

**Department of
Veterans Affairs**

Memorandum

Date: **DEC 30 2014**

From: Chief of Staff (00A)

Subj: Official Service on Board of Directors of VA-Affiliated Nonprofit Research and Education Corporations by a VA Employee (VAIQ 7544696, EST GCL 56902)

To: Interim Under Secretary for Health (10)
General Counsel (02)

1. The Department has a unique relationship with the Nonprofit Research and Education Corporations (NPCs) established, as authorized by the Secretary, pursuant to sections 7361 through 7366 of title 38, United States Code. By statute, these NPCs are flexible funding mechanisms to facilitate the conduct of approved VA research and education activities. A VA employee's official duty service on the Board of Directors (Board) of an NPC furthers VA's mission to carry out a program of medical research. 38 U.S.C. § 7303. Thus, the Department has authority to assign a VA employee to serve in official capacity on a Board should an NPC request it to do so after following its policies for determining Board membership.

2. This memorandum does not apply to those VHA employees statutorily mandated to serve on the board of directors of an NPC by section 7363 of title 38, United States Code.

3. Official duty service of Department employees on the Boards of VA-affiliated NPCs does not require the same rigorous process as that mandated in the February 12, 2014 memorandum of Chief of Staff, "VA Employee Official Service as a Nonprofit Officer, Director, or Trustee – VAIQ #7437214." Accordingly, the following specifically-tailored rules and procedures apply to assigning VA employees to serve in official capacity on these Boards in the position(s) of officer, director, or trustee.

a. An NPC, after following the procedure required in its by-laws, policies, and establishing documents for appointing a member to the Board, may request that a VA employee serve in official VA capacity on its Board as director, officer, trustee, or some combination of these positions.

b. The first SES/SES EQUIV in the chain of command of that employee will be the "Assigning Official," for this purpose and is authorized to assign the employee to serve in official capacity on the NPC Board of Directors.

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4. The Assigning Official may not assign a VA employee to serve in official capacity on the Board of an NPC if the employee, in a personal capacity, serves the NPC as Executive Director or in any other NPC employee position that is supervised by the NPC Board or Executive Director. NPC researchers assigned to VA to conduct VA-approved research are not considered, for this purpose, to be supervised by the NPC Board or Executive Director because they are supervised by VA in their research duties. (I note that the service of a Federal employee in the position of NPC Executive Director is problematic in light of the conflict of interest prohibitions contained in sections 203, 205, and in some instances, 208, of title 18 of the United States Code.)

5. VA employees serving, under this memorandum, in official capacity on an NPC Board:

- may not serve as an employee of the NPC in such official duty-capacity. Official-duty service is limited to serving as officer, director, trustee, or some combination of those three positions;
- may not receive any supplementation of salary, including personal reimbursement of travel expenses (except that permitted under 5 U.S.C. § 4111 for travel for training or other meeting), from the NPC for actions taken in official capacity;
- may not participate in official capacity in fundraising;
- may not participate in lobbying on behalf of the NPC;
- may not participate in any activity determined by the VA Office of General Counsel to be illegal or improper.

6. VA employees serving, under this memorandum, in official capacity on an NPC Board:

- owe a duty of loyalty first and foremost to the Department;
- may participate in financial or personnel decisions of the NPC;
- may fundraise in a personal capacity provided such fundraising is in accordance with the Government ethics rules applicable to personal-capacity fundraising.

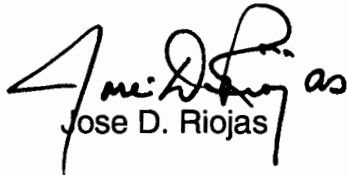
7. VA employees currently serving on the Board of an NPC must, within one year of the date of this memorandum, leave such position or be appointed to official-duty service in accordance with this memorandum. Thereafter, no VA

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employees may serve an NPC as an officer, director or trustee unless appointed, in accordance with this memo, to serve in official capacity.

8. Questions regarding official duty service on an NPC may be directed to OGC's Ethics Specialty Team at GovernmentEthics@va.gov.


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