

Medical Opinion Letters

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Loves include: My darling children and dogs,
CrossFit, research papers (nerd alert, I know),
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Objectives

- In today's course, we will discuss:
 - How to approach providers for medical opinion letters
 - How NOT to approach providers for medical opinion letters
 - Sample checklists
 - Common flaws

Before we delve in...

- Tell me, what do you want to get out of this lecture today?

A Veteran walks into your office...

- A veteran walks into your office and complains of low back pain.
- Your vet has no current diagnosis.
- What do you do?

A Veteran walks into your office...

- STEP 1- You need a diagnosis.
- STEP 2- You should gather ALL relevant information
- STEP 3- Write proper letter
- STEP 4- ORGANIZE, highlight, tab.
- STEP 5- Contact office and work as a team
- STEP 6- File claim, Trigger C&P
- Step 7- Update provider

A Veteran walks into your office...

- A veteran walks into your office and complains of low back pain.
- Your vet has a diagnosis of degenerative arthritis (or, whatever else their diagnosis happens to be that you are trying to service connect).
- What do you do?

A Veteran walks into your office...

- STEP 1- Don't send to provider. File appropriate claim.
- What are the benefits of doing it this way?
 - Will likely order imaging and pay for such
 - May get lucky and it will get approved
 - Easier to argue with their words on defense (new and material evidence)
 - If you start with a DBQ, they trigger a C&P anyways
- What are the risks of doing it this way?
 - Gets denied, vet pays out of pocket for second opinion
- Should you include letters from providers?

A note on imaging

- Mechanical Cervical Pain Syndrome
 - ICD9: 724.8 (facet syndrome), 723.1 (neck pain)
 - ICD10: M54.08, M54.2
 - No imaging required.
 - This is not a typically used set of codes in practice
- Cervical Sprain/Strain
 - ICD9: 847.0
 - ICD10: S13.4
 - No imaging required, however, imaging often included to rule out fracture

A note on imaging

- Cervical Spondylosis
 - ICD9: 721.0 (without myelopathy), 721.1 (with myelopathy)
 - ICD10: M47.812, M53.82
 - **Imaging required**
- Degenerative Disc Disease
 - ICD9: 722.4
 - ICD10: M50.30
 - **Imaging required**

A note on imaging

- Foraminal stenosis/central stenosis
 - ICD9: 723.0
 - ICD10: M48.02
 - **Imaging required**- often times MRI or CT as well as neurological (radiculopathy) signs will likely be present.
- Intervertebral Disc Syndrome
 - ICD9: 722.71 (with myelopathy), 722.0 (without myelopathy)
 - ICD10: M50.00, M50.20
- **Imaging required**- MRI usually as neurological (radiculopathy) signs will likely be present

A note on imaging

- Radiculopathy
 - ICD9: 723.4
 - ICD10: M54.12
 - Imaging not required, however, it is usually linked to a primary diagnosis requiring a imaging.
- Myelopathy
 - ICD9: 721.1 (Cervical Spondylosis with Myelopathy)
 - ICD10: M47.12
 - **Imaging required (CT/MRI)**

A note on imaging

- Vertebral Fracture:
 - ICD9: 805-806.19 (traumatic), 733.13 (pathological)
 - ICD10: Requires more input of level information
 - Imaging required

A note on imaging

- From the provider's perspective:
 - Most of the conditions on the DBQ require imaging of some sort to diagnose.
 - If I can safely treat a patient, and image confirmation of a diagnosis I suspect won't alter the care I give them, I don't always image as imaging is just an extra expense at that point for the patient to make it "official".
 - You will often times need to educate and arm your provider with the information to give you what you need to complete a claim.

A Veteran walks into your office...

- A veteran walks into your office and complains of low back pain.
- Your vet has a diagnosis of degenerative arthritis (or, whatever else their diagnosis happens to be that you are trying to service connect).
- His claim has been denied
- What do you do?

A Veteran walks into your office...

- Now, send second opinion letter to provider with all of the relevant information as discussed.

A Veteran walks into your office...

- A veteran walks into your office and complains of low back pain.
- Your vet has no diagnosis
- Because his previous CVSO did not attend this lecture, they filed a claim without a diagnosis, and the claim is denied based on lack of diagnosis.
- What do you do?

A Veteran walks into your office...

- Now, send second opinion letter to provider with all of the relevant information as discussed, highlighting that the Veteran needs a diagnosis first and foremost.

Lets play a game...

- Lets play a game called what are some of the things you think the average provider doesn't know about the claims process
- Lets play another game called what words do you think your provider is unfamiliar with in regards to the claims process
- Lets play a final game called what do you think a provider needs in order to do a good job

In the land of rainbows and unicorns

- Don't be shy... what do you usually send your providers? What does your process look like?
- In order to write the best claim possible, I would receive:
 - All of the information within the VA claims file so that I am able to click the "Yes" box on the "Was the veteran's VA claim file reviewed"
 - This information would be highlighted or have notations as to what you as the VCSO find relevant

MEDICAL RECORD REVIEW	
WAS THE VETERAN'S VA CLAIMS FILE REVIEWED?	
<input type="checkbox"/> YES	<input type="checkbox"/> NO
IF YES, LIST ANY RECORDS THAT WERE REVIEWED BUT WERE NOT INCLUDED IN THE VETERAN'S VA CLAIMS FILE:	
IF NO, CHECK ALL RECORDS REVIEWED:	
<input type="checkbox"/> Military service treatment records	<input type="checkbox"/> Department of Defense Form 214 Separation Documents
<input type="checkbox"/> Military service personnel records	<input type="checkbox"/> Veterans Health Administration medical records (<i>VA treatment records</i>)
<input type="checkbox"/> Military enlistment examination	<input type="checkbox"/> Civilian medical records
<input type="checkbox"/> Military separation examination	<input type="checkbox"/> Interviews with collateral witnesses (<i>family and others who have known the veteran before and after military service</i>)
<input type="checkbox"/> Military post-deployment questionnaire	<input type="checkbox"/> Other: _____
	<input type="checkbox"/> No records were reviewed

We need instructions.

Understand that if you have not worked with this provider before, they likely will need education from you as to what you want.

You NEED to send a letter to them.

- I have found letters utilizing specific VA language to be helpful
 - Example- If you are seeking individual employability, in order to render a decision on if I feel the veteran meets the requirements, I need to know what the VA defines this as.
 - Understand- your goal is to build a network of providers. You want to make this process smooth for them, and make them want to work with you in the future.

We need instructions.

- Keep in mind, providers do not understand the importance of ROM in your exams.
 - Providing the classifications/ratings for disability would be very helpful to convey this.
 - They need to know that you need them to measure ROM SPECIFICALLY AND OBJECTIVELY.

We need instructions.

- Explain more likely than not, as likely as not, and less likely than not

My process

- https://drive.google.com/open?id=1xAUi49DXtRnsGxd_Nj_Fymff3BeLHrGy

Help Us.

- Organize your paperwork!
- Fill in page 1 of the DBQ, including ICD-10 codes and dates of diagnosis
- Be aware of financials, have this conversation with your veteran
- Notify us of who is paying for what

Other info to include

CHIROPRACTIC OPINIONS ETC. The Court of Appeals for Veterans Claims has indicated that treatment by or the opinions of private chiropractors, nurses or other medical professionals is medical evidence which cannot be ignored. See *Smith v. Brown*, 7 Vet.App. 255, 258 (1994) (Court characterizes two opinions by private chiropractors as “medical evidence of record”); *Black v. Brown*, 5 Vet.App. 177, 180 (1993) (chiropractor’s opinion about origin of low back disorder is a medical opinion); *Wilson v. Brown*, 5 Vet. App. 103, 107 (1993) (Court orders remand where Board did not discuss a private chiropractor’s statement about the veteran’s unemployability). See also *Williams (Willie) v. Brown*, 4. Vet.App. 270, 273 (1993) (professional opinion of a registered nurse therapist cannot be ignored).

Boilerplate for above: “In the veteran’s case, a professional medical opinion was provided by _____, a (insert chiropractor, nurse, etc.). Under the cases of *Smith*, 7 Vet.App. at 258, *Black*, 5 Vet.App. at 180, *Wilson*, 5 Vet.App. at 107, and *Williams*, 4. Vet.App. at 273, this opinion must be accepted as medical evidence and cannot be dismissed based on the VA’s own unsubstantiated medical conclusion. See *Colvin v. Derwinski*, 1 Vet.App. 171, 175 (1992).

NOTE: VA CAN reject above opinions if based on veteran’s history only IF inaccurate or untrue.

Other info to include

NEW & MATERIAL EVIDENCE –The definition of “new and material evidence” was revised in August, 2001, to require that the newly submitted evidence relate to an unestablished fact necessary to substantiate the claim, and present the reasonable possibility of substantiating the claim. (38 C.F.R. § 3.156 (2002)). The change in the law pertains to claims filed on or after August 29, 2001.

(From BVA decision) 38 CFR § 3.15, as in effect prior to August, 2001, does not identify the qualities evidence must have to be “so significant it must be considered in order to fairly decide the merits of the claim.” It is reasonable to require evidence submitted since the prior final denial to “contribute to a more complete picture of the circumstances surrounding the origin of a veteran’s injury or disability, even where it will not eventually convince the Board to alter its ratings decision.” *Hodge, supra*, at 1363. When determining whether a claim should be reopened, the credibility of the newly submitted evidence is to be presumed. *Justus v. Principi*, 3 Vet. App. 510 (1992).

The Board also notes that *Hodge* and later cases regarding requests to reopen claims set forth a three step analysis to be applied in determining whether evidence was new and material. The second step of that analysis required VA to determine whether the claim is well grounded under 38 USCA § 5107 (a). However, as noted above, the VCAA amended certain provisions of the laws governing veterans’ benefits in November 2000, so that a veteran is no longer required to submit a well grounded claim. Therefore, the portion of the analysis in *Hodge* regarding determination of whether the new and material evidence establishes a well grounded claim has not been applied by the Board.

Other info to include

SECONDARY CONDITIONS -- 38 C.F.R. § 3.310 (a) provides that a “disability which is proximately due to or the result of a service connected disease or injury shall be service connected.”

The U.S. Court of Veteran’s Appeals has found that secondary service connection is a medical issue that must be resolved with medical evidence. (See Velez, 11 Vet. App. At 158, Epps, 9 Vet.App. at 344, etc.)”

Other info to include

REASONABLE DOUBT: 38 C.F.R. § 3.102-1 provides that, “When, after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding service origin, the degree of disability, or any other point, such doubt will be resolved in favor of the claimant. By reasonable doubt is meant one which exists because of an approximate balance of positive and negative evidence....”

Williams v. Brown, 4 Vet.App. 270, 273-74 (1993) provided that, in a case where there is significant evidence in support of an appellant’s claim, the Board must provide a satisfactory explanation as to why the evidence is not in equipoise. *Wade v. Derwinski*, 3 Vet. App. 70, 72 (1992) provided that the Board erred as a matter of law in holding the appellant to a standard higher than that established by 38 U.S.C. § 5107 (b). *Gilbert v. Derwinski*, 1 Vet.App. 49, 55 (1990) provided that a veteran is entitled to prevail in a claim for veteran’s benefits unless “a fair preponderance of the evidence is against the claim.”

A claim may only be denied on the merits if a preponderance of the evidence is against the claim. *Aleman v. Brown*, 9 Vet.App. 518 (1996).

“When there is ‘significant evidence’ in support of the claim, if the (BVA) denies the claim, it must provide an adequate explanation as to why the evidence is not in ‘relative equipoise’ so as to warrant application of the benefit-of-the-doubt rule in 38 U.S.C. A. § 5107 (b); *Williams (Willie) v. Brown*, 4. Vet.App. 270, 273-74 (1993).

Other info to include

“NON-OPINIONS” & REASONABLE DOUBT: In a BVA decision dated 7/10/03, Docket number 02-05-531, the Board discounted an opinion by a VA doctor, Dr. S.M., and resolved reasonable doubt in the veteran’s favor. Dr. S.M. stated that she ‘cannot state that it is likely or at least as likely as not that renal cell carcinoma is the result of exposure to herbicides’. The Board noted that Dr. S.M. did not affirmatively state that the renal cell carcinoma was not likely related to such exposure, but merely that she was unable to state. In the Board’s view, such distinction is important.” We note that the record contained a private opinion that “there was a high degree of certainty” that the veteran’s cancer was related to Agent Orange exposure, especially given negative family history for the disease.

To Summarize

- Your letter/packet should include:
 - Introduction
 - An “ask”- what do you want this provider to render an opinion on
 - An explanation of VA language related to your claim
 - Points worth mentioning- like ROM
 - Relevant Research (we will talk about this)
 - Financial Information (consider setting an industry standard and range)
 - DBQ if applicable, all information filled out
 - C-File information in order, tabbed and organized
 - Example letters

Today's Objectives

- In today's course, we will discuss:
 - How to approach providers for medical opinion letters
 - How NOT to approach providers for medical opinion letters
 - Sample checklists
 - Common flaws
- Any questions?

Research

- Consider as an association adding a Google Drive document including your favorite research articles.