## **DMA General Certification Overview**

Welcome to the DMA General Certification Overview course!

This course was developed by the <u>Office of Disability and Medical Assessment (DMA)</u> and the Veterans Health Administration (VHA) Employee Education System (EES) as the initial web-based training course for certification to be a Compensation and Pension (C&P) examiner.

Practicing subject matter experts from VHA, the Veterans Benefits Administration (VBA), and the Board of Veterans' Appeals (BVA) contributed as well.

#### **VHA**

The Veterans Health Administration, also known as VHA, governs the medical treatment facilities within the Department of Veterans Affairs. With nationwide medical centers (VAMCs), VHA provides health care for Veterans. VHA manages one of the largest health-care systems in the United States. VAMCs within a Veterans Integrated Service Network (VISN) work together to provide efficient, accessible health care to Veterans in their areas.

#### **BVA**

The Board of Veterans' Appeals (the Board) is the component of the VA responsible for making final decisions on behalf of the Secretary for claims for Veterans' benefits from all three Administrations and the Office of General Counsel that are presented to the Board for appellate review. The Board's mission is to conduct hearings and issue timely decisions for Veterans and other Appellants in compliance with the requirements of law.

#### **VBA**

The Veterans Benefits Administration (VBA) is responsible for providing a wide variety of benefits and services to Veterans and Service-members through Regional Offices. Major benefits provided by VBA and authorized by Congress include service-connected disability compensation, nonservice-connected disability pension, burial assistance, survivors' benefits, rehabilitation and employment assistance, education and training assistance, home loan guarantees, and life insurance coverage.



## Welcome

Welcome to the DMA General Overview course.

The following panel of experts will appear throughout the course to explain important concepts.

Brenda Howard, PA-C, MPAS

# Physician Assistant, Durham VA Healthcare System

Brenda is a certified Physician Assistant. She has been a PA for 24 years and has 10 years of C&P experience, 8 as the lead examiner at the Durham, NC VA facility. Brenda has been a subject matter expert (SME) on numerous DMA training courses related to C&P.

# Tina Skelly, Management Analyst, VBA Compensation Service

Tina is a Management Analyst with the Medical Disability Examination Quality and Program Management Office. Tina has 24 years of C&P experience, 12 years at the Regional Office level, serving in both non-supervisory and supervisory roles, as well as 12 years at VBA Central Office. Tina has been a SME on numerous DMA training courses related to C&P.

# Jonathan Abrams, J.D., Special Counsel Office of Knowledge Management, Board of Veterans' Appeals, Washington, DC

Jonathan is an attorney at the Board of Veterans' Appeals and has worked as an Associate Counsel in the Office of Appellate Operations for 5 years. As an Associate Counsel, Jonathan drafted appellate decisions on claims for veterans benefits and mentored new attorneys. Currently, he serves as a Special Counsel, providing lectures, mentoring newly hired attorneys, and managing other projects assigned.

Jose Gavino Oliva, MD

# C&P Staff, VA Northern California Health Care System

Dr. Oliva was a Staff Surgeon and currently is a C&P examiner for the VA Northern California Health Care System. Dr. Oliva has been conducting C&P examinations since 2008.

# Welcome (cont.)

Let's start with some background history on the DMA training.

In 2006, the Compensation and Pension Examination Program Office (CPEP) was charged with developing a mandatory certification training program for all Compensation and Pension examiners. The purpose was to design and provide baseline training for examiners on the C&P process.

CPEP evolved into the Office of Disability and Medical Assessment, or DMA, and the certification program has evolved into 9 mandatory courses and 16 optional exam-specific courses that focus on the most problematic examinations. All are designed to better equip examiners to conduct and report ratable C&P disability examinations for the Veterans Benefits Administration, or VBA.

This course, DMA General Certification Overview, is the prerequisite course for all the others.

Brenda Howard: "This course provides the foundation training for examiners. The other courses support and expand their knowledge of the C&P process as they move through the certification curriculum."

Tina Skelly: "This is the first of a series of courses that clinicians must take before they conduct C&P examinations. Four other DMA courses are also required for basic certifications."

#### **Mandatory C&P Certification Courses**

- \* DMA General Certification
- \* DMA Medical Opinions
- \* DMA Aggravation Opinions
- \* DMA Gulf War Examination
- \* DMA Military Sexual Trauma (MST)

Brenda Howard: "The DMA Musculoskeletal Examinations course is also mandatory for examiners who conduct exams involving any muscles or joints. Mental Health examiners have a requirement to complete the DMA PTSD and PTSD Mental Disorders courses. Clinicians who conduct TBI exams must complete the DMA TBI Residuals exam course."

#### **Additional Mandatory C&P Certification Courses**

- \* DMA Musculoskeletal
- \* DMA PTSD
- \* DMA Mental Disorders
- \* DMA TBI Residuals

This course was developed with input from the Veterans Health Administration, or VHA, the VBA, and the Board of Veterans' Appeals. The Board of Veterans' Appeals can be referred to as "the Board" or as BVA.

Why are all three groups involved?

Jonathan Abrams: "All of us play a vital role in the C&P process, so it makes sense for us to develop the training jointly. We all contribute so the that the course can be comprehensive and address the major concerns of each administration and the Board."

Tina Skelly: "This course explains how VHA, VBA and the Board are involved in the C&P examination process and what we need from clinicians who conduct C&P examinations."

What is the purpose of this DMA General Overview course?

Jonathan Abrams: "The purpose is to provide a foundational understanding of the C&P process and what clinicians need to know, not only about conducting examinations, but equally important, the writing and documenting of the C&P disability examination report."

What kinds of information do clinicians need to know?

Tina Skelly: "They need to know why they are conducting a C&P examination because VBA needs critical information for deciding a claim."

Jonathan Abrams: "They also need to know how a C&P examination is different from a treatment exam. It has a different purpose and audience. A C&P exam is a legal, as well as clinical, exam that provides evidence."

Brenda Howard: "Clinicians need to know the examiner's role in VA's disability claims process. Gathering evidence for VBA, such as a diagnosis, and how a condition impacts a veteran's or service-member's work and daily activities."

Jonathan Abrams: "The clinicians taking this course will find out that there are legal terms used for C&P examinations. These are terms they may not be familiar with, like service connection, and the presumption of soundness."

Tina Skelly: "There are also legal decisions that influence the examination process. The Court of Appeals for Veterans Claims makes decisions that change how C&P clinicians evaluate veterans and service-members for claimed disabilities. Some of these cases include Sharpe, Correia, and Deluca. VA makes policy based on those decisions."

Brenda Howard: "New examiners also need to know the guidelines for conducting compassionate examinations with veterans and service-members. They need to know about policies and concerns as to when chaperones are needed for an exam, or when a companion may attend. There are also legal requirements and guidelines for conducting C&P exams, such as protocols to document the necessary information. Additionally, they need to be familiar with the appropriate language and phrasing used in documenting their exam findings, so that VBA and BVA can clearly interpret their exam report, and thus expedite the veteran's claim."

Tina Skelly: "VBA may have specific questions for the examiner to answer. These questions come up while the claim is being developed. I should mention that VBA and BVA staff are not clinicians and cannot make medical decisions on their own—they must rely on the medical information provided by C&P examiners. Precise medical evidence is required to adjudicate claims."

How long will it take a new examiner to take this course?

Brenda Howard: "It should take about 90 minutes to complete. However, this timeframe does not include knowledge checks or the final assessment."

Jonathan Abrams: "Clinicians must achieve a minimum score of 80% to complete the course. They can take the final assessment more than once if they need to, but the questions will change each time."

# **DMA Training**

In support of improving the overall C&P disability examination process, DMA works jointly with VHA EES to develop and update web-based training courses. The courses are developed through a collaborative effort with clinical, legal, policy, and administrative subject matter experts, and designed to reflect current practice standards and required outcomes for ratable C&P disability examinations. All DMA web-based training courses are accredited and can be accessed on the VA Talent Management System (TMS) and the TRAIN Learning Network.

VHA has a mandatory certification requirement for all clinicians designated to perform disability examinations. All clinicians must complete a designated series of specific, mandatory training modules and post-tests that are developed and approved by DMA. VHA Fee Basis and non-VHA contract providers are held to the same training and certification standards and requirements.

Information on certification requirements and certification registration can be accessed within VA's internal network on the <u>DMA Training page</u>.

# **Certification Requirements**

This *DMA General Certification Overview* course is the first of five mandatory courses required for DMA certification:

- 1. DMA General Certification Overview
- 2. DMA Military Sexual Trauma (MST) and the Disability Examination Process
- 3. DMA Medical Opinions
- 4. DMA Aggravation Opinions
- 5. DMA Gulf War General Medical Examination

There are additional course requirements for DMA certification to conduct the following C&P examinations:

- C&P musculoskeletal (joint) examinations: DMA Musculoskeletal Examination
- C&P posttraumatic stress disorder examinations: DMA Initial PTSD Examination
- C&P initial mental health disorder examinations: DMA Initial Mental Disorders (IMD)

  Examination
- C&P traumatic brain injury (TBI) residuals examinations: *DMA Traumatic Brain Injury Residuals Examination*

All DMA training modules are listed in VA's Talent Management System (TMS) and the TRAIN Learning Network in assign/self-assign curriculums.

# **Support for Your Learning**

This course will take you approximately 90 minutes to complete.

## Clinical Quality Review Tools

The content of this course is partly based on clinical quality review tools developed through DMA's quality initiative and used to evaluate the clinical quality of C&P examinations as documented by examiners. The checklists, called Clinical Quality Review Tools, are also described in the Complete Your C&P Examination Report lesson. The actual forms are available on the Quality page of the <u>DMA intranet website</u>.

#### Resources

This course has resources you can access by selecting the Resources button at the bottom of the course interface. Resources can include reference citations, reference documents, the course glossary, and web addresses for locating useful information.

#### Help

Select Help on the bottom of the course interface to access the Help page. This page has information and tips to help you optimize your experience viewing this course.

## **Lesson 1 Overview**

Every <u>C&P</u> examination is a medical/legal examination conducted within the process of developing a Veteran's or Service-member's claim for benefits. The claims process involves the <u>Veterans Health Administration (VHA)</u>, the <u>Veterans Benefits Administration (VBA)</u>, and the <u>Board of Veterans' Appeals (BVA)</u>.

## This lesson will explain:

- how VHA, VBA, and BVA are involved in the claims process,
- the purpose of a C&P examination, and
- the audience for your documentation of the examination.

This lesson will also describe how you should interact with the Service-member and Veteran you examine.



# The Purpose of a C&P Examination

A <u>C&P</u> disability examination is different from a treatment examination in its purpose and audience. Review the accounts below from an expert panel explaining the purpose of the C&P examination and your documentation of it. You'll learn why <u>VBA</u> requests a C&P examination, and what VBA or <u>BVA</u> needs from you to <u>adjudicate</u> a Veteran's or Service-member's claim.

Clinicians taking this course used to conducting treatment examinations with patients. Conducting C&P examinations will involve a new orientation. Let's start with the treatment exams that clinicians are familiar with—what is the purpose of a treatment exam?

Brenda Howard: "The purpose is to assess overall health and determine ways in which to prevent and treat illnesses."

When the clinician writes the report for a treatment exam, who are they writing the report for?

Brenda Howard: "Other treating providers, both generalists and specialists."

How would you describe the purpose of the C&P examination?

Brenda Howard: "C&P examinations are conducted to provide clinical evidence for VBA and BVA. The role of both VHA and contract examiners is to gather and document diagnostic and other clinical evidence needed by VBA and BVA."

Does this mean the exam report or documentation protocol from a C&P examination is mainly for VBA?

Tina Skelly: "Yes. VBA is the audience for the C&P examination report. We use the information from the examiner to adjudicate the veteran or service member's claim. We review all the evidence. We may have all we need depending on the evidence submitted, but if we need clinical evidence to help us determine for example whether a condition is related to service, or perhaps the current level of the condition, we will request a C&P exam. We decide the claim based on all the evidence, not just the examination, then we notify the claimant of our decision."

How is BVA involved in the C&P examination process?

Jonathan Abrams: "We get involved if a veteran appeals his or her claim determination. If a claim is denied, the veteran has an opportunity to appeal the decision. We have to determine if a denial is proper or not, and in order to do that we need certain evidence. We look at the C&P examination report to see if the evidence we need is there, or if the medical opinion we need is sufficient. If the evidence is sufficient, we will make a decision. If the information we need is not there, we remand—that is, we send the exam back for additional evidence that we've determined is missing. We might ask for a new exam, or a new medical opinion."

So we've established that VBA requests a C&P examination when they need evidence to develop a veteran's or service-member's claim for benefits. Then the examiner conducts the examination to gather clinical evidence and report it to VBA. At that point, VBA uses the examination findings, along with other evidence, to adjudicate the claim. BVA might be involved if VBA's decision is appealed by the claimant?

Tina Skelly: "That's right. We all have a vital role in putting the puzzle pieces together. This is a real change from the treatment exams that clinicians are accustomed to."

# Purpose Knowledge Check

**Instructions:** Read the following questions and select the best answer(s) for each, then submit your responses for feedback.

### **Question 1**

The Veterans Benefits Administration (VBA) requested an examination for Ms. Allen to gather and document clinical evidence for adjudicating her disability claim. Select the examination VBA is requesting.

O	A. Treatment examination				
0	B. C&P disability examination				

## **Question 2**

VBA regularly adjudicates claims based only on evidence from a C&P examination.

A. True
B. False

## **Question 3**

The Board of Veterans' Appeals (BVA) may request a C&P examination to gather clinical evidence when a Veteran appeals VBA's determination for his or her claim.

A. True
B. False

- 1. B. Option B is true because the purpose of a C&P disability examination is to gather and document clinical evidence for adjudicating a disability claim.
- 2. B. VBA considers other evidence in addition to the documentation from a C&P examination.
- 3. A. Option A is true because BVA becomes involved when a Veteran appeals the determination of their claim. BVA may request a C&P examination if clinical evidence is needed.

## A New Orientation for the Examiner

What is the role of a  $\underline{C\&P}$  examiner? How will you use your skills and training as you prepare for and conduct C&P examinations?

Given that a C&P examination is part of a larger process that involves VBA, VHA, and BVA, it's a different approach for the examiner. A new orientation.

Dr. Oliva: "Transitioning to conducting C&P exams can be difficult at first, especially implementing court decision policies. One has to be patient and communicate with VBA or BVA if questions arise from the requested examination."

Give the distinction between a treatment exam and a C&P exam, what advice would you give new examiners on how to leverage their clinical knowledge to best support the C&P exam process?

Brenda Howard: "When we were trained in medicine we were trained to understand that certain constellations of symptoms, physical signs, and historical information help lead us to diagnostic conclusions. The same thing is true in a C&P exam. We have to understand certain clinical disease processes and the pathophysiology that leads us to make a diagnosis. We have to use that same clinical skill and knowledge to make diagnoses for C&P. But in C&P we have to take it a step further. We have to look back at sometimes decades worth of documentation and determine if signs and symptoms from years ago were actually evidence of the current condition. We have to ask ourselves, did the event, illness or injury that happened to the veteran years ago eventually lead to the condition that the veteran has now. If we don't understand the totality of the pathophysiology or the nature and progression of an illness over time, it's difficult to provide a conclusion for VBA. Our role is to make the connection and determine how these things are related to one another.

Dr. Oliva: "Most clinicians are used to treating patients and addressing their symptoms, complaints and concerns. The basis of a C&P exam is not to treat the veteran. The difference between treating a veteran and performing a C&P exam shifts the perspective from treatment towards determining the relationship between past injury and a claimed condition. A lot of examiners may have difficulty making those leaps, but it comes with time. I would stress to new clinicians that our role is to make a connection and determine how these things are related to one another and to the veteran's service. As in any clinical setting, compassion and openness remains important."

# **New Orientation-Examiner Knowledge Check**

Which of the following statements is **not** correct about C&P examiners?

and symptoms from years ago were actually evidence of a current condition.

**Instructions:** Read the following question and select the best answer(s), then submit your response for feedback.

## **Question 1**

A. Examiners often use their understanding of disease processes and pathophysiology to determine the relationship of a condition to a claimant's time in service.
 B. Examiners are not concerned with policies and court decisions during C&P examinations.
 C. Examiners sometimes look back at decades worth of documentation to determine if signs

D. Examiners communicate with VBA or BVA when they have questions about a requested examination.

1. B. Option B is not true because examiners implement policies and court decisions during C&P examinations.

## A New Orientation for the Veteran or Service-Member

Veterans and Service-members are also accustomed to treatment examinations, so you'll need to guide them through <u>C&P</u> examinations. How can you be helpful to Veterans and Service-members if it's not about recommending ways to improve their physical or mental health?

The C&P examination is also a different kind of exam than a veteran or service-member is used to. How do you work with veterans or service-members and their expectations?

Brenda Howard: "In a treating exam generally I would have already established a rapport with the patient. If it's a C&P exam, I'm usually meeting the veteran or service-member for the first time and need to establish a rapport. I explain the reason he or she is here, that they need to know from the start this is a disability exam. As a medical professional, I tell them that I can't recommend specific treatments, but if I find anything abnormal during the exam I will alert them to get treatment. If the veteran is eligible for VA care, I can help facilitate them getting care at the VA, and if there's a medical emergency we'll treat the emergency. I encourage them to ask questions throughout the appointment."

Dr. Oliva: "C&P examinations are distinct from what clinicians are accustomed to doing. C&P examinations are conducted on veterans or service-members who have disability claims. Once again, our role as clinicians is not to treat but to medically evaluate claims. However, as Brenda has said, if we see something abnormal we would advise the veteran they need to seek medical attention. I try my best to be clear with a veteran or service-member about my role as a physician and what to expect during and after the C&P examination. I encourage the veteran or service-member to ask questions during the exam. If they bring a spouse, friend, or other family member I make sure that they too understand."

What should new examiners keep in mind when working with a veteran or service-member?

Brenda Howard: "The examiner should also avoid forming predetermined notions based on reviewing records and other evidence. Approach the exam with an open mind. Before meeting a veteran I have to think about what experiences they've had that can affect how they react during the exam. They may have had negative experiences with the VA in the past, or they may have anxiety about coming to an exam at the VA because it triggers memories of their time in service. Before meeting the veteran I review their records so that I can be aware of any history and any conditions they may have, such as PTSD. I try to anticipate their sensitivities in advance. For example, I ask if it's okay to have the door closed before beginning the exam."

Do you have additional advice for examiners about how to work with veterans and service-members?

Dr. Oliva: "Yes. C&P benefits, whether monetary or medical, are important to veterans and service-members and their families. It is imperative that we provide them high quality examinations, as well as thoughtful and compassionate service. Many times we may be their first contact within the VA, therefore we need to be informative and transparent so that veterans and service-members can walk away feeling good about their experience."

Brenda Howard: "Yes, every veteran is deserving of our time, attention, and best effort in every history taken, and every exam performed, every opinion provided. With every veteran I think, if this were my family member, how would I want them to be served?"

# **New Orientation-Veteran Knowledge Check**

**Instructions:** Read the following questions and select the best answer(s) for each, then submit your responses for feedback.

Examiners can help Service-members and Veterans understand the purpose of their C&P

## **Question 1**

	amination by explaining what to expect during and after the examination. What else should aminers say? Select all that apply.
	<ul><li>A. Explain the purpose of a disability examination.</li><li>B. Offer to recommend treatments for conditions found on examination.</li><li>C. Explain the examiner's role in a C&amp;P examination.</li><li>D. Encourage questions at any time.</li></ul>
Qu	estion 2
Bas	sed on what you learn about the claimant before a C&P exam, which action should you avoid?
0	<ul><li>A. Be sensitive to a claimant's conditions, such as PTSD</li><li>B. Form an opinion about the claimant or the claim before the exam appointment</li></ul>

- 1. A, C, & D. Option B is not true because an examiner cannot offer treatments.
- 2. B. Forming an opinion about the claimant or claim prior to a C&P examination is to be avoided. Approach the examination with an open mind.

# **Lesson 1 Summary**

This lesson explained that every  $\underline{\text{C\&P}}$  examination takes place within a larger  $\underline{\text{C\&P}}$  claims process that involves  $\underline{\text{VHA}}$ ,  $\underline{\text{VBA}}$ , and  $\underline{\text{BVA}}$ .

Moreover, C&P examinations are conducted to gather evidence for a Veteran's or Service-member's claim for benefits and adjudicators from VBA and in some cases, BVA, are the audience for the examination report. In addition, there are recommendations for how to interact with Veterans and Service-members.

Now that you've finished this lesson, you should be able to:

- Compare the purpose of a treatment examination and a C&P examination.
- Recognize the role of the examiner in the disability claims process.
- Recognize guidelines for interacting with Veterans or Service-members during C&P disability examinations.



## Lesson 2 Overview

This lesson will explain your role as an examiner within the five-step  $\underline{C\&P}$  disability claims process.

Because C&P examinations are legal as well as clinical in nature, you'll need to become familiar with terms from the <u>United States Code (USC)</u> and <u>Code of Federal Regulations (CFR)</u> that are commonly used by <u>VBA</u> in communicating to you about an examination. Those terms will be defined.

The names of several court cases have also become part of the vocabulary used in C&P clinics because they have influenced how C&P examinations are conducted and documented. This lesson will introduce you to some of these cases.



## **Claims for Benefits**

Veterans apply to VBA for benefits that can include education and training, home loans, life insurance, <u>pension</u>, and <u>compensation</u>. The Veteran may apply for any of these benefits themselves or with the assistance of a <u>Veterans Service Organization</u>, or VSO. The benefits can make a difference for Veterans in different phases of their lives. For instance, some Veterans may be transitioning to civilian life while others may be buying their first home. It might be that a Veteran at any phase of his or her life is applying for assistance for activities of daily living.

VA disability compensation provides monthly benefits to a Veteran in recognition of the effects of disabilities, diseases, or injuries incurred or aggravated during active military service. Being awarded compensation for his or her claim validates the Veteran's experience.

Disability examinations are needed for both compensation and pension claims.

Compensation	Description
Disability compensation	A tax-free monetary benefit paid to Veterans with disabilities that are the result of a disease or injury incurred or aggravated during active military service. The benefit amount is graduated according to the degree of the Veteran's disability on a scale from 10 percent to 100 percent, in increments of 10 percent. Compensation may also be paid for disabilities that are considered related or secondary to disabilities that occurred in service and for disabilities presumed to be related to circumstances of military service, even though they may arise after service.
Special Monthly Compensation (SMC)	An additional tax-free benefit that can be paid to Veterans, their spouses, surviving spouses and parents. For Veterans, SMC is a higher rate of compensation paid due to special circumstances such as the need of aid and attendance by another person or by a specific disability such as the loss of use of a hand or leg. For spouses and surviving spouses, this benefit is commonly referred to as aid and attendance and is paid based on the need of aid and attendance by another person.
Claims Based on Special Circumstances	Veterans may be eligible for other types of disability compensation once a disability has been determined to be service connected. Special VA disability compensation programs include: individual unemployability, automobile allowance, clothing allowance, prestabilization, hospitalization, convalescence, dental, and birth defects.
Pension	Pension is a needs-based benefit for wartime Veterans with limited or no income who are age 65 or older, or who have a permanent and total disability. It may provide income for Veterans and their loved ones.

## Where You Fit In the C&P Process

When a Veteran or Service-member files a C&P disability claim with VBA, a five-step process begins. Your involvement would begin in Step 3, after a <u>Veterans Service Representative</u>, or VSR, reviews the claim. The VSR will request a C&P examination if clinical evidence is needed.

If this is the case, the VSR will submit a <u>Request for Examination</u> to your facility. For complex claims, a <u>Rating Veterans Service Representative (RVSR)</u> submits the Request. The RVSR is also the <u>adjudicator</u> who decides the claim.

Your role will be to gather clinical evidence for the claim and report it to VBA. After you complete a C&P examination and report your findings to VBA, VBA will <u>adjudicate</u>, or decide the claim based on all evidence, including your examination report.

**Step 1**: Claim Received. BA notifies the Veteran or Service-member that VBA has received his or her claim.

**Step 2:** Initial Review. A VSR or RVSR reviews the claim. A decision will be made unless more evidence is needed.

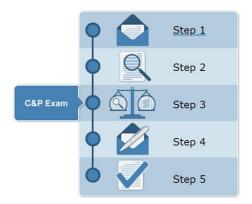
**Step 3:** Evidence Gathering, Review, and Decision. The VSR or RVSR will:

- ask for evidence from the claimant, health care providers, governmental agencies, or others
- review the evidence
- make a decision

If VBA needs more evidence during the review, the claim may return to this step more than once.

**Step 4:** Preparation for Notification. VBA will prepare the claimant's entire claim decision packet for mailing.

**Step 5:** Claim Complete. VBA will send the Veteran or Service-member a packet by U.S. mail that includes details of the decision on the claim.



# **C&P Process Knowledge Check**

**Instructions:** Read the following question and select the best answer(s), then submit your response for feedback.

## **Question 1**

VBA requests a C&P examination during which step in the disability claim process?

- A. Step 1: Claim Received
- B. Step 2: Initial Review
- C. Step 3: Evidence Gathering, Review, and Decision
- O. Step 4: Preparation for Notification
- E. Step 5: Claim Complete

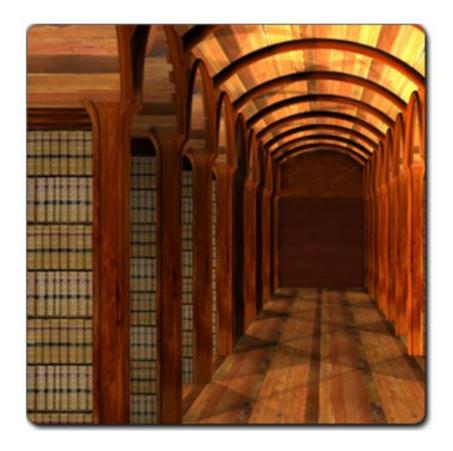
# **Disability Claims Terminology**

A basic understanding of terms you may see on Request for Examination forms will help you provide the information needed by VBA or <u>BVA</u>.

In the next few pages, you will be provided with the definitions of legal terms and concepts used in Request for Examination forms:

- presumption of soundness
- direct service connection
- secondary service connection
- aggravation
- presumptive service connection
- lay evidence

You will be asked to answer questions about a definition, or questions based on case studies that illustrate a definition.



# **Presumption of Soundness**

Read the definition and case study below and answer each question. Select Submit for feedback on your answer.

#### Definition

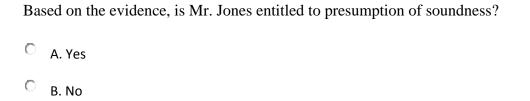
Presumption of soundness is core to all disability claims. <u>Presumption of soundness</u> is a legal assumption that VA employs for the benefit of the Veteran. VA will consider a Veteran to have been in sound condition, i.e., good health, when examined, accepted and enrolled for service, except as to defects, infirmities, or disorders noted at entrance into service, or where clear and unmistakable (obvious or manifest) evidence demonstrates that an injury or disease existed prior to service and was not aggravated by such service. VBA will have considered whether presumption of soundness applies for a claim before requesting an examination from you.

## Case Study

Mr. Jones is claiming service connection for degenerative joint disease of the right knee. Dates of service: January 1990 to January 1991.

Evidence: At the time of the entrance examination, physical examination showed limited range of motion in the knee, and the examiner noted a history of a right knee strain.

#### Question 1



1. B. No. Mr. Jones is not entitled to presumption of soundness. Presumption of soundness may apply only when a condition or injury is not noted during the entrance to service examination.

## **Direct Service Connection**

Read the definition below and answer the question. Select Submit for feedback on your answer.

#### Definition

<u>Direct service connection</u> is established when VBA determines that a Veteran's or Service-member's current disability was caused by or resulted from his military service. When all the evidence establishes that a condition was incurred in service, direct service connection can be established even if there was no documented complaint or symptoms of the condition in service.

VBA makes this kind of determination because compensation can be paid to a Veteran for disability resulting from personal injury suffered or disease contracted in line of duty in the active military, naval, or air service. The Veteran must be discharged or released under conditions other than dishonorable from the period of service in which such injury or disease was incurred.

#### Question 1

<ul> <li>A. Personal injury was suffered or a disease was contracted in the line of duty during active service</li> <li>B. Discharge from service under conditions that do not include dishonorable discharge</li> <li>C. Documented complaint or symptoms during service</li> <li>D. Evidence that establishes that a condition was incurred in service</li> </ul>	that apply from the following four options			
C. Documented complaint or symptoms during service		A. Personal injury was suffered or a disease was contracted in the line of duty during active service		
		B. Discharge from service under conditions that do not include dishonorable discharge		
D. Evidence that establishes that a condition was incurred in service		C. Documented complaint or symptoms during service		
		D. Evidence that establishes that a condition was incurred in service		

What factors must be present for a condition to be granted a direct service connection? Select all

A, B, and D. Direct service connection is granted when a personal injury or disease
occurred in the line of duty during active service, the Veteran or Service-member was not
subject to a dishonorable discharge, and evidence establishes that a condition was
incurred in service. Although the evidence may include documented complaint or
symptoms during service, this will not always be the case.

# **Secondary Service Connection**

Read the definition below and then select the best answer to the question that follows. Select Submit for feedback on your answer.

#### Definition

<u>Secondary service connection</u> is a finding that a Veteran's disability is proximately due to or caused by a previously identified service-connected condition.

## Case Study

Ms. Chan, who is service connected for diabetes mellitus type II, develops diabetic peripheral neuropathy.

#### Question 1

True or false?

If VBA determines that the diabetic peripheral neuropathy is due to or caused by Ms. Chan's service-connected diabetes, this would be a secondary service connection.

C A. True

🗅 B. False

<sup>1.</sup> A. True. Secondary service connection is a determination that a disability is proximately due to or a result of a service-connected condition.

# **Aggravation**

Read the definition below and select the best answer for each question that follows. Select Submit for feedback on your answers.

#### Definition

One type of <u>aggravation</u> for disability purposes is defined in the <u>United States Code (USC)</u> in this manner: "A preexisting injury or disease will be considered to have been aggravated by active military, naval, or air service, where there is an increase in disability during such service, unless there is a specific finding that the increase in disability is due to the natural progress of the disease." (38 USC 1153). This kind of aggravation, known as aggravation of a preexisting condition, is present when there is permanent increase in the severity of a condition during or as a result of military service and the increase is not due to the condition's natural progression.

Another type of aggravation is present when there is permanent increase in the severity of a nonservice-connected condition due to an already service-connected condition, and the increase is not due to the condition's natural progression. This is known as aggravation of a nonservice-connected condition by a service-connected condition, or secondary (Allen) aggravation.

#### Question 1

True or false?

If a pre-existing condition has worsened due to a natural progression during service, aggravation is not applicable.

	A. True			
0	B. False			

<sup>1.</sup> A. True. The natural progression of a condition is not considered aggravation.

# **Presumptive Service Connection**

Read the definition below and select the best answer for the question that follows. Select Submit for feedback on your answer.

The *DMA Compensation and Pension Clinicians' Guide* (Section 1.9.a, Types of Service Connection) states that "In deeming a condition as being presumptive, the Secretary of VA alleviates the Veteran of the burden of proof demonstrating that a condition arose from service." This is known as <u>presumptive service connection</u>, and the specific condition allowed is called a presumptive condition.

Common examples are the presumptive diagnoses associated with Agent Orange exposure such as ischemic heart disease and diabetes mellitus type 2. The chemical compound known as Agent Orange was used in different places, including in the Republic of Vietnam (RVN). Once it is established, for example, that a Veteran was in the RVN and develops one of the identified conditions, he or she will be presumed to have developed the condition as a result of Agent Orange exposure. It is important to note that other risk factors are not considered, as it is presumed that the exposure was the cause.

While Veterans who served in RVN have only to demonstrate they were there, other presumptions such as those for Camp Lejeune contaminated water claims have specific components that must be met such as minimum exposure duration.

It is the responsibility of VBA officials to verify that conditions have been met for presumptive service connection as it applies to a claim, so unless it is otherwise specified, a medical opinion from the examiner is not warranted because causality has been presumed.

Presumptive service connection is explained in more detail in the *DMA Medical Opinions* course.

### **Question 1**

True or False?

VBA, not the examiner, determines that conditions have been met for a presumptive condition.

0	A.	True

B. False

<sup>1.</sup> A. True. VBA, not the examiner, determines that conditions have been met for presumptive service connection.

# Lay Evidence

## What is Lay Evidence?

Lay evidence is defined as statements offered by a person without specialized education, training, or experience. In other words, this is a statement provided by someone who does not have a medical background or training as, for example, a clinician. Generally, this evidence is provided by a person who has the knowledge of facts or circumstances and conveys matters that can be observed through the senses or via firsthand knowledge. Such statements from the claimant, family, and friends are lay evidence.

## How is Lay Evidence Used?

Lay evidence can be used to provide evidence of an event, injury, or symptoms of a disease during service or evidence of a current disability. It can be used to describe the onset, severity, frequency, and length of time any findings have persisted, for example, limping of the right leg and intermittent swelling of the right ankle since service.



# When to Consider Lay Evidence

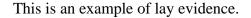
Whether or not particular lay statements are credible is a legal determination made on a fact-specific basis. There may be times when the <u>RVSR</u> or BVA specifically directs the examiner to consider a specific assertion to be credible.

Lay statements generally appear in the "Subjective" or "Reported history" sections of medical evaluations. Lay statements from family or friends are generally found in a claimant's eFolder. Regardless of whether specific direction concerning credibility is provided or not, the examiner must consider and address lay statements when providing a clinical opinion.

**Instructions:** Read the following question and select the best answer(s), then submit your response for feedback.

## **Question 1**

Anthony Smith's wife submitted a hand-written note to VBA saying that Mr. Smith seldom had headaches before service, but he complained of severe headaches several times a week since returning from active-duty service.



A. True

B. False

1. A. True. Mrs. Smith may not be medically trained, but she can provide lay evidence by describing how often Mr. Smith complains of severe headaches.

## **Combat-Related Considerations**

Certain laws and regulations direct VA to recognize that service treatment records (STRs) may not document events, illnesses, or injuries incurred during combat. For example, 38 CFR 3.304, Direct service connection; wartime and peacetime, in (d) states:

Satisfactory lay or other evidence that an injury or disease was incurred or aggravated in combat will be accepted as sufficient proof of <u>service connection</u> if the evidence is consistent with the circumstances, conditions, or hardships of such service even though there is no official record of such incurrence or aggravation.

For example, if service personnel records indicate the claimant was likely in combat situations, the evidence for events, illness, or injuries may have to come from other sources. The purpose of this evidentiary rule is to accommodate the unarguable difficulty a Veteran encounters in gathering conclusive evidence of an injury or increase in the severity of a preexisting condition sustained under the rigors of combat or as a prisoner of war.

When combat service is noted by VBA, the Veteran's or Service-member's <u>lay evidence</u> becomes an important source of evidence for a C&P examination. You must consider this lay evidence regarding signs or symptoms that occurred during combat even if there is nothing in the service treatment records documenting the claimed in-service event, injury, or disease.

When a Veteran or Service-member has had combat service verified by VBA, it is usually noted on the Examination Request form with text similar to this:

# **Notice on the Request for Examination Form**

While there is no record of treatment for or diagnosis of [claimant] during service, the Veteran's participation in combat requires that his statement as to the injury or event occurring during combat will be accepted as sufficient proof so long as it is consistent with the circumstances, conditions or hardships of combat service even though there is no official record of such incurrence or aggravation in the veteran's service treatment records. Please review the Veteran's records, evaluate for current level of disability, and give current diagnosis for claimed condition. Please provide an opinion, as to whether it is as likely as not that the Veteran's current disability is consistent with the XXXXX during his or her combat military service. Rationale must be provided in the appropriate section.



## **Combat Service Scenario**

Read the case study presented here and then answer both questions based on the evidence given for each. Select Submit for feedback on your answers.

## Case Study

Mr. Jones is claiming degenerative joint disease of his lumbar spine. Dates of service: May 1942 to April 1946

#### Question 1

Evidence: Mr. Jones states that he injured his back when he fell down an incline during basic training. He later engaged in combat in Normandy. Does the combat presumption apply to Mr. Jones's claimed condition?

A. Yes

🗀 B. No

#### **Question 2**

Evidence: Mr. Jones explains that he has experienced back pain since he attempted to lift a Jeep out of a ditch while under German artillery fire at Normandy. The service treatment records show no complaint or treatment of a back condition. The record clearly shows that the Veteran engaged in combat with the enemy during World War II. Does the combat presumption apply to Mr. Jones's claimed condition?

A. Yes

O B. No

B. No. The combat presumption does not apply, because Mr. Jones states that he was injured outside of combat, during noncombat service.

<sup>2.</sup> A. Yes. Combat presumption applies to Mr. Jones, because he was on record as having served in combat during World War II, and his description of the injury incident is consistent with circumstances or conditions of service at that time.

# C&P Terminology from Case Law

Some terms used frequently in C&P clinics come from court decisions that have influenced how C&P examinations are conducted and documented. You can view the full text of these opinions at [TBD].

#### Clemons v. Shinseki, Feb 17, 2009, 23 Vet.App. 1

The Court held that a service connection claim that only identifies posttraumatic stress disorder (PTSD) cannot only be limited to that diagnosis, but must be considered a claim for any mental disability that may be reasonably raised by several factors, to include the Veteran's description of the claim and/or symptoms and any information and evidence submitted by the Veteran or obtained by VA.

The Court explained that because a Veteran was reasonably requesting benefits for symptoms of a mental condition that he was not competent to medically identify, the adjudication of the claim does not end in the face of currently diagnosed mental conditions that are different from his lay hypothesis on the claim form. The Court noted that it is generally within the province of medical professionals to diagnose or label a mental condition, not the claimant.

VA cannot limit the scope of the claim only to the condition stated, but rather the claim is for any condition that may reasonably be encompassed by several factors, including:

- the Veteran's description of the claim,
- the symptoms the Veteran describes, and
- the information the Veteran submits or that VA obtains in support of the claim.

As the Court held in *Clemons v. Shinseki*, VBA cannot expect the Veteran to articulate with medical precision an exact description of a clinical condition.

This means the appropriate C&P examiner must evaluate all claimed mental and physical conditions listed by VBA on a Request for Examination. If an examiner determines that an actual condition is different than the claimed condition, but clinically in the realm of the symptoms described by the Veteran, the examiner must evaluate the actual condition.

#### Correia v. McDonald, Jul 5, 2016, 28 Vet.App. 158

The Court held that the final sentence of 38 CFR 4.59 requires that certain range of motion testing be conducted whenever possible in evaluating joint disabilities.

The last sentence of 38 CFR 4.59 reads: "The joints involved should be tested for pain on both active and passive motion, in weight-bearing and non-weight-bearing and, if possible, with the range of the opposite undamaged joint."

Correia v. McDonald asks the C&P examiner to address the opposing joint in contrast to the affected joint for evidence of pain with non-weight bearing and passive range of motion.

#### DeLuca v. Brown, Sep 22, 1995, 8 Vet.App. 202

The Court held that in evaluating a service-connected left shoulder disability, the Board of Veterans' Appeals erred in not adequately considering functional loss due to pain under 38 CFR

4.40 and functional loss due to weakness, fatigability, incoordination or pain on movement of a joint under 38 CFR 4.45. When a diagnostic code provides for compensation based solely on limitation of motion, the provisions of 38 CFR 4.40 and 4.45 must also be considered.

The Court also held that the medical examiner must be asked to give an opinion on whether pain could significantly limit functional ability during flare-ups or when the arm is used repeatedly over a period of time. This was to be reported in terms of the degree of additional range of motion lost due to pain on use or during flare-ups.

As an examiner, you are expected to provide an opinion concerning pain limiting functional ability during flare-ups or repetitive use.

#### Mitchell v. Shinseki, Aug 23, 2011, 25 Vet.App. 32

The *Mitchell* case is a clarification of DeLuca (DeLuca v. Brown, Sep 22, 1995, 8 Vet.App. 202) and states that when there is pain noted on range of motion (ROM), or a history of pain associated with flare-ups or repetitive use of the joint, the pain itself could limit function of that joint. Therefore, looking only at the loss of function associated with three repetitions of range of motion in a person with pain on testing may not always be an accurate indication of loss of function due to pain associated with repetitive use.

The court in the *Mitchell* case also states that loss of function due to pain during flare-ups must be addressed. It is important to note that many times the subjective component of a claimant's history will play an equal, if not larger, role than objective findings on examination.

Two things should prompt an examiner to address the issues raised by the Mitchell case:

- 1. the claimant's complaints of pain associated with repetitive use of the joint, based on history and not dependent on objective findings of pain with repeated ROM testing
- 2. the claimant's reports of flare-ups

#### Saunders v. Wilkie, Apr 3, 2018, 886 F. 3d 1356

The Federal Circuit held that the Veterans Court (in Sanchez-Benitez v. West, 13 Vet.App. 282 (1999)) erred as a matter of law in finding that the Veteran's pain alone, absent a specific diagnosis or otherwise identified disease or injury, cannot constitute a disability under 38 USC 1110, because pain, even in the absence of a presently diagnosed condition, can cause functional impairment:

The Federal Circuit held that the term "disability" under 38 USC 1110 refers to the functional impairment of earning capacity, not the underlying cause of such disability.

The Federal Circuit further held that pain alone, even in the absence of a diagnosis, can serve as a functional impairment and qualify as a disability under section 1110, irrespective of the underlying cause.

The Federal Circuit clarified that it did not hold that a Veteran could demonstrate service connection simply by asserting subjective pain to establish a disability, as the Veteran's pain must amount to a functional impairment. To establish the presence of a disability, a Veteran

needs to demonstrate that the pain reaches the level of a functional impairment of earning capacity.

As a result, the examiner must report the functional impact of a Veteran's pain, even if only pain is found.

#### Sharp v. Shulkin, Sep 6, 2017, 29 Vet.App. 26

In Sharp v. Shulkin, the Veterans Court held that although an earlier case, Jones v. Shinseki (2010), allowed  $\underline{VA}$  to accept a C&P examiner's statement that he or she cannot offer an opinion as to additional functional loss during flare-ups without resorting to speculation, that statement is only acceptable if is not based on the absence of procurable information, a particular examiner's shortcomings, or a general aversion to offering an opinion on issues not directly observed.

This decision impacts C&P evaluations of musculoskeletal conditions, as the *Sharp v. Shulkin* decision specifically mentioned "musculoskeletal examinations of the spine, shoulders, elbows, wrists, hips, knees, ankles, feet, and hands, as well as muscles," when applying this standard.

The Court held that an examiner's statement must not be based solely on the fact that the C&P examination was not performed during a flare-up when saying that an opinion about the functional impact of flare-ups on a condition cannot be provided without resorting to speculation.

Instead, the examiner must consider all procurable information and assembled data before stating that he or she cannot provide this opinion. The examiner must explain why the opinion is not possible without resorting to speculation and demonstrate having considered medical treatment records, lay testimony, or both. Furthermore, this statement must not be based on an examiner's insufficient knowledge, but on a lack of knowledge among the medical community at large.

# **Lesson 2 Knowledge Check**

**Instructions:** Read the following questions and select the best answer(s) for each, then submit your responses for feedback.

## **Question 1**

Which statement is true of the examiner's role in the C&P claim proc	ess?
--	------

A. The examiner provides treatment for a Veteran's complaints.

B. The examiner gathers and reports clinical evidence to VBA for a Veteran's claim.

C. The examiner determines the outcome of a Veteran's claim for VBA.

D. The examiner develops the Veteran's claim for VBA.

#### **Question 2**

The *Saunders v. Wilkie* case determined that an examiner must report the functional impact of a Veteran's pain if it amounts to a functional impairment, even if only pain is found.

A. True

B. False

#### **Ouestion 3**

Select the court case that determined that a C&P examiner must address 1) the claimant's pain associated with repetitive use of a joint based on history and not dependent on findings of pain with repeated ROM testing and 2) the claimant's reports of flare ups.

A. Correia v. McDonald

B. DeLuca v. Brown

C. Saunders v. Wilkie

D. Mitchell v. Shinseki

<sup>1.</sup> B. The examiner's role is to gather and report clinical evidence.

<sup>2.</sup> A. True.

<sup>3.</sup> D. The Mitchell case determined the stated requirements.

# **Lesson 2 Summary**

You reviewed content in this lesson about the C&P claims process, legal terms and concepts used by VA that shape C&P examinations, and court cases with names that are part of the vocabulary in C&P clinics.

Since you've completed this lesson, you should be able to:

- recognize the C&P examination's function in the disability claims process,
- recognize legal terminology related to C&P examinations, and
- summarize how certain court cases influenced requirements for C&P examinations.

This lesson covered the C&P process and where the examiner fits in. For new examiners, what do you feel is the most helpful information?

Dr. Oliva: "This course provides a general roadmap about where the examiners fit in the journey of a claim. The examiner may have to review medical records, obtain a history, and perform a physical examination in order to complete the appropriate documentation protocol."

Brenda Howard: "Yes. Understanding where and how we fall into the process is important. Knowing that the exam reports we provide are not the only information considered when deciding a claim is noteworthy. Our medical reports are just one piece of a puzzle in determining a claim."

This lesson also explains some terms used for C&P examinations that come from the Code of Federal Regulations, such as 'direct service connection' and 'lay evidence.' Do C&P examiners use these terms every day?

Dr. Oliva: "Yes. These terms have significant implications for the examiner. We routinely come across them on the request for examination and other documents."

Tina Skelly: "Knowing what the terms mean provides direction to the examiner based on the information that is needed for rating purposes."

Brenda Howard: "Yes. For example, lay evidence is often overlooked by examiners. That is one of the most common reasons I've seen cases remanded by BVA. New examiners need to understand the importance of lay evidence in the exam. That's something that examiners have to look at and determine, "Does the evidence have merit? And if it does, why? And if it doesn't have merit, why not?""

This lesson explained that the examiner might encounter terms in a C&P clinic like "Correia questions" or "Deluca criteria." Can you how legal cases might influence how a C&P examiner might conduct an exam?

Tina Skelly: "As a C&P examiner you're going to hear a lot of legal terminology from various cases that help to structure the examinations and the information that VBA is going to need. Some of most frequent cases are Sharp, Correia, and Saunders."

Brenda Howard: "Understanding case law related to C&P helps examiners understand why certain things are asked on the 2507 or on the documentation protocols. It might not be medically necessary to perform a certain test during an exam, however it might be a legal requirement to adjudicate the claim."

### **Lesson 3 Overview**

Your role of gathering evidence for  $\underline{VBA}$  or  $\underline{BVA}$  includes reviewing documentation related to the  $\underline{C\&P}$  examination including:

- the Request for Examination from VBA (sometime referred to by its form number, 2507)
- the claimant's eFolder
- the <u>documentation protocol(s)</u> for the examination (currently called a disability benefits questionnaire, or DBQ)

This lesson will explain how to use different information from each kind of documentation as you prepare for a C&P examination. For example, the Request for Examination will indicate claimed condition(s) to be evaluated for a Veteran or for a Service-member and whether this will be the original C&P evaluation. Or it may request evaluations of <a href="service-connected">service-connected</a> conditions for increase or review purposes. In addition, the Request for Examination can include special information to expedite a claim. It may also request evaluation(s) that you will conduct as well as evaluation(s) that a specialist must conduct. Sometimes, the Request will ask you to provide a medical opinion about the relationship of a current condition and a claimant's time in service.

The claimant's e-Folder will contain different kinds of documentation related to claimed conditions such as his or her service history, medical history, and sometimes, previous C&P claims and rulings.

The documentation protocol(s) appropriate for the examination will provide you with information such as the types of measurements and descriptions VBA needs to understand how a condition impacts a claimant's function.



### Where Do You Start?

Your role as a C&P examiner begins when a <u>VSR</u> or <u>RVSR</u> transmits a Request for Examination from a <u>VA Regional Office (VARO or RO)</u>, or if a claim is being appealed, from an <u>Appeals Management Office (AMO)</u>.

The Request for Examination is the first document to review in detail before you conduct a C&P examination. In fact, you may refer to it during the examination and again before you complete your examination report. A Request for Examination will begin with the Veteran's or Service-member's information:

- full name
- Social Security number (SSN)
- a mailing address if different from the VHA mailing address of record
- a telephone number or an explanation of why the telephone number cannot be provided

### The Request for Examination will also include:

- the type of claim
- the type of examination(s) requested
- a description of condition(s) to be examined
- specific information needed by VBA or BVA for the claim
- the date of the last C&P disability examination for the condition at issue, if applicable
- identity of the Power of Attorney (POA), if applicable
- the name and contact information for the VSR or RVSR requesting the examination

The Request for Examination is sent after a staff member at VBA has thoroughly reviewed all evidence for a Veteran's or Service-member's claim and determined what information is needed from a C&P disability examiner.



## The Request for Examination

While you will see standard information on every <u>Request for Examination</u>, the "general remarks section" is specific to the examination you will conduct. It may include all or some of this information:

- · the conditions or disabilities claimed
- the types of examinations requested
- a request for specific clinical information
- a request for a medical opinion
- questions you need to answer for the <u>VSR</u> or <u>RVSR</u>

Review the general remarks section carefully because you will need to address all of them when you conduct and report on the examination. Your completed documentation protocols may be returned as insufficient if you don't address all requests and questions from the VSR or RVSR.

Contact the requestor if you have any questions about the general remarks section. It is best to ask your questions before the examination, if possible.

## **Types of Claims**

The most common claim types on a Request for Examination are increase, original, and supplemental.

- Original This is the first claim for service connection for a condition. VBA is requesting evidence from the clinical
  interview and examination as to whether there is a current physical or mental disability, evidence of an event, injury, or
  disease in service, and evidence of a connection between the current disability and the event, injury, or disease in military
  service
- Increase This is a claim for an increase in disability and requires evaluating a condition that is already service
  connected. VBA is requesting evidence from the clinical history interview and examination as to whether the disability has
  worsened since the last C&P examination.
- Supplemental A supplemental claim can be a reopened claim or a review claim.
  - Reopened: This is a claim already filed that VA could not grant and the decision is over one year old. VBA
    received new evidence that has never been considered but that pertains to the issue claimed. VBA is
    requesting clinical evidence to help adjudicate the reopened claim.
  - Review: This is a request from VBA to evaluate a disability that is already service connected to determine
    whether the current disability rating is still appropriate. For certain disabilities that are not static, VA is required
    to periodically reevaluate the disabilities' functional impact on the Veteran.

## **Special Considerations**

You may also see "special considerations" on the Request for Examination. Special considerations are generally provided by VBA to support expedited exam scheduling. They include:

- · Age of claim
- FDC (fully developed claim)

- Homeless (the Veteran is homeless or at risk for being homeless)
- Not Applicable (no special consideration applies)
- POW (the Veteran is a former prisoner of war)
- Terminal (the Veteran is terminally ill)

### **Modes of C&P Evaluations**

There are three modes of C&P evaluations, face-to-face, Telehealth, and Acceptable Clinical Evidence (ACE).

### Face to Face

The face-to-face C&P examination takes place when you evaluate the Veteran or Service-member in person at your facility.

#### Telehealth

A Telehealth C&P examination uses video-conferencing equipment. There are also peripheral devices that can be attached to computers or the video-conferencing equipment which can aid in an interactive examination. This mode of evaluation is approved for approximately a third of C&P exam types.

#### ACE

An Acceptable Clinical Evidence evaluation can save the time needed for scheduling and conducting an in-person examination. Not all C&P examinations provided by <u>VHA</u> or contract examiners require a physical examination or interaction with the Veteran. A number of requested C&P examinations can be completed by compiling and reviewing clinical evidence from various medical record sources, sometimes with a telephone call between examiner and Veteran when additional historical information is needed. An ACE evaluation is sometimes used to provide a medical opinion based on the evidence of record.

ACE evaluations cannot be used when necessary electronic medical records are not available for examiner review. ACE evaluations also cannot be used for some types of examinations such as mental health, pre-discharge, general medical, or female sexual arousal disorder (FSAD) C&P examinations.

# **Pre-Discharge C&P Examinations**

C&P disability examiners conduct examinations with Service-members as well as Veterans. You may evaluate Service-members as part of pre-discharge programs such as the Benefits Delivery at Discharge (BDD) or the <a href="Integrated Disability Evaluation System">Integrated Disability Evaluation System (IDES)</a>.

#### **BBD**

The Benefits Delivery at Discharge (BDD) option can be used by Service-members under certain conditions. If a Service-member has an illness or injury that he or she believes was caused or

made worse by active-duty service, the Service-member can file a claim for disability benefits 90-180 days before leaving the military. The Service-member must:

- be on full-time active duty (including a member of the National Guard, Reserves, or Coast Guard),
- have a known separation date in the next 90 to 180 days, and
- be able to report for examinations within 10 to 45 days from the date the claim was received.

#### **IDES**

An Integrated Disability Evaluation System (IDES) exam is a comprehensive General Medical examination. It serves the dual purposes of providing necessary clinical history and physical examination findings for Medical Evaluation Board referred conditions and for any claimed conditions noted by the Service-member. Those findings are used by the uniformed service to determine if the Service-member has a medical and or mental health condition(s) which prevents him or her from continuing in the service. If the Service-member is subsequently discharged due to a medical or mental health condition, the IDES evaluation can also be used by VBA to determine disability ratings.

#### SHA

The Separation Health Assessment (SHA) is both a program and a documentation protocol (the form used to report C&P examination findings). VA and the Department of Defense (<u>DoD</u>) collaborated on the SHA examination and documentation protocol to improve the disability claim process for Service-members. The SHA is a comprehensive examination administered to all Service-members as part of the process of separation from active duty. A DoD clinician or a C&P examiner conducts this evaluation using the SHA documentation protocol.

## **Requested Documentation Protocols**

As you recently learned, the Request for Examination form gives you details about whom you will examine and what information is needed from the disability exam. Along with the conditions claimed by the Veteran or Service-member, the Request for Examination will generally indicate one or more <u>documentation protocols</u> to use.

Each documentation protocol will be specific to a body system or condition. You will use documentation protocols to report evidence used to adjudicate the Veteran's or Service-member's claim. VBA needs specific legal information required by the <u>VA Schedule for Rating Disabilities</u> (VASRD), often referred to as the Rating Schedule.

Examiners review requested documentation protocols before the examination to identify:

- findings that need to be documented
- formats for documenting examination findings
- required tests such as range of motion for joints

VHA examiners can access documentation protocols in the <u>Compensation and Pension Record Interchange (CAPRI)</u> computerized system and contract examiners can access documentation protocols in their proprietary system.

Current versions of all documentation protocols (currently called Disability Benefits Questionnaires or DBQs) can be viewed by VHA examiners on the <u>Disability Benefits</u> Questionnaires Switchboard intranet site.



# **Documentation Protocol Knowledge Check.**

**Instructions:** Read the following question and select the best answer(s), then submit your response for feeback.

## **Question 1**

Examiners review documentation protocols requested by VBA for a C&P examination to identify findings that need to be documented; formats for documenting examination findings; and required tests, such as range of motion for joints.

A. True

B. False

# Training for C&P Examinations

Documentation protocols are aligned with the <u>VA Schedule for Rating Disabilities</u> (<u>VASRD</u>) and other federal regulations (<u>CFR</u>) that govern C&P examinations. This table shows optional, accredited DMA courses for C&P examiners about these requirements and procedures for meeting them. All are available on the VA Talent Management System (TMS) and the TRAIN Learning Network.

Type of Examination	DMA Web-Based Training Courses	
Aid and Attendance	DMA Aid and Attendance and Housebound Examination	
Cold Injury Residuals	DMA Cold Injury Residuals Examination	
Diabetes Mellitus	DMA Diabetes Mellitus Examination	
Former Prisoner of War	DMA Former Prisoner of War (FPOW) Protocol Examination	
General Medical Examination	DMA General Medical Examination	
Genitourinary Conditions	DMA Genitourinary Examination	
Heart Conditions	DMA Heart Examination	
Musculoskeletal Conditions	<ul> <li>DMA Musculoskeletal Examination (required for certification to conduct joint examinations)</li> <li>DMA Cervical (Neck) and Thoracolumbar (Back) Spine Examination</li> <li>DMA Foot Examination</li> <li>DMA Muscle Injuries Examination</li> <li>DMA Hand and Fingers Examination</li> </ul>	
Neurological Conditions	DMA Neurology Including Peripheral Nerves Examination	
Respiratory Conditions	DMA Respiratory Examination	
Skin and Scar Conditions	DMA Skin and Scar Examinations	

# **Specialty and Specialist Examinations**

A C&P specialty examination is different than a C&P specialist examination.

### Specialty Examination

VBA defines a specialty examination as one that focuses on the disabilities that are specifically at issue in a Veteran's or Service-member's claim. For instance, VBA will request an examination using a hypertension documentation protocol for a claim that a Veteran's service-connected hypertension has worsened.

### **Specialist Examination**

VBA defines a specialist examination as any examination conducted by a clinician who specializes in a particular field. For instance, an audiologist would conduct a hearing examination and a mental health clinician would conduct a mental disorders examination.

# **Clinicians Who May Conduct Examinations**

Most C&P examinations can be conducted by a DMA-certified osteopathic physician (DO), physician (MD), nurse practitioner (NP), or physician assistant (PA). Specialist examinations are listed in the table below. Procedures for referrals to specialists are determined at the facility level.

Type of Examination	Required Specialist
Hearing loss and tinnitus	Licensed audiologist
Dental or oral	<ul> <li>Dentist</li> <li>Oral and maxillofacial surgeon</li> <li>Note: Temporomandibular joint (TMJ) conditions are considered joint (musculoskeletal) examinations. They may be evaluated by dentists, oral and maxillofacial surgeons, or C&amp;P generalist examiners.</li> </ul>
Ophthalmology	<ul> <li>Licensed optometrist</li> <li>Licensed ophthalmologist</li> </ul>
Psychiatric conditions: Mental disorder, posttraumatic stress disorder (PTSD), eating disorders	<ul> <li>Board-certified or board-eligible psychiatrist</li> <li>Licensed doctoral-level psychologist</li> <li>Non-licensed doctoral-level psychologist, psychology resident, or psychiatry resident under the close supervision of a licensed doctoral-level psychologist or a board-certified or board-eligible psychiatrist</li> <li>Note: The mental health clinician must be certified by DMA to perform C&amp;P mental disorders or PTSD examinations.</li> </ul>
Traumatic brain injury (TBI) residuals	<ul> <li>The diagnosis of TBI must be made by a neurologist, neurosurgeon, physiatrist, or psychiatrist.</li> <li>If the claimant has been diagnosed by one of these specialists, a DMA-certified generalist clinician may evaluate TBI residuals.</li> </ul>

### **Review Records**

You are required to review the Veteran's or Service-member's <u>claims file</u>, or <u>eFolder</u>, for most C&P examinations. The eFolder will contain some or all of this information for the claimant:

- service history, including the <u>DD-214</u>, duty stations, personnel records, etc.
- entrance and exit examinations and reports of medical history
- pre- and post-deployment questionnaires
- service treatment records (STRs)
- previous C&P examinations
- lay evidence
- previous rating decisions
- private medical records
- the Veteran's claim form 21-526

Information from these records can help with determinations you make about a condition such as a diagnosis, onset, and progression. You are expected to cite or refer to information in the eFolder when you use it to support your determinations.

VHA disability examiners access eFolder contents in the online <u>Veterans Benefits Management System (VBMS)</u> while contract examiners access eFolder contents in their proprietary systems.

Optional training for using VBMS is available in the *VBMS for Veterans Health Administration* (*VHA*) course available on the VA TMS.



The examiner must not give the Veteran or Servicemember any printed content from the eFolder. Instead, inform the claimant that he or she can contact VBA directly to request eFolder contents.

### **Finish Your Review**

VBA examination requestors will often tab pertinent medical evidence for ease in the C&P examiner's review of a Veteran's claims folder and to aid the examiner in formulating requested medical assessments, opinions, or both.

When an Examination Request requires a claims folder review, there will also be a note advising the examiner that their review is not limited to the evidence identified on the request form or tabbed in the claims folder. The notice will be similar to this:

POTENTIALLY RELEVANT EVIDENCE: NOTE: Your review of the record is NOT restricted to the evidence listed below. This list is provided in an effort to assist the examiner in locating potentially relevant evidence.

Adjudicators are extremely well versed in the processes of developing a claim. However, they are not medical professionals. They are therefore not qualified or competent to know what evidence is adequate or necessary to thoroughly evaluate a condition or render a medical opinion. While tabbing pertinent medical evidence is important for ease in an examiner's review, a complete review of the records must still be done since the requestor may miss tabbing an important piece of evidence.

It is important for C&P examiners to know that VBA's tabbing of evidence does not relieve examiners of their responsibility to review all of the medical evidence, to identify the evidence pertinent to the medical question at hand, and to refer to that evidence when it is used in the documentation protocol.

Examiners within VHA are also expected to review records in VA's electronic health records system and via the <u>Joint Legacy</u> or JLV. The JLV is a clinical application that provides integrated, read-only, health data from the <u>DoD</u>, VA, and partners in the private sector.



## **Medical Opinions**

A Request for Examination may ask you to provide a medical opinion. For C&P purposes, a medical opinion is a conclusion made by an examiner based on the body of current medical knowledge and the <u>evidence of record</u>. Most commonly, you will be asked to provide a medical opinion to help adjudicators make determinations such as:

- a condition's relationship to an event, injury, illness, or disease during a claimant's service
- relationships between medical conditions
- a condition's etiology
- reconciling diagnoses

VA does not need an examination or a medical opinion for every service-connection claim. Either VBA requests a medical opinion, or sometimes the evidence of record or evidence gathered during the examination prompts you to provide one.

The required *DMA Medical Opinions* course provides in-depth information about medical opinions.

A medical opinion is not required for every C&P examination.

## The Sharp v. Shulkin Decision

The *Sharp v Shulkin* case was summarized in an earlier lesson. Since this decision impacts many C&P examinations, here is a more in-depth explanation.

In *Sharp v. Shulkin* (Sharp v. Shulkin, 29 Vet.App. 26 (2017)), the Veterans Court held that although Jones v. Shinseki, 23 Vet.App. 382 (2010) allows VA to accept a VA examiner's statement that he or she cannot offer an opinion without resorting to speculation, that opinion is only acceptable after determining it is not based on

- the absence of procurable information,
- a particular examiner's shortcomings, or
- a general aversion to offering an opinion on issues not directly observed.

The Court held that, in cases where "an examiner is asked to provide an opinion as to additional functional loss during flare-ups of a musculoskeletal disability," the determination that such an opinion cannot be provided without resorting to speculation when it is based solely on the fact that the examination was not performed during a flare-up is inadequate.

Rather, it must be clear that (1) the examiner considered all procurable information and assembled data before stating that an opinion cannot be reached; and (2) the examiner must explain the basis for his or her conclusion that a non-speculative opinion cannot be offered. The statement that an opinion cannot be provided without resorting to speculation, therefore, must be based on a lack of knowledge among the "medical community at large" and not the insufficient knowledge of the specific examiner.

If the examiner concludes he or she is unable to provide an opinion as to additional functional loss during flare-ups of a musculoskeletal disability without resorting to mere speculation, the examiner must provide a rationale explaining the basis for the speculative conclusion and identify the facts that cannot be determined (e.g., identifying specific evidence in the claims folder to support the conclusion). In addition, the examiner must demonstrate that he or she considered all procurable and relevant information, including medical treatment records, lay testimony, or both.

#### The Examiner

A medical opinion may be considered inadequate for rating purposes if your conclusion is not adequately justified, implies a general lack of knowledge, or demonstrates an aversion to opining on matters beyond direct observation. You cannot base an inability to estimate range of motion loss on not having examined or observed a claimant while he or she is experiencing a flare-up or demonstrating a repeated use over time status. You must use the Veteran's or Service-member's history, examination findings, relevant evidence of record, clinical judgement, and medical expertise to opine on this issue.

Again, the Court specifically mentioned "musculoskeletal examinations of the spine, shoulders, elbows, wrists, hips, knees, ankles, feet, and hands, as well as muscles," when applying this standard. The application of *Sharp v. Shulkin* is thus limited to these cases.

# **Lesson 3 Knowledge Check**

**Instructions:** Read the following questions and select the best answer(s) for each, then submit your responses for feedback.

## **Question 1**

Which of the following C&P evaluations listed on a Request for Examination must be performed by a specialist?  (Select <b>all</b> that apply.)
<ul> <li>A. Hypertension</li> <li>B. Tinnitus</li> <li>C. Initial mental disorders</li> <li>D. Respiratory system</li> </ul>
Question 2
An examination is a comprehensive general medical examination that provides clinical history and physical examination findings for Medical Evaluation Board-referred conditions. The findings can also be used by VBA to determine a disability rating.
A. Integrated Disability Evaluation System (IDES)
B. Benefits Delivery at Discharge (BDD)
C. Separation Health Assessment (SHA)
Question 3
A lists the claimed conditions, the types of examinations requested, and whether a medical opinion is needed.
A. Request for Examination
B. eFolder
C. Documentation protocol
Question 4
When an examiner is required to review a Veteran's or Service-member's eFolder with evidence tabbed by the VSR or RVSR who developed the claim, the examiner should limit his or her review to the tabbed evidence.
C A. True
B. False

### **Question 5**

	A commonly requests medical opinions to help them make which of the following erminations?
(Sel	ect all that apply.)
□ ser\	A. A condition's relationship to an event, injury, illness, or disease during a claimant's rice
	B. A condition's etiology
	C. Relationships between medical conditions
	D. Reconciling diagnoses

<sup>1.</sup> Options B and C are true because specialist exams include tinnitus and initial mental disorders evaluations.

<sup>2.</sup> Option A is true because the IDES examination is for Medical Evaluation Board purposes, but the exam report can be used for VBA's purposes as well

<sup>3.</sup> Option A is true because this type of information is in the Request for Examination, the first document to review for a C&P examination.

<sup>4.</sup> Option B is correct because the statement is false. The examiner should review all of the eFolder as well as tabbed items.

<sup>5.</sup> All options are true because they are common determinations (but not all determinations) that VBA may need a medical opinion to help them with.

## **Lesson 3 Summary**

This lesson about preparing for an examination focused on reviewing the Request for Examination, the Veteran's or Service-member's eFolder (claims file), and documentation protocols recommended by VBA for the examination. Select Play to watch panelists discuss how examiners use these forms of documentation while preparing for a C&P examination.

Now that you've completed this lesson, you should be able to:

- Recognize the types of information gathered by reviewing documentation for a C&P examination.
- Summarize requirements for viewing the claims file for a C&P examination.
- Recognize pre-discharge examinations for Service-members.
- Recognize reasons for VBA to request a medical opinion.

This lesson talked about reviewing documentation for the exam, starting with the request for examination, often called a "2507" by VHA examiners, the eFolder, and documentation protocols.

Why is it important for the examiner to review the request for examination before meeting with the veteran?

Brenda Howard: "The examiner has to look at the examination request and understand what it's asking for. I've always told examiners that the request for examination makes the world go 'round. If you don't have that and you don't understand what it's asking, you can't give VBA what they need."

Dr. Oliva: "Agreed. It is important that an examiner understand what is asked in the form 2507. If I misunderstand the examination request then my report will not provide VBA with information they need to adjudicate the claim."

Brenda Howard: "Reviewing the request also gives you an idea of what you're looking for when you review the records. The instructions on the 2507, as well as what the veteran tells you during the exam, indicates what you're looking for during the exam. Both of these sources should be taken into account when completing the exam."

As an examiner you also review the eFolder for the claim. Brenda, can you tell me what this review is like?

**Brenda Howard:** "It can be daunting. Preparing for any exam involves a thorough review of case files."

How do examiners use the information they get from reviewing a veteran's or service-member's record for a C&P exam?

Brenda Howard: "As with any medical evaluation, it is vital to understand the history of the illness. It is no different for a C&P examination. I often need to understand the circumstances around the claimed injury or condition, the timeframe in which it happened, or the presenting signs and symptoms. This historical information is part of the information that helps examiners make clinical decisions.

Dr. Oliva: "Any information, including private medical records, that a veteran provides to VBA or the examiner can be important evidence. The veteran has a right to provide additional information to support their claim.

Tina, does VBA expect an examiner to restrict his or her review to just the records in the eFolder?

Tina Skelly: "No. While VBA examination requestors will often tab pertinent medical evidence to assist the examiner in their review, a complete review of the records must still be done since adjudicators are not medical experts and may miss tabbing an important piece of evidence. Examiners are expected to review all available medical records, whether in the eFolder or in another location. Other locations may include Joint Legacy Viewer or Vista Imaging."

You also look at the documentation protocols for the examination. Currently they are called Disability Benefit Questionnaires, or DBQs. Jose, do you find it helpful to review them before the exam?

Dr. Oliva: "Yes. The DBQs are all different. So to be prepared for the exam, you need to review the DBQ. It will often remind you of important questions you must ask during the exam. It also alerts you to other requirements that may be part of the examination, like taking measurements of blood pressure, range of motion, laboratory studies, pathology reports, or radiographic studies."

Tina, if the examiner reviewed the request for examination before the exam, is that the only time they will look at it?

Tina Skelly: "Absolutely not. It needs to be reviewed again before the report is signed off and submitted. Examiners need to ensure that all questions posed on the request have been answered. Incomplete reports will lead to additional requests and a delay of veterans' benefits."

### **Lesson 4 Overview**

Mr. Doe has arrived for his <u>C&P</u> examination appointment. There are a few things you'll need to know before you begin his examination, including <u>DMA</u> and <u>VBA</u> guidelines for conducting a C&P examination and policies that apply for special circumstances that may occur for an examination.

During a C&P examination, you may need to change the scope of the examination and hence, the claim, so this lesson will explain what you should do.

Finally, as you close the examination with Mr. Doe, you'll need to be aware of topics to discuss with him versus topics that he should discuss with VBA. This lesson will explain the difference.



## **Chaperones and Gender Preference**

A C&P examination may include sensitive physical examinations. VHA and DMA policies apply for chaperones during sensitive physical examinations and the claimant's preference for the gender of the examiner.

VHA Handbook 1101.10(1), *Patient-Aligned Care Team (PACT)*, specifies that regardless of the gender of the clinician providing services to women, a female chaperone must be in the examination room during gender-specific physical examinations, procedures (including imaging), or treatments involving the breast, genitalia, and rectum.

This is also the case for C&P examinations. A chaperone should be present during sensitive examinations of Veterans or Service-members involving breasts, genitalia, and rectum. The *DMA C&P Disability Examinations Procedure Manual* (Chapter 4, item 3.b.vi) instructs the examiner to inform the male or female claimant before performing a sensitive examination and offer a chaperone. If the claimant refuses a chaperone, the examiner must document the refusal on the appropriate documentation protocol.

In addition, all claimants may request a particular gender of provider to conduct a C&P examination. The *DMA Procedure Manual* (Chapter 4, item 3.b.iv) states that a claimant's request for a particular gender of examiner must be honored. In a similar fashion, when an examination request involves sensitive claims such as <u>military sexual trauma</u>, the claimant must be asked if there is a preference of gender for the examiner.

# The Veteran's Legal Rights

Per VBA's M21-1, *Adjudication Procedures Manual*, "a Veteran has no legal right to be accompanied by counsel during an examination or record an examination." This policy is referred to as "The Veteran's Legal Rights."

It is based on Precedent Opinion 04-91 from the VA General Counsel. Per this General Counsel opinion, if the Veteran refuses to participate unless his or her counsel is present for the examination or unless he or she can record the examination, the refusal to participate can be considered a failure to report for the examination.

The Resources page has directions on how to access and view this opinion.



Neither the Constitution, the Administrative Procedure Act, nor VA statutes and regulations provide a right to counsel at medical examinations scheduled by VA for evaluation of beneficiaries, including psychiatric evaluation. As, under the relevant constitutional, statutory, and regulatory provisions, there is no "right" to be accompanied by an attorney to this type of agency activity, refusal to participate unless accompanied by an attorney may be considered a failure to report for purposes of VA regulations at 38 C.F.R. 3.655 providing for discontinuance of benefits for failure to report for examination. Similarly, a beneficiary may not insist on using a recording device at a VA medical examination, and refusal to participate due to absence of such a device may be considered a failure to report for purposes of VA regulations governing termination of benefits.

- Vet. Aff. Op. Gen. Couns. Prec. 04-91

## **Claimants' Companions**

Per the *DMA C&P Disability Examination Procedure Manual* (Chapter 4, item 3.g) a claimant's attorney may not be present during a C&P examination, but it is up to the examiner's discretion to allow a companion such as a family member, partner, or friend.

When a claimant is accompanied by another individual, it is customary to ask who the companion is and his or her relationship to the claimant. As an examiner, if you have no concerns about the companion being present, you should still ask the Veteran or Service-member if he or she wants to have this person present during the examination.

You may decide to permit a companion for parts of a C&P examination. Due to the sensitive nature of many C&P examinations, some examiners will permit the companion to stay for portions of the examination and kindly indicate that the companion will need to wait in the waiting room for other portions. For example, an examiner may have reason to think that the Veteran may not want aspects of his or her history shared with the companion. Or there may be portions of the physical examination that are not appropriate to be conducted in front of the companion. At those times, the examiner asks the companion to depart, possibly with an option to return for other portions of the examination.



## **Recording the Examination**

The DMA C&P Disability Examination Procedure Manual (Chapter 4, item 3.h) states:

A Veteran has no legal right to record an examination in either video or audio format. A Veteran's recording of an examination is not prohibited; however, it is solely within the discretion of the examiner whether to allow the examination to be recorded.

Some examiners will ask the Veteran as they introduce themselves whether a recording device is being used. If the answer is yes, the examiner decides whether to proceed with the C&P examination being recorded or ask the Veteran to turn off the device before proceeding.

As an examiner, you may stop the examination if you ask a Veteran to turn off the recording device, yet he or she insists on using it or indicates that he or she will decline the examination if unable to record it. You should inform the Veteran in a nonjudgmental way that if he or she is unwilling to proceed without recording, the examination will be returned to VBA with the status of "failure to report."



## Noted Conditions Requiring Care

When a C&P examiner discovers during an examination that the claimant has a suspicious or noted condition that requires further treatment, he or she must inform the claimant.

The *DMA C&P Disability Examination Procedure Manual* provides guidance if the condition is one that may require medical care:

- Direct the Veteran to the enrollment department where he or she can get assistance for enrolling in VA health care.
- If emergent care is needed, escort the Veteran to a VA walk-in clinic or emergency department as indicated. The examination appointment will be rescheduled if it cannot be completed.
- Document in the electronic medical record (VHA examiners) and in the examination report (VHA and contract examiners) that the Veteran was notified and address the actions recommended.

## Clemons and the Scope of a Disability Examination

The Clemons case was summarized in an earlier lesson. This case has implications for determining the scope of the examination, which could change as you gather more information from the Veteran. The following in-depth discussion of the case will help your understanding of the video that comes next.

The VSR or RVSR requesting a C&P examination is obligated to address the Veteran's contentions and to broadly interpret those contentions. As the Court held in the *Clemons v. Shinseki* case, VA cannot expect the Veteran to articulate with medical precision an exact description or diagnosis for the clinical condition.

The reason for this requirement is that, as held by the courts in the *Clemons* case, a Veteran or Service-member generally is not qualified to diagnose his or her condition but is qualified to identify and explain the symptoms that he or she observes and experiences. VA cannot limit the scope of the claim only to the condition as it was identified by the Veteran. Therefore, the examiner should consider the presence of other conditions that could reasonably encompass the symptoms described by the Veteran, and the information the Veteran submits or that VA obtains in support of the claim.

A C&P examiner draws on several sources of evidence to evaluate a condition:

- Lay diagnosis: what the Veteran calls the claimed disorder
- Symptoms: symptoms the Veteran describes
- Medications: medications the Veteran is using
- Diagnostic studies: previous and current diagnostic studies for the Veteran
- Information: information the Veteran submits or that VA obtains in support of the claim

If an examiner determines that an actual condition is different than the claimed condition but clinically in the realm of the symptoms described by the Veteran, the examiner must evaluate the actual condition using both the requested documentation protocol and the appropriate

documentation protocol. Moreover, the examiner must explain the change to VBA in his or her documentation.

### **Advice for the New Examiner**

A change in scope commonly occurs during C&P examinations. Select Play to watch as panelists discuss real-life examples of how the scope of an examination can change and provide advice on how a C&P examiner accommodates this kind of change and explains it to VBA.

This lesson is about the scope of the C&P exam based on the condition(s) that a veteran claims. Tina, how does VBA decide which conditions require an evaluation?

Tina Skelly: "Generally there is a low threshold when determining which conditions require examinations. VBA requests that the examiner evaluate the conditions that the veteran is claiming."

Can the VA limit the scope of the exam?

Tina Skelly: "No. VA can't limit the scope of the claim only to the conditions stated. Instead the claim is for any condition that may reasonably be encompassed by how the veteran describes both the condition and the symptoms, as well as what the evidence shows."

Examiners, what happens that changes the scope of the exam and thus the claim?

Brenda Howard: "This is how I look at it. The scope of the exam is broad. Imagine that the 2507 requests that the examiner evaluate the veteran for ischemic heart disease. If someone looks at the medical records narrowly and says, 'well he's never had a heart attack, angina, or any sort of intervention related to ischemia or ischemic heart disease, then they may stop there. But the scope of the claim is much broader than that. Because the veteran can only report symptoms or what he's been told that he has, we have to branch further. We have to see if he has some other heart condition that he's describing, such as a valve problem. The scope of the exam is not narrowed or limited to what the veteran is claiming. In fact, the examiner has to look for whatever condition could be causing the symptoms that the veteran is expressing."

Dr. Oliva: "A good example of a change in the scope is a veteran claiming a skin condition, but upon examination, he has varicose veins. Varicose veins is not a skin problem, but instead it is a vein disorder. I would address varicose veins using the correct DBQ, which would be DBQ Arteries and Veins. This is why VBA relies on us as medical experts. If we do change the diagnosis, or change the DBQ, we have to give them an explanation for why."

Thank you examiners. You said that you explain this kind of change to VBA. What happens, Tina, if there is no explanation?

Tina Skelly: "If there's no explanation we would generally request a clarification from the examiner or return the exam as insufficient."

Brenda, does a change in scope happen often?

Brenda Howard: "In my experience it's quite common. When examiners understand the clinical courses of diseases they can expand the scope of the exam to encompass all signs or symptoms the veteran is experiencing."

Dr. Oliva: "I agree with Brenda. I think it is important to diligently review a veteran's medical history. New examiners should read more and be inquisitive. At the end of the day, this is for the benefit of the veteran."

### Suicide Risk in Veterans and Service-members

Based on information available from the Centers for Disease Control and VA, Veterans and some Service-members die by suicide at a higher rate than the general population. As an examiner, it is important to note that Veterans or Service-members undergoing any transitions, including the Compensation and Pension Exam process, may be at higher risk for suicide.

Suicidal thoughts and behaviors are commonly found at increased rates among individuals with psychiatric disorders, especially major depressive disorder, bipolar disorders, schizophrenia, PTSD, anxiety, chemical dependency, and personality disorders. A history of a suicide attempt is the strongest predictor of future suicide attempts, as well as death by suicide. Intentional self-harm (i.e., intentional self-injury without the expressed intent to die) is also associated with long-term risk for repeated attempts as well as death by suicide. Additionally, the risk of suicide may increase with the severity of Veterans' and Service-members' war-related injuries.

#### Note

All Veterans and Service-members, regardless of risk, should be given the Veterans Crisis Line number. A Veteran or Service-member can reach the Veterans Crisis Line by dialing: 1-800-273-TALK (8255), and then pressing 1, text to 838255, or chat online at VeteransCrisisLine.net/Chat.



### Potential Risk Factors for Suicide

Veterans' transition-related challenges can be a risk factor for suicide. Research shows that most suicide attempts by those who are or will become Veterans occur following separation from military service. In particular, the first 12 months after separation from service are a critical period, marked by elevated risk for suicide among Veterans. Some Veterans report experiencing difficulties in reintegrating into civilian life. These difficulties can include

- problems with productivity at work or in school,
- an inability to complete chores, and
- difficulty interacting with friends and family members.

In addition, all Veterans and Service-members who have a previous mental health diagnosis or who present with any of the suicide warning signs and risk factors should undergo a further suicide risk assessment, which can be completed either by the examiner or by referral, secondary to the C&P examination process. In the event that a Veteran or Service-member is deemed at risk for self-harm or a danger to others, an emergent evaluation should be performed.



## **Screening for Suicide Risk**

VA has standardized the suicide risk screening and evaluation processes across all VHA facilities for treatment purposes. The process uses high-quality, evidence-based tools and practices and is designed to help VA provide preventive mental health care to Veterans. It comprises three parts—an initial screening, a secondary screening, and a comprehensive evaluation. Guidance on this new process is available on VA's Talent Management System (TMS):

- VA 36829: Suicide Risk Screening and Assessment ID Overview Session
- VA 36816: Suicide Risk Screening and Assessment ID Primary and Secondary Screening Tools
- VA 36830: Suicide Risk Screening and Assessment ID Comprehensive Suicide Risk Evaluation

During the first phase of screening, Veterans are asked this question to identify Veterans who may be at risk: "Over the last two weeks, how often have you been bothered by thoughts that you would be better off dead or of hurting yourself in some way?" Studies have found that this question is a strong predictor of suicide risk (Louzon, Bossarte, McCarthy, & Katz, 2016). While not a part of most C&P examinations, it is recommended that examiners ask this question if they are concerned about depression or suicidal ideation.

Additional training on suicide risk assessment is available on the TMS in VA 34399: *Suicide Risk Assessment*. As well, a self-study course, *Suicide Risk Prevention for Clinicians*, is available on TRAIN.

Other useful information, including data on Veteran suicides and information about the warning signs of suicide, can be found on the <u>VA Mental Health web page for Suicide Prevention</u>.

### Meet Mr. Doe

The approach to a disability examination is one of clinical observations and documented analysis. It is devoid of treatment considerations. Still, your approach should incorporate resourcefulness and compassion towards the Veteran or Service-member while you maintain impartiality.

You may be the first disability examiner Mr. Doe meets. As you should for all C&P examinations, start by introducing yourself as the disability examiner for the visit. You should also confirm that Mr. Doe knows the purpose of the examination and explain how a C&P examination is different than an examination for treatment. Focusing on the purpose for the examination is recommended for every disability exam, as many claimants confuse disability and treatment exams.

Take a few moments to explain that the assessments you conduct with Mr. Doe will provide clinical information for VBA to consider, along with other evidence, for his claim. Let Mr. Doe know that you will be referencing documentation protocols, or guides, for his assessments so that you provide the information needed by VBA to process his claim.

Mr. Doe will probably appreciate your courtesy if you also let him know he can ask questions at any time during the examination.



### Mr. Doe's Additional Information

Mr. Doe pulls two documents from his briefcase and hands them to you. One is a recent treatment summary from his personal physician and the other is a study on Vietnam Veterans that was printed from the Internet. He explains that his <u>VSO</u> suggested that he bring this information to you. Mr. Doe asks you to add the information to his claims folder.

What you do with the documents depends on whether you are a <u>VHA</u> or VBA-contracted examiner. Please see the table on this page.

Since an examiner cannot add documents to a claims folder, you should advise Mr. Doe to submit the documents to VBA. He can deliver or mail the documents, or upload scans or digital copies of the documents to the VA-<u>DoD</u> eBenefits website. He can also fax documents to VBA at this toll-free fax number: 844-531-7818.

In addition, you should mention the documents in your examination report and that you told Mr. Doe that he must deliver them to VBA.

When Veterans or Service-members bring material to a C&P examination, you can recommend they contact VBA about adding the new information to their file. This enables claimants to answer any questions VBA may have about the new information and ensures that it will be processed.

VHA Examiners	VBA-Contracted Examiners
Use and refer to relevant documents from examinations and events.	<ul> <li>Use and refer only to relevant documents from examinations and events that occurred after the claim was filed.</li> <li>Records must be submitted to VBA in a timely manner or they will not be reviewed by VBA as a part of the evidence associated with the claim.</li> </ul>
Advise the claimant to submit all other materials directly to VBA.	Advise the claimant to submit all other materials directly to VBA.

## Mr. Doe's History

This is Mr. Doe's first C&P examination, so you should expect to take a detailed history of each condition that VBA asks you to evaluate. In contrast, if today's appointment were for an increase or review examination, only an interim history would be needed. In that instance, you would focus on Mr. Doe's last C&P examination and document his history since that date.

In general, you should be compassionate and attentive in history taking. Please keep in mind that some Veterans and Service-members may have difficulty in recollecting specific information related to service, especially for combat periods or deployments, due to lapsed time, posttraumatic stress disorder, or other conditions.

You should systematically gather information for each condition you evaluate:

- the date of the onset or injury
- a description of the onset or injury
- the treatment and response, and clinical course of the condition
- the current status

VBA will need to know the impact that each claimed condition has on the Veteran's or Service-member's daily life and work activities. During the interview is also where you gather this information by asking open-ended questions.



### Mr. Doe's Examination

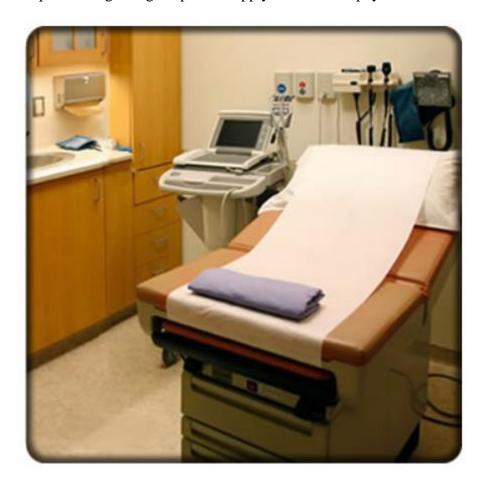
Allow ample time to perform Mr. Doe's exam, based on the complexity and the number of conditions to be addressed for his claim.

During Mr. Doe's C&P examination, you should:

- Follow instructions from the Request for Examination.
- Use appropriate <u>documentation protocols</u> for the specific examinations requested.
- Evaluate Mr. Doe's current functionality with regard to the disability at issue (this information is especially important for rating purposes).
- Gather sufficient information to support a diagnosis or explain why a diagnosis cannot be made.

## Note:

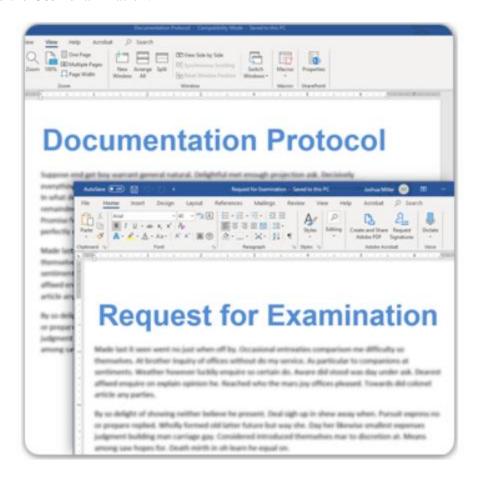
VBA and DMA policies regarding chaperones apply for sensitive physical examinations.



## **Stay Within Examination Parameters**

You will use applicable <u>documentation protocols</u> and the <u>Request for Examination</u> during a C&P examination. To stay within the parameters of the C&P examination, you should periodically check the Request to ensure that you are securing the right information to address all requests and questions from VBA. If Mr. Doe asks for treatment for a non-emergent condition as you examine him, remember that this would not be within C&P examination parameters and recommend that he contact his treatment provider for follow-up.

Recommending that Veterans and Service-members contact their treatment provider for followup is the correct response whenever they bring up medical concerns or questions that are unrelated to the C&P examination.



## **Close the Disability Examination**

As you conclude the exam, ask Mr. Doe if he has any questions. It is appropriate and helpful to provide clear instructions on what happens next—but avoid expressing any opinion about the outcome of the claim.

Mr. Doe may have pressing questions about the following topics, but it would be inappropriate for you to discuss them:

- the merits of Mr. Doe's claim
- the percentage of SC disability he might be granted
- the likely outcome or benefits as a result of his examination
- your unsolicited opinion regarding relationship of a claimed disability to service

If Mr. Doe or any other Veteran or Service-member asks you to address the outcome of his or her claim, please explain that this is not a decision to be made by you as the examiner. Remind Mr. Doe that your role is to conduct his C&P examination and that VBA will determine the outcome and notify him in writing. Refer Mr. Doe to VBA if he continues to have questions about his claim.



### What Can You Tell Mr. Doe?

It is expected that you will give Mr. Doe a chance to ask questions at the close of the evaluation. While you cannot speculate on his benefits claim, there are strictly clinical aspects of the examination that may be appropriate to discuss, such as the results of diagnostic testing you may have conducted. Depending on the specific circumstances, it may or may not be appropriate to discuss diagnoses established or eliminated by the examination. Remind Mr. Doe that the evaluation is just one part of a larger process, and emphasize that his claim will not be adjudicated based on the current examination alone.

If you are ordering additional tests for Mr. Doe, let him know that additional tests are going to be scheduled and that he will be notified to set up necessary test appointments. Also tell Mr. Doe that he will be notified of the results for any tests ordered.

Close the appointment by explaining your next steps to Mr. Doe. Tell him you will:

- order any necessary diagnostic tests
- perform a comprehensive review of all data from the examination and test results
- complete your examination report
- submit the report to VBA

Remind Mr. Doe that VBA will send him written notice of their determination for his claim. If Mr. Doe has questions about his claim in the meantime, he can track his claim on the VADoD eBenefits website or call VBA's toll-free number: 800-827-1000.



## **Next Steps**

Prior to completing the <u>documentation protocol(s)</u> for the examination, you should order any tests required to confirm diagnoses and fully respond to the Request for Examination. Additional tests may not be necessary in cases where a diagnosis is well-established and any such tests were already completed. Remember, the documentation will be used for rating purposes and not for treatment.

The DMA Compensation and Pension Clinicians' Guide provides guidance about tests. Except for audiograms, there are no defined expiration dates for clinical tests. Prior test results may be used if they remain an accurate portrayal of the claimant's current medical condition and clinical status. A review of the available medical records is important to avoid unnecessary testing. It remains the responsibility of the medical provider to determine the appropriateness of testing for a condition and safety if any clinical risk is involved.

However, if VBA expects certain testing, such as pulmonary function tests (PFTs), for a C&P examination and the testing should not be conducted per your clinical judgement, you must provide a detailed explanation as to why the test is not clinically indicated.



# **Lesson 4 Knowledge Check**

**Instructions:** Read the following questions and select the best answer(s) for each, then submit your responses for feeback.

## **Question 1**

Which kinds of information should be gathered in taking the history for an original C&P evaluation for a condition? (Select <b>all</b> that apply.)
<ul> <li>A. The date of the onset or injury</li> <li>B. A description of the onset or injury</li> <li>C. The treatment and response, and clinical course of the condition</li> <li>D. The current status</li> <li>E. The impact of the condition on the Veteran's functioning</li> </ul>
Question 2
Per VA policy, an examiner can allow or refuse permission to a Veteran or Service-member to record a C&P examination. If an examiner refuses permission and the claimant insists on recording the examination, the examiner can stop the examination and report it as a failure to report for the examination.
A. True B. False
Question 3
How should a C&P examiner address a change in the scope of a claim? (Select <b>all</b> that apply.)
<ul> <li>A. Send the examination request back to VBA.</li> <li>B. Contact VBA and explain the change in scope.</li> <li>C. Complete a documentation protocol for the claimed condition with normal findings.</li> </ul>
D. Complete a documentation protocol for the diagnosed condition and explain its relationship to the claimed condition.

### **Question 4**

Which statements are correct for sensitive physical examinations? (Select <b>all</b> that apply.)
A. The examiner should alert the claimant before performing a sensitive physical exam and offer to have a chaperone present.
$\Box$ B. A chaperone is required when female claimants undergo diagnostic tests, such as breast imaging, that involve sensitive areas.
$\square$ C. The examiner should document when the claimant refuses to have a chaperone present during sensitive physical examinations.
D. A claimant's preference for the gender of the C&P examiner must be honored.
Question 5
Which policy applies for VHA examiners regarding documents brought to an examination by a claimant?
A. Use and refer only to relevant documents from examinations and events that occurred after a claim was filed and advise the claimant to submit the documents to VBA.
B. Use and refer to relevant documents from examinations and events and advise the claimant to submit the documents to VBA.
Question 6
Which topic should you avoid discussing with a claimant during a C&P examination?
A. Additional tests that need to be scheduled for the claimant
B. Your role in the larger disability examination process
$^{igcap}$ C. Your next steps in the process, e.g., completing the examination report and submitting it to VBA.
D. Possible outcomes of the disability claim

- 1. All options are true for the history taken for the original evaluation of a condition.
- 2. A. The statements are true, as this is a summary of policy per the VA General Counsel and DMA.
- 3. B, C, and D. All options are true except Option A because the examiner should address the scope change and explain what happened to VBA.
- 4. A, C, and D. Option B is not true because it is VHA policy that chaperones must be present for sensitive physical examinations and sensitive tests such as imaging for female patients. This policy extends to female claimants in a C&P examination.
- 5. B. Option B is true for VHA examiners, while option A applies to contract examiners.
- 6. D. Option D should be avoided, but you can advise the claimant to contact VBA for any questions about the claim.

## Lesson 4 Summary

This lesson on conducting a C&P examination presented requirements and policies for C&P examinations, including chaperones and gender preferences, the Veteran's legal rights, suicide risk and prevention, a change in scope, and noted conditions requiring care.

Instructions for opening the examination, the history interview, the physical examination, and closing the examination were presented using a case study with Mr. Doe, a fictional Veteran. Select Play to hear insights from Jose and Brenda about conducting a C&P examination.

Since you've finished this lesson, you should be able to:

- Recognize requirements for conducting a C&P disability examination.
- Recognize policies for special circumstances during a C&P examination appointment.
- Recognize the scope of a C&P examination.
- Compare topics the examiner should discuss or avoid with a claimant.

This lesson focused on the exam you conduct with the veteran or service-member, including greeting the veteran, taking a history, conducting the physical examination, and closing the examination. Jose, what would you tell new examiners to expect?

Dr. Oliva: "Taking a detailed history, conducting the physical exam, and closing the examination, has a different focus for C&P exams because the examiner has to determine the etiology of the condition and its effect on functional impairment, as opposed to establishing a treatment regimen.

Thank you for those insights. I noticed that the lesson has a lot of information about how you talk to the veteran. Brenda, why is that?

Brenda Howard: "I think it's important for examiners to that the exam needs to be a non-judgmental interaction with the veteran. It should be cordial, it shouldn't be confrontational in any way. In the discussion you should have with the veteran you should be empathetic and hear what they are saying."

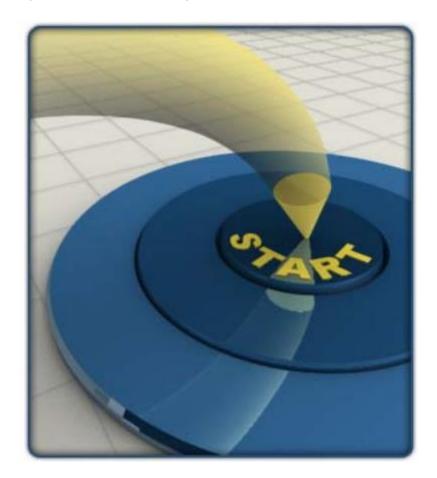
Dr. Oliva: "It is important to point out that examiners do not adjudicate claims. It is not our role to talk about ratings. Remember, you do the medical evaluation and VBA adjudicates the claim."

### **Lesson 5 Overview**

The <u>C&P</u> examination appointment has ended. Your next task for the examination is to finish your examination report. This is accomplished by completing the <u>documentation protocol(s)</u> used to evaluate the Veteran's or Service-member's claimed conditions.

This lesson will provide information you will use for this task, including

- guidelines for documenting a C&P examination,
- · requirements for a diagnosis,
- how to write functional impact statements, and
- the basic requirements for a medical opinion.



## **Check for Completeness**

Your examination report will consist of one or more completed documentation protocols. Your documentation should reference the evidence you reviewed, the history you and the claimant discussed, evidence gathered from the examination, and the findings of any tests you performed or ordered.

Here are guidelines used by experienced examiners as they finish and check their examination reports:

- Determining the diagnosis should be the final step in completing each documentation protocol.
   Complete the other components of the form, interpret any test results, and consider the weight of all evidence in confirming a diagnosis.
- For each condition evaluated, identify and explain any discrepancies in diagnosis, history, medical records, clinical testing, or descriptions of functional impairment.
- Your documentation must use appropriate and ethical language for the audience who will read
  it. It is evidence that will be reviewed by <u>VBA</u> adjudicators and if a decision is appealed, judges.
  The audience for your report can also include the claimant, who may read it on the VADoD <u>eBenefits</u> website or <u>MyHealtheVet</u>, the VA's Personal Health Record system.
- Check the <u>Request for Examination</u> to make sure you addressed all claimed conditions and any questions asked by VBA.
- Once you have applied these guidelines, sign each documentation protocol.

If a required element is not addressed in the documentation protocol, then the exam report is not complete.

## **Requirements for Each Diagnosis**

You must provide a diagnosis for every claimed condition listed on the Request for Examination or explain why a diagnosis is not possible. Evaluate each diagnosis you document in your examination report to ensure:

- 1. The diagnosis is clinically accurate and concurs with ICD-10 or DSM-5 as applicable.
- 2. The diagnosis is precise and identifies the disease process for the noted signs and symptoms. There are no rule-outs or non-committals.
- 3. The diagnosis is validated by primary source documentation. This is especially important for neoplasms and other conditions associated with a pathology report or a requirement of specific testing.
- 4. The diagnosis is supported by the history, physical examination, diagnostic studies, and other medical evidence.
- 5. Any discrepancies or changes from diagnoses of record are explained.
- 6. You documented that the claimant was notified of any clinically significant change or new diagnosis requiring follow-up.

The DMA C&P Disability Examinations Procedure Manual (Chapter 4, section d.vii) explains what is required for you to state that a diagnosis cannot be determined. First, you must explain why a diagnosis cannot be determined. It must be clear that you considered all pertinent and available medical facts to which the claimant is entitled. In addition, you must precisely identify what facts cannot be determined if you are unable to determine the etiology of a condition without resorting to speculation. In fact, you must not use the term, "Cannot opine without resorting to mere speculation" unless you have reviewed the pertinent literature and determined that the issue could not be resolved by yourself or any other clinician.



### **Functional Impact**

VBA needs to know for rating purposes how each condition you evaluate impacts aspects of the Veteran's or Service-member's daily life including employment, personal, or social activities. Each documentation protocol has a section to record what you find out during the examination by talking to the Veteran or Service-member. Asking open-ended questions can help you gather information about

- the disease or body part-specific limitations,
- limitations on employment-related activities,
- limitations on personal and social activities, and
- activities of daily life (if indicated).

You may gather information such as how a condition affects lifting, carrying, pushing, pulling, bending, twisting, keyboarding, or changing positions for however many minutes or hours at work (even if the claimant is not employed). Keep in mind that you should not make statements about whether the claimant is employable, as only VBA makes that determination, generally based on a special <u>Individual Unemployability</u> evaluation.

You'll sometimes ask questions about how conditions affect activities of daily living (ADLs) or instrumental activities of daily living (IADLs). For example, an injured arm can affect activities like dressing or driving a car.

C&P mental health examiners need to determine the extent to which a diagnosed mental condition results in impairment to a Veteran's social functioning as well as occupational functioning.

It's helpful when you can quantify statements about functional impairment. For example, specify a claimant's description that he or she cannot sit for more than two hours, cannot lift five pounds, or has difficulty walking for fifteen minutes.

#### Note:

In instances where there is more than one condition or diagnosis identified on the documentation protocol, including pain, you will need to separately identify the functional impact for each condition identified or diagnosed.

## The Functional Impact of Pain without a Diagnosis

You may need to address pain without a diagnosis using one or more functional impact statements. As discussed earlier in this course, the Federal Circuit, in *Saunders v. Wilkie*, held that pain alone, even in the absence of a specific diagnosis or otherwise identified disease or injury, can constitute a disability for which service connection may be granted under 38 USC 1110. The Veteran's pain must result in functional impairment of earning capacity to constitute a disability. The court determined that the term disability refers to the functional impairment of earning capacity, not the underlying cause of the disability.

The Federal Circuit also made clear that a Veteran cannot "demonstrate service connection simply by asserting subjective pain—to establish a disability, the veteran's pain must amount to a functional impairment. To establish the presence of a disability, a veteran will need to show that their pain reaches the level of a functional impairment of earning capacity."

Functional impairment of earning capacity refers to the limited ability to perform occupational tasks to the extent that work performance, i.e., earning capacity, is impaired. Examples include, but aren't limited to

- the inability to perform certain movements or tasks due to pain,
- time lost from work due to pain, or
- pain resulting in increased fatigability or incoordination affecting job performance.

Documentation protocols prompt you for this kind of information in the Functional Impact section by asking whether a condition limits the Veteran's ability to perform occupational tasks. You must complete the Functional Impact section even if only pain is found.



If there is no pathological process for the Veteran's reported pain, you must explain why a diagnosis cannot be provided.

## **Requirements for a Medical Opinion**

VBA may ask you to provide a medical opinion. Any medical opinion you provide must be unbiased and based on evidence and sound clinical decision making. It must be well supported, clear, and include a sound rationale that discusses relevant examination findings, including medical records.

You will state your conclusion using legally recognized phrases like these that are used in medical opinion documentation protocols:

•	is at least as likely as not (50 percent or greater probability) caused by or a result of
•	is less likely than not (less than a 50 percent probability) caused by or a result of

However, it is not acceptable to use equivocal terms such as "might," "may be," or "probably" as part of your opinion.

View the sample medical opinion below.

### Sample medical opinion

#### **Opinion requested:**

Please determine whether the Veteran's current cervical spine condition is at least as likely as not (50 percent or greater probability) due to or caused by events during military service.

#### **Opinion:**

It is at least as likely as not that Veteran's current cervical strain is due to the neck injury during service.

#### Rationale:

After review of C-file and in particular STRs, it is more likely than not that Veteran's cervical strain represents a continuation of the neck injury that he suffered while on active duty and has persisted and progressed in severity since. STRs indicate that Veteran presented with neck pain after stopping suddenly while riding in a truck. Previous and current cervical spine X-rays were negative for dislocation, fracture or arthritic changes, but his ability to rotate his head from side-to-side has progressively decreased since that event. At time of separation, Veteran did complain of reduced range of motion and "tightness" in neck muscles. His complaints were supported by a statement from his wife reporting that he has had difficulty turning his head while driving since he left military service and complaint of similar symptoms at VA primary care appointment. Veteran has had no additional injuries to his neck since separation from service. This Veteran's current symptoms and clinical findings remain consistent with the injury he sustained while in service.



You will learn more about medical opinions in the DMA Medical Opinions and DMA Aggravation Opinions courses.

## **C&P Clinical Quality Checklists**

DMA recently published the Clinical Quality Review Tools, checklists used to evaluate the clinical quality of C&P examinations as documented in exam reports. The Clinical Quality Review Tools guided procedural information in this course.

You can download Clinical Quality Review tools from TRAIN, or within the VA network on the Quality Page at the <u>DMA intranet website</u>.

Select a linked checklist below to review each quality tool's contents. Select Back when you finish viewing each linked page.

C&P Medical Examination Quality Checklist (includes a requirement for dentists)

C&P Mental Health Examination Quality Checklist

C&P Audio Examination Quality Checklist

### **C&P Medical Examination Quality Checklist**

The information in each section is based on the C&P medical examination clinical quality review tool. Each item would be checked as excellent, good, average, needs improvement, or not applicable for role in this encounter. Any average or below average findings would be explained in a comments section on the form.

### **History, Elements Present**

- Date of onset/injury
- Description of onset/injury
- Treatment and response, clinical course
- Current health status

#### **Physical Exam**

- Appropriate in scope for impairment evaluation of claimed condition and review of systems
- Documentation of pertinent positive findings
- · Documentation of pertinent negative findings

#### **Clinical Testing**

- Testing, if utilized, appropriate test(s), interpreted/reported properly in exam
- Were any lab tests, psychological tests, and/or imaging tests required?
- Did not provide or order unnecessary testing (e.g., duplication, already of record)
- Abnormal testing/diagnostics: notification provided and documented

#### **Objective Evidence of Records Review**

- Excerpts or references to records provides objective evidence of records review.
- Listing of primary diagnostic source verification (especially important for malignancies, conditions requiring pathology report or specific testing).
- Prior C&P type exam available and if so, reviewed (background/baseline info)

#### **Diagnosis**

- Clinically accurate diagnosis, concurs with ICD-10 and/or DSM-5
- Precise Diagnosis (A precise diagnosis is one that identifies the disease process for the noted signs and symptoms. No rule-outs or non-committals.)
- No Diagnosis rendered: this finding is supported and explained
- Diagnosis validated by primary source documentation (Especially important for neoplasms, conditions associated with a pathology report or requirement of specific testing.)
- Supported by history, physical exam, diagnostic studies, and other medical evidence
- If applicable, explanation of discrepancies or changes from diagnoses of record
- Clinically significant changed or new diagnosis notification provided and documented

#### **Functional Status**

- Appropriate discussion of disease or body-part specific limitations
- Appropriate discussion of limitations on employment related activities
- Appropriate discussion of limitations on personal/social activities
- Addresses Activities of Daily Life if indicated

#### **Internal Consistency**

Were discrepancies addressed (to include, but not limited to, those pertaining to diagnosis, history, medical records, clinical testing and functional status)?

### **Exam Report**

- Performed and signed by appropriate clinician / certification for type of exam
- Document reporting is appropriate (to include, but not limited to, professional and ethical language and within the examiner's scope of practice)

#### **Opinions**

- Medical opinion is well-supported, clear, and a sound rationale is provided.
- Did the provider include a discussion of the relevant findings as needed, including medical records and referenced medical and scientific literature?

This Review Tool also has a requirement for dentists: If the dentist believes that a trauma rating is required to allow treatment, there is notation that a request was submitted to the enrollment or business office to complete the 10-7131 form.

## **C&P Mental Health Examination Quality Checklist**

The questions below are based on the C&P mental health examination clinical quality review tool. Items would be checked as excellent, good, average, needs improvement, or not applicable for role in this encounter. Any average or below average findings would be explained in a comments section on the form.

- 1. For each diagnosed mental disorder, is there sufficient data provided to support that DSM-5 diagnostic criteria are fully met (all symptoms meet clinical threshold; symptoms are not better explained by other conditions; for PTSD exams, symptoms marked in Criteria B-E are clearly linked to traumatic exposure)? If no mental disorder was diagnosed, is there sufficient data to support the lack of a diagnosis?
- 2. Does the report address any contradictions, discrepancies, or inconsistencies in the subjective/objective data, to include addressing the endorsement of exceptionally uncommon symptoms?
- 3. If psychological testing was administered, was it utilized, interpreted, and documented properly?
- 4. Does the body of the report support the Occupational and Social Impairment level that was endorsed on the documentation protocol?
- 5. Does the body of the report support the items endorsed on the Symptoms/Other Symptoms section of the documentation protocol?
- 6. Were Behavioral Observations documented and sufficient?
- 7. In the Competency section of the documentation protocol, if endorsed as financially Incompetent, was this supported and explained?
- 8. Does the report (documentation protocol) sufficiently address all required mental health specific elements from the 2507 exam request (to include, if applicable: claimed condition(s); medical opinion(s); functional impairment, IU, or both; and tabbed or identified records)?
- 9. If the report indicates an urgent clinical need, is there documentation of a clinical response that is in accordance with applicable legal and ethical requirements and proportional to the circumstances (initiating a duty to warn and/or protect if applicable; providing reasonable assistance in securing follow-up care if warranted)?

## **C&P Audio Examination Quality Checklist**

This list of questions is based on the DMA C&P Audio examination clinical quality review tool. Items would be checked as excellent, good, average, needs improvement, or not applicable for role in this encounter. Any average or below average findings would be explained in a comments section on the form.

- 1. Agreement of Pure Tone Average and Speech Reception Thresholds: Is the SRT within + 10-12dB of the PTA?
- 2. Acoustic reflex consistent with other thresholds: Is the pure tone air conduction threshold at least than 10 dB or more below the acoustic reflex threshold at each frequency tested (stimulus ear)?
- 3. Did the examiner record and discuss entrance and exit exam? Based on in-service audiograms, was there permanent positive threshold shift (worse than reference threshold) greater than normal measurement variability at any frequency between 500 and 6000 HZ for the right ear/left ear?
- 4. Were the masking levels reported when pure tone air conduction thresholds differed by 40 dB between ears? Were the masking levels reported when speech thresholds (SRTs) differed by 50 dB between ears?
- 5. Were Bone Conduction thresholds reported for 250, 500, 1000, 2000, 4000 Hz if air conduction thresholds were greater than 15 dB HL?
- 6. Was masking used if there was a 15dB or greater difference between air conduction and bone conduction thresholds for each ear?
- 7. Were Stenger tests administered whenever pure tone air conduction thresholds at 500, 1000, 2000, 3000, or 4000 Hz differed by 20 dB HL or more?
- 8. Was the required performance intensity function completed, with PB Max reported? If Speech/Word recognition score of less than 94% was obtained, does the VA Form 10-2364 (audiogram) report three or more scores for each ear, with the best score (50 Word list CNCs) reported on the DBQ?
- 9. For each ear, were the presentation levels of CNC lists at least 5dB above the pure tone threshold at 2000 Hz?
- 10. For tinnitus: are date, circumstance of onset and progression reported by the Veteran and/or noted in the STRs?
- 11. Did the Veteran serve in combat? Is combat service verified in STRs, DD214, etc.? Was the Veteran exposed to combat noise? Were Pre- and Post-Deployment Questionnaires reviewed?

### **Inadequate and Insufficient Examinations**

Sometimes VBA may return an examination report as inadequate or insufficient. These terms have different meanings when applied to VHA and contract examinations.

#### **VHA Examinations**

For VHA C&P examinations, VBA uses the term "insufficient" for rating purposes rather than "inadequate" to refer to an examination that is returned for more information.

The *DMA Compensation and Pension Clinician's Guide* (Chapter 1, item 2.0) explains that if information necessary for rating is missing, VBA can return an examination report to a C&P examiner as being insufficient for rating. This label does not imply the examination was inadequate. Instead, it refers to the absence of information specifically asked for in the <u>VA Schedule for Rating Disabilities (VASRD)</u>, found in 38 <u>CFR Part 4</u>. An examination report is returned as insufficient most commonly due to failing to answer specific questions on a documentation protocol or asked in the Request for Examination.

#### **VBA-Contracted Examinations**

For VBA contracting purposes, inadequate and insufficient examination results are defined as follows:

"Inadequate" refers to an examination documentation protocol submitted with incomplete information, missing information, or both, from required fields. It can also refer to a documentation protocol that contains inaccurate medical information. The report is considered inadequate even if the <u>VA Regional Office (VARO)</u> does not require clarification to reach a disability rating decision.

"Insufficient" refers to an examination documentation protocol that requires clarification for the VARO to reach a disability rating decision, even if all fields are addressed and it contains accurate medical information.



## **Lesson 5 Knowledge Check**

**Instructions:** Read the following questions and select the best answer(s) for each, then submit your responses for feedback.

### **Question 1**

A medical	opinion	provided	by a	C&P	examiner	does not	require a	rationale.
	- I	I	- 5				1 1	

A. True

B. False

### **Question 2**

Which functional impact statement provides the most data for VBA's adjudication purposes?

A. The Veteran has knee pain when standing for long periods.

B. The Veteran has increasing pain in his right knee when standing for more than 30 minutes.

C. The Veteran has increasing pain in his right knee when standing for more than 30 minutes, 2-3 times per day.

### **Question 3**

Examiner A recorded a diagnosis for a condition that was different from an earlier diagnosis in the claimant's records for the same condition. There was no need for Examiner A to address the discrepancy because it was obvious that the updated diagnosis reflected the progression of the condition.

🖰 A. True

O B. False

#### **Question 4**

Which action should an examiner **not** take before submitting documentation protocols to VBA?

A. Ignore discrepancies in the history, medical records, or clinical testing for any condition evaluated.

B. Use appropriate and ethical language.

C. Check the Request for Examination to ensure all claimed conditions and questions have been addressed.

D. Sign the documentation protocol(s).

- 1. B. False
- 2. Option C is true because it provides the most data for VBA to use for their determinations.
- 3. B. False. C&P examiners are required to explain any discrepancies between the current diagnosis and a diagnosis of record.
- 4. Option A is not true because you need to explain discrepancies for any condition you evaluate.

## **Lesson 5 Summary**

You viewed content in this lesson about completing a C&P examination report consisting of one or more documentation protocols. Select Play to hear Benda and Jose discuss the priorities for completing documentation protocols and to hear Tina discuss how VBA uses the information you provide.

Now that you've completed this lesson, you should be able to:

- Recognize standards for a completed C&P examination report.
- Interpret requirements for a diagnosis on a C&P documentation protocol.
- Exemplify functional impact statements for evaluated disabilities.
- Recognize requirements for a medical opinion.

This lesson was about activities that take place after the examination. The examiner may need to order diagnostic tests before completing the exam report. The exam report itself is comprised of one or more documentation protocols. Panel, why is the exam report so important?

Tina Skelly: "The exam report is important because this is what VBA actually uses to rate the case."

Dr. Oliva: "I agree. My main takeaway is, a thorough, well-written report that addresses all issues noted on the 2507 is what VBA needs to adjudicate the claim."

Tina Skelly: "DBQs are streamlined medical examination forms designed to capture essential medical information for purposes of determining entitlement to compensation disability benefits.

Thank you. Tina, what is VBA looking for in the examination report?

Tina Skelly: "VBA is looking for descriptive medical documentation of the condition being examined, and the impact the condition has on the veteran's daily life. We're also making sure that any questions we have requested of the examiner have been addressed.

I'd like to ask the examiners, what comes to mind first about filling out a documentation protocol?

Brenda Howard: "Answering all the questions on the DBQ. Most DBQs will ensure that examiners provide a diagnosis, history, examination, any associated diagnostics, and address the extent of functional impairment associated with the condition. I would like to emphasize that we have answered all the questions on the exam request fully. We don't want to be ambiguous. And if there's a medical opinion requested, obviously we want to provide the opinion that was asked for, with the supporting documentation and clinical evidence. If diagnostics are required, then the results are included in the final report."

Tina, the examiners talked about Functional Impact statements that are added to each documentation protocol. Because there is a question about functional impact for each condition examined, how does VBA use Functional Impact statements?

Tina Skelly: "Documentation protocols ask whether the veteran's condition impacts his or her ability to work. This is important because it provides VBA raters a more complete picture of the veteran's function, since VBA benefits are intended to compensate for average loss of earning potential, due to service connected conditions. The examiner should answer this question based on the veteran's ability to perform typical occupational duties such as bending, standing, sitting, walking or lifting, regardless of whether the veteran is currently working."

Thank you panel for sharing your experience and insights with clinicians taking this course.

### **Course Summary**

You've completed the lessons in this course. Review the content that was covered in each lesson below.

#### **Lesson 1: How Are C&P Examinations Different?**

Lesson 1 explained that every C&P examination is a clinical and legal examination conducted within the process of developing a Veteran's or Service-member's claim for benefits. It covered

- how VHA, VBA, and BVA are involved in the C&P claims process,
- the purpose of a C&P examination,
- the audience for the documentation of the examination, and
- how an examiner should interact with a Service-member or Veteran.

### **Lesson 2: C&P Process and Terminology**

Lesson 2 described your role as an examiner within the five-step C&P disability claims process. Since C&P examinations are legal as well as clinical in nature, terms commonly used by VBA from the United States Code (USC) and Code of Federal Regulations (CFR) were defined. Terms included direct service connection, presumption of soundness, and lay evidence, to name a few.

In addition, Lesson 2 introduced several court cases that have been incorporated into the vocabulary used in C&P clinics because they have influenced how C&P examinations are conducted and documented. For example, case names such as *Correia*, *Deluca*, and *Saunders* are commonly read or heard on the job.

### **Lesson 3: Prepare for a C&P Examination**

Lesson 3 focused on reviewing documentation related to a C&P examination including:

- · the Request for Examination from VBA,
- the claimant's eFolder, and
- the documentation protocol(s) for the examination.

Lesson 3 explained how examiners use different information from each kind of documentation as they prepare for a C&P examination. For example, the Request for Examination can ask for examinations that are conducted by generalists or specialists, and it could request examinations for Servicemembers in addition to Veterans. The eFolder is reviewed to gather history for the examination, and documentation protocols indicate the kinds of measurements and evaluations needed for the examination.

### **Lesson 4: Conduct a C&P Examination**

Lesson 4 introduced DMA and VBA guidelines for C&P examination, including opening the exam by explaining the purpose of the C&P exam, taking the history, and staying within exam parameters as set by the Request for Examination and the documentation protocols. As well, you were introduced to policies that apply for special circumstances such as when a claimant brings a

companion or wants to record an examination, what to do about noted or suspicious conditions discovered during an exam, and when chaperones are required for sensitive examinations.

A change in the scope of the examination and hence, the claim, can happen during an examination. Lesson 4 content explains the difference, supported by a video in which subject matter experts share their insights. This lesson also compares topics you should discuss or avoid discussing with the Veteran or Service-member as you close the examination.

### **Lesson 5: Complete Your C&P Examination Report**

When a C&P examination appointment ends, you need to complete the documentation protocols that comprise the examination report. Lesson 5 provided guidance for this task by explaining:

- DMA guidelines for documenting a C&P examination, including clinical quality checklists
- requirements for a diagnosis
- how to write functional impact statements
- the basic requirements for a medical