

ADMINISTRATIVE INVESTIGATIONS

1. REASON FOR ISSUE: This Directive establishes policy within the Department of Veterans Affairs (VA) regarding administrative investigations. It establishes uniform and flexible standards for the conduct, reporting, and review of administrative investigation boards, and clarifies the responsibilities of those involved.

2. SUMMARY OF CONTENTS/MAJOR CHANGES: This VA Directive provides new policy and guidance for conducting administrative investigations, and a delegation of investigative authority to VA officials.

3. RESPONSIBLE OFFICE: The General Counsel is responsible for recertification, implementation monitoring, and contents of this Directive. Questions should be referred to Regional Counsel or to the Office of the General Counsel (023).

4. RELATED HANDBOOK: VA Handbook 0700, Administrative Investigations (to be published).

5. RESCISSION: MP-1, Part 1, Chapter 2, VA Investigation Policy.

CERTIFIED BY:

/s/
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**BY DIRECTION OF THE SECRETARY
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ADMINISTRATIVE INVESTIGATIONS

1. PURPOSE

a. The purpose of this Department of Veterans Affairs (VA) Directive is to provide policy regarding administrative investigations (AIs) and the procedures to be used in conducting and reporting them. The term “administrative investigation” refers to a systematic process for determining facts and documenting evidence about matters of significant interest to VA. AIs are conducted to collect and analyze evidence to determine what actually happened and why it happened, so that individual and systemic deficiencies can be identified and effectively corrected.

b. AIs serve a broad array of important policy and management needs at all levels of VA. It is critical that VA officials and employees involved in the AI process have a clear understanding of the scope, purpose, and nature of AIs, and their roles in the process. Investigations that fail to adequately address critical issues, or that reach findings, conclusions, or recommendations that are not supported by the evidence, are an ineffective use of resources and can adversely affect the operation of VA’s facilities, the morale of its employees, and its image before Congress and the public.

c. This directive is established for the administrative efficiency of VA and does not create rights for any individual. However, individual rights or obligations that must be observed in the course of investigations may arise under other directives, regulations, laws, or governing collective bargaining agreements.

NOTE: This directive does not govern: investigations involving quality assurance documents or information protected by 38 USC Section 5705 such as those listed in VA Directive 2001-049, Quality Management and Patient Safety Activities That Can Generate Confidential Documents; investigations into complaints of discrimination conducted by the Office of Resolution Management pursuant to the regulations of the Equal Employment Opportunity Commission; investigations conducted by personnel of the Office of the Inspector General or the Office of the Medical Inspector; investigations by VA police officers conducted pursuant to VA Directive and Handbook 0730; or tort claims investigations conducted by, or under guidance from, the Office of the General Counsel.

2. POLICY

a. Administrative Investigations in VA.

(1) It is VA policy that significant incidents occurring and issues arising within VA facilities or staff offices, or as a result of VA activities, shall be reported and investigated as necessary to meet the informational and decision-making needs of VA. Primary responsibility in this regard rests with the chief executive of the facility or staff office involved, and with their seniors in VA and its administrations.

(2) Determining the facts and the appropriate response to matters within their areas of responsibility is an inherent duty of VA executive leadership. A commitment to reliably determining, reporting, and acting on the facts promotes effective decision-making, fairness, confidence in VA, and support for its actions among employees, veterans, and the public.

(3) While informal information-gathering processes are often sufficient to meet VA's needs, many situations demand a more systematic, thorough, and objective analysis of evidence, documented in a manner that clearly conveys not only the facts found, but also the evidence from which those facts are ascertained, and the investigator's conclusions about matters that may be disputed. Administrative investigation boards are VA's primary tool for this purpose. VA's administrative investigation board procedures will be designed to ensure timely, objective, complete, and thoroughly documented investigations, and shall be sufficiently flexible to address the wide array of situations meriting such investigations within VA in an efficient manner.

b. Delegation of Authority for Conducting Administrative Investigations.

(1) The Secretary is authorized to "make investigations and examine witnesses upon any matter within the jurisdiction of the Department," to take affidavits, and to administer oaths and affirmations under 38 USC § 5711. These authorities are delegated to the Heads of VA Administrations and Staff Offices, to the chief executives of VA facilities, and to all authorities senior to any of these officials in the VA organization (collectively, "convening authorities"). Such authority is in addition to any other existing authorities, including the inherent authority of VA officials to make or direct appropriate inquiries into matters within their areas of responsibility. This delegation of authority shall continue in effect until it, or this directive, is specifically rescinded or revoked, and is not subject to the sunset provision of VA Directive 0000, Delegations of Authority.

(2) These authorities may be redelegated to a principal assistant, and may also be redelegated to employees assigned to conduct administrative investigations for the duration of their investigation duties. Senior convening authorities may direct their subordinate convening authorities in the exercise of these authorities. In exercising these authorities, delegees shall comply with applicable requirements of this directive and VA Handbook 0700, Administrative Investigations (to be published separately).

(3) The Secretary's statutory authority to issue subpoenas, compel attendance of witnesses, and require the production of evidence is not delegated herein but has been delegated separately to other authorities (see 38 CFR Part 2).

(4) VA employees are required to cooperate with administrative investigations in accordance with 38 CFR § 0.735-12(b) and other applicable authorities.

c. Notice To Higher Authority of Convening Authority Involvement. The decision whether to convene an investigation should not be made by an official whose own actions (or failure to act) are likely to be a subject of the investigation, or who appears to have a personal bias in the matter to be investigated. In such situations, the

official involved shall notify the next higher supervisory convening authority within the VA organization of the nature of the matter, the involvement of the official, and the need for decision-making regarding the investigation. The supervisory authority shall be responsible as convening authority for the matter.

d. Certification and Follow-up Action. Upon receipt of the report of an administrative investigation board, the convening authority shall review the report and certify the sufficiency of the investigation. The convening authority shall take any necessary action based on the results of the investigation, including appropriate dissemination of the results of the report to other officials within VA.

3. RESPONSIBILITIES

a. VA Administration and Staff Office Heads, acting within existing authority, may establish policies governing investigation of specific types of matters within their areas of responsibility as necessary to meet VA's informational needs. Such policies shall be consistent with this Directive and, to the extent feasible, with the AI Handbook. Such policies shall avoid unnecessary duplication of material in this Directive and Handbook.

b. Convening authorities shall ensure that proper and sufficient investigations are conducted of incidents occurring at their facilities or as a result of the activities of their organizations, consistent with this directive, the administrative investigations handbook, and any other governing requirements. They shall take appropriate action to protect persons who properly provide information to administrative investigations from reprisal for such cooperation.

c. Members of Administrative Boards of Investigation shall comply with the requirements of this directive, the administrative investigations handbook, and other governing requirements, including those established by the convening authority for the specific investigations to which they are assigned.

d. All VA Employees shall cooperate with administrative investigations to the extent permitted by governing laws, regulations, policies, and collective bargaining agreements. When so directed by convening authorities or members of administrative investigation boards, they shall refrain from disclosing any information developed in the course of an administrative investigation, including the substance of their own testimony, except to federal investigators or their designated representatives or advisors, until the investigation is certified complete by the convening authority. This requirement is established to enhance the integrity and fairness of the investigatory process and does not prohibit disclosures required for official purposes or protected from reprisal by laws such as the Whistleblower Protection Act (codified at 5 USC § 2302(b)(8)).