

Letter	1
Appendix I Comments From the Office of Personnel Management	42
Appendix II Disposition of Misconduct Charges Involving VHA Management Triad Members—Fiscal Years 1994 Through 1996	44
Appendix III Range of Misconduct Penalties at VA Compared With Ranges at Agriculture and Commerce	46
Appendix IV Major Contributors and Acknowledgments	48
Tables	
Table 1: Actions Taken to Address Performance Problems of 19 Triad Members	13
Table 2: Reasons Cited by the Network Directors for Not Using Formal Means to Identify and Deal With Poor or Marginal Performers	16

---

Table 3: Distribution of Medical Center Directors' Performance Ratings—1994 Through 1997

---

**Abbreviations**

CPDF	Central Personnel Data File
EEO	equal employment opportunity
GS	general schedule
MSPB	Merit Systems Protection Board
OEO	Office of Equal Opportunity
OGC	Office of General Counsel
OHRM	Office of Human Resources Management
OIG	Office of Inspector General
OPM	Office of Personnel Management
ORM	Office of Resolution Management
PIP	performance improvement plan
SES	Senior Executive Service
U.S.C.	United States Code
VA	Department of Veterans Affairs
VHA	Veterans Health Administration

# Comments From the Office of Personnel Management



OFFICE OF THE DIRECTOR

UNITED STATES  
OFFICE OF PERSONNEL MANAGEMENT  
WASHINGTON, DC 20415-0001

APR -6 1998

Mr. L. Nye Stevens  
Director, Federal Management and Workforce Issues  
General Government Division  
U. S. General Accounting Office  
Washington, DC 20548

Dear Mr. Stevens:

This provides the Office of Personnel Management's views on the draft report entitled, "Personnel Practices: VHA's Handling of Performance and Conduct Issues among Medical Center Senior Management."

The draft report describes the way in which managers in the Veterans Health Administration (VHA) address performance and conduct issues. VHA managers tend to deal with employees who have performance or conduct problems in an informal manner before invoking formal systems established by law and regulation. The reason given is that the informal means generally resolve the issues, so that formal procedures do not have to be used. Another reason given is that managers generally perceive the formal systems to be time-consuming, burdensome, and not as effective as informal methods. These findings are not surprising. Prior studies by GAO, MSPB, and OPM have shown that managers and supervisors in many agencies avoid taking formal actions for similar reasons. Regardless of how simple or how well-designed a system is, however, it can only be effective if it is used.

The Government's responsibility, then, must be to hold managers accountable for addressing performance and conduct issues and encourage managers to identify and address these issues in a humane, dignified, and positive way that focuses on improving performance and conduct, and avoids a negative confrontational approach. To be effective, however, managers need the flexibility to deal with performance and conduct issues in an informal way. The need for such flexible alternatives is also being recognized and implemented throughout Government with increasingly positive results in the area of dispute resolution. We are working in partnership with our stakeholders on a series of initiatives to improve individual and organizational performance governmentwide. We are especially focusing on strengthening ways to hold executives and managers accountable for producing results and for providing them tools to identify and rectify performance deficiencies.

One of these tools is the CD-Rom supervisory training guide, entitled *Addressing and Resolving Poor Performance*, that is referenced in the report. Your recommendation to assess the effectiveness of this guide is a good one. We will evaluate the use and

---

**Appendix I  
Comments From the Office of Personnel  
Management**

effectiveness of this tool as well as other materials used to help managers address performance and conduct issues. Another initiative in OPM's strategy to evaluate and improve performance management is a study of how Federal organizations handle poor performers. The study involves a telephone survey of the Federal community to determine the extent of poor performance and the steps managers take to deal with it.

Also, as opportunities to make system improvements arise, both administrative and legislative, we will seize them.

We are encouraged that VHA managers are facing performance and conduct problems. With shrinking resources, we can no longer afford to ignore performance issues. The taxpayers deserve quality performance from all Federal employees, and we are striving to ensure that they get it. We appreciate the opportunity to review the draft report and to share our views.

Sincerely,



Janice R. Lachance  
Director

# Disposition of Misconduct Charges Involving VHA Management Triad Members—Fiscal Years 1994 Through 1996

Position title	Nature of misconduct	Disposition
Director	Verbal sexual harassment; abusive language	Demoted and reassigned out of state to another facility <sup>a</sup>
Director	Improperly lobbied local congressman to provide funds to renovate buildings on the medical center's grounds to be turned over to university medical school named for the same congressman	Counseled
	Engaged in wasteful spending on quarters renovations, improper spending on a (golf course) putting green, and installing video cameras in a restroom	Admonishment was issued citing poor judgment in installing camera. Other allegations were not substantiated.
Director	Used government vehicle for personal use while on temporary duty	Reprimanded
Chief of Staff	Conflict of interest: represented the medical center in contracting negotiations with university where he was on staff	Resigned after counseling and removal of contracting authority
Associate Director	Sexual and racial harassment: permitted establishment of hostile environment	Admonished and put under an action plan
Director	Committed reprisal by terminating a registered nurse with whom he had engaged in a consensual affair	Retired
Associate Director	Physical altercation with a police officer; hostile environment	Demoted and reassigned out-of-state to another facility
Director	Violated the Privacy Act by disclosing information to officials of veterans group regarding an employee's status in the workers' compensation program	Counseled
Director	Violation of merit principles; travel irregularities	Admonished <sup>a</sup>
Associate Director	Sexual harassment: established hostile environment via consensual relationships with subordinates	Retired
Director	Made inappropriate comments regarding members of the clerical staff	Retired
Associate Director	Sexual harassment	Counseled
Associate Director	Sexual harassment: requested "quid pro quo" sexual favors from staff	Resigned

<sup>a</sup>Although the misconduct occurred within our fiscal year 1994 through 1996 review period, VHA's disposition of the misconduct occurred during fiscal year 1997.

Source: GAO's analysis of data provided by VHA.

---

---

# Range of Misconduct Penalties at VA Compared With Ranges at Agriculture and Commerce

Nature of misconduct	VA <sup>a</sup>		
	First	Second	Third
Sexual harassment	Reprimand to discharge	5-day suspension to discharge	10-day suspension to discharge
Inappropriate comments about staff	Reprimand to discharge	10-day suspension to discharge	Discharge
Improperly lobbied local congressman to earmark funds for building renovations	N/A	N/A	N/A
Used government vehicle for personal use	Mandatory 30-day suspension to discharge	Discharge	<sup>b</sup>
Inappropriately installed video camera in restroom	N/A	N/A	N/A
Conflict of interest: Represented VA in contract negotiations with university where he was on faculty	Admonishment to discharge	10-day suspension to discharge	Discharge
Engaged in a physical altercation with policeman	Reprimand to discharge	10-day suspension to discharge	Discharge
Violated Privacy Act: Disclosed information regarding workers' compensation case	Reprimand to 10-day suspension	10-day suspension to discharge	Discharge
Violated merit principles: Promoted employees before they had 1 year in grade	Reprimand to discharge	10-day suspension to discharge	Discharge



**Appendix III  
Range of Misconduct Penalties at VA  
Compared With Ranges at Agriculture and  
Commerce**

Agriculture			Commerce		
First	Second	Third	First	Second	Third
Letter of reprimand to discharge	14-day suspension to discharge	<sup>b</sup>	N/A	N/A	N/A
Letter of reprimand to discharge	5-day suspension to discharge	<sup>b</sup>	Written reprimand to 10-day suspension	5-day suspension to discharge	30-day suspension to discharge
N/A	N/A	N/A	N/A	N/A	N/A
Mandatory 30-day suspension to discharge	Discharge	<sup>b</sup>	Mandatory 30-day suspension to discharge	Discharge	<sup>b</sup>
N/A	N/A	N/A	N/A	N/A	N/A
Letter of reprimand to discharge	Discharge	<sup>b</sup>	N/A	N/A	N/A
5-day suspension to discharge	14-day suspension to discharge	<sup>b</sup>	Written reprimand to discharge	5-day suspension to discharge	30-day suspension to discharge
Letter of reprimand to discharge	Discharge	<sup>b</sup>	N/A	N/A	N/A
Letter of reprimand to discharge	Discharge	<sup>b</sup>	Written reprimand to 10-day suspension	5-day suspension to discharge	30-day suspension to discharge

Note: The N/A designation represents charges or allegations that are not expressly listed in the departments' tables of penalties. However, the tables are designed to be broad enough to include most, but not all, types of offenses, and appropriate penalties for the unlisted charges could be imposed that are consistent with the range of penalties for comparable offenses.

<sup>a</sup>VA's table of penalties, dated October 18, 1994, applies to all VA employees appointed under Title 5, such as GS and SES employees; and under sections 7401(2) and 7401(3) of Title 38, such as psychologists and pharmacists, respectively. VHA's supplement to this table applies to employees appointed under section 7401(1) of Title 38, such as nurses, physicians, and optometrists. The range of penalties listed in VHA's supplemental table is generally the same as the range in VA's table of penalties.

<sup>b</sup>The tables of penalties do not list a penalty for a third offense of these types of misconduct.

Source: GAO's analysis of the tables of penalties available at VA, the Department of Commerce, and the Department of Agriculture.

---

# Major Contributors and Acknowledgments

---

## General Government Division

Michael Brostek, Associate Director  
Richard Caradine, Assistant Director  
Mary Martin, Assignment Manager  
Gerard Burke, Evaluator in Charge  
Gregory Wilmoth, Supervisory Social Science Analyst  
Ruth Kassinger, Writing Consultant

---

## Office of the General Counsel

Alan Belkin, Assistant General Counsel  
Bruce Goddard, Senior Attorney

---

## Acknowledgements

In addition to those named above, the following individuals from the General Government Division made important contributions to this report: Ernestine Burt, Issue Area Assistant; Donna M. Leiss, Communications Analyst; Michael O'Donnell, Senior Evaluator; and William Trancucci, Senior Evaluator.

---

## Ordering Information

The first copy of each GAO report and testimony is free. Additional copies are \$2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. VISA and MasterCard credit cards are accepted, also. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

### Orders by mail:

U.S. General Accounting Office  
P.O. Box 37050  
Washington, DC 20013

### or visit:

Room 1100  
700 4th St. NW (corner of 4th and G Sts. NW)  
U.S. General Accounting Office  
Washington, DC

Orders may also be placed by calling (202) 512-6000 or by using fax number (202) 512-6061, or TDD (202) 512-2537.

Each day, GAO issues a list of newly available reports and testimony. To receive facsimile copies of the daily list or any list from the past 30 days, please call (202) 512-6000 using a touchtone phone. A recorded menu will provide information on how to obtain these lists.

For information on how to access GAO reports on the INTERNET, send an e-mail message with "info" in the body to:

[info@www.gao.gov](mailto:info@www.gao.gov)

or visit GAO's World Wide Web Home Page at:

<http://www.gao.gov>

---

**United States  
General Accounting Office  
Washington, D.C. 20548-0001**

**Bulk Rate  
Postage & Fees Paid  
GAO  
Permit No. G100**

**Official Business  
Penalty for Private Use \$300**

**Address Correction Requested**

---

