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**STATEMENT OF
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FOR THE RECORD OF THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
JULY 27, 2023**

Chairman Luttrell, Ranking Member Pappas and Members of the Subcommittee:

Thank you for inviting DAV (Disabled American Veterans) to submit testimony for the record of your oversight hearing titled, "VA Disability Exams: Are Veterans Receiving Quality Services?"

DAV is a congressionally chartered and VA-accredited national veterans' service organization of more than one million wartime veterans, all of whom were injured or made ill while serving on behalf of this nation. To fulfill our service mission to America's injured and ill veterans and the families who care for them, DAV directly employs a corps of benefits advocates called national service officers (NSOs), all of whom are themselves wartime service-connected disabled veterans, at every VA regional office (VARO) as well as other VA facilities throughout the nation.

Based on our experience with the VA claims process, we will address the question posed by this hearing as we discuss VA Disability examinations, the Veterans Benefits Administration's (VBA) Medical Disability Examination Office (MDEO), oversight and quality of exams, and the importance of license portability for examiners. We will wrap up this testimony with our recommendations and our concerns moving forward.

VA DISABILITY EXAMINATIONS

In order for veterans to receive their earned benefits, a claim must be established with the VA seeking service connection for specific conditions. Those claims are developed and adjudicated by the VBA. Per VA's fiscal year (FY) 2022 annual report updated in February 2023, over 360,000 new veterans and survivors started receiving VA disability compensation.

As a part of the development process, a VA veterans' service representative (VSR) determines if a VA exam is required for the specific claimed condition. The VA Compensation & Pension (C&P) examination process is a vital part of the claims process as it can be determinative of the existence of a current condition, or if the

veteran's illness or injury is related to their active military service or specifically, the severity of that condition.

In many cases, the VA exam is the linchpin to establish or deny a claimed benefit. However, if a veteran fails to appear for an exam or it is cancelled and not rescheduled, this can result in denial of benefits. For example, if a scheduled examination is not completed, it will be returned to VBA for review by a VSR to determine if the case is ready to rate. It is then assigned to a rating veterans' service representative (RVSR) for review and a decision. In this instance, the case would be decided based on the evidence of record without the benefit of medical evidence from a completed exam, which will usually result in a denial of the claimed benefit.

In other instances, a missed or cancelled exam can lead to a reduction of benefits. A re-examination or routine future examination (RFE) will be requested whenever VA determines there is a need to verify either the continued existence or the current severity of a disability. Veterans for whom reexaminations have been authorized and scheduled are required to report for such reexaminations. If a veteran does not report for the exam or it is cancelled and not rescheduled, VBA will issue a decision proposing to reduce the disability in question.

VA C&P exams are of a unique importance and missed or cancelled exams can negatively impact a veteran's claim and disability rating. If a negative decision is rendered based on a missed or cancelled exam, the veteran cannot simply request to reschedule the exam. At this point, the veteran is required to submit a supplemental claim requesting a new exam for the claimed conditions, thus requiring additional time, development, and a new scheduled exam for a new VA rating decision.

VBA'S Medical Disability Examination Office

Starting in 1996, as part of a pilot program, VA was authorized to complete disability exams from non-VA medical sources to increase its capacity and improve timeliness, but stipulated no more than 10 VAROs could participate. These contract exams, originally managed by the Veterans Health Administration (VHA), were expanded from 10 to 15 VAROs between 2014 and 2016.

In 2016, VHA officially transferred to VBA the national compensation and pension disability exam contract and program management. VA established VBA's MDEO to manage and oversee contractors, monitor their performance, and ensure that they meet contract requirements, while enhancing the prompt delivery of disability benefits claims and improve the disability exam experience for veterans. The disability contract exam program was also expanded to allow all VAROs access to use the mandatory contract exam program starting in FY 2017.

The contracts for the vendor-provided VA examinations require a specialized focus on three areas: quality, timeliness and customer satisfaction. The examiners for the vendors are required to complete the same training as provided to VHA examiners.

In reference to the timeliness, the contract exams are required to be completed within 20 days generally, or within 30 days for specialized exam requests outside of the vendor's network.

The Pandemic's Effect

The enormity of the impact of the COVID-19 pandemic will be felt for years to come with continued lessons learned. In November 2020, the VA Office of the Inspector General (OIG) report "Enhanced Strategy Needed to Reduce Disability Exam Inventory Due to the Pandemic and Errors Related to Canceled Exams," made the following findings:

- VBA discontinued in-person exams to protect veterans
- Protective measures contributed to VBA's exam inventory growth
- VBA prepared for increased use of telemental health and ACE exams
- VBA's use of telehealth was limited by the need for a telepresenter for some exams
- VBA prematurely or improperly denied claims based on canceled exams
- VBA needs to further develop and test its strategy to address the inventory of exams

At the beginning of the pandemic, there were roughly 140,000 pending VA exam requests with an average of 21 days to completion. Despite challenges posed by the pandemic, in 2022, the MDEO reduced the contract medical examination pending inventory from 258,000 to 189,195. Overall in 2022, contract vendors completed 1,844,399 exam requests.

The contract vendors continue to increase their volume of completed exam requests each month, resulting in a decrease in the excess inventory of examinations. The MDEO forecasts contract medical examination vendors will complete medical disability exam requests for over 3 million veterans in 2023 and over 3.3 million in 2024.

Given this surge of exams, DAV is greatly concerned with quality of the VA exam process, whether exams are conducted by contract examiners or the VHA.

OVERSIGHT AND QUALITY OF VA EXAMS

VA examinations, with the exception of certain specialty exams, are conducted by vendors through the MDEO. As noted, this increased utilization began in 2017. VBA must be providing adequate oversight to ensure the vendors are providing quality exams. This has been problematic in the past.

In the 2018 Government Accountability Office (GAO) report, “Improved Performance Analysis and Training Oversight Needed for Contracted Exams,” GAO found the following:

- VBA reported contractors missed exam quality targets and VBA could not accurately measure performance on timeliness targets;
- Delayed quality reviews and performance reports and data limitations hinder BA’s monitoring of contractors;
- VBA’s data limitations hinder its ability to oversee certain contract provisions;
- VBA did not conduct comprehensive performance analysis; and
- Although the auditor verified contracted examiner licenses, VBA did not verify training completion or collect information on training effectiveness.

In November 2018, at the House Veterans’ Affairs Subcommittee on Disability Assistance and Memorial Affairs hearing, “Exploring VA’s Oversight of Contract Disability Examinations,” VBA acknowledged the problems outlined by the GAO report and concurred with it.

In June 2019, the VA OIG released its report, “Inadequate Oversight of Contracted Disability Exam Cancellations.” This report was based on essentially the same time period as the 2018 GAO report and identified similar issues with the oversight of the VA contract examination process.

At the September 2019 House Veterans’ Affairs Subcommittee on Disability Assistance and Memorial Affairs hearing, VBA noted that VA contract examination quality is evaluated quarterly and the results are used to identify training needs and provide feedback to contractors. It also addressed the need to improve delivery and tracking of training requirements for examiners. Further, it was noted that all vendors were achieving an overall customer satisfaction rating of 90%.

The VA OIG report of June 2022, “Contract Medical Exam Program Limitations Put Veterans at Risk for Inaccurate Claims Decisions,” found that VBA governance of and accountability for the contract medical disability exam program needed to improve. The deficiencies noted stemmed from limitations with VBA’s management and oversight of the program at the time of the review.

The OIG further concluded that VBA’s MDEO was deficient because it did not hold vendors accountable for correcting errors and improving exam accuracy. However, the OIG did determine that MDEO performed quality reviews correctly. The MDEO’s results were substantiated by the report, estimating that MDEO reached the correct

conclusion on at least 95.1% of reviews completed in 2020. The June 2022 OIG report made the following recommendations:

1. Assess and modify contracts and any renewals to ensure that vendors can be held accountable for unsatisfactory performance by applying monetary disincentives.
2. Assess and modify contracts and any renewals to ensure procedures are established for vendors to correct errors identified by the MDEO.
3. Implement procedures requiring the MDEO to communicate exam errors to the Office of Field Operations and the regional offices and demonstrate progress in correcting the identified errors.
4. Implement procedures requiring the MDEO to analyze all available error data and provide systemic exam issues and error trends to vendors.

At the time of the report, the VA's Acting Under Secretary for Benefits concurred in principle with recommendations 1 and 2, provided information on actions taken—in particular, executing new contracts—and requested closure of the recommendations. Additionally, VBA concurred with recommendations 3 and 4 and provided an action plan to address each recommendation. VBA's responses to the recommendations follow:

- Recommendation 1. On October 1, 2021, VBA executed new contracts that hold vendors accountable for unsatisfactory performance through application of monetary disincentives, referred to as negative incentives. A negative incentive is assessed on a quarterly basis if the contracts' combined timeliness and production performance requirement levels are not met. VBA considers this recommendation fully implemented and requests closure.
- Recommendation 2. VBA executed contracts that include established procedures for vendors to correct errors identified by MDEO. The contractor must take corrective action when examination deficiencies are identified and provide the corrective action to VBA upon receipt of the request. VBA considers this recommendation fully implemented and requests closure.
- Recommendation 3. VBA initiated development of procedures that refer disability benefits questionnaire errors from MDEO to the Office of Field Operations for review.
- Recommendation 4. MDEO will work with Compensation Service to identify a process to receive error trend data that is a result of incorrect exams. MDEO will also develop a procedure for obtaining and assessing rework data. MDEO will analyze both data sets to identify systemic exam issues and communicate those error trends to vendors.

Recently, MDEO noted they are meeting twice a week with vendors for executive and operations concerns and monthly to specifically address quality of exams directly with vendors. Additionally, the office noted that veteran satisfaction with exams is nearly 96%. Comparing the reports from 2018 to recent information, the quality and veteran satisfaction with exams has vastly improved.

DAV has met directly with the vendors on the issue of quality within the past 45 days. All of the vendors have provided us with their own internal quality review processes, which we believe has added to the improved quality of VA contract exams. We also believe that in the expansion of the license portability has improved the VA contract exam process and provided exams to rural and underserved veteran populations.

IMPACT OF LICENSE PORTABILITY

Enacted in 2016, Public Law 114-315, section 109, “Improvements To Authority For Performance Of Medical Disabilities Examinations By Contract Physicians,” notes that a physician may conduct an examination pursuant to a contract, at any location in any state, the District of Columbia, or a Commonwealth, territory, or possession of the United States, so long as the examination is within the scope of the authorized duties under such contract. A physician is defined as one who has a current unrestricted license to practice the health care profession of physician.

This allows contract exam vendors to provide examining physicians to rural areas that may not have examining physicians available in their state or territory. The provision speaks only to physicians and psychiatrists; however, it did not include other licensed health care professionals such as nurse practitioners, clinical psychologists, and other clinical health care professionals that are qualified to conduct VA examinations.

In our testimony before this Subcommittee in September 2019, we recommended to amend Public Law 114-315, section 109, to include licensed health care professionals such as nurse practitioners, clinical psychologists, and other clinical health care professionals, to conduct VA contract examinations at any location in any state, in the same manner as physicians.

In January 2021, the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 granted certain types of VBA-contracted examiners temporary authority, until January 2024, to conduct exams in states other than those in which they hold a license.

The GAO report of June 2023, “Actions Needed to Clarify Program Requirements Regarding Examiners,” looked specifically at this temporary portability used by contracted examiners. VBA officials and vendors said that the temporary expansion of license portability expanded access in underserved areas.

The report noted that the guidelines VBA provided to its contracted exam vendors included inaccuracies and VBA conducted inadequate monitoring of the vendors. This contributed to vendors allowing ineligible examiners to conduct exams using license portability. For example, VBA incorrectly listed dentists as eligible for license portability in the guidelines it provided to vendors. This contributed to two of VBA's three vendors using dentists to conduct exams in states other than where they were licensed.

Additionally, GAO's review found that one vendor used optometrists to conduct exams in states other than where they were licensed, which VBA officials said was not permitted. VBA acknowledged these errors and agreed with the GAO recommendations for correction.

The report also showcases the impact of the expanded license portability. Vendors were able to send examiners to rural and high-need areas that did not have enough examiners to meet local demand. One vendor said license portability allowed them to continue serving veterans when natural disasters disrupted the availability of examiners in the affected states. For example, this vendor reported using license portability to send mobile clinics to Florida following Hurricane Ian in September 2022.

Another vendor said license portability helped them serve more veterans living on tribal lands. All three vendors said expanded license portability helped them serve incarcerated veterans. Officials from one vendor said reaching these veterans historically has posed a challenge because not all examiners are willing to physically enter a prison, and license portability allowed them to use examiners willing to do so.

Recent information from MDEO indicates that this license portability expansion in January 2021 has resulted in 1,462 providers completing over 150,000 medical appointments and nearly 425,000 disability benefits questionnaires (DBQs). As part of this VA exam discussion, it is clear that license portability has increased service to rural and underserved veterans.

DAV RECOMMENDATIONS AND CONCERNS

The totality of our testimony shows how vital the VA exam process is to ensure that veterans are obtaining the benefits and health care they have earned. Additionally, it displays the issues with the MDEO and vendor examinations in the past through the reports of the VA OIG and GAO. It also shows the improvements and progress that VBA has made. To this end, we have the following recommendations about the VA exam process moving forward, to include:

- **Continue Oversight on Quality**—As early as 2018, the VA OIG and GAO reports clearly outline deficiencies within MDEO and VA contract exams. Since that time, notable improvements have been made. However, we recommend that Congress and VA OIG continue to vigilantly provide oversight to ensure quality is being maintained and improved upon. Exams can be the determinative factor on

whether a veteran receives benefits; therefore, quality exams, regardless of who provides them, will always be of concern.

- **Extension of license portability**—The provision of license portability has had a positive impact for veterans living in rural areas and tribal lands, and for incarcerated veterans, all while assisting in reducing the backlog of exams which has a direct impact on the backlog of claims. We are greatly concerned that this temporary portability ends in January 2024.

DAV recommends the immediate introduction and passage of legislation to extend this portability on a permanent basis. Additionally, as it was noted, not all medical professionals are covered within the existing portability; therefore, we recommend that all medical professionals that are able to conduct VA exams within VHA be included in the permanent extension of license portability.

- **Validate veterans' experience in the examination process**—DAV has received feedback from our National Service Offices around the country in reference to VA exams. The number one complaint from veterans regarding contract exams was that they felt the exams were not thorough enough; next was that examiners were not knowledgeable about the veteran's claim at the time of the exam. While these two complaints may not speak to the actual quality and thoroughness of the VA contract exams, as required by VA; they do speak to the perception of veterans about the quality and satisfaction of VA contract exams.

We acknowledge the recent reporting from MDEO of a 96% veteran satisfaction rating for contract exams. However, based on the perception of veterans we noted above, we recommend that VBA continue to address the customer satisfaction with their contractors, but also include VHA, and conduct surveys or town hall-like events to communicate directly with veterans concerning their satisfaction with VA examinations.

There have been many discussions and ongoing debates on who provides a more quality exam, VHA professionals or contractors. Many believe that returning the VA disability exam process to VHA will eliminate veterans' negative perceptions on the quality of exams. We have concerns.

- **Data for a comparison does not exist**—Prior to 2017, VHA was the predominant provider for VA disability exams. VA was not capturing the data that is currently required of contract examiners. So, a look at VHA versus contract provided exams cannot be conducted to arrive at an impartial decision. Over the past several decades, DAV has reviewed all types of VA disability examinations and have not taken a side in this debate, as we believe, that regardless of who provides the VA disability exam, quality, accuracy and timeliness are the most important aspects for veterans claims.

- **VHA does not currently have the capacity**—Currently VHA has over 40,000 health care vacancies that need to be filled; thus, VHA does not have the current staffing or capacity to take over the VA disability examination process.

We are aware of the June 23, 2023, memorandum from the VHA Undersecretary for Health. It encourages VA Medical Centers to return to providing VA disability exams at the levels prior to the pandemic, based on existing resources and staffing levels. Given these parameters, it does not indicate that VHA will be taking over the VA disability exam process from contract vendors.

- **Increasing in the VA claims backlog**—Currently, VBA has over 800,000 claims pending and more than 250,000 are backlogged, which means they have been pending over 125 days. The incoming PACT Act claims have exceedingly increased the number of claims, thus the current number of pending claims. If VHA were to take over the VA disability exam process, given its shortfalls in staffing, this would almost certainly increase the number of backlogged claims, requiring veterans to wait even longer for VA claims decisions. This would create a crisis that is completely avoidable.

Mr. Chairman, we believe that DAV's recommendations would help to improve the quality of VA exams and importantly—the overall veteran experience.

In conclusion, the VA exam process is integral to the VA claims process. By continuing oversight of the VA disability exam process, we will ensure that veterans are obtaining the benefits and health care they have earned. We urge this Subcommittee to take immediate action on extending and expanding license portability to provide VA exams in all areas, specifically for rural and underserved veteran populations.

This concludes my testimony on behalf of DAV.