

To: Robert McDonald
Secretary
US Department of Veterans Affairs
810 Vermont Avenue, NW,
Washington, D.C.

December 16, 2014

From: Eric Lee Hughes
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Mr. Secretary,

It is prohibited by [18 U.S.C.S. § 2071](#) to conceal, remove, or mutilate a public record. It has come to my attention that a substantial number of the Department's C&P mental health examiners, are concealing from your attention, the government, and the public their discourse regarding how PTSD C&P exams are conducted. The concealment comes in the form of what is called a Wiki, or user edited database of information, held in the cloud. The specific location of this wiki is <http://cpexaminers.wikispaces.com>.

As it is a password protected site that is held outside of the government computer system, it is impossible to directly know the contents without being an insider. However, I have discovered from the [November 13, 2012](#) post on the [Association of VA Psychologist Leaders Early Career Committee](#) facebook page that Mark Worthen, Psy.D. (Charles George VA Medical Center) Brad Brummett, Ph.D. (VA Central Western Massachusetts Healthcare System) are the sites administrators. Ostensibly the purpose of the wiki is for VA C&P examiners to collaborate on methods and best practices regarding the manner in which to conduct a mental health C&P examination. On the surface, I question why it is necessary to conduct such a discussion outside of the VA's computer records management system. I see this as a violation of the *Transparency* clause of [38 C.F.R. § 0.602\(a\)](#) because the act of conducting official agency action on non-va computers is a clear attempt to avoid oversight and FOIA. But I grow even more concerned when I place this clandestine wiki in the context of Dr. Worthen's other websites.

At <http://www.ptsdexams.com/a-critique-of-ptsd-disability-assessment-by-marx-and-holowka-2011-in-ptsd-research-quarterly/> Dr. Worthen writes the following:

Army Medicine's [Policy Guidance on the Treatment and Assessment of Post-Traumatic Stress Disorder \(PTSD\)](#) [OTSD/MEDCOM Policy Memo 2012-035] states:

*Although there has been debate on the role of symptom exaggeration or malingering for secondary gain in DoD and VA PTSD Disability Evaluation System (DES) processes, **there is considerable evidence that this is rare and unlikely to be a major factor in the vast majority of disability determinations.** [emphasis added by Dr. Worthen]*

This statement could not be further from the truth, and it is a shame that a National Center for PTSD publication provided the justification for such an inaccurate assertion by Army Medicine.

*Despite the inestimable contributions of National Center for PTSD, if they have a **weak spot** [Emphasis added by Dr. Worthen] it is their penchant for minimizing or denying the extent to which veterans engage in misattribution, exaggeration, or feigning of PTSD symptoms during VA Compensation and Pension examinations (C&P exams) for posttraumatic stress disorder. The Marx & Holowka (2011) article exemplifies this denial and minimization.*

Indeed, Dr. Worthen states the following about the VAOIG 2005 report that found extremely low incidence of symptom exaggeration. His critique of the VAOIG report can be found here:

<http://www.ptsdexams.com/critique-of-ptsd-disability-assessment-by-marx-holowka-2011-part-2/>

2005 VA Office of the Inspector General (OIG) Report

*Citing the IOG Report as evidence for an exceptionally low exaggeration rate, as Marx & Holokwa (2011) did, **compares apples to oranges**. In this case the comparison is between:*

- 1) a potential crime (fraud); and*
- 2) symptom exaggeration during PTSD treatment evaluations or disability examinations.*

Dr. Worthen argues that in his summation symptom exaggeration is not a crime. Instead, the intentional exaggeration of symptoms is a kind of benefits fraud, and the kind of fraud that the VAOIG was investigating. This illustrates how little Dr. Worthen knows about the law. Indeed, Dr. Worthen is neither an accredited attorney nor a claims agent. He is a psychologist that pretends to know the law. That he is providing claims advice to C&P examiners without accreditation, and outside the scope of his employment by DVA, may be a violation of the intent of [38 U.S.C.S. §§ 5901-5902, 5904](#); [38 C.F.R. § 14.629](#).

Dr. Worthen writes the following in a 2011 online medical journal [“Psychological Injury and the Law”](#) under the subheading “Political Climate at the Department of Veterans Affairs”:

From a professional perspective, examiners have an obligation to conduct a fair, balanced, and impartial evaluation. A misguided attempt to “give the veteran the benefit of the doubt” ignores the facts, namely that there is an incentive to exaggerate or feign given the monetary reward for successfully fooling an examiner and receiving disability benefits. To ignore this incentive is naïve and unscientific as it denies the abundant scientific evidence to the contrary.¹

¹ Mark D. Worthen & Robert G. Moering, “A Practical Guide to Conducting VA Compensation

[38 U.S.C.S. § 5107\(b\)](#) clearly gives the veteran the “Benefit of Doubt”. Dr. Worthen, then is then on record of publicly proclaiming that Congress, the Courts and the Executive Branch are “misguided” in their efforts to afford the veteran deference. Likewise he directly contradicts the Secretary’s intent in adjudicating claims as expressed by [38 C.F.R. § 3.102](#). I argue this reflects an attitude that is contrary to [38 C.F.R. § 4.23 “Attitude of Rating Officers”](#) as well as the [ICARE initiative](#).

Dr. Worthen then cites within the above listed journal article a case were a psychologist at the VA was fired for developing to deny a veterans claim. He states:

VA officials at her site told this psychologist that “the use of instruments designed to detect feigning ‘do not give the veteran the benefit of the doubt’.” (Poyner, 2010, p. 131). This stance by at least these VA officials might reflect a misguided notion that C&P examiners are supposed to be providing clinical services, when, in fact, they are performing a forensic mental health assessment function. This political opposition to the assessment of feigning is not universal across VA facilities. However, if you encounter opposition, be prepared to explain in careful detail the importance of screening for exaggeration and feigning on empirical, ethical, professional, and public policy grounds.²

From his writing, it is clear the Dr. Worthen, Psy.D. and the other likeminded professionals he cites in his journal article, fail to grasp the long standing Congressional intent behind the VA claims process. Namely that at the level of the regional office, and in particular at the level of the examination the process is supposed to be non-adversarial and [uniquely pro-claimant](#)³ and any interpretive doubt must be resolved in the veterans favor as held in [Brown v. Gardner \(1994\)](#)⁴

Further, there is a clear focus within his writing that Dr. Worthen advocates the development of symptom exaggeration in an effort to deny or reduce a C&P disability claim. The Court of Appeals for Veterans Claims has addressed this issue of “developing to deny” in [Hart v. Mansfield \(2007\)](#). I quote the court:

The Secretary has a duty to assist a claimant by providing a thorough and contemporaneous medical examination when the record does not adequately reveal the current state of the claimant's disability. See 38 U.S.C.S. § 5103A(d)(1); Green v. Derwinski, 1 Vet.App. 121, 124 (1991); see also Caffrey v. Brown, 6 Vet.App. 377, 381 (1994). However, VA may not pursue such development if the purpose is to obtain evidence against the claim. See Mariano v. Principi, 17 Vet.App. 305, 312 (2003); see also 38 C.F.R. § 3.304(c) (2007) (development of evidence should not

and Pension Exams for PTSD and Other Mental Disorders” Psychol. Inj. and Law (2011) 4:187–216, 197 DOI 10.1007/s12207-011-9115-2

² Ibid

³ [Hodge v. West, 155 F.3d 1356, \(Fed. Cir. 1998\)](#), Indeed the phrase “[Uniquely pro-claimant](#)” is used to describe the Veterans Claims Process some 65 times by the courts. Thus importing an adversarial mindset from the insurance defense industry is contrary to the veterans right to due process. See, [Cushman v. Shinseki 576 F. 3d 1290 \(Fed. Cir. 2009\)](#).

⁴ [Brown v. Gardner, 513 U.S. 115, 115 S.Ct. 552, 130 L.Ed.2d 462 \(1994\)](#)

be undertaken when evidence present is sufficient for service connection determination). The record is inadequate and the need for a contemporaneous examination occurs when the evidence indicates that the current rating may be incorrect.⁵

Quite the contrary to the pro-claimant nature of the *Ex Parte* relationship of the C&P examiner and exam process to the veteran, Dr. Worthen's other website states, that in his private practice, he exclusively represents Insurance Companies and Prosecutors to oppose claims of mental disability. See: <http://www.drworthen.net/> There he states the following:

Civil Law

Private Insurance Disability - *If you represent an insurance company that provides long-term disability insurance, Dr. Worthen can help you determine if the claimant's psychological disability claim has merit. If not, he will provide information regarding successful deposition questions for the opposing expert witness.*

Workplace Discrimination or Sexual Harassment - *If you represent a company accused of discrimination or sexual harassment, Dr. Worthen will help you evaluate the legitimacy of an employee's claim of mental or emotional harm and help you prepare to depose the plaintiff's expert witness.*

Personal Injury - *If you are the defense counsel for a person, company, or agency accused of causing psychological harm to the plaintiff, Dr. Worthen can provide assistance with regard to evaluating the merits of the alleged mental/emotional harm and to prepare deposition or trial cross-examination questions of the plaintiff's expert witness.*

Criminal Law

Death Penalty - *Are you prosecuting a murder case in which the defense plans to present evidence of mitigating circumstances due to psychological disorders? Dr. Worthen can help you take apart such claims.*

Mitigating Circumstances - *Similarly, Dr. Worthen helps District Attorneys' prepare to cross examine defense experts who plan to testify about a defendant's alleged mental/emotional problems.*

Juvenile Transfer - *If you believe it is appropriate to transfer a juvenile who has committed a heinous crime to adult court but the defense plans to present expert witness evidence to the contrary, ask Dr. Worthen to help you dismantle their arguments.*

⁵ Hart v. Mansfield, 21 Vet. App. 505, 508 (2007)

Notice that in above quoted marketing material, Dr. Worthen makes zero effort to discuss his neutrality of position. Rather, he specifically only works for Insurance Companies, and Prosecutors in his private practice in their effort to refute a claim of mental disability. This is a far cry from the *“obligation to conduct a fair, balanced, and impartial evaluation”* he espoused in his Journal Article.

I argue that when an examiner goes into an examination proactively looking for signs of fraud, malingering, and falsification and sees himself as government’s defender against the same, the process cannot help to be anything but an adversarial endeavor. I believe this creates an ‘us vs. them’ mentality that drives the very behavior Dr. Worthen claims he is trying to prevent. This mentality among experts that the Independent Medical Examiner’s foray into the claims process needs to be adversarial comes from the very lucrative insurance defense industry where many VA C&P examiners moonlight their skills in their private practice. I strongly believe that it is a conflict of interest for a C&P examiner employed by DVA to moonlight as an expert witness in the insurance defense industry. Such a practice SHOULD be prohibited by [5 C.F.R. § 2635.805](#).

Mr. McDonald, in the [VA ICARE PowerPoint](#) presentation you are quoted as saying *“Our commitment to serving Veterans must be unquestioned.”* Respectfully, based on my research, I question the commitment C&P psychological examiners have to serve veterans when they moonlight as expert witnesses for insurance defense lawyers. The adversarial mentality required for insurance defense is contrary to the pro-claimant nature of the veterans’ claims process. I do not believe an examiner can “switch on and off” their mentality towards a claim depending on who their employer is in a given case. Dr. Worthen’s blog presents one example.

On [November 16, 2014](#) Dr. Worthen wrote the following, *“Hi, When I started this Mental Health Compensation and Pension Exam Newsletter, I indicated that I would not address policy issues. I realize now that my passion for policy is as strong as my interest in education. It's simply too hard for me to divorce the two.”* With the discovery of the Wiki I called your attention to at the beginning of this letter, I believe that there is a conspiracy among C&P examiners to deprive veterans of the Ex Parte examination that due process of law entitles them to. While the access to the specifics of empirical psychological testing should be limited in order to keep tests valid, in a free and democratic society secrecy should not extend to the process of law under the guise of preserving a professional secret.

I understand that these issues are inconsistent with the pro-consumer transformation you enacted upon your appointment. I would appreciate it greatly if you give them the attention that they are due.

Sincerely,

Eric Lee Hughes
Accredited Veterans Claims Agent # 28162

