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Predatory Practices and VA Claims Representation

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Did you know that only individuals and organizations accredited by the Department of Veterans Affairs (VA) may assist Veterans and their families with VA benefits claims? Did you also know that there are statutory restrictions on when fees can be charged for claims representation?

The VA believes that all Veterans and their families deserve qualified, competent representation on their VA benefits claims. Sadly, each year we receive numerous complaints about questionable conduct relating to claims preparation, and too often the conduct that is being complained about is outside the scope of the VA's enforcement authority over accreditation. The VA strives to join forces with state and federal enforcement authorities to address conduct that appears to be harmful to Veterans but is currently beyond the VA's reach. Through collaborating on criminal and civil prosecutions, we send the message loud and clear that preying upon Veterans for your own financial gain will not be tolerated.

Federal Law and General Overview

Congress granted the VA the authority to accredit representatives of Veterans Service Organizations (VSOs), attorneys, and claims agents to ensure that Veterans receive responsible, qualified assistance in the preparation, presentation, and prosecution of their VA benefit claims.¹ Under these provisions, the VA's Office of General Counsel (VA OGC) administers the Accreditation Program. There are four major components of the VA OGC's Accreditation Program: (a) approving initial accreditation applications, (b) monitoring accredited individuals, (c) investigating complaints, and (d) removing accreditation, when necessary.

Predatory Practices That VA Alone Cannot Effectively Address

To the extent the VA OGC receives complaints regarding the quality of representation provided by a VA-accredited attorneys, agents, or VSO representatives, we have procedures in place to initiate inquiries and proceedings to suspend or cancel their accreditation.² In other areas, however, the VA's enforcement authority is much more restricted. The VA has limited authority to police conduct relating to an accredited individual's "other-business interests," and even less to curtail activities by unaccredited individuals and organizations.³ A few concerning areas are:

¹ 38 U.S.C. § 5902-5904; 38 C.F.R. § 14.626-14.636.

² 38 C.F.R. § 14.633.

³ In December 2006, Congress amended 38 U.S.C. § 5905 to repeal the criminal penalty for charging unlawful fees to Veterans for representation on their benefits claims. See Pub. L. No. 109-461, § 101(g), 120 Stat. 3403, 3408 (2006).

- **Financial Planners** who promise to qualify ineligible Veterans by repositioning assets with financial products not always in the Veteran’s best interest and inaccurately represent that as the “only way” to qualify for the VA pension benefit. These individuals often tie the offer of free claims assistance to their for-profit products.
- **Home care Entities** that offer free claims assistance as a ruse to lock Veterans and their families into long-term contracts for sub-par homecare services. In some cases, the home care entity offers to file the VA claim for the Veteran while fronting home healthcare costs, and then charges the Veteran when the VA claim is not approved.
- **Pre-Filing Consultants**, who attempt to avoid the law⁴ that prohibits charging Veterans a fee for claims preparation, by disguising their fee as a charge for “general information about federal benefits,” and claiming that the benefit claim is filed “free-of-charge.”
- **Post-Filing Contract Management** involves a promise to file the benefit claim “free-of-charge,” but then demands payment for a questionable contract management fee on the backend to oversee future communications with the VA.

Because there are limitations on the VA’s ability to address complaints about these potential predatory practices against our nation’s Veterans, we strongly value our relationship with state and federal enforcement authorities.

VA Collaborations with State Attorneys General Offices/Agencies

The VA has had success stories with state attorneys general offices in fighting those who attempt to scam elderly Veterans related to their VA benefits claims. For example, the Michigan Attorney General enforced the state’s Consumer Protection Act by reaching a settlement with a home care entity targeting elderly Veterans regarding the VA pension benefit; the organization agreed to cease recruiting new clients in Michigan, pay for cost of the investigation, and donate a significant sum of money to Michigan VSOs. The Washington State Attorney General investigated an unaccredited individual charging Veterans for his services, under the Washington Pension Poacher Prevention Act, resulting in a consent decree with the individual agreeing to pay restitution and costs and attorney’s fees. Most recently, VA initiated a cancellation proceeding based on a referral from the New Mexico Regulation and Licensing Department’s Securities Division after they entered into a settlement agreement in which the claims agent agreed to surrender his insurance license and pay a large fine for violating the New Mexico Uniform Securities Act.

Going forward, the VA’s accreditation program welcomes partnering with state attorneys general offices to protect Veterans from predatory practices by enforcing state laws, regarding consumer protection, elder abuse, and the unauthorized practice of law. We look forward to collaborating with more attorneys general offices in order to help protect Veterans from scams and unlawful conduct. We kindly request that your offices inform our office of any ongoing investigations that relate to representation for VA benefits, use us as a resource in your prosecutions, and widely publicize all prosecutions involving predatory acts against Veterans as a deterrent to other potential predators.

⁴ 38 U.S.C. § 5904(c)(1); 38 C.F.R. § 14.636(c).

For more information on the VA OGC Accreditation Program, see:
<https://www.va.gov/ogc/accreditation.asp>

Each month, the Center for Consumer Protection will provide an article written by an assistant attorney general. If you would like to provide an article, please email Blake Bee at bbee@naag.org.