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Clinical & Forensic Psychology

PUBLIC STATEMENT

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LTC Thomas J. Pamperin (USAR, ret.), Acting Chairman, and
Members of the VA Advisory Committee on Disability Compensation
c/o Sian Roussel, Advisory Committee Management Office (00AC)
Department of Veterans Affairs, 1717 H ST NW, Washington DC 2006

Dear Acting Chairman Pamperin and Members of the Committee:

Thank you for all your hard work helping the Veterans Benefits Administration to continuously improve disability benefits to our nation's military veterans.

I read with interest the minutes for the Committee's meeting on 27 May 2020, particularly this paragraph on page 6 of the minutes:

Mr. Hazell noted that the OIG report also mentioned the improper use of telehealth by private providers, but added that *neither U.S. Code (U.S.C.) nor regulation prohibited that*. He added that it was odd that VA was discouraging telehealth by private providers while expanding the ability of VHA and contract examiners to perform telehealth exams. Acting Chairman Pamperin agreed.
[emphasis added]

I wholeheartedly agree.

On the one hand, VBA claims that the *M21-1 Adjudication Procedures Manual* "is an internal manual used to convey guidance to VA adjudicators. It is not intended to establish substantive rules beyond those contained in statute and regulation."¹ On the other hand, based on the *M21-1 Adjudication Procedures Manual* alone,² VBA and the

¹ 72 Fed. Reg. 66218, 66219 (Nov. 27, 2007).

² Veterans Benefits Admin., Dep't Veterans Aff., Tele-C&P and Telemental Health Examination, M21-1 Adjudication Procedures Manual, pt. III, subpt. iv, chap. 3, sec. D, topic 2c (rev. Oct. 19, 2020), (stating that a "telemental health examination report is only acceptable and actionable for rating purposes when prepared by a VHA or VBA-contracted examiner in response to a VA C&P examination request.").

VA Office of Inspector General³ assert that "the use of private provider telehealth examinations for rating purposes is prohibited."

Veterans have a right to submit IME (independent medical exam) or IPE (independent psychological exam) findings to support their claim. However, because of VBA's arbitrary rule, issued without any explanation or rationale, veterans are at a disadvantage because in many instances if they (or their attorneys) wish to retain an independent expert, the veteran has to travel hundreds or thousands of miles and incur significant expenses for travel, lodging, and food costs, as well as lost time from work.

These unjust expenses could be avoided if physicians and psychologists in the private sector could conduct Tele-C&P exams, just like the physicians and psychologists in the private sector who conduct exams under contract with a VBA-approved medical disability examination (MDE) company.

Contract examiners (who will soon conduct *nearly all* VA C&P exams) evaluate thousands of veterans via Internet-based audiovisual technology every day, usually using their own computers, software, and audiovisual technology. How are these Tele-C&P exams different from a veteran-retained psychologist conducting a telemental health exam?

I encourage the Committee to press VBA for a cogent explanation for this biased, inequitable rule that disadvantages veterans.

Thank you for your kind consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark D Worthen', with a large, stylized flourish at the end.

Mark D Worthen PsyD

P.S. Information about my background, including my CV, is available at:
<https://www.drworthen.net>

³ Off. Inspector Gen., Dep't Veterans Aff., Rep. No. 19-07119-80, *Telehealth Public-Use Questionnaires Were Used Improperly to Determine Disability Benefits 2* (Feb. 18, 2020).