THE VETERANS MONTHLY

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GATES, SHINSEKI AGREE TO NEW RECORDS SYSTEM

JOINT VIRTUAL LIFETIME ELECTRONIC RECORD PROJECT CLOSER TO REALITY

Two years after announcing their intention to develop a Joint Virtual Lifetime Electronic Record, VA Secretary Eric Shinseki and Defense Secretary Robert Gates have agreed to create a common platform for their departments' electronic medical records. According to VA Deputy Secretary W. Scott Gould, the Secretaries recently gave their staff members an early May deadline to come up with a plan for how the new system will be implemented.

VA and DoD now have to develop a shared platform capable of reconciling their separate and distinct processes. As of now, DoD uses the Armed Forces Health Longitudinal Technology Application (AHLTA) system, and is in the process of switching to the more comprehensive, real-time Electronic Health Record (EHR) Way Ahead system. VA still uses the decades-old Veterans Health Information Systems and Technology Architecture (VistA).

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Bergmann & Moore, LLC provides premium legal services to Veterans and their dependents. While consultations and other services are offered free of charge, fees are charged for representation before VA on the condition that the case is won. The firm encourages Veterans and their dependents to make full use of the free services available to them through their local Veterans Service Officer and/or Veterans Service Organizations.

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...ELECTRONIC RECORD PROJECT, Continued from Page 1

As evidenced by a report issued to Congress by the Defense-VA Interagency Program Office in 2010, the departments' current systems do have a lot in common. According to the report, VA and DoD share nine of the 13 total functional capabilities for an electronic health record. This uplifting fact should give hope to all Veterans that the departments will be able to get their act together in a timely manner.

On March 31, Shinseki told a Senate Appropriations Committee subcommittee that the deal was the result of about two years of discussions. He observed that DoD leadership is "looking for new direction" for their own electronics record system, while noting the need to update VA's own system.

"We have a terrific electronic health record, but again, it's about 20 years in being," Shinseki said of VA's VistA system. "So, we're going to have to adjust also to ensure the sustainability of that system. It's a great opportunity for both of us to put our heads together."

During a House Armed Service Committee's Military Personnel Subcommittee hearing held on March 15, Army Lt. Gen. Eric Schoomaker, Army Surgeon General, said that creating a single electronic health record will increase information-sharing between the two departments and provide a more efficient way to transfer patient data.

"No two health organizations in the nation share more non-billable health information than the DoD and the VA," Schoomaker noted. "The departments continue to standardize this sharing activity under delivering information technology solutions that will significantly improve the sharing of appropriate electronic health information."

This agreement follows in step with the two departments' April 2009 decision to create a Joint Virtual Lifetime Electronic Record to ensure that medical records pass freely between VA and DoD. Five pilot programs are up and running to test out the initiative before it goes nationwide.

While it could be years before your average Veteran gets to enjoy the fruit of these optimistic initiatives, it is nonetheless a good thing to see progress being made in this direction. Our firm speaks with frustrated Veterans about the contentious issue of military records and VA disability claims on a daily basis. We hope this initiative bears fruit. ■

For more information, please visit www.defense.gov/news/newsarticle.aspx?id=63435

U.S. Court of Appeals for Veterans Claims

The United States Court of Appeals for Veterans Claims (CAVC) is a national court of record. CAVC was created under the authority of Article I of the United States Constitution. CAVC posseses exclusive jurisdiction to provide judicial review of all final ruling issued by the Board of Veterans' Appeals (BVA), an entity within the Department of Veterans Affairs located in Washington DC.

CAVC provides Veterans with an impartial judicial forum for the review of administrative decisions issued by VA. Here Veterans are able to contest denials of entitlement to benefits for service-connected disabilities as well as survivor benefits and other benefits such as education payments and waiver of indebtedness. In furtherance of its important mission, CAVC also endeavors to help ensure that all Veterans have equal access to it and to promote public trust and confidence in its ability to render impartial and equitable decisions on behalf of Veterans.

Medical Minute

ERECTILE DYSFUNCTION IN VETERANS

Erectile dysfunction (ED) is defined as a man's inability to produce and maintain an erection sufficient for mutually satisfactory relations with his partner. ED is commonly linked with disorders such as heart disease, diabetes, high blood pressure, PTSD, nervous system disorders, and depression, among others. Erectile dysfunction may also develop as an undesired side effect from medication.

ED is referred to as a "loss of a creative organ" and is rated as a Special Monthly Compensation (SMC-k) above and beyond other ratings you may have. VA will compensate you at a rate of $96.00 per month for ED. ED may also be service connected as a secondary condition to, for example, the side effects of any medications taken to address physical and mental service-connected conditions. ■

AMERICAN COMBAT VETERANS OF WAR

AN INTERVIEW WITH WILLIAM RIDER, PRESIDENT AND CEO OF ACVOW

Q. *How did American Combat Veterans of War get started?*

A. American Combat Veterans of War (ACVOW) began when we were challenged by Bill Mahedy, who was a chaplain at the La Jolla VAMC, to do something to help Veterans. We started ACVOW, pre 9-11, 2001, to advocate for and assist combat Veterans from previous wars; after 9-11, our job expanded.

Q. *How many combat Veterans to you help each year?*

A. Since starting ACVOW, we have helped approximately 10,000 Veterans at the La Jolla VAMC and Camp Pendleton, California. Usually, they find us or they are told about our organization from fellow warriors or others who are aware of our reputation or who have themselves been helped by us. The VAMC in La Jolla, where our office is located, often refers clients to us for assistance. Our location on Camp Pendleton, in the middle of the 5th Marine Regiment, allows current warriors to walk in and ask for assistance. Additionally, we are blessed with having good media coverage and warriors find out about us from newspapers, radio, television, and magazine coverage.

Q. *What are some of the programs you offer combat Veterans?*

A. We assist Veterans and current warriors in obtaining their medical, educational and disability benefits. Also, we offer the once a week Safe Warrior Outreach program at our Oceanside headquarters which assists with combat operational stress, post traumatic stress, and traumatic brain injury. We help them recognize their symptoms and give them a full range of alternatives to help them deal with their diagnosis.

Q. *What are some of the challenges facing combat Veterans?*

A. The challenges facing those who have experienced combat include: dealing with survivor's guilt, the loss of combat brothers in battle, and being wounded physically and mentally and recuperating from those wounds in a constructive manner, all as soon as possible. The key is finding a good mentor or peer able to talk with them and advocate effectively on their behalf. ACVOW is successful because we do this very well.

Q. *How do you expect ACVOW to look in the coming years?*

A. We look to having a nationwide presence. One of the things we see as an imperative is having a huge number of combat Veterans who can be comfortable being peer-to-peer advocates for OEF and OIF combat Veterans. The challenge is making the military and VA realize that there is indeed a place for the mentor, peer-to-peer description in helping our combat Veterans and current warriors with their feelings of isolation and helplessness. ACVOW's success is unquestioned and the anecdotal and emperical evidence is beyond reproach. We need to convince both entities that ACVOW is worthy of their trust and, of course, funding. ■

To learn more about ACVOW, visit: www.acvow.org

William Rider (right), President of ACVOW, hands out a winning award to a Marine at Camp Pendleton during an ACVOW sponsored Dip Contest

POST-INCARCERATION HEALTHCARE OFFERED BY VA

Under a new program aimed at cutting back on repeat offenses, VA recently announced plans to extend healthcare to eligible Veterans in halfway houses and similar post-incarceration housing arrangements.

While incarcerated Veterans do not forfeit their eligibility for medical care, current regulations restrict VA from providing hospital and outpatient care to incarcerated or otherwise supervised Veterans who are inmates in an institution of another government agency when that agency has a duty to give care or services.

However, VA does make healthcare available once the Veteran has been unconditionally released from the penal institution. Veterans are actively encouraged to enroll in the VA Health Benefits System as soon as this release takes place.

According to Jim McGuire, director of VA's Veterans Justice Outreach Programs, "There's hard evidence that lack of access to health care, including mental health care, for newly released inmates is a factor in people becoming homeless or returning to prison and jail. These are Veterans who otherwise qualify for VA health care."

The status quo has made it all but impossible for VA to provide health care to inmates of prisons and jails who are Veterans. These same Veterans, however, receive health care from the federal, state or local government.

This rule change would have the effect of amending that prohibition and allowing VA to provide health care to Veterans in halfway houses and other temporary, post-incarceration housing arrangements.

A 2008 Urban Institute study concluded that good health care in the months that immediately follow reentry into the community played a significant role in easing readjustment and reducing the risk of a reversion to criminal behavior. According to the Department of Justice's Bureau of Justice Statistics, approximately 29,000-56,000 Veterans are released annually from state and federal prisons and at least 90,000 Veterans are released each year from city and county jails.

VA INVITES FEEDBACK ON REGULATIONS

In accordance with Executive Order 13536 "Improving Regulation and Regulatory Review," January 18, 2011, and OMB Guidance Memorandum M-11-10, February 2, 2011, VA is desirous to learn your thoughts on regulations that you feel should be adapted, streamlined, further developed, or repealed to ensure that VA's regulatory programs are more productive or less troublesome in achieving VA's objectives. This includes any regulations that are interpreted as being outdated, ineffective, or excessively burdensome on Veterans.

In this widespread solicitation of feedback, Veterans have a real opportunity to have their opinions known. In a time when many Veterans feel as if their interests are marginalized, VA seems to be making an effort to provide a vehicle through which opinions can be heard. But however welcoming this all may seem, the real test of VA's sincerity will come when some of the more popular criticisms they collect are actually implemented. Time will be the ultimate judge of how committed VA is to accommodating our nation's Veterans. ■

To learn more, please visit: www.va.gov/orpm

A Brief History of the Purple Heart

The Purple Heart is one of our nation's most recognized symbols of combat injury and personal sacrifice. This medal is also the oldest award which is still given to members of the military. The original Purple Heart, then called the "Badge of Military Merit," was established by George Washington in August 1782 during the last days of the Revolutionary War. While the award was intended to be permanent, it was all but forgotten until the early 1900s. In January 1931, General Douglas MacArthur began working to resurrect the award. On February 22, 1932, the 200th anniversary of George Washington's birth, the Purple Heart award was officially "revived out of respect to his memory and military achievements" by the President of the United States per War Department General Order No. 3. The newly redesigned medal was in the shape of a heart, contained a profile of George Washington, and bore the inscription "For Military Merit."

A number of changes in the criteria for award of the Purple Heart have been made since its revival. Originally, the award was for Army personnel, but the criteria were subsequently expanded to include all military members. It was originally awarded for meritorious performance of duty as well as for wounds received. After the establishment of a separate Legion of Merit award in 1942, the Purple Heart was limited to those who were wounded. An Executive Order in 1962 included provisions for posthumous award of the medal. In 1984, an Executive Order authorized award of the Purple Heart as a result of terrorist attacks or while serving as part of a Peacekeeping Force subsequent to March 28, 1973. At one time civilians could receive the award, but they are no longer eligible recipients.

Currently, the Purple Heart is awarded in the name of the President to any member of the armed forces who, while serving under competent authority in any capacity with one of the U.S. Armed Services after April 5, 1917, has been wounded or killed, or who has died after being wounded or killed, in specified actions or by acts involving an enemy or opposing force of the United States. The Purple Heart is also authorized for those who have been killed or wounded in action by friendly fire.

The Purple Heart award criteria specify that a "wound" involves "an injury to any part of the body from an outside force or agent[.]" To qualify for the award, the wound must have required treatment by medical personnel and the medical treatment must have been made a matter of official record. Although it has been a matter of some recent consideration, post-traumatic stress disorder is not considered a wound for purposes of this award. While the award is authorized for concussion injuries, there has also been recent concern as to how to apply the award criteria in cases involving traumatic brain injury.

"Originally, the award was for Army personnel, but the criteria were subsequently expanded to include all military members."

Every recipient of the Purple Heart is worthy of recognition and honor for his or her sacrifice. Some of the more well-known recipients of this award include former Presidents (John F. Kennedy), Senators (John McCain and John Kerry), sports figures (Pat Tillman and Rocky Bleier), and actors (James Arness, James Garner, Charles Bronson and Lee Marvin). Also included among the recipients is Eric Shinseki, the current Secretary of Veterans Affairs.

Possession of the Purple Heart medal does not by itself qualify recipients for VA disability compensation. However, since November 1999, Purple Heart recipients have been placed in VA's enrollment priority group three, unless eligible for the higher priority groups based on service-connected disabilities. Recipients are also exempt from co-payments for VA hospital care and medical outpatient care. ■

For more information, please visit
www.thepurpleheart.com or www.purpleheart.org

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CAVC FINDS THAT INJURY FROM HOSPITAL CARE CAN BE RECOGNIZED UNDER 38 U.S.C. § 1151 (VA NEGLIGENCE)

Mr. Bartlett, a Vietnam-era Army Veteran, was placed in a lock-down psychiatric ward at a VA medical center. While standing in line at the cafeteria he was attacked by another patient without provocation. Though VA staff attempted to intervene, Mr. Bartlett was shoved twice by the other patient. Mr. Bartlett contends that he received back and neck injuries, for which he seeks compensation under 38 U.S.C. § 1151.

Section 1151 provides benefits for Veterans disabled by treatment or vocational rehabilitation in the same manner as if the disability were service-connected. For compensation to be awarded under section 1151, the disability or death must be "caused by hospital care, medical or surgical treatment, or examination" by VA. CAVC has previously made clear that "hospital care," as used in section 1151, does not apply to injuries that occur during a patient's general experience at a VA facility – those that occur "coincidentally" or "by chance" during treatment. For instance, the Court has held that mental distress caused by a shooting at a VA domiciliary was coincidental to care and not caused by the care *See Manghan v. Shinseki*, 23 Vet. App. 284 (2009) and that an injury incurred from a ceiling grate falling down happened by chance during a VA examination and did not warrant compensation under section 1151. *See Loving v. Nicholson*, 19 Vet. App. 96 (2005).

In *Bartlett*, the Secretary argued that Mr. Barlett's injuries – being immediately inflicted by another patient – did not qualify as "hospital care" following the Court's precedent. However, the Veteran argued that he was not merely injured while at a VA facility but "that the supervision of hospital patients in a lock-down psychiatric facility constitutes 'hospital care' and the negligent performance of that supervision caused his injury." *Bartlett* slip. op. at 4. The Court thus was faced with the issue of whether supervising patients in a lock-down VA psychiatric facility constituted "hospital care."

The Court first looked at the ordinary meaning of "care" as found in the dictionary. The Court also investigated how other statutes defined "hospital care," including 38 U.S.C. § 1803(c)(4), which defines hospital care for children of Vietnam Veterans who have spina bifida, as "care and treatment for a disability furnished to an individual who has been admitted as a patient." Based on this analysis, the Court agreed that "'hospital care,' at a minimum, includes the provision of services unique to the hospitalization of patients." *Bartlett* slip. op. at 7.

The Court declined to define "hospital care" in a more concrete manner than this, but it did provide a list of factors to help determine whether particular circumstances represent "hospital care" for section 1151. These factors, though not exclusive, include: "the nature of services, the degree of VA control over patient freedom, the mental and physical conditions of the patients, and the foreseeability of potential harms." Slip. op. at 7. The Court held that it was for the Board to consider these factors in the first instance.

Applying these findings to Mr. Bartlett's case, the Court concluded that the Board committed clear error in finding that the events that transpired fell outside of section 1151 and determined that the situation as alleged involved "hospital care." The Court returned his claim to the Board for it to determine whether the remaining requirements of section 1151 were met and thus whether compensation was warranted. The Court also explicitly stated that the Board's definition of "hospital care" as "limited only to treatment or examination" and its implication that injury resulting from third party injury could not be caused by "hospital care" were both wrong. The Court further rejected the Secretary's argument that Mr. Bartlett should not receive compensation pursuant to section 1151 because he could possibly be entitled to an award under the Federal Torts Claims Act.

The *Bartlett* decision will likely prove very helpful for those Veterans and survivors seeking compensation under section 1151. VA – including the regional offices and the Board – should now be using the definition and guiding factors provided in Bartlett to determine whether the facts in a claim constitute "hospital care." There will likely be some errors made as VA adjudicators begin to apply *Bartlett*, and claimants should watch out for a decision that may not seem to apply it correctly. Additionally, those who previously considered making a 1151 claim but decided against it may want to reconsider – particularly if the disability happened in a lock-down VA medical facility. ■

For more information, please visit
http://www.uscourts.cavc.gov/documents/Bartlett_08-4092_published_opinion_March_10_2011.pdf

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VETERAN EVENTS CALENDAR

HERE IS A LIST OF SOME EXCITING EVENTS HAPPENING NATIONWIDE THROUGHOUT MAY

Puerto Rico Veterans Benefits Workshop

San Juan YMCA
#800 Blvd. Sagrado Corazon • San Juan, PR 00909
Telephone: (877) 838-2889 or (877) 367-5310
June 25th, 2011
www.vetlawyers.com

Fourth Annual Vision for Veterans 5K

Michael E. DeBakey VA Medical Center
347 East Park Avenue • Columbiana, OH 44408
Telephone: (330) 540-0097
May 20th, 2011
www.visionforveterans.org

14th Annual POW/MIA Balloon Launch

Veterans Memorial Grounds
Wind Lake, WI 53185
Telephone: (414) 218-3030
May 30th, 2011
www.war-veterans.org/Wlaunch.htm

National Memorial Day Parade

World War Two Veterans Committee
Constitution Ave. and 7th St. • Washington, DC 20004
Telephone: (703) 302-1012
May 30th, 2011
www.veteransbusinesscouncil.org/newsevents.asp

CLAIMS PROCESS ADVICE

VA CLAIMS PROCESS 101: Aggravation of a Pre-existing Condition

A pre-existing condition that is aggravated during military service is one way to prove service connection. If it can be shown that the medical condition before service was made measurably worse, through service, VA must show by "clear and unmistakable evidence" that the disability's increase is due to the natural progress of the disease or disability.

Under VA law, it is presumed that the Veteran's condition was sound when he or she entered service. To show this presumption to be false, VA must show "clear and unmistakable" evidence that the condition existed prior to entry into service. If the condition is noted on the entrance medical exam, the presumption of soundness for that condition will not apply. Some of the more common reasons why a Veteran is found to have a pre-existing condition are statements made by the Veteran stating that he or she had the medical condition before service or the presence of treatment records in his or her entrance medical exam dated prior to service.

For this type of service connection, the principal issue is whether there was a pre-existing condition. Next, if there was a pre-existing condition, was that condition made worse or aggravated by service? Finally, if the condition has become worse, is it due to a natural progression of the disease? If you have a claim of this type the most important thing you can do is demonstrate through medical evidence that your condition has degraded due to your service. If you can show this, VA will have a very difficult time proving that your worsening condition is the result of the natural progression of the disease. VA normally attempts to overcome the burden by producing opinion evidence from a VA doctor claiming that the worsening of the Veteran's condition is due to the natural progression of the disease.

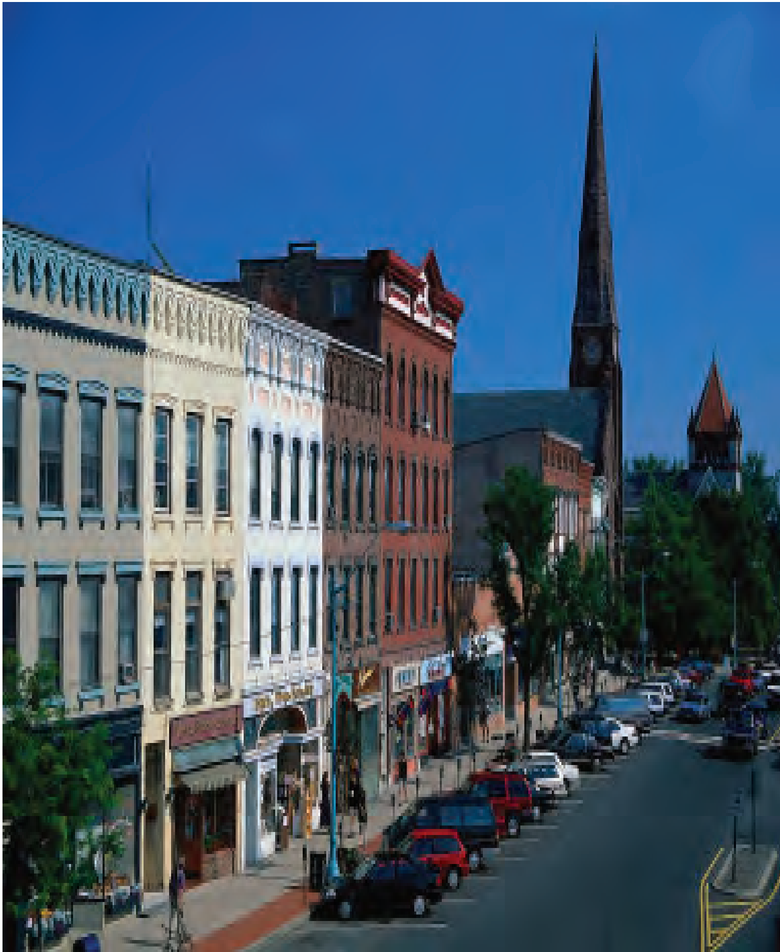
VSO SPOTLIGHT

STEVE CONNOR, VETERANS SERVICE OFFICER FOR HAMPSHIRE COUNTY, MASSACHUSETTS

Northampton is Hampshire County's seat. Its history in the shaping of this nation, its blend of traditional neighborhoods, and a lively and sophisticated cultural community would make any city proud. Northhampton has been recognized in recent years by numerous publications as a top rated town for the arts, for families, for historic preservation, and for outdoor activities. Located in the Five-College area, Northhampton is home to prestigious Smith College for women.

Website: www.northamptonma.gov/veterans

Know a VSO who should be honored? Email us at drohde@vetlawyers.com and we'll feature them in a future issue.



Q: What inspired you to help Veterans professionally?

A: When the Mayor spoke with me about the position, she told me she wanted me to do outreach and find Veterans who were not receiving the services they deserved, even though it meant the Veterans Services budget in our city would rise dramatically. I knew it was a mission I could be on board with.

Q: When did you get started in this position?

A: I have been the Veterans Services Director since February of 2004.

Q: Do you believe that the need for VSOs is growing?

A: I believe the need for professional VSOs is growing every day. Gone are the days when a town's Veteran's Service Agent's main responsibility was organizing Veteran's Day parades and patriotic events. Today, the aging Veterans of WWII, Korea and Vietnam, as well as the Veterans of more recent conflicts, including those in Iraq and Afghanistan, are bringing ever more complex medical issues and housing needs, and our work is increasingly being completed through online portals, necessitating a high level of computer literacy. Every community needs access to a trained VSO who understands the many varied programs available to help Veterans and their families.

Q: What gets you really excited about your work?

A: Last weekend, I went for a walk on the bike path and passed a Veteran out for a spring bike ride. I remember that Veteran coming into my office when he heard I may be able to help him. He had been living in a shed on somebody's property – no running water or heat – with less than $700 a month to his name. He was unaware of the services due to him. Today he lives in an apartment in the community through the VASH program and volunteers to help homeless Vets. Seeing my work make a difference in a Vets' life keeps me going.

Q: What are the biggest challenges for this generation?

A: The Veterans of the current engagements are coming home with Traumatic Brain Injury at extremely high rates and are also at a much higher risk of post-deployment suicide. These are significant challenges. Also, Post Traumatic Stress Disorder (PTSD) may be more understood and recognized in general today than during previous conflicts, but the reality of living with PTSD and finding appropriate treatment resources remains very difficult.

Q: What are the biggest challenges for this generation?

A: I met a homeless Vietnam Veteran when doing an outreach at a local shelter. He had been battling drug addiction and had been homeless for more than a year. I was able to let him know the resources available to him if he stopped using, and that was the impetus he needed to get his life back on track. This gentleman now lives in the community and speaks on panels to students in public schools about his experience. Last summer, he teamed up with an Operation Iraqi Freedom Veteran to participate in one leg of a cross-country bike ride to raise awareness of Veterans issues. He also served as a model for a statue that was presented as an award to Admiral Mike Mullen. It's a story of hope and help – that the hope that lives in the hearts of Veterans and their families can sometimes come true with the help that our communities can provide them through their VSO.