

April 3, 2006

MEDICAL REVIEW ASSISTANCE TO BOARD OF VETERANS APPEALS CASES

1. PURPOSE: This Veterans Health Administration (VHA) Directive defines the Department of Veterans Affairs (VA) process by which VHA provides medical reviews for the Board of Veterans' Appeals (BVA) cases that require expert advisory medical opinions.

2. BACKGROUND: Prior to the Veterans Judicial Review Act in 1988, BVA was permitted to use its own staff physicians in addition to outside resources to provide expert medical opinions in the decision-making of appeal cases. In July 1994, the decision of the United States Court of Veterans Appeals, in *Austin v. Brown*, constrained the role BVA staff physicians can play in the appellate process.

a. Appeal cases requiring expert medical opinions must now be referred to sources outside of BVA, such as the Armed Forces Institute of Pathology, selected medical schools, and VHA, to provide the medical reviews.

b. VHA physicians offer high quality medical reviews due to a greater appreciation of unique veterans' health problems, shorter turn-around times of reviewed cases, and familiarity with VA policies and procedures. Most cases requiring medical expert opinions are in the areas of: internal medicine, cardiology, psychiatry, orthopedic surgery, neurology, and occasionally rheumatology; ear, nose, and throat (ENT); pulmonary medicine; environmental medicine; and other specialties.

3. POLICY: It is VHA policy that all designated facilities are to assist and collaborate with BVA requests for medical reviews.

4. ACTION

a. **Under Secretary for Health.** The Under Secretary for Health, or designee, is responsible for providing BVA with a listing of tertiary, affiliated VA medical centers, including current contact information for the Medical Center Director.

b. **Medical Center Director.** The Medical Center Director of a listed VA medical center is responsible for:

(1) Ensuring that the requested medical advisory opinions are prepared by physicians employed by or under contract to VA medical centers.

(2) Facilitating prompt resolutions of veterans' appeals by ensuring that a completed medical advisory opinion (starting from the date all pertinent medical case review material of a BVA request is received) is provided to BVA within 60 Days.

(3) Ensuring that the claims file is promptly returned to BVA with the completed medical advisory opinion.

c. **Board of Veterans' Appeals (BVA).** BVA is responsible for:

VHA DIRECTIVE 2006-019

April 3, 2006

(1) Initiating all requests for medical advisory opinions to the Office of the Director of an individual VA medical center from the VHA listing.

(a) Each request must clearly and concisely state the medical question(s) for which a medical advisory opinion is being sought.

(b) Each request must contain operational procedures including where the completed advisory opinions are to be sent and how the opinion and the related veteran's claim folder are to be shipped back to BVA.

(c) Each request must provide a BVA point of contact for questions concerning the request or process.

(2) Distributing the caseload equitably based on specialty needs, geographical location, and facility size, to all appropriate VA medical centers, thereby placing minimal burden on any individual VA medical center. *NOTE: BVA estimates approximately 2,000 cases a year.*

(3) Contacting each VA medical center Director, or designee, to update operational guidelines or procedures as necessary.

(4) Providing a quarterly report to the Office of the Deputy Under Secretary for Health and the Office of Patient Care Services on the:

(a) Participation by VA medical centers,

(b) Number and type of cases referred,

(c) Timeliness of responses, and

(d) Quality of the medical advisory opinions in facilitating the adjudication process.

5. REFERENCE: None.

6. FOLLOW-UP RESPONSIBILITY: The Chief Patient Care Services Officer (11) and the Chairman, Board of Veterans' Appeals (01), share responsibility for this Directive. Questions may be addressed to 202-273-8474.

7. RESCISSIONS: VHA Directive 2000-049, dated December 13, 2000, is rescinded. This VHA Directive expires April 30, 2011.

Jonathan B. Perlin, MD, PhD, MSHA, FACP
Under Secretary for Health

DISTRIBUTION: CO: E-mailed 4/5/06
FLD: VISN, MA, DO, OC, OCRO, and 200 – E-mailed 4/5/06