

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

STEPHANIE CARTER,

Plaintiff,

v.

No. 6:22-cv-1275-A

DENIS RICHARD MCDONOUGH, in his  
official capacity as United States Secretary of  
Veterans Affairs, and the UNITED STATES  
DEPARTMENT OF VETERANS AFFAIRS,

Defendants.

**DEFENDANTS' APPENDIX IN SUPPORT OF  
OPPOSITION TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

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# EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT  
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STEPHANIE CARTER,

Plaintiff,

v.

No. 6:22-cv-1275-A

DENIS RICHARD MCDONOUGH, in his  
official capacity as United States Secretary of  
Veterans Affairs, and the UNITED STATES  
DEPARTMENT OF VETERANS AFFAIRS,

Defendants.

**DECLARATION OF DR. RIMA BISHARA IN SUPPORT OF DEFENDANTS'  
OPPOSITION TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

I, Rima Bishara, being first duly sworn under oath, state and depose upon personal knowledge as follows:

1. I am the Associate Chief of Staff (ACOS) Ambulatory Care (North) at the Department of Veterans Affairs (VA) Central Texas Health Care System. VA Central Texas Health Care System is comprised of two medical facilities (Olin E. Teague Facility in Temple and Doris Miller Facility in Waco) and nine community based outpatient clinics. The Central Texas Health Care System serves a broad community of veterans in Texas from Brownwood to the West to Palestine to the East, Lagrange to the South and Waco to the North. The Waco site houses Mental Health inpatient wards, Long Term Care units, and an outpatient primary care clinic.

2. Management responsibilities for ambulatory care are divided geographically – I am responsible for supervising ambulatory care in the northern half of VA Central Texas Health Care System while my colleague supervises ambulatory care in the southern half of VA Central Texas Health Care System.

3. In my capacity as ACOS Ambulatory Care (North), I am responsible for oversight of clinical and administrative operations for ambulatory care at an outpatient clinic located at the Olin E. Teague facility in Temple, an outpatient clinic at the Doris Miller facility in Waco, and outpatient clinics at the Temple, Brownwood, and Palestine VA Clinics. I also have oversight of two contract VA outpatient clinics in Copperas Cove and Killeen. I submit this declaration in support of the Defendants' Opposition to Plaintiff's Motion for Preliminary Injunction in the above-captioned matter. Unless otherwise stated, the facts set forth herein are true of my own personal knowledge, and if called as a witness to testify in this matter, I could and would testify competently thereto.

4. I graduated from Loma Linda University Medical School, Loma Linda, CA in 1986. I am American Board of Internal Medicine Board Eligible and a Fellow of the American College of Physicians.

5. I came to VA Central Texas Health Care System in 2010. My first position was as a Primary Care Provider at the outpatient clinic in Waco, Texas, until late 2017 when I was assigned the Clinic Director position at that clinic. I held the Clinic Director position until July 2021 when I was assigned to my current role as ACOS Ambulatory Care (North)

6. As ACOS Ambulatory Care (North), I review clinic operations on a daily basis and work to address both clinical and administrative processes that impact VA's role of caring for veterans. To support this role, I am a member of several standing committees including the Professional Standards Board which reviews and manages credentialing of privileges for new providers and renewal of privileges for returning providers; the Medical Staff Executive Committee which provides medical oversight of provider privileges, practices and actions needed; the Clinical Executive Committee which reviews and manages facility processes and procedures; and the Peer Review Committee which reviews provider practices and outcomes. I am regularly assigned to other committees or projects as determined by Executive Leadership.

7. In my current role, I am Ms. Stephanie Carter's second-line supervisor. Prior to becoming Ms. Carter's second-line supervisor, I worked with her at the Central Texas Health Care System over several years when Ms. Carter was a Registered Nurse (RN) and was in training to become a Nurse Practitioner (NP).

8. Once Ms. Carter became an NP at the Central Texas Health Care System, we periodically communicated about questions she might have had about clinical cases. She worked as an NP from June 6, 2017 through March 31, 2019, when she retired from the VA. In 2021, Ms. Carter reached out to me directly after she decided to return to work at VA. I directed her to the application process for an open position. I wrote her a peer recommendation at her request for the credentialing process. She ultimately returned to VA in her current position as an NP at the Olin E. Teague Temple facility. From my perspective, our relationship has been collegial and respectful.

9. As Ms. Carter's second-line supervisor, I review her work on approximately a weekly to monthly basis, relating to patient care or routine review of performance.

10. I am aware that VA has general policies in place regarding religious accommodations for employees. Additionally, I am aware that VA leadership communicated to VA employees that those who have objections to providing certain care based on a religious belief would be able to request a religious accommodation. For example, on September 2, 2022, the VA Secretary stated that religious beliefs are protected at VA. *See* Ex. D. On October 17, 2022, the Under Secretary for Health reiterated that VA is committed to respecting individuals' objections to participation in abortions or abortion counseling and stated that guidance for processing such requests was being developed. *See* Ex. E.

11. I am also aware that Central Texas Health Care System leaders have communicated to employees that their religious beliefs are respected, including in connection with abortion-related care. For example, on October 6, 2022, I received a message from VA's Executive Director, Office of Primary Care, discussing VA's provision of abortions in certain circumstances and stating that "[p]roviders may request reasonable accommodation if they have a moral/ethical objection to performing this service." I personally forwarded this message on October 11, 2022, to primary care providers within the Central Texas Health Care System, which included Ms. Carter. *See* Pl's App'x 010. I also informed all ambulatory care leaders, including Ms. Carter's supervisor, that requests for accommodation should be forwarded to the reasonable accommodation coordinator, Layne Ashby. *See* Ex. L.

12. Additionally, on January 6, 2023, the Director of the Central Texas Health Care System sent guidance on requests to be excused from aspects of reproductive health care. *See* Ex. F. On January 9, 2023, the Director supplemented that guidance with the assigned Reasonable Accommodation Coordinator who will assist with those requests for the Central Texas region, including at the Teague facility. *See* Ex. G.

13. On December 15, 2022, I first became aware of Ms. Carter's request for a religious accommodation not to participate in abortion services because of her religious beliefs against performing, prescribing, or counseling for abortion, as well the response of her first-line supervisor. Ms. Carter's first-line supervisor was on leave starting on December 5, 2022, and did not return to work until December 21, 2022.

14. On December 19, 2022, I reached out to Ms. Carter via email to clarify that VA's practice is to grant interim accommodations where possible and to apologize that this practice was not made clear to her when she made her request. Specifically, I stated in my email:

I have been made aware of your request for a religious accommodation dated October 27, 2022 that would permit you not to participate in abortion services (performing, prescribing, or counseling). VA's practice is to grant interim accommodations in such cases where possible, and I apologize that was not made clear to you when you made your request. While we await additional guidance on processing accommodation requests, please know that your request is granted on an interim basis. The granting of this accommodation means that you are not required to participate in abortion services, to include performing, prescribing, or counseling for abortion. No further action is required from either you or the agency for you to receive this interim accommodation. I will be in touch once we have any additional guidance on the accommodations process.

*See* Ex. H at 2.

15. On December 19, 2022, following the interim grant of Ms. Carter's original accommodation request, I received an email from Ms. Carter asking if the interim accommodation also included her "religious objection to working in a facility that provides abortions for reasons other than to protect the life of the mother." *Id.*

16. On December 22, 2022, I responded to Ms. Carter and stated:

Your initial accommodation request dated October 27 did not indicate that you objected to working in a facility that provides abortions for reasons other than to protect the life of the mother. It said: "I need accommodation not to participate in abortion services because of my religious beliefs against performing, prescribing or counseling for an abortion." We interpreted that request as a request that you personally not be required to perform, prescribe, or counsel for any abortion, and we granted an interim accommodation to meet that request.

It sounds like you are now requesting a broader accommodation – that you not work in a facility that provides abortions for reasons other than to protect the life of the mother. VA does not intend to stop providing abortion services at the Olin E. Teague Veterans' Center in Temple, Texas, consistent with the terms of VA's interim final rule. Would a transfer – to a different VA facility that does not provide abortions, such as the VBA Regional Office or the Killeen Heights Vet Center - accommodate your religious objection? If so, I will begin looking into that possibility, but that would require additional time to fully explore.

*See* Ex. H at 1.

17. Ms. Carter has not responded to my December 22, 2022 email.

18. On January 12, 2023, I informed Ms. Carter via email that her religious accommodation had been made final. *See* Ex. I. In that email, which also attached recently-circulated guidance on religious accommodations from the Facility Director, I stated:

Please see the attached final decision on your accommodation request not to participate in abortion services (performing, prescribing, or counseling). You will not be required to sign this form for it to become final. With this decision, you are not required to perform, prescribe, or counsel for abortion. With respect to your request not to work in a facility that provides abortions for reasons other than to protect the life of the mother, I did not receive a response to my last email to you on December 22, 2022. In the absence of a response, it is unclear if you intend to pursue an accommodation related to that portion of your request. If you would like to pursue that request, please advise myself or the reasonable accommodation coordinator Layne Ashby who can help with processing that request. I have also attached the Facility Director's message on this topic along with an employee guide for your reference.

*See* Ex. I.

19. As of today, I have not received a response from Ms. Carter.

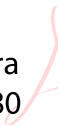


I declare under penalty of perjury that the foregoing is true and correct. Executed this 17th day of January 2023, Temple, Texas.

\_\_\_\_1/17/2023\_\_\_\_\_

Date

Rima  
Bishara  
347380



Digitally signed  
by Rima Bishara  
347380  
Date: 2023.01.17  
16:11:27 -06'00'

Rima Bishara, M.D.

# EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

STEPHANIE CARTER,

Plaintiff,

v.

No. 6:22-cv-1275-A

DENIS RICHARD MCDONOUGH, in his  
official capacity as United States Secretary of  
Veterans Affairs, and the UNITED STATES  
DEPARTMENT OF VETERANS AFFAIRS,

Defendants.

**DECLARATION OF DR. OLAWALE FASHINA IN SUPPORT OF DEFENDANTS'  
OPPOSITION TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

I, Olawale Fashina, being first duly sworn under oath, state and depose upon personal knowledge as follows:

1. I am the Chief of Staff at the Department of Veterans Affairs (VA) Central Texas Health Care System. In my capacity as Chief of Staff, I am responsible for oversight of clinical care provision at all sites in the Central Texas Health Care System to include hospitals at Temple (Olin E. Teague Facility) and Waco (Doris Miller Facility), a large outpatient clinic at Austin, and several more Community Based Outpatient Clinics. I submit this declaration in support of the Defendants' Opposition to Plaintiff's Motion for Preliminary Injunction in the above-captioned matter. Unless otherwise stated, the facts set forth herein are true of my own personal knowledge, and if called as a witness to testify in this matter, I could and would testify competently thereto.

2. I graduated from the College of Medicine, University of Lagos, Nigeria, in 1982. I am board certified in Internal Medicine.

3. I came to VA Central Texas Health Care System in 2007. I served as Service Chief (Associate Chief of Care) for Ambulatory Care until I became Chief of Staff in 2014.

4. VA Central Texas Health Care System includes two main hospitals, located in Temple, Texas, and Waco, Texas, as well as nine clinics. The Doris Miller facility in Waco houses our Inpatient Mental Health facility, Long-term (Nursing home care), and some Primary Care and outpatient Mental Health. The clinic sites provide outpatient care, mostly Primary Care and Mental Health.

5. The Olin E. Teague facility in Temple, Texas, is our flagship facility and provides a broad range of inpatient and outpatient medical care. A non-exhaustive list includes acute hospitalizations for Medical and Surgical conditions, a broad range of specialty care including cardiology, pulmonary, gastroenterology, general surgery, vascular surgery, etc. Much of this Specialty Care, particularly Surgery, is not available at other sites in our Central Texas Health Care System. The Olin E. Teague facility and Austin clinic have Women's Health Clinics for provision of Primary and

Gynecologic care. All of our Primary Care providers are required to provide Primary Care Services to women assigned to them; we have a requirement for continuing education in Women's Health for these providers. There are two full time gynecologists on staff at the Olin E. Teague facility who provide specialized Women's Health Services and consultations.

6. At the end of fiscal year 2022, our Central Texas Health Care System had 20,201 female enrollees, with more than 7000 of them receiving care at the Olin E. Teague facility.

7. As Chief of Staff I have oversight responsibility over all the Medical Care provided at the Central Texas Health Care System's hospitals and clinics. I ensure that care is provided in accordance with the best medical information available, and in adherence with the directives of the Department of Veterans Affairs. I oversee the self-governing processes of the medical staff regarding quality of care and credentialing of medical staff. I directly supervise most of the Clinical Service Chiefs, with overall responsibility for approximately 1,750 staff.

8. I am familiar with religious accommodations generally, as well as the process by which VA employees can seek such accommodations. As a leader in VA Central Texas Health Care System, I strive to ensure that all employees are aware of their rights and to balance the needs of patients with the religious beliefs of employees.

9. I am aware that VA has general policies in place regarding religious accommodations. Additionally, VA has recently reiterated the availability of religious accommodations, including in connection with abortion-related care. On September 2, 2022, the VA Secretary stated that religious beliefs are protected at VA. Ex. D. On October 17, 2022, the Under Secretary for Health reiterated that VA is committed to respecting individuals' objections to participation in abortions or abortion counseling, and stated that guidance for processing such requests was being developed. Ex. E.

10. I am Dr. Rima Bishara's direct supervisor. I have become aware of the accommodation request(s) from Ms. Stephanie Carter, initially with respect to not performing, prescribing, or

counseling for an abortion, and subsequently a potential objection to working in a facility that provides abortions for reasons other than to protect the life of the mother.

11. I understand that VA has now provided Ms. Carter a final accommodation pursuant to which she is not required to perform, prescribe, or counsel for abortion. I also understand that, with respect to her potential objection to working in a facility that provides abortions for reasons other than to protect the life of the mother, VA has inquired whether a transfer – to a different VA facility that does not provide abortions, such as the VBA Regional Office or the Killeen Heights Vet Center – would accommodate her religious objection, and if so has offered to explore that possibility

12. A final accommodation not to personally participate in abortion care or counseling, and an offer to explore whether transfer to a different facility might be possible (an option VA is not required to offer under RFRA but is voluntarily exploring as to Ms. Carter), is the least restrictive means of accommodating Ms. Carter's religious exercise while still ensuring needed care is delivered to veterans, including at the Temple facility. Any further accommodation – including curtailing the availability of reproductive healthcare at the Temple facility as a means of accommodating an individual employee's religious objections – is simply not viable.

13. Specifically, VA has a compelling interest in ensuring that covered veterans and beneficiaries can receive abortions when the life or the health of the pregnant veteran or beneficiary would be endangered if the pregnancy were carried to term or the pregnancy is the result of an act of rape or incest. Failure to offer abortions in these circumstances would leave veterans and their beneficiaries without access to needed services to preserve their lives and health, as detailed in VA's Interim Final Rule announced on September 9, 2022.

14. VA Central Texas Health Care System cannot grant a facility-wide request that the Olin E. Teague facility stop providing any abortions. Pursuant to the interim final rule, VA has decided that covered veterans and beneficiaries can receive abortions when the life or the health of the

pregnant veteran or beneficiary would be endangered if the pregnancy were carried to term, or the pregnancy is the result of an act of rape or incest. Granting Ms. Carter's facility-wise request that the Olin E. Teague facility stop providing any abortions would effectively make such VA services unavailable to the patient population served by the Olin E. Teague facility.

15. The Olin E. Teague facility serves more than 7000 female enrollees, and almost half of which are of reproductive age. Geographically, the area served is quite large—spanning from Brentwood to the West to Palestine to the East, and Lagrange to the South to Waco to the North. The closest VA facilities that can provide all types of abortion care are located in Dallas, Texas, which is two hours away or San Antonio, Texas, which is nearly three hours away. For some of the population served by the Olin E. Teague facility, then, failure to offer abortion care at the Olin E. Teague facility could require them to travel over 120 miles to the closest VA facility offering such care.

16. If the Olin E. Teague facility cannot provide abortions, including in emergent situations, it presents a significant risk to the lives and health of any veteran or CHAMPVA beneficiary who seeks that care. These individuals would be required to obtain care out of state or at a different VA facility much further away. Such delays could endanger a patient's life or health. For example, travel may endanger a patient's life or health based on her condition, or moving a patient may exacerbate a condition from serious to critical. In addition to the significant burden on patients, this would also place a burden on VA's system by straining resources and increasing the costs of care.

17. Additionally, the Olin E. Teague facility employs approximately 4,300 individuals. If any one of those individuals could seek a religious accommodation not about their own job duties but applicable to the operations of the facility as a whole, VA would be placed in an untenable position—at risk of being unable to perform critical VA functions. This problem would not be limited only to the Olin E. Teague facility, and would threaten the agency's overall ability to effectively perform its statutory mission.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 17th day of January 2023, Temple, Texas.

Jan 17 2023

Date



Olawale Fashina, M.D.



# EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

STEPHANIE CARTER,

Plaintiff,

v.

No. 6:22-cv-1275-A

DENIS RICHARD MCDONOUGH, in his  
official capacity as United States Secretary of  
Veterans Affairs, and the UNITED STATES  
DEPARTMENT OF VETERANS AFFAIRS,

Defendants.

**DECLARATION OF MEGGAN BABCOCK IN SUPPORT OF DEFENDANTS'  
OPPOSITION TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

I, Meggan Babcock, being first duly sworn under oath, state and depose upon personal knowledge as follows:

1. I am a Supervisory Human Resource Specialist at the Department of Veterans Affairs (VA), Veterans Health Administration (VHA) Workforce Management and Consulting (WMC). In my capacity as a Supervisory Human Resource Specialist, I am responsible for overseeing the development of policies and programs in accordance with Veterans Health Administration priorities in the areas of Employee Relations, Labor Relations, Performance Management, and Worklife. I submit this declaration in support of the Defendants' Opposition to Plaintiff's Motion for Preliminary Injunction in the above-captioned matter. Unless otherwise stated, the facts set forth herein are based on my own personal knowledge, and if called as a witness to testify in this matter, I could and would testify competently thereto.

2. I graduated from University of Wisconsin with a Bachelor of Arts in English in 2007 and from the University of Wisconsin-Milwaukee with a Master of Arts in English in 2009.

3. I have worked for VA since 2009. I began working at VHA WMC in 2019. VHA WMC drives talent management throughout the VHA by providing consultation in VHA Human Resources (HR) policy development, oversight, operational guidance, human resource management systems, human resource operations, EEO/Affirmative Employment and in Diversity and Inclusion. WMC collaborates and communicates with stakeholders in designing and delivering systems, infrastructure, and programs that enable VHA to deliver premier health care services through a motivated, highly qualified, and engaged workforce. From 2019 to 2021, I oversaw an operational team of Employee and Labor Relations Specialists who handled national level issues and programs and triaged and investigated high level, national issues. From 2021 to present, I have overseen a team of specialists who write policy and legislation and implement programs in accordance with the priorities of the Under Secretary for Health for the Veterans Health Administration as well as the

operational team I previously oversaw. Prior to this position with VHA WMC, I held leadership roles in the area of human resources at several VHA facilities, including being the Human Resource Officer for the James A. Lovell Federal Health Care Center.

4. As a Supervisory Human Resource Specialist for VHA WMC, I oversee a team of specialists who design programs to meet our employee obligations in many areas of human resources, to include awards, performance management, employee relations, labor relations, leave management, and worklife topics. The team drafts, collaborates on, advises on, and negotiates policy changes, program roll outs and legislative proposals related to human resources to ensure we are meeting our obligations for and to employees in accordance with applicable law, regulation, and guidance in a manner that is as streamlined and efficient as possible. We have negotiated national term and mid-term agreements with our labor partners, implemented the COVID-19 vaccination policy and related reasonable accommodation policy—including for employees seeking religious accommodations from those policies—and implemented programs to restore leave and designed and implemented programs to settle issues across VHA’s 400,000 employee population.

5. As a Supervisory Human Resource Specialist, I am familiar with the reasonable accommodation (accommodation) policies and processes adopted by the VA to process requests for religious exemptions. *See* VA Directive 5975 Diversity and Inclusion and VA Handbook 5011 Hours of Duty and Leave (attached as Exhibits J and K) I am also responsible for overseeing the drafting and implementation of VHA-wide accommodation policy for the interim final rule (IFR) permitting VA to provide veterans and Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) beneficiaries with access to abortion services and counseling in certain circumstances. *Reproductive Health Services*, 87 Fed. Reg. 55,287, 55,287–88 (Sept. 9, 2022) (the “IFR”). Since publication of the IFR, I oversaw efforts at VHA to draft the current accommodation policy and guidance related to the IFR for managers, supervisors, Reasonable Accommodation

Coordinators (“RAC,” the human resource employees who help facilitate the processing of reasonable accommodation requests), and employees.

6. It has been VHA’s longstanding and consistent practice to accommodate religious exemptions where possible. For example, VHA has granted accommodations to employees when it would substantially burden the exercise of their religion to fill or dispense birth control pills, work on holy days, and remove facial hair. Employees regularly request time off or compensatory time for religious reasons in order to observe holy days. Compensatory time for religious reasons is the only type of compensatory time which can be used before it is earned. Additionally, at times schedules are adjusted to facilitate time for prayer during the workday or to permit employees to change their off-days to ensure their access to religious observances.

7. Generally, VA leadership has made clear that they want all employees to be aware of their rights and that VA’s accommodation policies are designed to balance the needs of VA and its patients with the religious beliefs of employees. For the IFR specifically, VA leadership has communicated to employees that religious accommodations are available for those who have objections to providing certain care based on a religious belief.

8. On September 2, 2022, VA Secretary Denis McDonough stated in a VA-wide message that religious beliefs are protected at VA *See* Ex. D. On October 17, 2022, the Under Secretary for Health Shereef Elnahal reiterated to VHA employees that VA is committed to respecting individuals’ objections to participation in abortions or abortion counseling, and stated that guidance for processing such requests was being developed. Ex. E.

9. The guidance provided to the VHA human resources personnel and Reproductive Health representatives from each VISN prior to release of the final accommodation policy documents was that employees who requested to be excused from providing some aspect of reproductive health care should be granted an interim accommodation to be excused from the aspect of care at issue. This

guidance was provided via recurring calls with our Chief Human Resource Officers for each Veterans Integrated Service Network (VISN)<sup>1</sup> as well as to the global VISN population attending the Reproductive Health Planning Sequester in October 2022. An example of such accommodations occurred when one of our VISN Women's Health Coordinators requested to be excused from participating in the Reproductive Health Planning meetings in which the planning for the implementation of the IFR was being discussed. The VISN discussed the request with WMC and accommodated the employee by sending another representative. When I was asked about other specific accommodation requests prior to the accommodation process being finalized, I instructed local HR employees to advise management to grant interim accommodations. These instructions were discussed on a recurring basis with Chief Human Resource Officers for dissemination to their staff, supervisors, and managers. It was also discussed on the Reproductive Health Planning Sequester which had participation from each VISN.

10. On January 6, 2023, VHA finalized and issued its accommodation policy and guidance related to the IFR for managers, supervisors, RACs, and employees. *See* Exhibit F. The policy and guidance was disseminated to all VHA managers, supervisors, and RACs. In the message disseminating this policy, the VA noted that the policy and guidance should be reviewed by supervisors and human resources leaders to ensure they are prepared to process any requests to be excused from reproductive health care. In addition, the message directed that VHA leadership must send all VHA employees a document titled Reproductive Health Excusal Requests for Employees, which apprises employees of their rights to request to be excused from an aspect of reproductive health care, and provides employees with information about the applicable laws and general process for requesting such accommodations. The message also directed that employees must be informed of the

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<sup>1</sup> The U.S. is divided into 18 Veterans Integrated Service Networks, or VISNs — regional systems of care working together to better meet local health care needs and provides greater access to care.

regional/facility reasonable accommodations coordinator (RACs) who will assist employees who are seeking a religious exemption from the IFR.

11. To ensure employees and supervisors are able to navigate employee requests to be excused from reproductive health related job functions, VHA servicing HR offices have designated specific RACs who will process the requests to be excused from aspects of the provision of reproductive health. Our belief is that employees, applicants, and supervisors will benefit from a process that is facilitated from beginning to end by the dedicated RAC servicing the individual's location.

12. Individuals may submit requests to be excused directly to the RAC or to the individual's supervisor who will notify the RAC of the request. Standard forms have been developed by VHA for processing the requests. Once a request is made, RACs will utilize a standard intake and tracking form (VA Form 10-328). The next step of the process is for the individual employee to review the form to verify and acknowledge the request details are accurate. Once the RAC has the employee's acknowledgement, the RAC will coordinate with the supervisor or designated management official (DMO) to make the determination on the request. If the request is for an accommodation or exemption, VA Form 10-330 will be utilized to document the decision. In the event denial for an accommodation or exemption request is considered, guidance requires consultation with OGC.

13. I understand that Ms. Stephanie Carter was granted an interim accommodation so that she is not required to perform, prescribe, or counsel on abortions, and has now been granted a final accommodation of equivalent scope. I also understand that Ms. Carter stated that she has a religious objection to working in a facility where abortions are performed for reasons other than to save the life of the mother.

14. With respect to this broader stated objection, I understand that VA has inquired from Ms. Carter whether a transfer – to a different, specialized VA facility that does not provide abortions,

such as the VBA Regional Office, or the Kileen Heights Vet Center, which provides counseling services— would accommodate her religious objection, and if so has offered to explore that possibility. Exploring the possibility of transfer to a different facility and/or position that does not conflict with the employee’s religious beliefs is a recognized accommodation, and (depending on the specific facts and circumstances of each particular case) can be an effective potential option for balancing an employee’s religious objections while preserving VA’s ability to fulfill its mission to its patients and beneficiaries.

15. In contrast, VA cannot grant an individual accommodation that includes a request that an entire facility and its staff stop offering abortion care, contrary to VA’s decision in the IFR. While the VA considers requests for individual accommodations on a case-by-case basis, and thus an individual VA employee might well receive an accommodation that allows them to opt out of performing such counseling or care in the course of their usual duties—as Ms. Carter has received here—it is simply not possible or practical for the VA to pause all such care across an entire facility as part of an accommodation for an individual employee. That type of facility-wide accommodation would not allow VA to fulfill its mission to its patients, as it would result in VA not being able to provide patients with needed care at the Temple VA facility, as explained in the IFR.

16. In short, if a VA facility cannot provide abortions, including in emergency situations, that would endanger the lives and health of any veteran or VA beneficiary who seeks that care. In addition to the unacceptable risk to patients’ health at the Temple VA facility presented by Ms. Carter’s request, accommodating this request and others like it would put a tremendous burden on patients and the VA system as a whole. Because abortion care in certain circumstances, is now included as part of VA’s medical benefits package for veterans and their beneficiaries the VA would have to facilitate patients receiving such needed care at other facilities. Requiring patients to seek needed care at other facilities, potentially located in far-away geographic areas, would impose needless costs,



difficulties, and burdens on patients, and may not be possible depending on the nature of the care sought and how life- or health-threatening the patient's condition is. Additionally, if there were multiple facilities in a state where VA could not provide care, it could be much more difficult to ensure the provision of timely and effective care to veterans and CHAMPVA beneficiaries. For instance, based on timelines for specific procedures, coordinating the travel and needed care within the necessary timeframe would be incredibly burdensome and may not be possible in some cases.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 17<sup>th</sup>  
day of January 2023, Brooklyn Park, Minnesota.

\_\_\_\_1/17/2023\_\_\_\_\_

Date

**MEGGAN  
BABCOCK** Digitally signed by  
MEGGAN BABCOCK  
Date: 2023.01.17  
17:01:13 -06'00'

Meggan Babcock

# EXHIBIT D

**From:** [US Department of Veterans Affairs](#)  
**To:** [VA All Mailboxes](#)  
**Subject:** MESSAGE FROM THE SECRETARY: Reproductive Health  
**Date:** Friday, September 2, 2022 11:25:01 AM

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## **MESSAGE FROM THE SECRETARY Reproductive Health**

Colleagues,

Today, we will announce that the Department of Veterans Affairs (VA) will begin to provide access to abortion counseling and—in certain cases—abortion services to pregnant Veterans and VA beneficiaries. Specifically, when our new Interim Final Rule is published, VA will be able to provide access to abortion services when the life or health of the pregnant Veteran would be endangered if the pregnancy were carried to term, or when the pregnancy is the result of rape or incest. VA beneficiaries enrolled in CHAMPVA will also have access to this care.

We came to this decision after listening to VA health care providers and Veterans across the country, who informed us that state abortion restrictions are creating a medical emergency for the Veterans we serve. Veterans are also at greater risk of experiencing pregnancy-related complications due to increased rates of chronic health conditions. As we have made clear consistently and constantly, Veteran patient safety is our number one priority. Therefore, to protect the life and health of pregnant Veterans and eligible beneficiaries, VA determined that it was necessary to offer abortion counseling and—in some cases—abortion services.

The determination of whether the “life and health of the pregnant Veteran would be endangered if the pregnancy were carried to term” will be made on a case-by-case basis through careful consultation between VA’s great health care providers and the Veterans they serve. In cases of rape or incest, self-reporting from a Veteran or VA beneficiary will constitute sufficient evidence that an act of rape or incest occurred.

VA is taking steps to guarantee Veterans and other VA beneficiaries abortion-related care anywhere in the country. VA employees, when working within the scope of their federal employment, may provide authorized services regardless of state restrictions.

We will continue to communicate with you about this decision every step of the way, and we encourage you to reach out to your organizational leadership if you have any urgent questions. For now, if you want to learn more, you can visit [VA.gov/ReproductiveHealth](https://VA.gov/ReproductiveHealth) and click on Abortion Services. And if you are a clinician or health care provider who is impacted by this decision, VHA leadership and the Office of Women’s Health will soon be reaching out with more information about training and implementation.

As I’ve said many times, our diversity—of gender, of race, of thought and belief—is a fundamental source of strength of our country, of our Armed Forces, and of our workforce at VA. It is therefore likely that there will be a range of reactions to this decision among our great teammates here at VA, and I welcome that diversity of thought and reaction. More importantly, you should all know that your religious beliefs—including sincerely held moral or ethical beliefs as to what is right and wrong—are protected here at VA. Information about those protections can be found through the Office of Resolution Management Diversity and Inclusion, which you can contact

[here](#). I've also discussed this decision with our Chief of Chaplains, Chaplain Willis, who made clear that VA's Chaplain services—at VA Central Office or at your local facility—are available to any employee who wishes to seek emotional or spiritual services in reaction to this decision.

Ultimately, this was a patient safety decision above all else. Pregnant Veterans and VA beneficiaries deserve to have access to world-class, life-saving reproductive care when they need it most—including access to abortion counseling and abortion services when necessary. That's what our nation owes them, and that's what we at VA will deliver.

Thank you so much for all you do to serve Veterans, their families, caregivers, and survivors. It's an honor to serve alongside you.

Denis McDonough

**PLEASE PRODUCE LOCALLY FOR ALL THOSE WHO DO NOT ROUTINELY  
ACCESS EMAIL DUE TO THEIR SPECIALTIES.**

# EXHIBIT E

**From:** [VHA USH ANNOUNCEMENTS](#)  
**To:** [VHA USH ANNOUNCEMENTS](#)  
**Subject:** VA Abortion Counseling and Abortion Services: The Federal Government Supports VA Employees  
**Date:** Monday, October 17, 2022 5:04:29 PM

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**MESSAGE FROM THE UNDER SECRETARY FOR HEALTH  
October 17, 2022**

**VA Abortion Counseling and Abortion Services:  
The Federal Government Supports VA Employees**

Dear Colleagues,

As you may know, VA has amended our medical benefits package to provide Veterans and VA beneficiaries with access to abortion counseling and — [in certain cases](#) — abortion services. This was a patient safety decision, and we came to it after listening to VA health care providers and Veterans across the country, who sounded the alarm that new state-wide abortion restrictions were creating a medical emergency. Most importantly, offering this care helps us protect the health and lives of the Veterans we serve.

In the wake of this decision, it is understandable that some VA employees may be concerned about the legal ramifications of providing these services, especially in states with abortion restrictions. I assure you that VA can and will support any employee who faces any legal actions for simply carrying out their duties under this policy.

The Department of Justice (DOJ) Office of Legal Counsel (OLC) [determined](#) that VA's rule is a lawful exercise of VA's authority, and that states may not impose criminal or civil liability on VA employees — including doctors, nurses, and administrative staff — who provide or facilitate abortions or related services in a manner authorized by federal law, including VA's interim final rule. OLC explained that the Supremacy Clause of the U.S. Constitution bars state officials from penalizing VA employees for performing their federal functions, whether through criminal penalties, license revocation proceedings, or civil litigation.

This means that it is fully legal for VA employees to provide abortion care and services under VA's interim final rule, and that any employee who does so is fully protected under federal law.

The Attorney General has made clear that DOJ will work with VA to use every tool at its disposal to protect access to reproductive services. Consistent with that commitment, DOJ will support and provide representation to VA employees who are subject to legal actions for appropriately carrying out their duties under VA's interim final rule. And DOJ will defend VA's rule against any legal challenge.

If you have concerns about threats of legal action related to the performance of your federal duties or would like more information, please contact your direct supervisor, and refer to Under Secretary for Health Memorandum: [Representation for VA Health Professionals Before State Licensing Boards](#) dated May 26, 2022.

I would also like to add that VA is committed to respecting individuals' objections to participating in the provision of abortions or abortion counseling. We are currently developing policies as to how VA will process requests for exemptions, and in the meantime, we would ask that you please notify your supervisor of any such requests.

Thank you for all you do for Veterans every day.

Shereef Elnahal, MD, MBA  
Under Secretary for Health

# EXHIBIT F



**From:** [Kiefer, Michael L.](#)  
**To:** [CTX Service Chiefs](#); [CTXAdmin Officers](#); [CTXELT](#); [CTXCHIEFS/PLM/MANAGERS](#); [CTXSupervisors Only](#)  
**Cc:** [Jones, Wendell E. \(V17\)](#); [McNeil, Juli K. \(V17\)](#)  
**Subject:** Memorandum: Processing Employee Requests to be Excused from Aspects of the Provision of Reproductive Health Care within the Veterans Health Administration (VHA)  
**Date:** Friday, January 6, 2023 6:45:57 PM  
**Attachments:** [image001.png](#)  
[010623--Processing Employee Requests to be Excused from Aspects of the Provision of Reproductive Health Care within the Veterans Health Administration.pdf](#)  
[Attachment 1--Reproductive Health Excusal Requests for Employees.pdf](#)  
[Attachment 2--Reproductive Health Excusal Requests for Supervisors.pdf](#)  
[Attachment 3--Guidance for VHA Managers, Supervisors, RACs for Reproductive Health Excusal Requests.pdf](#)  
[Attachment 4--FAO for VHA Managers, Supervisors, RACs--Processing Reproductive Health Excusal Requests.pdf](#)  
[Attachment 5--VA Form 10-328, Reasonable Accommodation Coordinator \(RAC\) Intake Tracking Form \(1\).pdf](#)  
[Attachment 6--VA Form 10-329, Coats-Snowe Form.pdf](#)  
[Attachment 7--VA Form 10-330, Exemption and Accommodation Form.pdf](#)  
[Attachment 8--Process Maps, Reproductive Health Excusal Requests.pdf](#)  
[Attachment 9--Employee Message Template, Requests to be Excused from Aspects of Reproductive Health Care.docx](#)  
**Importance:** High

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Team Central Texas:

Please carefully read the guidance on how Central Texas VHA staff may request to be excused from aspects of the provision of reproductive health care within the VHA. It is imperative that all requests are processed in accordance with the attached guidance.

Regards,

*Mike*

Michael L. Kiefer, MHA, FACHE  
Executive Director, Central Texas Veterans Health Care System  
1901 Veterans Memorial Drive  
Temple, TX 76504  
254-743-2306

Click Below for CTVHCS HRO Website



How is VA Quality? Click the links below.

[Mortality among US veterans after emergency visits to Veterans Affairs and other hospitals: retrospective cohort study | The BMJ](#)

[VA Beats Private Sector Hospitals for Post-Op Surgical Mortality | MedPage Today](#)

<https://www.onlinejacc.org/content/76/9/1112>

[Journal of the American Medical Association](#)

[Dartmouth](#)

<https://link.springer.com/article/10.1007/s11606-018-4433-7>

<https://www.newsweek.com/americas-best-addiction-treatment-centers-2020/texas>

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**From:** Office of the AUSHO Communications <[OfficeoftheAUSHOCommunications@va.gov](mailto:OfficeoftheAUSHOCommunications@va.gov)>

**Sent:** Friday, January 6, 2023 3:00 PM

**To:** VHA VISN Directors <[VHAVISNDirectors@va.gov](mailto:VHAVISNDirectors@va.gov)>; VHA VISN VHACO HR Officers

<[vhavisnvhacohrofficers@va.gov](mailto:vhavisnvhacohrofficers@va.gov)>; VHA VISN Admin Reps <[VHAVISNAdminReps@va.gov](mailto:VHAVISNAdminReps@va.gov)>

**Cc:** VHA VISN DNDs <[VHAVISNDND@va.gov](mailto:VHAVISNDND@va.gov)>; VHA VISN CNO only <[VHAVISNCNO@va.gov](mailto:VHAVISNCNO@va.gov)>; VHA VISN CMO Only <[VHAVISNCMOOnly@va.gov](mailto:VHAVISNCMOOnly@va.gov)>; VHA 15 Operations SS <[VHA15OperationsSS@va.gov](mailto:VHA15OperationsSS@va.gov)>; VHA 10A Action <[VHA10AAAction@va.gov](mailto:VHA10AAAction@va.gov)>; VHA 10BRAP Policy <[VHA10BRAPPolicy@va.gov](mailto:VHA10BRAPPolicy@va.gov)>; VHA 106A WMC COE Action Team <[VHA106AWMCCOEActionTeam@va.gov](mailto:VHA106AWMCCOEActionTeam@va.gov)>; VHA 106 HCM Action <[VHA106HCMAction@va.gov](mailto:VHA106HCMAction@va.gov)>; Kuiper-Rocha, Lauren (WMC) <[Lauren.Kuiper-Rocha@va.gov](mailto:Lauren.Kuiper-Rocha@va.gov)>; Spahos, Randy <[Randy.Spahos@va.gov](mailto:Randy.Spahos@va.gov)>; Babcock, Meggan J. <[Meggan.Babcock@va.gov](mailto:Meggan.Babcock@va.gov)>; Deters, Joyce (WMC) <[joyce.deters@va.gov](mailto:joyce.deters@va.gov)>; Hayes, Patricia M. (she/her/hers) <[Patricia.Hayes@va.gov](mailto:Patricia.Hayes@va.gov)>; VHA 106A WMC COE Repro Health Questions <[VHA106AWMCCOEReproHealthQuestions@va.gov](mailto:VHA106AWMCCOEReproHealthQuestions@va.gov)>  
**Subject:** Memorandum: Processing Employee Requests to be Excused from Aspects of the Provision of Reproductive Health Care within the Veterans Health Administration (VHA)

Good Afternoon,

The Office of the Assistant Under Secretary for Health for Operations is sending the attached memorandum “Processing Employee Requests to be Excused from Aspects of the Provision of Reproductive Health Care within the Veterans Health Administration (VHA)” and 9 attachments.

1. The Department of Veterans Affairs (VA) is committed to providing access to world-class care and the full range of reproductive health services that Veterans have earned. On September 9, 2022, VA published an [interim final rule](#) that now permits VA to perform abortions in certain circumstances and provide abortion counseling to veterans and CHAMPVA beneficiaries. VA also respects the rights of employees who carry out our mission every day. To that end, employees and applicants may request to be excused from providing, participating in, or facilitating an aspect of clinical care, including reproductive health clinical care. The purpose of this memorandum is to provide guidance regarding such requests.

2. In anticipation of an increase in requests to be excused from aspects of reproductive health care, guidance is attached for handling these requests.

3. This memorandum and the attached guidance must be disseminated to all VHA managers and supervisors. It should be reviewed by supervisors and human resources leaders to ensure your programs are prepared to process any opt-out requests related to reproductive health care. Attachment 1—Reproductive Health Excusal Requests for Employees must be disseminated to all employees (See Attachment 9—Employee Message Template, Requests to be Excused from Aspects of Reproductive Health Care). The communication to employees needs to specifically identify the Reasonable Accommodation Coordinators for your VISNs who will be assisting with this process. If excusal is requested, supervisors should grant interim excusal for employees from duties or training regarding reproductive health care while requests are being processed. The Office of General Counsel is also available to provide guidance regarding specific requests. General questions regarding reproductive health care requests for opting out or other accommodations may be referred to: [vha106awmccoereprohealthquestions@va.gov](mailto:vha106awmccoereprohealthquestions@va.gov)

4. For questions concerning this memorandum or the attached guidance, please contact: [vha106awmccoereprohealthquestions@va.gov](mailto:vha106awmccoereprohealthquestions@va.gov)

RimaAnn O. Nelson

Attachments

# EXHIBIT G

**From:** [Kiefer, Michael L.](#)  
**To:** [CTXUSERS](#)  
**Subject:** Updated Memorandum: Processing Employee Requests to be Excused from Aspects of the Provision of Reproductive Health Care within the Veterans Health Administration (VHA)  
**Date:** Monday, January 9, 2023 3:03:31 PM  
**Attachments:** [image001.png](#)  
[Attachment 1—Reproductive Health Excusal Requests for Employees.pdf](#)  
[Excusal.pdf](#)  
**Importance:** High

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**Department of  
Veterans Affairs**

**Memorandum**

te: January 09, 2023

n: Executive Director, Central Texas Veterans Health Care System

o: Central Texas Veterans Health Care System Employees

oj: Requests to be Excused from Aspects of the Provision of Reproductive Health Care within the Veterans Health Administration (VHA)

1. VA is committed to providing access to world-class care and the full range of reproductive health services that Veterans have earned. On September 9, 2022, VA published an [interim final rule](#) that now permits VA to perform abortions in certain circumstances and provide abortion counseling to veterans and CHAMPVA beneficiaries. VA also respects the rights of employees who carry out our mission every day. To that end, employees may request to be excused from providing, participating in, or facilitating an aspect of clinical care, including reproductive health clinical care.

2. Please review the attached information regarding requests to be excused from aspects of the provision of reproductive health care within VHA. Employees may communicate to their supervisors or the Reasonable Accommodation Coordinator Mr. Layne Ashby (RAC) their desire to be excused from providing or participating in aspects of this care. General questions regarding reproductive health care requests for opting out or other accommodations may be referred to: Layne Ashby ([layne.ashby@va.gov](mailto:layne.ashby@va.gov)).

/S/

Michael L. Kiefer, MHA, FACHE

Attachments:

Attachment 1—Reproductive Health Excusal Requests for Employees

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**From:** Kiefer, Michael L.

**Sent:** Friday, January 6, 2023 5:58 PM

**To:** CTXUSERS <[ctxusers@va.gov](mailto:ctxusers@va.gov)>

**Cc:** Jones, Wendell E. (V17) <Wendell.Jones@va.gov>; Dobson-Wilson, Lisa A. <Phalisa.Dobson-Wilson@va.gov>

**Subject:** FW: Memorandum: Processing Employee Requests to be Excused from Aspects of the Provision of Reproductive Health Care within the Veterans Health Administration (VHA)

**Importance:** High

To All Team Central Texas:

Please carefully read the guidance on how any Central Texas VHA staff member may request to be excused from aspects of the provision of reproductive health care within the VHA. It is imperative that all requests are requested and processed in accordance with the attached guidance.

Have a Great Weekend!

Regards,

*Mike*

Michael L. Kiefer, MHA, FACHE  
Executive Director, Central Texas Veterans Health Care System  
1901 Veterans Memorial Drive  
Temple, TX 76504  
254-743-2306

Click Below for CTVHCS HRO Website



How is VA Quality? Click the links below.

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[VA Beats Private Sector Hospitals for Post-Op Surgical Mortality | MedPage Today](#)

<https://www.onlinejacc.org/content/76/9/1112>

[Journal of the American Medical Association](#)

[Dartmouth](#)

<https://link.springer.com/article/10.1007/s11606-018-4433-7>

<https://www.newsweek.com/americas-best-addiction-treatment-centers-2020/texas>

# EXHIBIT H

**From:** [Bishara, Rima](#)  
**To:** [Shaughnessy, Bradley M. \(OGC\)](#); [Kalivoda, Danielle \(OGC\)](#); [Stacey, Jeffrey \(OGC\)](#)  
**Subject:** FW: Accommodation  
**Date:** Thursday, December 22, 2022 9:17:44 AM

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**From:** Bishara, Rima  
**Sent:** Thursday, December 22, 2022 9:12 AM  
**To:** Carter, Stephanie A. <Stephanie.Carter@va.gov>  
**Subject:** RE: Accommodation

Good morning Ms. Carter,

Your initial accommodation request dated October 27 did not indicate that you objected to working in a facility that provides abortions for reasons other than to protect the life of the mother. It said: "I need accommodation not to participate in abortion services because of my religious beliefs against performing, prescribing or counseling for an abortion." We interpreted that request as a request that you personally not be required to perform, prescribe, or counsel for any abortion, and we granted an interim accommodation to meet that request.

It sounds like you are now requesting a broader accommodation – that you not work in a facility that provides abortions for reasons other than to protect the life of the mother. VA does not intend to stop providing abortion services at the Olin E. Teague Veterans' Center in Temple, Texas, consistent with the terms of VA's interim final rule. Would a transfer – to a different VA facility that does not provide abortions, such as the VBA Regional Office or the Killeen Heights Vet Center - accommodate your religious objection? If so, I will begin looking into that possibility, but that would require additional time to fully explore.

Rima Bishara, MD  
ACOS Ambulatory Care North  
Crisis Hotline 988, option 1

---

**From:** Carter, Stephanie A. <Stephanie.Carter@va.gov>  
**Sent:** Monday, December 19, 2022 6:08 PM  
**To:** Bishara, Rima <Rima.Bishara@va.gov>  
**Cc:** Fong, Katherine K. <Katherine.Fong@va.gov>  
**Subject:** RE: Accommodation

Dr. Bishara,



Does the interim accommodation also include my religious objection to working in a facility that provides abortions for reasons other than to protect the life of the mother?

---

**From:** Bishara, Rima <Rima.Bishara@va.gov>  
**Sent:** Monday, December 19, 2022 8:58 AM  
**To:** Carter, Stephanie A. <Stephanie.Carter@va.gov>  
**Subject:** Accommodation

Dear Ms. Carter,

I have been made aware of your request for a religious accommodation dated October 27, 2022 that would permit you not to participate in abortion services (performing, prescribing, or counseling). VA's practice is to grant interim accommodations in such cases where possible, and I apologize that was not made clear to you when you made your request. While we await additional guidance on processing accommodation requests, please know that your request is granted on an interim basis. The granting of this accommodation means that you are not required to participate in abortion services, to include performing, prescribing, or counseling for abortion. No further action is required from either you or the agency for you to receive this interim accommodation. I will be in touch once we have any additional guidance on the accommodations process.

Please let me know if you have additional questions.

Rima Bishara, MD  
ACOS Ambulatory Care (North)  
Crisis Line 988, Press 1

# EXHIBIT I

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**From:** Bishara, Rima <Rima.Bishara@va.gov>  
**Sent:** Thursday, January 12, 2023 6:44 PM  
**To:** Carter, Stephanie A.  
**Subject:** Accommodation  
**Attachments:** Attachment 1—Reproductive Health Excusal Requests for Employees.pdf; Excusal.pdf; 10-330- Carter Stephanie (003).pdf

Ms. Carter,

Please see the attached final decision on your accommodation request not to participate in abortion services (performing, prescribing, or counseling). You will not be required to sign this form for it to become final. With this decision, you are not required to perform, prescribe, or counsel for abortion. With respect to your request not to work in a facility that provides abortions for reasons other than to protect the life of the mother, I did not receive a response to my last email to you on December 22, 2022. In the absence of a response, it is unclear if you intend to pursue an accommodation related to that portion of your request. If you would like to pursue that request, please advise myself or the reasonable accommodation coordinator Layne Ashby who can help with processing that request. I have also attached the Facility Director's message on this topic along with an employee guide for your reference.

Thank you,

Rima Bishara, MD  
ACOS Ambulatory Care North  
Crisis Hotline 988, option 1

# EXHIBIT J

Department of Veterans Affairs  
Washington, DC 20420

VA DIRECTIVE 5975  
Transmittal Sheet  
April 29, 2021

## DIVERSITY AND INCLUSION

1. **REASON FOR ISSUE:** To update Department of Veterans Affairs (VA) Directive 5975, Diversity and Inclusion, based on applicable laws, regulations and directives.
2. **SUMMARY OF CONTENTS/MAJOR CHANGES:** This Directive updates policies, program requirements and responsibilities for VA's Diversity and Inclusion programs, including building a model Equal Employment Opportunity (EEO) program that integrates Affirmative Employment, Special Emphasis, Reasonable Accommodation and Religious Accommodation. The major changes include the following:
  - a. Update the title of the VA office responsible for this Directive and position titles of responsible officials, so named during organizational restructuring.
  - b. Update VA's Diversity and Inclusion policy and programs to include the policies, requirements and responsibilities for the implementation, management and oversight of the Section 504 Program under the Rehabilitation Act of 1973, as amended.
  - c. Clarify the roles and responsibilities of Administrations and Staff Office officials and their respective EEO or Diversity and Inclusion Offices and the National VA Chaplain Service.
  - d. Establish new programs and initiatives to address emerging Diversity and Inclusion issues including, but not limited to, the Harassment Prevention Program.
3. **RESPONSIBLE OFFICE:** VA Office of Resolution Management, Diversity and Inclusion (08).
4. **RELATED HANDBOOKS:** VA Handbook 5011, Hours of Duty and Leave; VA Handbook 5975.1, Processing Requests for Reasonable Accommodation and Personal Assistance Services from Employees and Applicants with Disabilities; VA Handbook 5975.2, Equal Employment Opportunity, Diversity and Inclusion Technical Assistance Reviews; VA Handbook 5975.3, Guidance on Equal Employment Opportunity Commission's Management Directive 715 and Barrier Analysis; VA Handbook 5975.4, Transgender Employee Transition Guidance; VA Handbook 5975.5, Special Emphasis Program Management; and VA Handbook 5975.6, Compliance Procedures Implementing Section 504 of the Rehabilitation Act of 1973, as amended – Nondiscrimination Based on Disability in Federally Conducted Programs or Activities.

Department of Veterans Affairs  
Washington, DC 20420

**VA DIRECTIVE 5975**  
**Transmittal Sheet**  
**April 29, 2021**

**5. RESCISSION:** VA Directive 5975, Diversity and Inclusion, dated March 29, 2013.

**CERTIFIED BY:**

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

/s/

Dat P. Tran  
Acting Assistant Secretary for  
Enterprise Integration

/s/

Jeffrey R. Mayo  
Acting Assistant Secretary of Human  
Resources and Administration/Operations,  
Security and Preparedness

**DISTRIBUTION:** Electronic only

**DIVERSITY AND INCLUSION**

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5. DEFINITIONS..... 17

## DIVERSITY AND INCLUSION

1. **PURPOSE.** This Directive establishes the Department of Veterans Affairs' (Department or VA) policy, program requirements and coordinated responsibilities for workforce Diversity and Inclusion in accordance with (1) Executive Order (EO) 13583, "Establishing a Coordinated Government-wide Initiative to Promote Diversity and Inclusion in the Federal Workforce," (2) the Government-wide Diversity and Inclusion Strategic Plan, (3) the VA Diversity and Inclusion Strategic Plan and (4) applicable EEO laws, regulations and directives. VA's Diversity and Inclusion goals are to: (1) build a diverse, high performing workforce that reflects all segments of society, (2) cultivate a flexible, collaborative and inclusive work environment that leverages diversity and empowers all contributors and (3) facilitate outstanding public service and stakeholder relations through effective leadership and accountability. The principles associated with the strategic goals of the VA Diversity and Inclusion Plan are described below:

- a. **A Diverse Workforce.**

VA defines diversity broadly to include all the qualities and characteristics that make individuals unique. Foundational to VA's Diversity and Inclusion program is a strong and unwavering commitment to EEO in the workplace. EEO refers to the prohibited personnel practices cited in the Civil Service Reform Act of 1978, as amended, as well as other Federal laws, regulations and EOs that prohibit discrimination in the terms, conditions or privileges of employment on the basis of race, color, religion, national origin, sex (including sexual orientation, gender identity, transgender status) and pregnancy, age (40 or older), disability, genetic information or retaliation for opposing discriminatory practices or participating in protected activity. VA also includes culture, family status, educational background, organizational level, socioeconomic status, cognitive diversity (i.e., diversity of thought) and more in this definition. VA will draw on the talents and knowledge of all groups in our society to achieve diverse perspectives and deliver greater performance outcomes.

- b. **An Inclusive Workplace.**

VA understands EEO is essential to create an engaged, high performing workforce in the 21st Century. The Department must not only recruit a diverse workforce reflective of our global society, but also leverage the diverse talents and perspectives of all employees. While firmly rooted in the laws it was based upon, VA's Diversity and Inclusion program adopts a broader, proactive approach to achieving full participation, engagement and retention of employees—to achieve the best performance outcomes. Inclusion allows organizations to achieve full participation and harvest the innovation and performance advantages of a diverse workforce. Special Emphasis Programs promote inclusion by addressing barriers that inhibit the full participation of specific groups. Achieving workplace inclusion requires deliberate strategies such as: flexible work schedules; alternative workspaces; religious accommodation; transparent decision-making; multi-directional (360°)



communication; participatory work processes; constructive conflict management; continuous learning; career/leadership development; equitable awards systems; and shared accountability. Accessibility and reasonable accommodations for people with disabilities are not only inclusion strategies, they are legal requirements. Consistent with EO 13583 and the Government-wide Diversity and Inclusion Strategic Plan, VA will cultivate a culture that encourages collaboration, flexibility and fairness, enabling individuals to achieve their full potential.

**c. Outstanding Public Service.**

To meet the complex needs of a changing Veteran population, VA must cultivate a diverse workforce that draws on the talents and perspectives of an increasingly diverse society. According to research, a diverse workforce yields greater productivity, greater innovation and improved performance outcomes when diverse talents are leveraged and different points of view are encouraged. This is the business case for Diversity and Inclusion that VA embraces, in addition to legal and social imperatives. To fully engage our diverse workforce, VA must equip our managers and supervisors with the knowledge, tools and strategies to promote accountability, transparent communications and effective stakeholder relationships at all levels. Consistent with EO 13583 and Goal 3 of the Government-wide Diversity and Inclusion Strategic Plan, VA will develop strategies and tools that enable leaders to effectively leverage diversity and sustain a culture of inclusion.

**2. POLICY.** VA is committed to EEO, civil rights, workforce diversity, workplace inclusion and Veterans and public access. To that end, VA shall:

**a.** Build a diverse, high performing workforce that reflects all segments of society.

- (1) Ensure Equal Opportunity in employment for applicants, employees, U.S. military Veterans, former employees and individuals doing business with VA by eradicating unlawful barriers to employment and performing Affirmative Employment activities in accordance with law.
- (2) Prohibit discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation, gender identity, transgender status) and pregnancy, age (40 or older), disability, genetic information or retaliation for opposing discriminatory practices or participating in protected activity such as "whistle-blowing."
- (3) Establish and maintain a model EEO Program built on the six essential elements as provided by U.S. Equal Employment Opportunity Commission (EEOC) Management Directive 715 (MD 715). The six essential elements for a Model EEO Program are:
  - (a) Demonstrated commitment from agency leadership
  - (b) Integration of EEO into the agency's strategic mission

VA Directive 5975

April 29, 2021

- (c) Management and program accountability
  - (d) Proactive prevention of unlawful discrimination
  - (e) Efficiency of the EEO program
  - (f) Responsiveness and legal compliance.
- b.** Cultivate a flexible, collaborative and inclusive work environment that leverages diversity and empowers all contributors.
- (1) Provide timely and effective religious accommodation and Reasonable Accommodation to applicants and employees with disabilities in accordance with applicable laws, regulations and directives.
  - (2) Establish and maintain special emphasis programs to address the unique needs of specific groups and eliminate barriers that inhibit the full participation and advancement of these groups in the workplace. Special emphasis programs include but are not limited to: the Disabled Veterans Affirmative Action Program; Federal Women's Program; Hispanic Employment Program; People with Disabilities Program; Asian American and Pacific Islander Program; African American Program; American Indian/Alaska Native/Native Hawaiian Program; and Lesbian, Gay, Bisexual and Transgender Program. These and other special emphasis programs are authorized as necessary to carry out the functions of a continuing affirmative program to promote Equal Opportunity and eliminate discriminatory practices and policies, in accordance with 29 C.F.R. § 1614.102.
  - (3) Support continuous learning and career/leadership development for all segments of the workforce and eliminate identified barriers to career advancement.
  - (4) Resolve workplace disputes at the earliest possible stage, utilizing alternative dispute resolution (ADR) processes and the Harassment Prevention Program (HPP) whenever possible and appropriate to resolve conflict constructively.
- c.** Facilitate outstanding public service and stakeholder relations through effective leadership and accountability.
- (1) Ensure the public and recipients of VA services have full access to VA's programs and services in compliance with Federal accessibility requirements, including but not limited to Section 504 of the Rehabilitation Act of 1973, as amended; Title VI of the Civil Rights Act; Title IX of the Education Amendments; and EO 13166, Limited English Proficiency.
  - (2) Educate the VA workforce on EEO, Diversity and Inclusion to include ensuring that all employees complete Prevention of Workplace Harassment and No FEAR Training within 90 days of employment and biennially thereafter.

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- (3) Educate executives, managers and supervisors on EEO, Reasonable Accommodation, disability employment, Diversity and Inclusion and conflict management. All executives, managers and supervisors will complete EEO, Diversity and Inclusion and Conflict Management Training biennially.
- (4) Evaluate all executives, managers and supervisors on their commitment to agency EEO policies, principles and maintaining diverse and inclusive organizations, pursuant to 29 C.F.R. § 1614.102(a)(5). Consistent with the Inspector General's (IG's) independent authority under the Inspector General Act of 1978 (amended), the IG will determine how the Office of Inspector General executives, managers and supervisors are evaluated for maintaining Diversity and Inclusion.
- (5) Build and sustain positive internal and external stakeholder relationships through mutually beneficial outreach, collaborations and partnerships.

### **3. RESPONSIBILITIES.**

#### **a. Secretary of Veterans Affairs shall:**

- (1) Enforce and ensure accountability for the Department's Diversity and Inclusion goals and objectives in accordance with applicable antidiscrimination statutes, executive orders, VA policies and the VA Diversity and Inclusion Strategic Plan.
- (2) Issue annual policy statements to all VA employees prohibiting discrimination, promoting Diversity and Inclusion, supporting related training, encouraging ADR and addressing related workforce protections.
- (3) Incorporate Diversity and Inclusion principles as integral parts of the VA strategic plan and in all aspects of VA's mission to achieve optimal organizational performance and meet the special needs of Veterans and their beneficiaries.
- (4) Establish with a formal charter, maintain and support the Diversity and Inclusion in VA Council (DIVAC), and consider Council recommendations in accordance with the DIVAC Charter.

#### **b. Under Secretaries, Assistant Secretaries and Other Key Officials shall:**

- (1) Adopt and ensure compliance with all VA-wide EEO, Diversity and Inclusion policies, including this Directive.

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- (2) Implement programs and procedures, including but not limited to recruitment outreach, retention and training programs, in accordance with this Directive and with the VA Diversity and Inclusion Strategic Plan.
  - (3) Establish accountability measures for managers and supervisors to ensure compliance with this Directive and for advancing the goals and objectives of the VA Diversity and Inclusion Strategic Plan.
  - (4) Designate and hold employees accountable for performing the functions of EEO/Diversity Managers; Special Emphasis Program (SEP) Managers in accordance with VA Handbook 5975.5, Special Emphasis Program Management; Reasonable Accommodation Coordinators (RAC) in accordance with VA Handbook 5975.1, Processing Requests for Reasonable Accommodation and Personal Assistance Services from Employees and Applicants with Disabilities; and Selective Placement Program Coordinators (SPPC) in accordance with VA Handbook 5975.5, Special Emphasis Program Management throughout their respective organizations. The number, grade level and status (i.e., full-time or collateral duty) of such staff will depend on the size, resources and EEO/diversity workload of the office or facility. However, irrespective of these dependencies, the functions, requirements and expectations contained in this Directive must be met.
  - (5) Ensure that sufficient resources are provided to the aforementioned staff and that they possess/have access to the requisite training and knowledge required to perform effectively to maintain successful operation of a continuing affirmative EEO program in accordance with 29 C.F.R. § 1614.101 and to comply with the policies in this Directive.
  - (6) Provide timely and accurate submissions for Department-level EEO and Diversity and Inclusion reports, including those submitted to the White House Initiative Offices, OPM and EEOC.
  - (7) Comply with the Office of Resolution Management, Diversity and Inclusion (ORMDI) data calls, reports, self-assessments, technical assistance site visits and EEO program reviews and other requests for information promptly and accurately.
  - (8) Appoint a senior executive to serve on the DIVAC.
  - (9) Publicize, periodically, the names, functional titles and contact information for all the aforementioned individuals in this section in an appropriate and accessible manner.
- c. **Diversity and Inclusion in VA Council (DIVAC)** shall in accordance with its Charter:

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- (1) Include representatives from each of the Department's Administrations, Staff Offices, national labor unions and other stakeholders including employee groups.
- (2) Serve as a communication link between the workforce and leadership and a forum to share best practices, consider new initiatives, leverage resources and ensure accountability in Diversity and Inclusion.
- (3) Incorporate input from all VA organizational components and stakeholders into the VA Diversity and Inclusion Strategic Plan and VA Diversity and Inclusion Quarterly and Annual Reports.
- (4) Designate members to serve as steering, nominating and/or judging committee members for the Annual Secretary's Diversity and Inclusion Excellence Award.
- (5) Establish sub-committees to address emerging Diversity and Inclusion needs and issues, including barriers, associated with the VA workforce, contractors and Veterans and their beneficiaries.

**d. Assistant Secretary for Human Resources and Administration/Operations, Security and Preparedness (ASHRA/OSP) shall:**

- (1) Provide adequate resources to support the goals of this Directive and maintain a continuing affirmative program to promote EEO in accordance with applicable laws and regulations.
- (2) Incorporate the VA Diversity and Inclusion Strategic Plan goals in VA's Human Capital Plan.
- (3) Ensure collaboration among key human capital, EEO and Diversity and Inclusion program officials to identify and eliminate barriers to employment and promotion opportunities consistent with laws, merit principles and the VA's Diversity and Inclusion Strategic Plan.
- (4) Provide resources and support for the VA EEO and Diversity and Inclusion policies, plans and programs in this Directive.
- (5) Promulgate EEO and Diversity and Inclusion policies, policy guidance, plans, programs and initiatives to all VA officials and employees; provide VA-wide oversight; and ensure VA-wide compliance and accountability.
- (6) Appoint the Deputy Assistant Secretary (DAS) for ORMDI as a non-voting standing member of the Executive Review Board.

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- (7) Provide operational and administrative support for the DIVAC through ORMDI.
- (8) Serve as co-chair of the DIVAC with the DAS for ORMDI.
- (9) Pursuant to 38 U.S.C. § 308(b)(7), has responsibilities for Equal Opportunity functions. This authority is defined as general oversight, coordination and liaison for the external civil rights program (Title VI and Title IX). VA Notice 99-3 delegates this authority to the DAS for ORMDI. ORMDI's External Complaints Program Manager is responsible for ensuring the establishment and implementation of policies and procedures for providing language assistance sufficient to fulfill Equal Opportunity responsibilities and provide Limited English Proficiency (LEP) individuals with meaningful access to services.

**e. Deputy Assistant Secretary for the Office of Resolution Management, Diversity and Inclusion (DAS for ORMDI) shall:**

- (1) Serve as VA's Chief Diversity Officer in accordance with EO 13583 and advise the Secretary, ASHRA/OSP and other senior leadership on all matters related to workforce Diversity and Inclusion. Represent VA on the Office of Personnel Management (OPM) Diversity and Inclusion Strategic Partners meeting.
- (2) Provide oversight and strategic direction for EEO, Diversity and Inclusion policies and programs.
- (3) Develop and periodically update the VA Diversity and Inclusion Strategic Plan.
- (4) Advise the ASHRA/OSP on Diversity and Inclusion performance measures for SES and other employees and monitor and report on compliance with those standards.
- (5) Serve as an advisor to the SES Performance Review Board and provide recommendations for an SES performance standard that includes support for VA's EEO, Diversity and Inclusion principles.
- (6) Provide feedback on Administrations' and Staff Offices' EEO and Diversity and Inclusion program performance.
- (7) Advise VA leadership and Chief Learning Officers (CLOs)/career development officials on strategies to eradicate barriers to EEO in the outreach and selection process and infuse Diversity and Inclusion content into program curricula. Serve on the VA Talent Development Council and on the Leadership VA Board.
- (8) Co-chair the DIVAC along with the ASHRA/OSP.



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(9) Direct the VA-wide Diversity and Inclusion Program, including but not limited to the following functions:

- (a) Perform analyses of VA workforce diversity and organizational inclusion and develop standards and procedures to identify, monitor and eliminate barriers to EEO in all areas including but not limited to recruitment, outreach, hiring, promotion, pay levels, separations, disciplinary actions, career development, leadership development and other terms and conditions of employment.
- (b) Manage and maintain an accurate and efficient workforce analysis information system that generates reports in the aforementioned areas to include applicant flow information.
- (c) Produce federally mandated reports on EEO and Diversity and Inclusion and review Administration-level EEO and Diversity and Inclusion reports, including those submitted to the White House Initiative Offices, OPM and EEOC.
- (d) Establish Special Emphasis and Affirmative Employment Programs in accordance with applicable laws and regulations and coordinate with other VA offices to implement targeted recruitment outreach and retention strategies to promote EEO, Diversity and Inclusion throughout VA.
- (e) Perform technical assistance reviews and conduct program evaluations in headquarters and in the field to ensure compliance with Federal and VA EEO, Diversity and Inclusion policies and programs VA-wide.
- (f) Direct, implement and perform compliance oversight for the VA National People with Disabilities Program and National SPPC. Ensure that people with disabilities have access to VA programs and activities and shall not be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any VA program or activity.
- (g) Establish and maintain VA policy as well as oversee compliance and implementation of the Section 504 of the Rehabilitation Act, as amended, to prevent discrimination based on disability in Federally conducted programs and activities per VA Handbook 5975.6, Compliance Procedures Implementing Section 504 of the Rehabilitation Act of 1973, as amended – Nondiscrimination Based on Disability in Federally Conducted Programs or Activities.
- (h) Provide training to VA employees on EEO, Disability Employment, Religious Accommodation and other Diversity and Inclusion matters in consultation with the VA Chief Learning Officer/Human Capital Service Center, Corporate Senior Executive Service Management Office, HR Academy, Administrations and Staff Offices (including CLOs and the Veterans Health Administration (VHA) Employee Education System,

Office of Information Technology Workforce Development and ORMDI Employee Development and Training or other instructional design staff, as appropriate). ORMDI will serve as a subject matter expert and clearinghouse for Departmental Diversity and Inclusion training. ORMDI will support the National Center for Organization Development (NCOD), National VA Chaplain Service, Acquisitions Academy, OSP Law Enforcement Training Center and other VA academies in integrating Diversity and Inclusion training content into their curricula.

- (i) Maintain an effective corporate Diversity and Inclusion communications program to reach a diverse audience throughout VA and raise awareness on EEO, Section 504 of the Rehabilitation Act of 1973, as amended, Diversity and Inclusion policies, issues and effective practices.
  - (j) Maintain productive relationships and partnerships with employee groups, NCOD, National VA Chaplain Service, United States Access Board (Architectural and Transportation Barriers Compliance Board), Center for Minority Veterans, Center for Women Veterans, Office of Tribal Relations, Office of Enterprise Integration, EEOC, OPM and other internal and external stakeholders to advance VA Diversity and Inclusion goals.
- (10) Ensure coordinated EEO complaint processing, Rehabilitation Act Section 504 complaint processing, Reasonable Accommodation complaint processing and ADR policies and programs are consistent with the policies in this Directive.
  - (11) Provide timely data on VA's EEO and ADR programs and trends when available.
  - (12) Direct, implement and perform compliance oversight for the VA Reasonable Accommodation program and establish a case management system to maintain an effective and efficient process for responding to requests reasonable accommodations in accordance with the VA Reasonable Accommodation policy. Provide training to VA employees on Reasonable Accommodation.
  - (13) Publicize RAC and SPPC contact information as provided and maintained by each Administration, OIT and VA Central Office (VACO) Staff Office.
  - (14) Execute ADR and HPP to resolve workplace disputes at the earliest possible stage.
  - (15) Establish and implement policies and procedures to provide language assistance sufficient to fulfill Equal Opportunity responsibilities and to provide LEP individuals with meaningful access to services (VA Notice 99-3).



**f. Chief Human Capital Officer (CHCO) shall:**

- (1) Partner with ORMDI on efforts to build a diverse workforce and inclusive work environment VA-wide and embed EEO, Diversity and Inclusion into the Office of the Chief Human Capital Officer's (OCHCO) mission and functions across the Department, especially as they relate to targeted recruitment outreach, internship programs, career development, employee retention and performance management.
- (2) Collaborate with ORMDI to ensure that human resources policies and programs are consistent with EEO, Diversity and Inclusion policies and incorporate Diversity and Inclusion strategic goals in the VA Human Capital Operating Plan and workforce planning.
- (3) Provide timely and accurate submissions for Department-level EEO and Diversity and Inclusion reports, including those submitted to the White House Initiative Offices, OPM and EEOC.
- (4) Ensure that heads of HR Centers provide proper technical support through their HR specialists or occupational health and safety specialists who can be designated as RACs and SPPCs.
- (5) Participate on the DIVAC and, as appropriate, other diversity-related work groups and committees.
- (6) Establish and maintain VA policy on compensatory time for accommodation for religious observance under provisions of Public Law 95-390.

**g. Assistant Secretary for Information and Technology and Chief Information Officer (OIT) shall:**

- (1) Designate an Electronic and Information Technology (EIT) Accessibility Officer (508 Officer) to ensure that all EIT hardware and software are fully accessible to employees with disabilities in the VA workplace, in compliance with Section 508 of the Rehabilitation Act of 1973, as amended.
- (2) Ensure reasonable accommodations related to EIT are provided and installed expeditiously and properly, in accordance with VA's Reasonable Accommodation policy. Ensure that OIT practices, policies and procedures facilitate the prompt purchase and installation of EIT accommodations.
- (3) Work collaboratively with the ASHRA/OSP, DAS for ORMDI, Reasonable Accommodation Services and 508 Officer to provide legally compliant, timely and effective reasonable accommodations and EIT accessibility services.

- h. **The General Counsel (OGC)** shall provide advice on EEO, Diversity and Inclusion, Reasonable Accommodation and religious accommodation matters, including the OGC District Counsels.
- i. **Agency Chief Learning Officers (CLOs)** shall:
  - (1) Partner with ORMDI in analyzing, designing, developing, implementing and evaluating training, mentoring and career/leadership development programs to eliminate barriers to EEO and maintain a diverse and high performing workforce.
  - (2) Collaborate with ORMDI to identify and eliminate barriers to EEO in training outreach and selection processes and promote diversity in training, mentoring and career/leadership development programs.
  - (3) Infuse Diversity and Inclusion concepts, principles and competencies in VA training and education programs.
  - (4) Participate on the DIVAC and other ORMDI program functions.
- j. **Equal Employment Opportunity (EEO)/Diversity Staff.** Designated EEO/Diversity Staff (EEO/Diversity Manager, SEP manager, RAC, SPPC) shall be responsible for meeting the requirements of this Directive. Designees should possess the skills and qualifications to effectively perform the functions outlined in this Directive including, but not limited to, barrier analysis; Affirmative Employment planning and reporting; targeted outreach; facilitating Diversity and Inclusion in career development programs; implementing an effective Reasonable Accommodation program; and performing Diversity and Inclusion training.
- k. **Reasonable Accommodation Coordinator (RAC)** within each Administration, OIT and VACO Staff Offices shall be responsible for implementing procedures for processing requests for Reasonable Accommodation and Personal Assistance Services from applicants and employees with disabilities in accordance with VA Handbook 5975.1, Processing Requests for Reasonable Accommodation and Personal Assistance Services from Employees and Applicants with Disabilities and applicable laws and regulations.
- l. **Selective Placement Program Coordinator (SPPC)** within each Administration, OIT and VACO Staff Offices shall assist management to recruit, hire and accommodate people with disabilities, to specifically include identifying candidates available for non-competitive placement to vacant positions under the Schedule A and 30% Disabled Veterans excepted service special hiring authorities; determining the essential functions of employment positions; providing information on Reasonable Accommodation and needs assessments for applicants and employees; and monitoring and evaluating program efforts to determine overall effectiveness and implement any needed adjustments to improve program effectiveness.

- m. Religious Accommodation Advisors (RAA).** All District Counsels reporting to the General Counsel, the Director of the National VA Chaplain Service reporting to the Under Secretary for Health and ORMDI subject-matter experts shall serve as RAAs and issue policy guidance and advise VA executives, managers and supervisors on religious accommodation issues in accordance with VA Directives 5975 and 0022, Religious Symbols in VA Facilities and VHA Directive 1111, Spiritual and Pastoral Care in the Veterans Health Administration. The OCHCO Worklife and Benefits Service will issue Agency policy regarding religious compensatory time in VA Handbook 5011, Hours of Duty and Leave. The Servicing HR office will advise management and supervisors of guidance regarding religious compensatory time.

#### 4. REFERENCES.

- a. [5 Code of Federal Regulations \(C.F.R.\) § 213.3102](#) (t) gives Federal agencies special appointing authority governing employment of individuals with intellectual disabilities (u) and those with severe physical disabilities under Schedule A and excepted appointment.
- b. [5 C.F.R. § 213.3102](#) (gg) gives Federal agencies special appointing authority governing persons with psychiatric disabilities.
- c. [5 C.F.R. § 213.3102](#) (ll) gives Federal agencies special appointing authority for employment of readers, interpreters and personal assistants for employees with disabilities.
- d. [5 C.F.R. § 315.709](#) authorizes employees with severe physical and intellectual disabilities to convert to competitive status after completion of two years of satisfactory service in their excepted positions.
- e. [5 C.F.R., Part 720, Subpart B](#) establishes the Federal Equal Opportunity Recruitment Program in OPM as a recruiting initiative designed to eliminate less than expected participation of minorities and women in the Federal service.
- f. [5 C.F.R., Part 720, Subpart C](#) and also [38 U.S.C. § 4214](#), establishes the Disabled Veterans Affirmative Action Program in OPM.
- g. [29 C.F.R., Part 1604](#) contains guidelines on discrimination based on gender.
- h. [29 C.F.R., Part 1606](#) contains guidelines on discrimination based on national origin.
- i. [29 C.F.R., Part 1607](#) contains the uniform guidelines of employee selection procedures.
- j. [29 C.F.R., Part 1614](#) establishes Federal Sector Equal Employment Opportunity.

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- k. [Age Discrimination in Employment Act of 1967](#), as amended.
- l. [Americans with Disabilities Act of 1990](#), [42 U.S.C. § 12101 et seq.](#)
- m. [Americans with Disabilities Act Amendments Act of 2008 \(ADAAA\)](#).
- n. [Architectural Barriers Act](#), [42 U.S.C. § 4151 et seq.](#)
- o. [Civil Rights Act of 1964](#), as amended, [42 U.S.C. § 2000e et seq.](#)
- p. [Civil Rights Act of 1991](#), [42 U.S.C. § 1981\(a\)](#).
- q. [Civil Service Reform Act of 1978](#), as amended.
- r. [Equal Employment Opportunity Act of 1972](#).
- s. [Equal Pay Act of 1963](#), [29 U.S.C. § 206\(d\)](#).
- t. [Executive Order \(EO\) 11375](#) - Amending Executive Order No. 11246, Relating to Equal Employment Opportunity.
- u. [EO 11478](#) - Equal employment opportunity in the Federal Government.
- v. [EO 11625](#) - Prescribing additional arrangements for developing and coordinating a national program for minority business enterprise.
- w. [EO 11701](#) - Employment of Veterans by Federal agencies and Government contractors and subcontractors.
- x. [EO 12067](#) - Providing for Coordination of Federal Equal Employment Opportunity programs.
- y. [EO 12106](#) - Transfer of certain equal employment enforcement functions.
- z. [EO 12250](#) - Leadership and Coordination of Nondiscrimination Laws.
- aa. [EO 13078](#) - Increasing Employment of Adults with Disabilities.
- bb. [EO 13087](#) - Amending EO 11478 to prohibit discrimination based on sexual orientation in the competitive service of the federal civilian workforce.
- cc. [EO 13125](#) - Increasing Participation of Asian Americans and Pacific Islanders in Federal Programs.
- dd. [EO 13145](#) - To Prohibit Discrimination in Federal Employment Based on Genetic Information.
- ee. [EO 13152](#) - Amending EO 11478 to prohibit discrimination based on parental status.

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- ff. [EO 13160](#) - Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Disability, Religion, Age, Sexual Orientation and Status as a Parent in Federally Conducted Education and Training Programs.
- gg. [EO 13163](#) - Increasing the Opportunity for Individuals With Disabilities To Be Employed in the Federal Government.
- hh. [EO 13164](#) - Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation.
- ii. [EO 13166](#) - Improving Access to Services for Persons with Limited English Proficiency.
- jj. [EO 13171](#) - Hispanic Employment in the Federal Government.
- kk. [EO 13175](#) - Consultation and Coordination with Indian Tribal Governments.
- ll. [EO 13187](#) - The President's Disability Employment Partnership Board.
- mm. [EO 13216](#) - Amendment to Executive Order 13125, Increasing Participation of Asian Americans and Pacific Islanders in Federal Programs.
- nn. [EO 13217](#) - Community-based Alternatives for Individuals with Disabilities.
- oo. [EO 13230](#) - President's Advisory Commission on Educational Excellence for Hispanic Americans.
- pp. [EO 13256](#) - President's Board of Advisors on Historically Black Colleges and Universities.
- qq. [EO 13339](#) - Increasing Economic Opportunity and Business Participation of Asian Americans and Pacific Islanders.
- rr. [EO 13403](#) - Amendments to Executive Orders 11030, 13279, 13339, 13381 and 13389 and revocation of Executive Order 13011.
- ss. [EO 13511](#) - Continuance of Certain Federal Advisory Committees.
- tt. [EO 13515](#) - Increasing Participation of Asian Americans and Pacific Islanders in Federal Programs.
- uu. [EO 13518](#) - Employment of Veterans in the Federal Government.
- vv. [EO 13548](#) - Increasing Federal Employment of Individuals with Disabilities.
- ww. [EO 13555](#) - White House Initiative on Educational Excellence for Hispanics.
- xx. [EO 13562](#) - Recruiting and Hiring Students and Recent Graduates.

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- yy.** [EO 13583](#) - Establishing a Coordinated Government-wide Initiative to Promote Diversity and Inclusion in the Federal Workforce.
- zz.** [EO 13592](#) - Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities.
- aaa.** [EO 13672](#) - Amending EO 11478 and EO 11246 to prohibit discrimination based on sexual orientation and gender identity.
- bbb.** [EO 13779](#) - The White House Initiative to Promote Excellence and Innovation at Historically Black Colleges and Universities.
- ccc.** [EO 13889](#) - Continuance of Certain Federal Advisory Committees.
- ddd.** [EO 13872](#) - Economic Empowerment of Asian Americans and Pacific Islanders.
- eee.** [EO 13899](#) - Combating Anti-Semitism.
- fff.** [EO 13935](#) - White House Hispanic Prosperity Initiative.
- ggg.** [Final Rule on Section 501 of the Rehabilitation Act of 1973](#).
- hhh.** [Genetic Information Nondiscrimination Act of 2008](#).
- iii.** [Management Directive 715](#) issued by EEOC provides policy guidance and standards for equal employment programs (effective October 1, 2003).
- jjj.** [Notification and Federal Employee Antidiscrimination and Retaliation \(NoFEAR\) Act of 2002](#).
- kkk.** [Older Workers Benefit Protection Act of 1990](#).
- III.** [Pregnancy Discrimination Act of 1978](#).
- mmm.** [Rehabilitation Act of 1973](#), as amended, 29 U.S.C. § 791, 793, 794(a) Sections 501, 504 and 508.
- nnn.** [Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity](#) - published in the Federal Register on October 30, 1997, by the Office of Management and Budget.
- ooo.** [Secretary's EEO, Diversity and Inclusion, No FEAR and Whistleblower Rights and Protection Policy Statement](#).

The following VA Directives and Handbooks available on the [VA Publications Website](#)

- a.** VA Directive 0022, Religious Symbols in VA Facilities.

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- b.** VA Directive 5977, Equal Employment Opportunity Discrimination Complaints Process.
- c.** VA Directive 5978, Alternative Dispute Resolution.
- d.** VA Directive 5979, Harassment Prevention Policy.
- e.** VA Handbook 5011, Hours of Duty and Leave.
- f.** VA Handbook 5975.1, Processing Requests for Reasonable Accommodation and Personal Assistance Services from Employees and Applicants with Disabilities.
- g.** VA Handbook 5975.2, Equal Employment Opportunity, Diversity and Inclusion Technical Assistance Reviews.
- h.** VA Handbook 5975.3, Guidance on Equal Employment Opportunity Commission's Management Directive 715 and Barrier Analysis
- i.** VA Handbook 5975.4, Transgender Employee Transition Guidance.
- j.** VA Handbook 5975.5, Special Emphasis Program Management.
- k.** VA Handbook 5975.6, Compliance Procedures Implementing Section 504 of the Rehabilitation Act of 1973, as amended – Nondiscrimination Based on Disability in Federally Conducted Programs or Activities.
- l.** VA Handbook 5977, Equal Employment Opportunity Discrimination Complaints Process.
- m.** VA Handbook 5978.1, Alternative Dispute Resolution Program Central Office.
- n.** VHA Directive 1111, Spiritual and Pastoral Care in the Veterans Health Administration (available on the VHA Publications website).



## 5. DEFINITIONS.

- a. **Affirmative Employment:** Programs required by 29 C.F.R., Part 1614, Executive Order 11478 and other laws and regulations that prohibit employment discrimination based on race, color, religion, sex, national origin, disability or age and require agencies to promote the full realization of EEO plans that contain workforce analysis of the distribution of each group compared to the benchmark, identifying areas where the group has a low or less than expected participation rate and responsive strategies that address identified barriers.
- b. **Applicant Flow Data:** Information reflecting characteristics of the pool of individuals applying for an employment opportunity.
- c. **Barrier:** An organizational policy, procedure, practice or condition that limits or tends to limit employment opportunities for members of a particular gender, race, ethnicity, national origin or disability status.
- d. **Disability:** Disability means, with respect to an individual: (i) A physical or mental impairment that substantially limits one or more of the major life activities of such individual; (ii) A record of such an impairment; or (iii) Being regarded as having such an impairment.
- e. **Diversity:** Workforce diversity is characterized by all that makes us unique, including but not limited to race, color, national origin, ethnicity, sex, sexual orientation, gender identity, religion, disability status, age and mutable characteristics such as educational background, socioeconomic status, organizational level, geographic region and cognitive/intellectual perspective.
- f. **Equal Employment Opportunity:** The laws, regulations and policies that prohibit discrimination in the terms, conditions or privileges of employment, on the bases of race, color, religion, national origin, sex (including sexual orientation, gender identity, transgender status) and pregnancy, age (40 or older), disability, genetic information or retaliation for opposing discriminatory practices or participating in protected activity (reprisal) (see legal references below).
- g. **Ethnicity:** For the purposes of Federal data collection, ethnicity refers to Hispanic or Latino origin, or non-Hispanic.
- h. **Inclusion:** Practices that enable the full participation and contribution of the workforce in support of the mission of the organization by eliminating implicit and explicit barriers. Inclusion involves leveraging the diverse talents and attributes of the entire workforce by configuring work opportunities, business processes, functional operations, rewards systems, work-life options, professional interactions, communications, information-sharing and decision-making to empower the full participation of all employees.



- i. **Less Than Expected Participation:** Participation of employees in a demographic group which is below their expected participation in the civilian labor force or relevant labor force.
- j. **Model EEO Program:** A program meeting all six essential elements criteria identified in MD-715.
- k. **Race:** For the purposes of Federal data collection, single race categories include White, American Indian and Alaska Native, Asian, Black or African American and Native Hawaiian or Other Pacific Islander. Individuals may self-identify in more than one race category.
- l. **Reasonable Accommodation:** Any change in the work environment, work processes or the application process that enable a person with a disability to apply for a job, perform the essential functions of a job or enjoy the benefits and privileges of employment, in accordance with the Rehabilitation Act of 1973, as amended.
- m. **Religious Accommodation:** A change in the work environment or in work schedule that enables an individual to adhere to his/her religious practices or beliefs. Types of religious accommodations include, but are not limited to: modification or adjustment to the work environment to permit and to avoid situations prohibited by his/her religion, modification or adjustment of the work schedule necessary to enable an employee to worship at designated hours or days or avoid working during hours prohibited by the religion and allowing flexible leave, alternative work schedules, religious garb, etc.
- n. **Section 501 Program:** The affirmative program plan that each agency is required to maintain under Section 501 of the Rehabilitation Act to provide individuals with disabilities adequate hiring, placement and advancement opportunities.
- o. **Section 504 Program:** The program that each agency is required to maintain under Section 504 of the Rehabilitation Act of 1973, as amended, to ensure that individuals with disabilities have access to VA programs and activities and shall not be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any VA program or activity.
- p. **Section 508 Program:** The program that each agency is required to maintain under Section 508 of the Rehabilitation Act of 1973, as amended, to ensure that Information and Communication Technology developed, procured, maintained or used by Federal departments and agencies must allow Federal employees and members of the public with disabilities access to and use of information and data.
- q. **Special Appointment Authorities:** Merit system hiring authorities that allow flexibility useful for members of groups to overcome less than expected participation, including non-competitive and excerpted service appointments.

- r. **Special Emphasis Programs (SEPs):** Programs authorized under 29 C.F.R. § 1614.102(b)(4) to address the unique needs of specific demographic groups with low or less than expected participation in the workforce (e.g., People With Disabilities Program, Federal Women's Program and Hispanic Employment Program), as may be necessary to eliminate discriminatory practices and carry out the functions described in the EEO regulations in all organizational units of the agency. SEP functions include, but are not limited to, performing workforce analyses to identify and eradicate barriers to EEO, participating in job fairs, performing training, implementing mentoring programs, issuing educational communications and conducting special observance programs to facilitate targeted outreach, retention and understanding of any barriers for diverse groups.
- s. **Special Emphasis Program Observances:** Executive or Congressional mandated calendar event, such as Black History Month, designated to recognize the historical contributions and current achievements and issues of a specific demographic group in our society. Supporting activities may include workshops, round-table discussions, employee development training, subject matter guest speakers and programs to enhance cross-cultural awareness.
- t. **Targeted and Non-Targeted Reportable Disabilities:** EEOC regulations (29 C.F.R. § 1614.203(d)(7)) require agencies to establish specific numerical goals for increasing the participation of persons with targeted disabilities and non-targeted reportable disabilities. As per the OPM, Self-Identification of Disability, Standard Form 256, the following complete list of targeted disabilities are provided: developmental disability, traumatic brain injury, deaf or serious difficultyhearing, blind or serious difficulty seeing even when wearing glasses, missing extremities, significant mobility impairment, partial or complete paralysis, epilepsyor other seizure disorders, intellectual disability, significant psychiatric disorder, dwarfism and significant disfigurement.

# EXHIBIT K

(Excerpts)

Department of Veterans Affairs  
Washington, DC 20420

VA DIRECTIVE 5011/3  
Transmittal Sheet  
December 29, 2022

## **HOURS OF DUTY AND LEAVE**

- 1. REASON FOR ISSUE:** To reissue Department of Veterans Affairs (VA) policy regarding hours of duty and leave.
- 2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This directive sets forth policies previously contained in numerous other issuances. No substantive changes have been made.
- 3. RESPONSIBLE OFFICE:** Worklife and Benefits Service (058), Office of the Chief Human Capital Officer.
- 4. RELATED HANDBOOK:** VA Handbook 5011, "Hours of Duty and Leave."
- 5. RESCISSIONS:** Refer to the Transmittal Sheet for VA Directive 5001, "General Introduction and Administration."

**CERTIFIED BY:**

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

/s/  
Guy T. Kiyokawa  
Assistant Secretary for  
Enterprise Integration

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

**DISTRIBUTION:** Electronic only

March 9, 2020

VA Directive 5011/3

## HOURS OF DUTY AND LEAVE

1. **PURPOSE.** This directive contains existing policy on the establishment of duty schedules and on leave administration for Department of Veterans Affairs (VA) personnel. It is applicable to General Schedule employees (including title 38 hybrid employees appointed to positions listed in 38 U.S.C. 7401(3)); Federal Wage System employees; non-U.S. citizen employees employed outside the United States; physicians, dentists, podiatrists, chiropractors, optometrists, nurses, nurse anesthetists, physicians assistants, and expanded-function dental auxiliaries appointed under 38 U.S.C., chapter 73 and 74; and non-physician/non-dentist program directors and other key executives appointed under 38 U.S.C. 7306(a)(7) or (9). This directive should be used in conjunction with VA Handbook 5011, which contains mandatory guidance and procedures on hours of duty and leave administration in VA.
2. **POLICY.**
  - a. The VA leave program for employees shall be administered fairly and uniformly within the meaning of the provisions of this directive and VA Handbook 5011.
  - b. In scheduling hours and tours of duty for VA employees, primary consideration will be given to efficiency in management and conduct of an agency functions, and equitable treatment of individual employees.
  - c. When tours of duty must necessarily vary from the normal tour, employees will be given the opportunity of discussing their assignment and of having their views or personal problems arising in connection with such assignment considered. Tours of duty will not be changed arbitrarily and insofar as possible, employees will be given notice of any change in their work schedule at least one administrative workweek in advance. Sympathetic consideration will be extended to employees who have religious scruples against working on their Sabbath. If practicable, mutually satisfactory exchange of duty assignments may be worked out for such employees or substitute work-time may be provided to offset the time required for religious observance. Insofar as possible, work schedules should be arranged to permit employee's observance of their Sabbath on whatever day it occurs.
  - d. All employees are expected to be on duty during the full period of their tours of duty unless absent on approved leave; to observe the opening and closing hours established for the tour of duty; and to adhere to established luncheon periods.
  - e. In the establishment of work schedules, employees will have their assignments scheduled in advance over periods of not less than one administrative workweek and such schedules will be established in a manner that realistically reflects the actual work requirement.
  - f. The occurrence of holidays shall not affect the designation of the basic workweek.
  - g. Duty schedules for title 38 healthcare employees shall be established as appropriate and necessary for performance of services in the care and treatment of patients and other essential activities within the administration of the Under Secretary for Health or designated officials.

NOVEMBER 20, 2012

**VA HANDBOOK 5011/23  
PART II  
CHAPTER 2****CHAPTER 2. ESTABLISHMENT OF WORKWEEKS, TOURS OF DUTY,  
AND WORK SCHEDULES FOR EMPLOYEES IN TITLE 5 POSITIONS  
(APPOINTED UNDER 5 U.S.C., CHAPTER 51)****1. BASIC WORKWEEK AND WORK SCHEDULES****a. Basic Workweek**

(1) Within each administrative workweek, the "basic workweek" for full-time employees shall be 40 hours in length. The normal tour of duty within the 40-hour basic workweek shall consist of five 8-hour days, exclusive of the luncheon period, Monday through Friday. Except for unusual circumstances, as provided below, the working hours in each day in the basic workweek shall be the same. Directors of field facilities are authorized to fix the hours of duty constituting the normal tours of duty within the 40-hour basic workweek. Employees will have their assignments scheduled in advance over periods of not less than one administrative workweek.

(2) Other tours of duty constituting the 40-hour basic workweek may be established when adherence to the normal tour is administratively impracticable, will handicap operations, or result in substantially increased costs. Under such conditions, directors of field facilities may schedule the 40-hour basic workweek to include Saturday and Sunday. However, the basic workweek may not extend over more than 6 days in the administrative workweek. Deviations from the normal tour of duty within a facility will be kept to a minimum and generally will be authorized only for certain groups of employees in those cases where the service is required on a continuing, around-the-clock basis, or must be performed outside the normal tour of duty of the facility. Where facilities and equipment are to be utilized during more than an 8-hour day for maximum efficiency, employees shall be assigned on a shift basis, when appropriate. The head of each VACO office or field facility may (within his or her responsible area) prescribe further restrictions or conditions appropriate to scheduling of such tours of duty for specific categories of employees. Administration Heads and top staff officials are authorized to approve tours of duty which are other than the normal for Central Office personnel under their jurisdiction, with the concurrence of the Deputy Assistant Secretary for Human Resources Management [and Labor Relations].

(3) When tours of duty must necessarily vary from the normal tour, employees will be given the opportunity of discussing their assignment and of having their views or personal problems arising in connection with such assignment considered. Tours of duty will not be changed arbitrarily, and insofar as possible, employees will be given notice of any change in their work schedule at least one administrative workweek in advance. Sympathetic consideration will be extended to employees who have religious scruples against working on their Sabbath. If practicable, mutually satisfactory exchange of duty assignments may be worked out for such employees, or substitute work time may be provided to offset the time required for religious observance. Insofar as possible, work schedules should be arranged to permit employees' observance of their Sabbath on whatever day it occurs.

(4) Notwithstanding other provisions of this chapter, special tours of duty (of not less than 40 hours) may be established for General Schedule employees to take courses in nearby educational institutions as outlined in 5 CFR 610.122. Approving officials for these special tours of duty will be the same as indicated in paragraph 1a(2), above. An employee may not receive premium pay solely because the special tour of

**VA HANDBOOK 5011/2**  
**PART II**  
**CHAPTER 2**

**JUNE 16, 2004**

interrupting the work assignment and responsibility. Such exceptional tours of duty shall be carefully examined as to justification by the approving official, and fully documented.

**5. HOLIDAYS**

a. **General.** It is VA policy to excuse from duty on legal holidays (and non-workdays designated by Federal Statute or Executive Order) all employees except those required to maintain the usual essential services. Employees who are notified to appear for duty on legal holidays and fail to report for work will be, in the absence of satisfactory explanation or justification, determined to be AWOL (absence without leave) and will lose pay for the day. However, notwithstanding the preceding provisions of this subparagraph, full-time nurses and nurse anesthetists on the Baylor Plan shall not be entitled to holidays.

**b. Identification and Determination of Legal Holidays**

(1) For identification and determination of legal holidays, see 5 U.S.C. 6103 and 6104, and Executive Orders 10358 (as amended by E.O. 11226 and 11272) and 10552.

(2) For purposes of section 4(b) of Executive Order 10358, the employee's first full day off in the calendar week will be considered the day off in lieu of Sunday.

(3) For purposes of 5 U.S.C. 6103(b)(2), the employee's second day off in the calendar week will be considered the day off in lieu of Saturday.

(4) All other holidays shall be observed on the day they occur. Part-time employees who are excused from duty on a holiday are entitled to their regular pay for that day.

(5) An in-lieu non-workday may be granted to full-time non-physician facility directors, physicians, dentists, podiatrists, [chiropractors,] and optometrists, for work performed on a holiday or the day observed as a holiday, provided the full-time employee's services can be spared without detriment to patient care. Such in-lieu day, if authorized, must be taken within 90 days by the full-time employee concerned. Full-time employees who are assigned to work on holidays and whose absences were not authorized will be reported as being on unauthorized absence and will lose pay for that day.

**NOTE:** *An in-lieu non-workday shall not be authorized for a nurse, nurse anesthetist, PA or EFDA who works on a holiday or the day designated as a holiday.*

c. **Religious Holidays.** While there is no official observance of religious holidays, except those which may also be legal holidays, it is the policy of VA to permit, insofar as practicable, absence from work for those employees who desire to observe religious holidays. Absence of employees on religious holidays will be charged to annual leave, if they have annual leave to their credit, otherwise to LWOP. Employees may, under provisions of 5 U.S.C. 5550a, and applicable regulations, elect to work compensatory overtime for the purpose of taking time off without charge to leave when their personal religious beliefs require that they abstain from work during certain periods of the workday or workweek, thereby avoiding an annual leave or leave without pay charge.

d. **State and Local Holidays.** Except as provided below for non-U.S. citizen employees overseas, State and local holidays will not be observed by the mere fact of their occurrence and such days will be treated as

# EXHIBIT L



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**From:** Bishara, Rima <Rima.Bishara@va.gov>  
**Sent:** Tuesday, October 11, 2022 3:03 PM  
**To:** CTXAMB PC LEADERS  
**Cc:** Johnson, Steven R.; Barnes, Jaclin R.  
**Subject:** FW: Reproduction Medicine Act

Good afternoon,

We have had a number of PCP's asking for Accommodation for medication to end pregnancy.

Please refer staff to Mr. Ashby (contact information below) if a PCP is requesting this Accommodation.

Thank you,

Rima & Keith

Johnson, Steven R. <Steven.Johnson16@va.gov>  
RE: Reproduction Medicine Act

The POC for this request is **HR Specialist Lane Ashby** [Layne.Ashby@va.gov](mailto:Layne.Ashby@va.gov) 254-981-1870. Please let me know if you have any questions. thank you.

Steven Johnson  
HR Specialist - SBU Recruitment and Placement  
Human Resources Management Service, VISN 17  
Veterans Health Administration  
US Department of Veterans Affairs  
Business Phone (254) 743-1417 Cell-254-408-2102 Available via Teams and Email

# EXHIBIT M

**From:** [Danielle Runyan](#)  
**To:** [Schwei, Daniel S. \(CIV\)](#); [Deffebach, Anna L. \(CIV\)](#); [Ely, Alexander N. \(CIV\)](#); [Newman, Lisa N. \(CIV\)](#); [Clendenen, Michael P. \(CIV\)](#)  
**Cc:** [Jeff Mateer](#); [David Hacker](#); [Justin Butterfield](#); [Mike Berry](#); [Holly Randall](#); [Christine Pratt](#)  
**Subject:** [EXTERNAL] Re: Carter v. Dep't of VA, 6:22-cv-1275 (W.D. Tex.)  
**Date:** Tuesday, January 17, 2023 7:31:42 PM

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Daniel,

Thank you for your email. Regarding the VA's final approval of Ms. Carter's religious accommodation that was emailed to her on Thursday evening, Ms. Carter did not have an opportunity to review and edit the VA's inputs on form 10-330 before the accommodation was issued. Specifically, Section II lists a number of other abortion-related activities that may substantially burden Ms. Carter's religious beliefs if they are or become required as part of her job duties. Also, the form does not specify how long the accommodation will remain in place. If you can let us know how long the accommodation will last, we will discuss form 10-330 with Ms. Carter and get back to you.

Before we can answer your question about whether a transfer would accommodate Ms. Carter's religious objection, we will need more information. Because we are unfamiliar with the services the VA's various facilities provide and are not privy to the positions that would be available to Ms. Carter, there is no meaningful way for Ms. Carter to determine the particular types of positions that would likely be acceptable.

At this time, we do not see a need to hold the PI motion in abeyance. As your office stated in an email on December 29, 2022 (see below), Defendants do not view communications regarding Ms. Carter's religious accommodation requests as settlement offers because the VA's communications with Ms. Carter are "part of VA's ongoing efforts to understand and address Ms. Carter's religious objection, an agency process that exists independent of this litigation." However, going forward, as my colleague David Hacker instructed in his email of December 22, 2022 (also below), we again ask that your office communicate with us directly regarding any and all aspects of Ms. Carter's accommodation requests.

Respectfully,

Danielle

**Danielle Runyan**  
Counsel  
[drunyan@firstliberty.org](mailto:drunyan@firstliberty.org)

**First Liberty Institute**  
*Restoring Religious Liberty for all Americans*

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**From:** Newman, Lisa N. (CIV) [Lisa.N.Newman@usdoj.gov](mailto:Lisa.N.Newman@usdoj.gov)  
**Date:** Thursday, December 29, 2022 at 2:50 PM  
**To:** David Hacker [dhacker@firstliberty.org](mailto:dhacker@firstliberty.org), Danielle Runyan [drunyan@firstliberty.org](mailto:drunyan@firstliberty.org)  
**Cc:** Schwei, Daniel S. (CIV) [Daniel.S.Schwei@usdoj.gov](mailto:Daniel.S.Schwei@usdoj.gov), Deffebach, Anna L. (CIV) [Anna.L.Deffebach@usdoj.gov](mailto:Anna.L.Deffebach@usdoj.gov), Ely, Alexander N. (CIV) [Alexander.N.Ely@usdoj.gov](mailto:Alexander.N.Ely@usdoj.gov), Clendenen, Michael P. (CIV) [Michael.P.Clendenen@usdoj.gov](mailto:Michael.P.Clendenen@usdoj.gov), Jeff Mateer [jmateer@firstliberty.org](mailto:jmateer@firstliberty.org), Justin Butterfield [jbutterfield@firstliberty.org](mailto:jbutterfield@firstliberty.org), Mike Berry [mberry@firstliberty.org](mailto:mberry@firstliberty.org), Christine Pratt [cpratt@firstliberty.org](mailto:cpratt@firstliberty.org), Holly Randall [hrandall@firstliberty.org](mailto:hrandall@firstliberty.org)

**Subject:** RE: Conferral in Carter v. Dep't of VA

David,

We do not believe that Dr. Bishara's communication violated Tex. Disciplinary Rule of Prof'l Conduct 4.02. To start, that message was not a "settlement offer," as your e-mail suggests. VA employees do not have authority to make settlement offers, *cf.* 28 C.F.R. § 0.160 *et seq.*, and Dr. Bishara's message did not propose any type of litigation settlement. Nor was that message a communication between a lawyer and a represented party. Instead, Dr. Bishara's communication was part of VA's ongoing efforts to understand and address Ms. Carter's religious objection, an agency process that exists independent of this litigation. Consistent with that accommodation process, Dr. Bishara responded to Ms. Carter's question about the scope of her interim accommodation, and then asked a question about the broader religious accommodation Ms. Carter was requesting from the agency for the first time.

We do not believe these types of party-to-party communications regarding the scope of Ms. Carter's duties, and whether her duties can be changed to accommodate her religious objections, violate the rules of professional responsibility. Indeed, Plaintiff's Notice of Supplemental Factual Developments (ECF No. 17) acknowledged these ongoing party-to-party communications, contemplated that VA would at some point respond to Plaintiff regarding her question, *see id.* at 2 ("Ms. Carter . . . has not received a response to her inquiry."), and did not express any concerns about the nature of these ongoing party-to-party communications.

Certainly, to the extent we have any litigation settlement offers to communicate at any point, we will communicate those offers to you directly. We will also remind VA that they should not present any litigation settlement offers directly to Plaintiff. But we do not believe Dr. Bishara's December 22 message to Ms. Carter violated Rule 4.02, nor do we think that VA personnel (including Ms. Carter's supervisors) are foreclosed from communicating with Ms. Carter regarding the scope of her duties and her requested accommodations, particularly when Ms. Carter herself poses questions to the agency. Thus, we do not believe that any further steps are necessary or warranted at this time.

Going forward, if you would like to maximize counsel-to-counsel communications regarding Ms. Carter's religious accommodation requests, please send any questions or communications on that topic to us, and we can provide a response to you on behalf of VA.

All the best,  
Lisa

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**From:** David Hacker [dhacker@firstliberty.org](mailto:dhacker@firstliberty.org)

**Sent:** Thursday, December 22, 2022 5:30 PM

**To:** Newman, Lisa N. (CIV) [Lisa.N.Newman@usdoj.gov](mailto:Lisa.N.Newman@usdoj.gov); Danielle Runyan [drunyan@firstliberty.org](mailto:drunyan@firstliberty.org)

**Cc:** Schwej, Daniel S. (CIV) [Daniel.S.Schwei@usdoj.gov](mailto:Daniel.S.Schwei@usdoj.gov); Deffebach, Anna L. (CIV) [Anna.L.Deffebach@usdoj.gov](mailto:Anna.L.Deffebach@usdoj.gov); Ely, Alexander N. (CIV) [Alexander.N.Ely@usdoj.gov](mailto:Alexander.N.Ely@usdoj.gov); Clendenen, Michael P. (CIV) [Michael.P.Clendenen@usdoj.gov](mailto:Michael.P.Clendenen@usdoj.gov); Jeff Mateer [jmateer@firstliberty.org](mailto:jmateer@firstliberty.org); Justin Butterfield [jbutterfield@firstliberty.org](mailto:jbutterfield@firstliberty.org); Mike Berry [mberry@firstliberty.org](mailto:mberry@firstliberty.org); Christine Pratt [cpratt@firstliberty.org](mailto:cpratt@firstliberty.org); Holly Randall [hrandall@firstliberty.org](mailto:hrandall@firstliberty.org)  
**Subject:** [EXTERNAL] Re: Conferral in Carter v. Dep't of VA

Lisa,

We've reviewed your unopposed motion for extension of time (Dkt. #20) and were surprised to see Exhibit A. You never communicated this offer regarding our client's request for a religious accommodation. Moreover, the communication by your clients in Exhibit A was improper. *See* Tex. Disciplinary Rule of Prof'l Conduct 4.02. We believe you need to inform the Court.

Going forward, please direct your clients to communicate settlement offers through counsel.

Thanks,  
David

**David J. Hacker**  
Vice President of Litigation and Senior Counsel

**First Liberty Institute**  
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**From:** Schwej, Daniel S. (CIV) <[Daniel.S.Schwei@usdoj.gov](mailto:Daniel.S.Schwei@usdoj.gov)>

**Date:** Friday, January 13, 2023 at 9:15 PM

**To:** Danielle Runyan <[drunyan@firstliberty.org](mailto:drunyan@firstliberty.org)>, Deffebach, Anna L. (CIV) <[Anna.L.Deffebach@usdoj.gov](mailto:Anna.L.Deffebach@usdoj.gov)>, Ely, Alexander N. (CIV) <[Alexander.N.Ely@usdoj.gov](mailto:Alexander.N.Ely@usdoj.gov)>, Newman, Lisa N. (CIV) <[Lisa.N.Newman@usdoj.gov](mailto:Lisa.N.Newman@usdoj.gov)>, Clendenen, Michael P. (CIV) <[Michael.P.Clendenen@usdoj.gov](mailto:Michael.P.Clendenen@usdoj.gov)>

**Cc:** Jeff Mateer <[jmateer@firstliberty.org](mailto:jmateer@firstliberty.org)>, David Hacker <[dhacker@firstliberty.org](mailto:dhacker@firstliberty.org)>, Justin Butterfield <[jbutterfield@firstliberty.org](mailto:jbutterfield@firstliberty.org)>, Mike Berry <[mberry@firstliberty.org](mailto:mberry@firstliberty.org)>, Holly Randall <[hrandall@firstliberty.org](mailto:hrandall@firstliberty.org)>, Christine Pratt <[cpratt@firstliberty.org](mailto:cpratt@firstliberty.org)>

**Subject:** RE: Carter v. Dep't of VA, 6:22-cv-1275 (W.D. Tex.)

Danielle,

For your awareness, attached please find a copy of an e-mail message that Dr. Bishara at VA sent to Ms. Carter yesterday, as well as PDFs of the three attachments to that message. This message addresses the appropriate process for requesting additional accommodations, and also the relevant guidance for employees.

Regarding your question about a possible transfer, the VA's December 22 e-mail requested that Ms. Carter inform VA whether a transfer would accommodate her religious objection, so that, if so, VA could begin looking into that possibility as doing so could take time to explore. To our knowledge, your e-mail is the first time you or Ms. Carter have expressed potential interest in that option. We will talk to VA about what, if any, additional details we can provide at this time in response to your inquiry. Given that your inquiry is arriving the business day prior to when our PI opposition is due, however, we are not sure when we will be able to provide a response, given ours and VA's current need to focus on finalizing that filing. Alternatively, if you'd like to jointly move to hold the PI motion in abeyance so that we can focus on these discussions, please let us know.

Regardless, we will keep you posted as soon as we have additional information. In the meantime, in responding to your inquiry, it would be useful for VA to know (1) whether Ms. Carter agrees that, if a position acceptable to her is identified, a transfer would accommodate her religious objection; and (2) if there are any particular types of positions that Ms. Carter thinks would likely be acceptable at the VBA Regional Office or the Killeen Heights Vet Center (or other VA facility)?

Thanks,  
Daniel

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**From:** Danielle Runyan <drunyan@firstliberty.org>

**Sent:** Friday, January 13, 2023 1:05 PM

**To:** Deffebach, Anna L. (CIV) <Anna.L.Deffebach@usdoj.gov>; Schwei, Daniel S. (CIV) <Daniel.S.Schwei@usdoj.gov>; Ely, Alexander N. (CIV) <Alexander.N.Ely@usdoj.gov>; Newman, Lisa N. (CIV) <Lisa.N.Newman@usdoj.gov>; Clendenen, Michael P. (CIV) <Michael.P.Clendenen@usdoj.gov>

**Cc:** Jeff Mateer <jmateer@firstliberty.org>; David Hacker <dhacker@firstliberty.org>; Justin Butterfield <jbutterfield@firstliberty.org>; Mike Berry <mberry@firstliberty.org>; Holly Randall <hrandall@firstliberty.org>; Christine Pratt <cpratt@firstliberty.org>

**Subject:** [EXTERNAL] Re: Carter v. Dep't of VA, 6:22-cv-1275 (W.D. Tex.)

Counsel,

Exhibit A of your December 22, 2022, Unopposed Motion for an Extension of Time to Oppose Plaintiff's Motion for a Preliminary Injunction is an email from the VA to Stephanie Carter that we had not seen before the motion was filed. In that email, the VA asks Ms. Carter if a transfer "to a different VA facility that does not provide abortions" would "accommodate [her] religious objection." Can you please provide us with more information about the proposed position in Waco?

Additionally, we saw that the VA issued guidance about the religious accommodation process. Could you please send us the relevant documents?

Thank you.

Respectfully,

Danielle

**Danielle Runyan**

Counsel

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**First Liberty Institute**

*Restoring Religious Liberty for all Americans*