

WHEN MAY NON-VA EXAMINERS CONDUCT TELEHEALTH C&P EXAMS?

The Department of Veterans Affairs (VA) leads the way when it comes to providing telehealth services, thereby helping more Veterans access healthcare services, including mental health treatment and assessment.^{1,2,3}

VA started conducting telemental C&P exams as early as 2012,⁴ and has increasingly utilized audiovisual technologies to conduct psychological C&P exams.⁵

Only VA examiners may conduct *Initial PTSD* C&P Exams. However, VA allows "fee-based"⁶ (independent, private sector) psychologists to conduct compensation and pension examinations for three other exam types:

- 1) *Review PTSD*;
- 2) *Initial Mental Disorder*; and
- 3) *Review Mental Disorder*.⁷

¹ Linda Godleski, Adam Darkins, & John Peters, *Outcomes of 98,609 U.S. Department of Veterans Affairs Patients Enrolled in Telemental Health Services, 2006–2010*, 63 PSYCHIATRIC SERVICES 383 (2012).

² Peter W. Tuerk et al., *Toward the Development of National Telehealth Services: the Role of Veterans Health Administration and Future Directions for Research*, 16 TELEMED. J. E. HEALTH 115 (2010).

³ Matthew S. Yoder & Travis H. Turner, *Assessment via Telemental Health Technology in PSYCHOLOGICAL ASSESSMENT OF VETERANS* (Shane S. Bush ed., 2014).

⁴ *Discovering a More Efficient Process Improving Timeliness and Adequacy of VA Compensation and Pension Examinations: Field Hearing before the Subcomm. on Disability Assistance and Memorial Aff., H. Comm. on Veterans' Aff.*, 112th Cong. (2012) (statement by Michael E. Moreland, FACHE, Dir., Veterans Integrated Serv. Network 4, Veterans Health Admin., U.S. Dep't Veterans Aff., in response to a question from Rep. Runyan).

⁵ *VBA and VHA Interactions: Ordering and Conducting Medical Examinations before the H. Comm. on Veterans Aff.*, 113th Cong. 11 (2014) (statement of Thomas Murphy, Dir., Comp. Serv., Veterans Benefits Admin., U.S. Dep't Veterans Aff.).

⁶ VETERANS BENEFITS ADMIN., U.S. DEP'T VETERANS AFF., *Accepting a Fee-Based Examiner's Report*, M21-1 ADJUDICATION PROCEDURES MANUAL, III.iv.3.D.2.q. (updated Mar. 12, 2018) ("There is no prohibition against acceptance of a VA examination for rating purposes from a fee-based medical examiner who has previously submitted a statement on the claimant's behalf.")

⁷ See VETERANS BENEFITS ADMIN., U.S. DEP'T OF VETERANS AFF., *Qualification Requirements of Examiners – Initial Mental Disorder Examinations*, M21-1 ADJUDICATION PROCEDURES MANUAL, Part III, Subpart iv, 3.D.2.h. (updated Mar. 12, 2018); see also Mental Disorders (Other Than PTSD and Eating Disorders) Disability Benefits Questionnaire, VA FORM 21-0960P-2 (May 2018) ("In order to conduct an INITIAL examination for mental disorders, the examiner must meet one of the following criteria ... a licensed doctorate-level psychologist ...").

To the best of my knowledge, VA has not published any *public* guidance for private psychologists and psychiatrists about telemental C&P exams.

The Veterans Benefits Administration's M21-1 Adjudication Procedures Manual discusses telemental health C&P exams in Part III, Subpart iv, 3.D.2.c., *Telehealth and Telemental Health Examinations*.

One must read this section carefully to ascertain when a private psychologist may conduct an acceptable-as-evidence C&P exam with a Veteran.

M21-1 III.iv.3.D.2.c (Telehealth and Telemental Health Examinations) states:

When VHA elects to conduct a videoconference examination (or telehealth/telemental health examination) in lieu of an in-person examination, assess the report for sufficiency under the same standards applicable to in-person examinations.

Important:

- A telehealth or telemental health examination report is only acceptable and actionable for rating purposes when prepared by a VHA or VBA-contracted examiner. Decision makers must not accept in lieu of VA examination any DBQ that has been
 - prepared by a non-VA provider, and
 - completed by means of telephone or videoconference examination.
- A mental health DBQ submitted by a private provider and based on a telephone interview with a Veteran is not acceptable or actionable for rating purposes under any circumstances. VHA has determined that, in order to assess a Veteran's mental health via telemental protocol, examiners must be able to
 - see clearly, and
 - fully appreciate all non-verbal cues, mannerisms, and manifestations displayed by the Veteran in a manner on par with an in-person examination.

Reference: For more information on telehealth and telemental health examinations, see the [Office of Disability and Medical Assessment \(DMA\) Expansion of Telehealth for Compensation and Pension \(C&P\) Examinations Fact Sheet](#)

Unfortunately, that hyperlinked text goes to a VA *intranet* site, which private psychologists and psychiatrists cannot access. The "Fact Sheet" URL is:

<http://vaww.demo.va.gov/files/FactSheets/2013/DMAFactSheet13-008ExpansionofTelehealth.pdf>

One of the confusing portions of M21-1 III.iv.3.D.2.c is this sentence:

Decision makers must not accept in lieu of VA examination any DBQ that has been prepared by a non-VA provider, and completed by means of telephone or videoconference examination.

The distinguishing phrase is “in lieu of”, which means “in the place of”.^{8,9}

Thus:

Decision makers must not accept *in the place of* a VA examination any DBQ that has been prepared by a non-VA provider, and completed by means of telephone or videoconference examination.

Of course, that sentence—and the entire Telehealth and Telemental Health Examinations section—exhibits murky, equivocal prose that significantly hinders comprehension. However, in the context of the M21-1 in its entirety, we can piece together a moderately improved and accurate sentence:

If a VA examiner has completed a C&P exam and submitted an acceptable exam report (DBQ), then decision makers must also accept an exam report submitted by the Veteran that is based on a telemental health exam conducted by an otherwise qualified non-VA examiner, provided that the examiner was (during the telemental health exam) able to see the Veteran clearly and fully appreciate all non-verbal cues, mannerisms, and manifestations displayed by the Veteran in a manner on par with an in-person examination.

⁸ WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE, UNABRIDGED (Philip B. Gove ed., 1961, rev. 1993, periodically updated as "Merriam-Webster Unabridged"), ("*lieu* noun ... — **in lieu of** : in the place of : instead of").

⁹ OXFORD ENGLISH DICTIONARY (2nd ed. 1989), ("*lieu*, *n.* Place, 'stead'. 1. In phrases. **a. in (the) lieu of**: in the place, room, or stead of (cf. *instead adv.* 1);").