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COMMENT ON PROPOSED RULE—AGGRAVATION DEFINITION

Agency: Dep't Veterans Aff.

Title: AQ80-Proposed Rule-Aggravation Definition

Document ID: VA-2020-VBA-0021-0001

Reference: Aggravation Definition, 85 Fed. Reg. 56,189 (Sept. 11, 2020)

BACKGROUND

My expertise is in psychopathology generally, and psychological C&P exams specifically.¹ I will therefore limit my comment to how the proposed regulatory changes would affect Veterans' claims for post-traumatic stress disorder (PTSD) and other mental disorders.

SYNOPSIS

The proposed regulatory changes evince ignorance about the *natural history*^{2,3} of psychiatric illness. In addition, the proposal will create unnecessary anxiety for Veterans; will create inequity because of examiners' various understandings of "permanent" and their familiarity (or lack thereof) with the research literature; and it conflicts with regulations governing the disability rating process.

I urge the Department of Veterans Affairs to abandon the word "permanent" and the phrase "permanent worsening", and use "chronic" instead. This modification will align these regulations with current scientific understanding, prevent unnecessary angst and unfairness, and avoid the establishment of conflicting definitions between the adjudication and rating sections of 38 C.F.R.

¹ I included a synopsis of my professional education, training, and experience in the APPENDIX.

² *Webster's Third New International Dictionary of the English Language, Unabridged*, ed. Philip B. Gove (Springfield, MA: G. & C. Merriam, 1961, 1993, periodically updated as *Merriam-Webster Unabridged*), ("**natural history** *noun* ... 2: a : the natural development of something [as of an organism or disease] over a period of time <increasing knowledge of the natural histories of tumors — H. S. N. Greene>").

³ *American Heritage Dictionary of the English Language*, 5th ed. (Boston: Houghton Mifflin Harcourt, 2018), ("**natural history**, *n.* ... 2. a. A collection of facts about the development of a natural process or entity: *the natural history of tuberculosis*").

SPECIFIC CONCERNS

The adjective "permanent" *conflicts* with scientific evidence on the natural history of mental disorders.

"Permanent" means continuing or enduring in the same state or status indefinitely, without essential change; not subject to fluctuation; not temporary.^{4,5,6} However, even the most serious, chronic mental illnesses exhibit marked variability with regard to onset (e.g., age, environmental stressors, or biologic precipitants); sign and symptom manifestation; degree and type of functional impairment; and rate of progression.⁷ Mental disorders display substantial variability across groups of

⁴ *Webster's Third New International Dictionary of the English Language, Unabridged*, ed. Philip B. Gove (Springfield, MA: G. & C. Merriam, 1961, 1993, periodically updated as *Merriam-Webster Unabridged*), ("**permanent** adjective: continuing or enduring (as in the same state, status, place) without fundamental or marked change : not subject to fluctuation or alteration : fixed or intended to be fixed : lasting, stable").

⁵ *Oxford English Dictionary (OED Online)*, 2nd ed. (Oxford, England: Oxford University Press, 1989), ("**permanent** ... *adj.* 1. a. Continuing or designed to continue or last indefinitely without change; abiding, enduring, lasting; persistent. Opposed to *temporary*").

⁶ *Collins English Dictionary*, 12th ed., Kindle ed. (Glasgow, Scotland: HarperCollins, 2014), loc. 316803 ("**permanent** *adj.* 1. existing or intended to exist for an indefinite period: a permanent structure; 2. not expected to change for an indefinite time; not temporary: *a permanent condition*").

⁷ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 5th ed. (*DSM-5*) (Washington, D.C.: American Psychiatric Association Publishing, 2013): 102 ("... the peak age at onset for the first psychotic episode [in schizophrenia] is in the early- to mid-20s for males ... The onset maybe abrupt or insidious, but the majority of individuals manifest a slow and gradual development of a variety of clinically significant signs and symptoms.").

people (interindividual variability)^{8,9,10} and fluctuation over time within individuals (intraindividual variability).^{11,12}

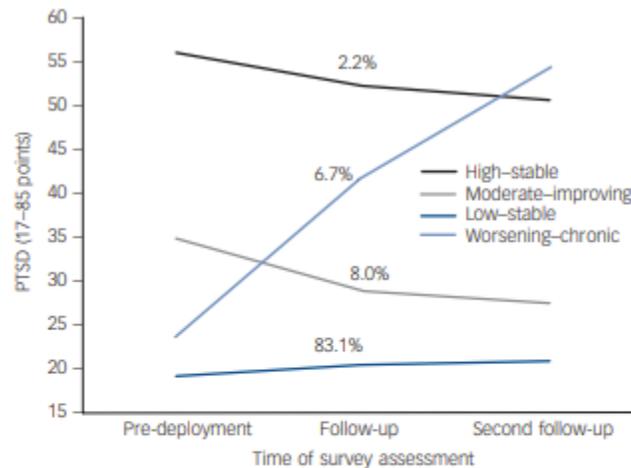


Fig. 1 Conditional model (including covariates) of post-traumatic stress over time among 3393 Millennium Cohort participants with a single deployment between baseline (pre-deployment) and first follow-up.

Post-traumatic stress disorder (PTSD) assessed using the PTSD Checklist – Civilian Version.

Bonanno, et al., *British Journal of Psychiatry* 200, no. 4 (2012): 319.

⁸ American Psychiatric Association, *DSM-5*, 100 ("Individuals with the disorder will vary substantially on most features, as schizophrenia is a heterogeneous clinical syndrome.").

⁹ Karstoft, Karen-Inge, Cherie Armour, Ask Elklit, and Zahava Solomon. "Long-Term Trajectories of Posttraumatic Stress Disorder in Veterans: The Role of Social Resources." *The Journal of Clinical Psychiatry* 74, no. 12 (December 2013): e1163-1168. ("Findings confirmed heterogeneity of long-term sequelae of combat, revealing 4 trajectories of resilience, recovery, delay, and chronicity in veterans with and without CSR [combat stress reaction].")

¹⁰ Bonanno, George A., et al. "Trajectories of Trauma Symptoms and Resilience in Deployed US Military Service Members: Prospective Cohort Study." *British Journal of Psychiatry* 200, no. 4 (April 2012): 317–23.

¹¹ Cherrie Galletly et al., "Royal Australian and New Zealand College of Psychiatrists Clinical Practice Guidelines for the Management of Schizophrenia and Related Disorders," *Australian & New Zealand Journal of Psychiatry* 50, no. 5 (2016): 413 ("Schizophrenia is a complex disorder of brain function with wide variation in symptoms and signs, and in the course of the illness.").

¹² Magruder, Kathryn M., et al., "Long-Term Trajectories of PTSD in Vietnam-Era Veterans: The Course and Consequences of PTSD in Twins," *Journal of Traumatic Stress* 29, no. 1 (February 2016): 12 ("... 20 years after the initial assessment an important subset [10.50% of theater veterans, 4.45% of nontheater veterans] had current PTSD that was either late onset [6.55% theater, 3.29% nontheater] or chronic [3.95% theater, 1.16% nontheater] ... those who served in Vietnam were less likely to be in the group that never had PTSD, but were more likely to be in the late-onset or chronic groups."). {Note: This research article uses the word "chronic" 25 times, "chronicity" five times, and never uses the word "permanent".}

Adriene M. Beltz and colleagues discuss current thinking about psychopathology in this regard in a 2016 article published in *Assessment*:

... individuals with the same disorder differ from each other and over time in **nontrivial** ways. ...

Disorders do not reflect distinct, qualitative groups but rather manifestations of varying levels of multiple (often biologically influenced) behavioral dimensions.

Also, **disorders change over time**, as seen in individuals who have the same disorder, but whose diagnosis resulted from unique triggers and symptomatology, and whose treatment profiles vary.¹³

(emphasis and paragraph breaks added; citations omitted)

The adjective "chronic" comports with scientific evidence on the natural history of mental disorders.

As applied to medical disorders, the adjective "chronic" denotes an illness that lasts a long time, is lingering and inveterate,¹⁴ often worsens slowly over time, and may exhibit a pattern of repeated remission and relapse without resolution or cure.^{15,16,17} *Chronic* retains the lasting, enduring quality of "permanent" without imposing a steady state expectation. When used to modify the name of a mental disorder, e.g., "chronic schizophrenia" or "chronic PTSD", the word acknowledges the abiding nature of mental illness, while simultaneously recognizing the varying patterns of onset, relapse and remission, progression, symptom expression, and functional impairment.

¹³ Beltz, Adriene M., Aidan G. C. Wright, Briana N. Sprague, and Peter C. M. Molenaar. "Bridging the Nomothetic and Idiographic Approaches to the Analysis of Clinical Data." *Assessment* 23, no. 4 (August 2016): 447–58.

¹⁴ *Oxford English Dictionary (OED Online)*, 2nd ed. (Oxford, England: Oxford University Press, 1989), ("inveterate, adj. ... 2. b. Of disease: Of long standing, chronic; hence, deep-seated and resisting treatment.").

¹⁵ Marie T. O'Toole, ed., *Mosby's Medical Dictionary*, 9th ed., Kindle ed. (St. Louis: Mosby/Elsevier, 2013): loc. 55150 ("**chronic** - [of a disease or disorder] persisting for a long period, often for the remainder of a person's lifetime. Compare *acute*").

¹⁶ *Stedman's Medical Dictionary Online* (Philadelphia: Wolters Kluwer Health, 2020), ("**chronic** - 1. Referring to a health-related state, lasting a long time. ... 3. The U.S. National Center for Health Statistics defines a chronic condition as one persisting 3 months or longer.").

¹⁷ *Oxford English Dictionary (OED Online)*, 2nd ed. (Oxford, England: Oxford University Press, 1989), ("**chronic**, adj. ... 2a: Of diseases, etc.: Lasting a long time, long-continued, lingering, inveterate; opposed to *acute*. [earliest known use: 1601, P. Holland tr. Pliny *Hist. World II*. 391, 'These long diseases which be called Chronique'.]").

The proposed regulatory changes will cause unnecessary distress to Veterans.

If the Department retains the language and meaning of the proposed changes, the new regulations will provoke unnecessary anxiety among Veterans who will (understandably) fear that VBA will reduce or eliminate their service-connected disability benefits. (The proposed regulatory changes will evoke worry and consternation even with the presence of a "grandparent clause".)

Our nation's Soldiers, Sailors, Marines, Airman, and Coast Guardsmen suffering from mental disorders have endured enough psychic anguish without the government pouring this abrasive salt into their wounds.

The proposal will create disparate opinions from C&P examiners.

Another problem with the proposal is that VBA would begin asking psychologist and psychiatrist examiners to provide a definitive answer to a flawed question. VBA will ask a question such as the one below.

VBA: "Is the Veteran's depressive disorder due to, or the result of, his service-connected diabetes and heart disease? And, if so, is the Veteran's depressive disorder permanent?"

C&P examiners familiar with the research literature will respond like this:

Psychologist-examiner: "Mental disorders are rarely 'permanent' because almost all of them fluctuate in terms of symptom severity and resulting functional impairment. Although the Veteran's disorder is *chronic* and *severe*, I must regrettably conclude that it is less likely than not that the Veteran's depressive disorder is *permanent*."

C&P examiners who are not familiar with the scholarly literature, or who are not aware of the distinction between *permanent* and *chronic*, would opine that the same Veteran's mental disorder *is* permanent.

While such an opinion would be a welcome result for those Veterans who see less knowledgeable examiners, it creates an unpredictable inequity; it is not fair to the Veterans evaluated by the more knowledgeable examiners.

The proposed regulatory changes conflict with related regulations.

In the ratings section of 38 C.F.R.,¹⁸ one finds language entirely consistent with applying the adjective "chronic" to describe enduring mental disorders, but this same language is *inconsistent* with so-called "permanent" mental disorders. For example:

When evaluating a mental disorder, the rating agency shall consider the frequency, severity, and duration of psychiatric symptoms, the length of remissions, and the veteran's capacity for adjustment during periods of remission.¹⁹

Thus, in this regulation, mental disorders are assumed to manifest variability in terms of symptom frequency, duration, and severity, and the regulation assumes that mental disorders may show periods of active illness interspersed with periods of remission.

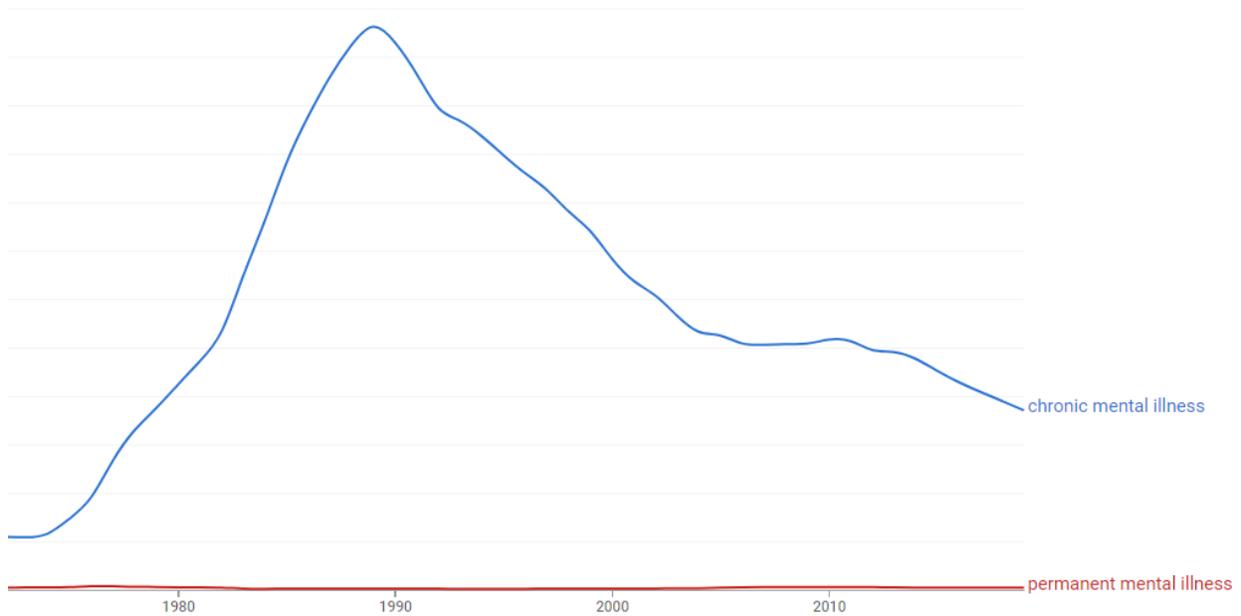
Given what we know about the meaning of "permanent", this section—38 C.F.R. § 4.126(a)—does not contemplate *permanent* mental disorders, but it is entirely consistent with *chronic* psychiatric illness.

The word "chronic" is much more common

The word "chronic", as applied to mental illness, is much more common than "permanent", based on multiple measures. For example, the use of "chronic mental illness" vs. "permanent mental illness", in books (*Google Ngram Viewer*).

¹⁸ [Disability Ratings](#), 38 C.F.R., chap. I, pt. 4, subpt. B (2019).

¹⁹ [Evaluation of disability from mental disorders](#), 38 C.F.R. § 4.126(a).



Frequency of "chronic mental illness" vs. "permanent mental illness" in books over the last 40 years.

And in scholarly articles, based on *Google Scholar* searches.

Phrase	Results	Ratio
"chronic mental illness"	25100	136:1
"permanent mental illness"	184	
"chronic mental disorders"	3770	44:1
"permanent mental disorders"	85	

Google Scholar – Number of documents containing the given phrases.

CONCLUSION

By using the adjective "chronic", instead of "permanent", the Department of Veterans Affairs will achieve its objective of uniform language in the "aggravation" regulations, while avoiding the multiple problems using "permanent" would cause.

APPENDIX

The commenter, Mark D Worthen PsyD, ...

- Graduated from the University of Maryland's *Psychology Honors Program*.
 - Member, *Phi Beta Kappa*.
 - *Commencement Speaker* at his college's graduation ceremony.
- Earned a Doctor of Psychology (PsyD) degree from Baylor University in Texas.
 - Completed an APA-accredited internship at a VA Medical Center.
 - *Clinical Fellow* in Psychology at Harvard Medical School.
- Served as Co-Chair of the North Carolina Psychological Association's Law & Psychology Committee.
- Lead author of the first article ever published in a peer-reviewed scholarly journal describing how to conduct C&P exams for PTSD and other mental disorders:
 - Worthen, Mark D. & Robert G. Moering. "A Practical Guide to Conducting VA Compensation and Pension Exams for PTSD and other Mental Disorders." *Psychological Injury and Law* 3, no. 3–4 (2011): 187–216.
<https://perma.cc/C9QK-MR23>
- Full-time C&P examiner, conducting C&P exams for VA compensation PTSD and other mental disorder claims (2010–2016).
 - Court Psychologist for a family court in Alexandria, Virginia.
 - Forensic Psychologist at a community mental health center in Charlotte, North Carolina.
 - Clinical Consultant to Mecklenburg County (NC) Drug Treatment Court (*pro bono*).
 - Consultant to defense counsel in private disability insurance cases.
 - Consultant to companies in workplace violence threat situations.
 - Expert witness in several jurisdictions in central and western North Carolina
- Licensed Psychologist in the State of Utah (#10951856-2501).
- Licensed *Healthcare Service Provider Psychologist* (HSP-P) in the State of North Carolina (#1835).

Dr. Worthen's [curriculum vitae \(CV\)](#) is available online.