



**Montgomery County Commission on Veterans Affairs
Meeting Summary Minutes
February 19, 2019**

I. Call to Order & Introductions

Wayne Miller, Vice-Chair, welcomed everyone to the meeting of the Commission on Veterans Affairs (CVA). Wayne asked for all present to stand for the Pledge of Allegiance and to remain standing for a moment of silence for all of those who have given their lives and those who have been wounded for our country in the different conflicts in which our country has been engaged. A POW/MIA Empty Chair is placed at all official meetings of the Commission as a physical symbol of the thousands of American POW/MIAs still unaccounted for from all wars and conflicts involving the United States of America.

II. Approval of Minutes

A motion was made to approve the November 2018 Meeting Summary Minutes. The motion was seconded. A vote was taken, and the November 2018 Meeting Summary Minutes were unanimously approved.

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Approved minutes are available online at www.montgomerycountymd.gov/cva.

III. VA Claims Process – Paul Sullivan, Director of Veteran Outreach, Bergmann & Moore Law Firm

Bergmann & Moore Law Firm (BMLF) was founded 15 years ago by two former VA attorneys. It is now the largest law firm in the country with a staff of 70 that only does VA claim appeals and offer representation at all levels of VA's claim appeals process: Regional Offices, Board of Veterans' Appeals (Board), U.S. Court of Appeals for Veterans Claims (Court), and the U.S. Court of Appeals for the Federal Circuit. They represent Veterans all over the United States, in Puerto Rico, and even Veterans who live abroad. All consultations are done over the phone or via email so there is no need for the Veteran or family member to live near their office location.

BMLF represents the American Legion, Veterans of Foreign Wars, Vietnam Veterans of America, AMVETS, and the State of California, at no cost to any of these veteran service organizations (VSO) or to the Veteran.

There are three steps to the claims process. First the Veteran files their claim with their VA Regional Office. If their claim is denied, the Veteran can file an appeal with the Board of Veterans' Appeals. If their claim is denied again, the Veteran can then appeal with the Court of Appeals for Veterans Claims.

The Equal Access to Justice Act, enacted in 1980, authorizes that an individual can take a case to court and as long as that person prevails the government will pay reasonable attorneys fees. BMLF is able to provide no cost services to the Veteran because they represent the Veteran for attorney fees and are able to prevail nearly all the time. Cases are carefully reviewed by two lawyers to decide whether the case should move forward with an appeal. The Veteran is in control of their case and can be represented by BMLF, represent themselves, or they can find another attorney.

If an appeal is made, BMLF will find the mistakes in the claim and make a motion to the VA. The VA will either grant the claim or remand it, which means it is sent back to the Board of Veterans' Appeals or to the Regional Office.

Currently, there are 500,000 Veterans with a VA disability claim appeal. The average wait to is 5 to 10 years depending on where the claim is in the cycle.

Paul is a Gulf War Veteran. His DD-214 said his service was in S.W.A. (Southwest Asia). Because it did not specifically list Iraq, Kuwait, Desert Storm, or Gulf War, when he applied for benefits the VA Clerk said he was not eligible because he did not go to war. Many Gulf War Veterans were experiencing common symptoms relating to neurological and respiratory problems at numbers higher than expected. In 2005, he helped to form the National Gulf War Resource Center, which pushed through the Persian Gulf Veterans Act of 1998 with the help of the Vietnam Veterans of America. The law is modeled on the Agent Orange Act and expanded the treatment, research, and benefits for the 700,000 veterans of the 1990 - 1991 war. Paul noted that the Federal government now spends \$20,000,000 per year on congressionally directed medical research as a result of the Persian Gulf Veterans Act. It also provides five years of free care for every Veteran who went to a war zone going back to the VA without having to first file a claim.

In 2000, the VA hired Paul as a Project Manager where he created a system of data collection for the VA for the first time in real time that enabled them to identify who was going to war, when they were discharged, and all the healthcare and benefits they were using at the VA. If a servicemember goes to a war zone, they are tagged with data fields that follow them around the rest of their time with the VA so they can keep track of how many people are filing claims, what they are filing claims for, and the data can be sorted into gender, medical issue, armed forces, and more. This data is being pulled from the Veterans Benefits Administration, Veterans Health Administration, Vet Centers and comes from Department of Defense once a quarter.

From this data, they know that if a servicemember in the Reserves was activated, sent to war, and discharged the person is two or three times more likely to have their claim denied due to missing records. Paul was also able to monitor what was happening in Walter Reed and Bethesda during the Iraq War. DoD deployed more medical personnel to the war zone and more servicemembers were surviving. When they were flown back for care, there were fewer doctors. Paul advised the VA in 2003 and in 2004 that the situation was unsustainable. This resulted in reports in 2007 that Veterans were living in dilapidated buildings waiting months to see doctors at Walter Reed and Bethesda. Paul reported to the Pentagon several times to show them via data the implications, but the VA had no advance planning. It is simple supply and demand. There were not enough doctors, claims processors and clerks to handle the tidal wave of new patients and claims. There were more patients surviving with more severe conditions putting a greater strain on the VA care and claims processing.

After leaving the VA, Paul created the Veterans for Commonsense, an all-volunteer organization that focuses on VA access and VA and DoD accountability as well as issues including VA funding, suicide, toxic exposures, DoD/VA medical research, and Veterans education. In 2007, Paul was the lead plaintiff for VFC when they sued the VA for failing to provide prompt and adequate medical care to a Veteran who committed suicide. During this time, the VA was turning away Veterans seeking care because there was no one available at the facility at that time to provide acute mental health care. From the lawsuit, every single VA facility when open must now have a suicide prevention counselor on call. The VA also established the toll-free Veterans crisis hotline – 1-800-273-8255, Press 1. Over the last 12 years, 4,000,000 Veterans have called this hotline and 100,000 Veterans have had emergency medical professionals dispatched to the Veterans location for immediate emergency care. Paul noted that Veterans are still committing suicide at a higher rate than civilians. Joanna Starling, Montgomery College, noted that HBO is currently airing a documentary called "Crisis Hotline: Veterans Press 1".

Paul also worked as Deputy Secretary of Communications for the California Department of Veterans Affairs for several years.

Using data from the VA, Paul worked with Professors from Harvard and Columbia to extrapolate the average cost of a Veterans care over the course of their lifetime. The average cost of an Iraq or Afghanistan Veteran is about \$1,000,000 for the next 40 to 50 years for that Veterans lifetime. Over 3,000,000 servicemembers were sent to the war zone and about 60% are using VA benefits. Approximately 1,800,000 servicemembers will be pushing \$2,000,000,000,000 in expenditures by the VA. This is an average cost. Some Veterans with a rating of 100% receive about \$40,000 a year while the average Veteran is rated about 30% will receive about \$500 a year. The average healthcare costs are \$10,000 to \$11,000 per year.

There are about 19,000,000 living Veterans. The VA receives 1,400,000 claims per year, and that number is expected to increase as Gulf War and Vietnam Veterans increase in age. Approximately 10% of Veterans appeal their first decision which means the VA receives 140,000 new appeals per year. There are currently 500,000 claims pending at the VA.

When the American Legion completed a review of the VA claims process a few years ago, it was estimated that the VA makes a mistake in about 30% of VA rating decisions for disability compensation. Some are minor errors, but those with more significant mistakes that the Veterans appeal. One issue is inadequate record keeping. This is one reason why computerizing VA records is very important. While the VA and DoD are doing a much better job of tracking what soldiers have been exposed to, it is in the Veterans best interest to write on their exam exams any symptoms, diagnoses or tests that were had during their service to create a contemporaneous record. This will become especially helpful for that Veteran if they develop medical problems 10 to 15 years down the road. BMLF began training American legion service officers last year on this very issue. They are also actively working with the Pentagon to increase training for transition meetings when the Veteran re-enters civilian life. DoD has improved their exit form that lists certain symptoms and conditions, but they have been asked to include a section that the Veteran can write down more information.

Veterans receiving discharges other than honorable (“bad papers”) has multiplied by 5 since WWII. Since 9/11 “bad papers” have exceeded 100,000. These individuals are losing their benefits or have a hard time accessing them. There is pushback from the VA that including more information on an exit form will allow for a Veteran to more easily file a claim. For each soon-to-be 1,000 Veterans not filing for their benefits, the government has saved \$1,000,000,000 for lifetime care and benefits.

Another issue resulting in a claim being denied is many Veterans, especially Gulf War and Vietnam, will try to get benefits under presumptive service connection, which is a list of medical conditions that the VA presumes were caused by military service. In some cases, the Veteran may be able to qualify for the benefit on a direct service connection basis. For example, a surviving spouse’s claim is denied when the Veteran died from glioblastoma (brain cancer). The VA does not have this on their presumptive list and many Veterans or survivors will not file. They should be instructed to file anyway and have the claim denied, then find independent medical advice that states the glioblastoma is of a higher incidence for Vietnam Veterans exposed to Agent Orange, and convince the VA to win the claim on a direct service connection basis. The VA is supposed to consider any reasonable raised theory of how a Veteran can receive their benefits, but the claim may be reviewed using the wrong method to grant service connection.

The VA will also mistakenly grant the claim effective date as the date the VA made the decision. The claim effect date should be the day the claim was filed.

The VA may also low-ball ratings for mental health claims. Suicide ideation, if there have been repeat instances, should automatically receive a 70% rating, yet Paul has seen claims where the VA will only grant 10% to 20%. The VA should not be doing personality disorder determinations. For most mental health cases regarding Veterans, the trauma is supposed to be associated with military service.

Regarding post-traumatic stress disorder (PTSD), political appointees under President George W. Bush's administration did not believe PTSD was a real diagnosis and they ordered a review of more than 1,000 random Veterans rated at 100% for PTSD. They found zero cases of fraud. The level of fraud within the VA is next to negligible as the VA makes sure that the Veteran is really entitled and eligible for the benefits they receive.

Paul stated that the best thing a Veteran can do before filing a claim is to talk to an accredited VSO and not to do it alone. The VSO should review the Veteran's medical records, ask about current medical conditions, see what evidence exists for a claim, and if necessary, request that someone write a "buddy statement" to corroborate on the medical condition. If the VA denies the claim, then appeal.

When a Veteran appeals to the Board of Veterans' Appeals in DC, about three-quarters of those claims are either granted or remanded and sent back to the local regional office because of a VA mistake. Of the remaining quarter that who appeal to the court, about three-quarters of those appeals are granted or remanded back to the Board and then ultimately to the local regional office. When a Veteran appeals, the likelihood of the veteran prevailing is extraordinarily high and if the Veteran has an advocate, they have a much better chance of winning.

The floor was opened to questions.

Does the DoD exit questionnaire include burn pit exposure? It currently does not, but they are working with them to make that change. The form, though, is a dramatic improvement from previously. Dan said that many first-term servicemembers cannot receive benefits due to conditions or symptoms that the VA deems existed prior to service. Dan advised that those entering the military be cautious when discussing medical conditions as it could be used against them later.

Who does BMLF train? They train the American Legion at the department level for all their states as well as the VFW, VVA, and AMVETS. They recently completed training on the new VA Appeals Improvement and Modernization Act that went into effect today. The new law modernizes the current claims and appeals process, includes three review options for disagreements for decisions, requires improved notification of VA decisions, provides earlier claim resolution, and ensures the Veteran receives the earliest effective date possible.

Why does a VA doctor have to provide the medical decision for a Veterans claim if the Veteran has been receiving medical care for years and their own doctor or trained Vet Center professionals can provide a diagnosis? If a Veteran files a claim for PTSD, VA has reserved in VA's regulation that they have the right to ask the Veteran to be examined by a VA Compensation and Pension Examiner before the VA can grant the claim. This again stems from the belief that there is rampant fraud in PTSD claims. Unfortunately, sometimes these exams are completed by medical professionals that have limited experience dealing with combat Veterans. Also, it may take a Veteran many sessions to talk about combat stressors and they are only given one 45-minute exam. If a Veteran's claim is denied for PTSD or their rating is lower than expected and they have been getting treatment from a Vet Center, the Veteran should appeal the decision and submit that information.

A comment was made regarding the Army's Transition Assistance Program (TAP). Michael Wilson noted that the Army discusses with soldiers who are transitioning into civilian life what they need to consider when filing their claim. Paul said that as the Deputy Secretary for California, he found that even as soon as a few months after discharge Veterans had completely forgotten their TAP briefing. Veterans who sign up for reminders are more likely to use their benefits. California Department of Veterans Affairs holds refresher TAPs where Veterans can receive information and file claims.

Michael also noted that he has seen over the past several years the growth of consultants that sell Veterans the belief that they can assist them with their claim for a fee. Paul stated that this is not allowed under the law – a Veteran cannot pay someone to help them fill out their claims. If such an individual or firm is found to be doing so, they should be reported to the VA's Inspector General.

Until the law changed in 2010, only 20% of Vietnam Veterans used their VA benefits. Only 30% of Gulf War Veterans serving since 1990 used their benefits, but the VA was expecting less than 20%. For Iraq and Afghanistan Veterans serving since 2003, 60% are using their benefits. The main reasons are multiple injuries and more deployments. The chances of a claim being filed go up each time the Veteran is deployed. Each time the economy crashes Veterans file claims because they lost private health care insurance and/or income.

Big changes came with two measures that President Obama took in 2010. New fact-based, science-based regulations for conditions related to Agent Orange, including heart disease, Parkinson's and B cell Leukemias, were added to the presumptive list. With this new regulation, 500,000 new claims came into the VA. New fact-based, science-based regulations were changed for PTSD making it easier for Veterans to receive health care and benefits. With this new regulation, several hundred thousand new claims were received by the VA.

In 2010, the Institute of Medicine came out with scientific research that associated deployment to a war zone with an increased risk of PTSD. This research was based on generations of scientific study. Previously, the VA required the Veteran to have had actively engaged in combat with the enemy and to have earned certain medals in order to approve their claim. Yet the determining variable for PTSD is deployment to a war zone. In the study it was noted that suicide and depression were also associated with deployment to a war zone. Paul sat in on meetings with VA officials asking the VA to make PTSD, depression, and suicide automatic disability benefits. The VA agreed only to PTSD, changing the wording to deployment, and only if the Veteran is reviewed by a VA doctor. This change helped 500,000 Veterans in about two years get their claim approved. Once the Veteran's claim is approved their health care use goes up. The VA said that depression would bring too many claims and cost too much money, and they never want to make suicide associated with service or be an incentive for a Veteran to receive benefits. It is a moral dilemma.

Phil Munley, Director of Service and Benefits Program, Maryland Department of Veterans Affairs (MDVA), introduced Joseph Thornton, the new Veterans Benefits Specialist (VBS) for Montgomery County. Joseph was previously working in Prince George's County. His office is located at Montgomery College Rockville Campus, 51 Mannakee Street, Mannakee Building, Room MK251, Rockville, MD 20850. He can be reached Monday through Friday, 7:30 a.m. to 3:30 p.m. at 240-567-5405 (V) or joseph.thornton@maryland.gov. Joseph provides outreach at the Silver Sprint Vet Center the 2nd and 4th Friday of every month.

IV. Discussion of Maryland Military Coalition (MMC) Legislative Agenda – Col. Bob Norton, President

MMC February 2019 Legislative Agenda:

https://montgomerycountymd.gov/HHS-Program/Resources/Files/A%26D%20Docs/CVA/MMCLEGISUPDATE_19FEB.pdf

The MMC has 13 members on the coalition at this point in time representing 100,000 out of the approximately 460,000 military-connected individuals in Maryland.

Bob shared an updated legislative goal sheet for the MMC. They are actively involved in testifying and are getting ready for upcoming hearings. The items listed on the sheet are not the only bills they are following. Brian Smith, Legislative Director, sends daily e-mail summary of all bills in Maryland relating to Veterans, the military community, and survivors.

Betsy Luecking, Staff, asked if MMC was in support of [HB043 / SB0853 – Maryland Police Training and Standards Commission – Police Officer Certification – Eligibility \(Freedom to Serve Act\)](#) which would alter the eligibility requirements for an individual to be certified by the Maryland Police Training and Standards Commission as a police officer to require an individual to be either a United States citizen or a permanent legal resident of the United States who is an honorably discharged veteran of the United States armed forces and who has applied to obtain or affirms an intent to obtain United States citizenship within 10 years of the employment start date; etc. Montgomery County Police Chief Tom Manger spoke before the Commission in December 2018 asking for support of this bill. As of today, no Veterans groups have come forward in support. Bob noted that the bill has been sent to everyone in the coalition and will be discussed at the March meeting. He is personally in support of the bill and will be sending out a letter of support tomorrow to the coalition for individual organizations to use if they choose. Any Commissioner can write a letter of support of the bill as a private citizen.

Betsy asked for input on [HB1170 / SB0528 – Behavioral Health Services Matching Grant Program for Service Members and Veterans – Establishment](#) that would award certain grants to non-profit organizations to establish and expand certain community behavioral health programs. Betsy is one of several staff that provides comments on bills for the Department of Health and Human Services (DHHS) on how the bill will impact the County. Bob stated that this bill may be related to SB0521 – Veteran Suicide Prevention – Comprehensive Action Plan. If Commissioners have thoughts on this bill, please let Betsy know.

V. Chair and Vice-Chair Reports

Dan Bullis, Chair, reported Neil Greenberger has followed-up with him and Betsy on what topic the Commission has chosen for their first outreach awareness campaign. They are focusing on the VA Gaithersburg Community-Based Outpatient Clinic (CBOC) and working with them to write up a snapshot or overview of the CBOC's services and current patient data.

VI. Announcements

Stan Siedel, Maryland Veterans Commission, announced [HB0672 / SB0810 – Housing – Local Housing Grant Program for Homeless Veterans and Survivors of Domestic Violence](#) would provide certain grants to counties to house homeless veterans and survivors of domestic violence. Betsy asked for Stan to write up his position on this bill and send it to her for distribution. Stan also discussed MDVA Secretary Owings and his intention of installing a second Veterans home in Maryland. The current counties included in this discussion are Anne Arundel, Montgomery County, and Prince George's. The facility would be 150-bed. Secretary Owings is asking for 35 acres of land, which may be a VA requirement. He is interested in speaking with County Executive Marc Elrich. Dan and Betsy discussed getting them connected for a meeting. Secretary Owings will be presenting before the Commission at the March 19th meeting.

Betsy had Thank You flyers printed for all those involved in the Vietnam Veterans Memorial that was dedicated in May 2018. She will be e-mailing copies to the family members that attended. Please contact her if you would like one.

The Women's Legislative Caucus of the Maryland General Assembly will be hosting a [Women's Veterans Day](#) on March 13th from 8:30am to 2pm in Annapolis.

Dan announced the American Legion is hosting a job fair on February 22nd. He also announced the Supreme Court will be having a hearing on the Maryland WWI Memorial on February 27th.

Scott Schlesinger, Veteran, announced Jewish War Veterans has approved a new post in Camp Hill. It currently has 25 active members.

The National Desert Storm and Desert Shield War Memorial site will be dedicated on February 26th. The memorial will be built near the Lincoln Memorial and the Vietnam Wall.

Phil announced the VA is now accepting claims for "blue water" Vietnam Veterans who are now considered to have been exposed to Agent Orange. Congress has passed a measure that requires the VA to automatically assume about 90,000 veterans who served in ships off the coast of Vietnam were exposed to Agent Orange for benefits purposes. The VA has the ability to appeal this decision, but Phil is encouraging those Veterans to file their claims now. He also announced the VA will no longer be sending yearly automatic employment verification letters to Veterans. They will now only be sent to Veterans who reported income during the last year to the IRS.

Adjournment: 7:50pm

Next Full Commission Meeting: Tuesday, March 19th, 2019 from 6pm to 7:30pm at the Department of Health and Human Services, 401 Hungerford Drive, 1st Floor Conference Room, Rockville, MD 20850

Respectfully submitted:

Carly Clem, Administrative Specialist I

Betsy Luecking, Community Outreach Manager