

Date: **AUG 21 2007**

From: Acting General Counsel (02)

Subj: Litigation Hold Memo – Veterans for Common Sense – (WebCIMS 388033)

To: All Administrations, Staff Offices, and Key Officials

1. This memorandum provides important information concerning VA's obligation to preserve information and data relevant to the litigation in Veterans for Common Sense et al. v. Nicholson et al., Case No. C 07 3758 SC (N.D. Cal. filed July 23, 2007). It is imperative that each office disseminate this information to its staff and designate a point of contact for the Office of General Counsel to assist us in ensuring compliance with the requirements of this litigation hold.
2. On July 23, 2007, Veterans for Common Sense (VCS) and Veterans United for Truth (VUT) filed a class action lawsuit in U.S. District Court for the Northern District of California, against VA, various VA officials in their official capacity, the Chief Judge of the U.S. Court of Appeals for Veterans Claims and the U.S. Attorney General, both in their official capacity. The lawsuit raises broad challenges to the laws, policies, and procedures VA employs in determining eligibility for and providing disability compensation and medical care benefits.
3. As part of this lawsuit, we anticipate that plaintiffs will use the discovery process to seek information and data pertaining to the subjects of this lawsuit, including information and data related to:
  - a. Claims adjudication (including appeal) policies and procedures at: regional offices (including the Appeals Management Center); the Board of Veterans' Appeals; the U.S. Court of Appeals for Veterans Claims; and the U.S. Court of Appeals for the Federal Circuit
  - b. Disposition of claims
  - c. Expediting claims adjudication in emergency situations
  - d. Claims processing times at each stage in the adjudication process
  - e. The destruction or alteration of claims records, files, or evidence
  - f. Policies and programs providing incentives to increase claims adjudication production, including information related to awards granted based on such policies and programs
  - g. Communications from the Veterans Benefits Administration to adjudication staff that could be construed as exerting pressure to increase production

2.

All Administrations, Staff Offices and Key Officials

- h. Special policies, regulations, and rules governing adjudication of PTSD-related claims
- i. Adjudication of claims of veterans discharged from service with a diagnosis of "personality disorder"
- j. Policies and procedures related to the adjudication of total disability based upon individual unemployability (TDIU) claims
- k. The provision of medical care to veterans seeking and receiving compensation for mental health issues
- l. Screening for, and treatment of, mental health issues in troops returning from combat zones
- m. Policies and procedures governing access to VA medical care and services provided to veterans
- n. VA's capacity (physical and staffing) to provide health care services to veterans (including waiting and appointment scheduling times)
- o. Mental health services available to veterans who are, or believe they are, suffering from mental health issues
- p. Statistical evidence concerning the prevalence of mental health issues among OIF/OEF veterans
- q. Policies, procedures, and statistics related to suicide of mentally ill veterans
- r. Formulation of the budget related to claims adjudication
- s. Formulation of the budget related to the provision of health care

4. **VA is under a legal obligation to preserve all records and information relevant to the litigation wherever located in the Agency.** Materials generated before and after the filing of this lawsuit are covered. The Office of the General Counsel requires your assistance in preserving VA information in this matter. **Failure to preserve records and information described in this memorandum could result in sanctions against the Department and you personally in the litigation.**

5. Responsive records and information to be preserved include: writings; records; files; correspondence; reports; memoranda; calendars; diaries; minutes; electronic messages; voicemail; E-mail; telephone message records or logs; computer and network activity logs; hard drives; backup data; removable computer storage media such as tapes, disks, and cards; printouts; document image files; Web pages; databases; spreadsheets; software; books; ledgers; journals; orders; invoices; bills; vouchers; checks; statements; worksheets; summaries; compilations; computations; charts; diagrams; graphic presentations; drawings; films; charts; digital or chemical process photographs; video; phonographic tape; or digital recordings or transcripts thereof; drafts; jottings; notes; and information that serves to identify, locate, or link such material, such as file inventories, file folders, indices, and metadata.

3.

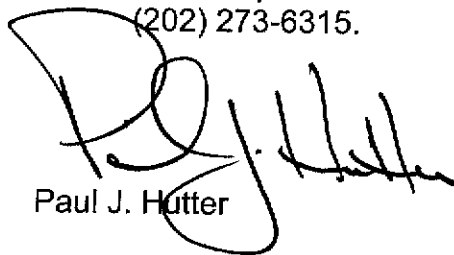
All Administrations, Staff Offices and Key Officials

6. We stress that the records and information preservation requirement applies to ***all*** responsive information maintained by VA, including information on computer systems, removable or portable electronic media and other locations, including your personal computer or electronic storage devices if used to access, create, store, send or receive VA records on these subjects in performance of your official VA duties.
7. All electronically stored information (ESI) must be preserved *in its original format*. In other words, if the electronic draft of a document is in Word®, the document must be preserved in that format. This requirement includes preserving all copies of information. Please take note that you should ensure that relevant backup tapes and all indexes to those tapes are preserved until further notice. ***If retaining backup tapes of any kind could entail significant costs for any VA component, please contact Michael G. Daugherty or Christopher McNamee at (202) 273-6315 immediately.*** Be prepared to provide a good faith cost estimate, including the daily, weekly, and monthly costs, of retaining backup tapes subject to this litigation hold memorandum. The Office of General Counsel is working with the Office of Information Technology to identify and address covered ESI systems containing relevant information and data and will provide further guidance, as needed, concerning these systems.
8. You must immediately notify the appropriate technical personnel responsible for operating the systems that store your responsive electronic records or who are responsible for storing your paper or other hard-copy records of the need to preserve the records, including advising them that they are not to destroy any responsive records, including e-mail, until advised by the Office of General Counsel that they may resume destruction of records.
9. The duty to preserve information and data extends to non-VA entities that may be storing records for VA. It also includes, but is not limited to, VA contractors, contract health providers, and researchers that may have relevant VA data or information that is the subject of this litigation. Please notify such individuals and entities of this litigation hold.
10. If there is doubt as to whether information is covered by this memorandum, preserve the information until you have consulted with the Office of General Counsel attorneys identified below. Please do not delete or destroy any information that may be subject to this litigation hold without first obtaining clearance from your Regional Counsel or Central Office Professional Staff Group that regularly advises you on legal matters.

4.

All Administrations, Staff Offices and Key Officials

11. Employees must take every reasonable step to preserve this information until further notice from the Office of General Counsel. **You are responsible for informing all employees of the need to preserve information related to this hold.** You are also responsible for providing Christopher McNamee, by e-mail, the name and contact information of the individual assigned to coordinate, distribute, and implement this litigation hold memorandum no later than August 22, 2007.
12. The individual assigned will be responsible for coordinating distribution of this litigation hold memorandum and documenting and certifying the actions taken by your organization to comply with this memorandum. **Once identified, the assigned individual will be provided further instructions for notifying VA employees and documenting their receipt of this notice.** The individual assigned will also compile a list of employees who have been identified as having information related to this litigation.
13. If you know of someone who is not an addressee of this memorandum or under supervisory control of an addressee of this memorandum and who may have responsive records, promptly notify one of the attorneys listed in paragraph 15 of this memorandum about these other individuals and entities, why you believe that they may have information subject to this litigation hold memorandum, and how to reach them, if you know.
14. The Office of General Counsel will provide additional guidance on this matter as it becomes available.
15. If this memorandum is unclear in any respect or additional guidance is desired, please contact Michael G. Daugherty or Christopher McNamee at (202) 273-6315.



Paul J. Hutter