



Department of
Veterans Affairs

January 28, 1991

In Reply Refer To: 023

VA District Counsel (344/02)
11000 Wilshire Blvd.
Los Angeles, California 90024

O.G.C. Advisory 1-91

SUBJ: Supplementation of Salaries through VA Non-Profit Research Corporations

1. You have asked whether VA non-profit research corporations (VANRC) can disburse salary checks to VA employees. More specifically, you ask (a) whether full-time VA physicians or other employees may work for a VANRC during off-duty hours and receive compensation exceeding their total negotiated salaries, and (b) whether VA physicians may obtain a portion of their total negotiated salary from NIH or private research grants. You advise that "total negotiated salary" (TNS) refers to a physician's VA pay plus pay from the affiliated university.

2. Additional salary from the affiliated university for university duties lawfully cannot be a part of the physician's VA salary, although it may be an important aspect of the physician's total compensation in the context of recruitment and retention. This additional pay must be for outside employment and, consequently, is subject to the strictures of 38 U.S.C. 4108(a), 38 C.F.R. 0.735-12, and MP-5 Part II, Chapter 13, Outside Professional Activities, and the DM&S Supplement thereto. Those strictures generally prohibit full-time VA physicians from assuming primary responsibility for non-VA patients' continuing medical care, prohibit outside activities conflicting with official duties, and permit only limited outside professional activities for remuneration, e.g., clinical teaching. These same rules would apply to full-time physicians working for a VANRC outside their VA employment. There is no dollar limit on lawful outside employment.

3. Sections 4161 - 4168 of title 38, United States Code, govern VANRC's. Sections 4161 and 4162 empower the Secretary to establish nonprofit corporations at VA medical centers as flexible funding mechanisms solely to support approved VA research projects. Section 4164(a) authorizes VANRC's to accept gifts and grants, to enter into contracts, and to hire and pay employees in support of the research mission. See also, VA Circular 10-89-99, Nonprofit Research Corporations. VA employees involved with VANRC's and VANRC employees are subject to Federal employee conflict of interest laws and regulations. 38 U.S.C. § 4166(c).

4. As a funding mechanism, the VANRC's administer funds received from grants and gifts from, and contracts with, for-profit companies, charitable foundations, other Federal agencies (e.g., PHS, NIH), professional societies or other nonprofit entities, and individuals, in support of approved VA research projects. VA circular 10-89-90. Because VA research support is the sole purpose of VANRC's, they may not administer funds other than research funds, and they may not administer funds for any other purpose.

1-17 VA Circulars 10-89-90

1-5 38 U.S.C. 4161

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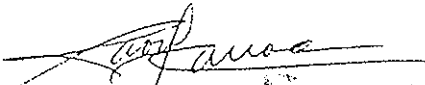
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Thus, to the extent the university funds in question support approved VA research projects, including related educational purposes, the VANRC's may receive and administer the funds; to the extent the funds are unrelated to approved VA research projects, e.g., they constitute faculty stipends only, the VANRC's lack authority to receive and administer them.

5. With respect, therefore, to your questions, neither VA standards of conduct nor the research corporation law is inconsistent with VA physicians' working for the corporation during off-duty hours, and nothing prevents the corporation from paying them for work the corporation may lawfully assign its employees. Further, there is no limit on the dollar amount of any such compensation, and whether the amount is considered a part of what you refer to as TNS does not affect the lawfulness of this employment or the compensation. Further, because NIH and private research grants are both sources from which research corporations may lawfully accept funds, it would not be unlawful for the compensation that a VA physician receives for employment with a VA research corporation to be derived from NIH or private grants.

6. With respect to protection under the Federal Tort Claims Act for actions involving patient care and treatment, VA employees working on approved VA research projects under the auspices of a VANRC, would be covered by the Act, subject to certification by the Attorney General, because they would be acting within the scope of their official duties. To the extent, however, they work directly for a VANRC, they would not be acting within the scope of their official duties and, thus, would be outside the scope of the Act's protections. VA Circular 10-89-99, para. 4j. See 28 U.S.C. § 2679(b); 38 U.S.C. § 4116(a).

7. Thus, in response to your specific questions: (a) full-time VA physicians or other employees may work for and be compensated by a VANRC during off-duty hours, irrespective of their "TNS," subject to the legal strictures on outside employment; and (b) funds from NIH or private research grants may be used, through a VANRC, to pay VA physicians the non-VA portion of TNS for work performed for a VANRC, but not their faculty salaries.



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