



Vets affected by VA hospital errors to file claims

Some now have HIV, hepatitis after being exposed to infectious body fluids

By Bill Poovey

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CHATTANOOGA, Tenn. - An attorney is preparing to ask the U.S. Department of Veterans Affairs to pay disability benefits and damages for hospital mistakes that may have exposed veterans to infectious body fluids — a complaint that he said could ultimately multiply into many more such demands.

The attorney, Mike Sheppard of Nashville, said he is preparing to file claims with the VA for about 60 veterans, including three women.

Among them are veterans who have tested positive for HIV and hepatitis and others who suffered emotional distress after the VA provided them with initial positive blood tests for infections that turned out to be wrong. Sheppard also said other veterans among the roughly 10,000 affected former patients at VA hospitals in Murfreesboro, Tenn., Miami and Augusta, Ga., are likely to seek compensation beyond the VA's offer of free medical care.

"I've gotten calls from all over the country," he said.

Sheppard said he will file medical malpractice and emotional distress claims with the VA within 30 to 45 days. He said veterans and veterans' relatives who have contacted him by phone from Florida and elsewhere likely have sought out other attorneys.

The claims process differs from a traditional malpractice lawsuit because the VA is a federal agency. The first step is to have the patient's claim reviewed by a VA regional attorney.

"A regional attorney will look at it and decide yea or nay," Sheppard said. "There is one level of appeal internally then you have a right to file a lawsuit in federal court."

The VA's regional counsel in Nashville, Tammy Kennedy, did not return telephone messages Friday and Monday seeking comment.

Records show that between fiscal year 2004 and March 2009 the VA denied 11,299 veterans' claims for compensation related to hospital and medical care, while granting 3,229 claims.

The VA denied 813 such claims filed by veterans' dependents, while granting 261 in the same period, records show.

The VA has offered free medical care to the affected veterans — but Sheppard said that's no more than they already expected. He said the requested compensation will vary greatly, depending on the veteran's age, ailments and other factors.

"It's a case by case basis," he said.

Updated records show that among the patients who have heeded VA warnings to get follow-up blood checks, eight have tested positive for HIV. Twelve former patients have tested positive for hepatitis B and 37 have tested positive for hepatitis C.

VA records show 9,141 veterans have received follow-up blood test results among the 10,320 former patients who were warned they might have even minimum risk of exposure.

The VA has said the errors were limited to the three facilities, but a report released by the agency's inspector general showed some more widespread problems. Investigators conducting surprise inspections in May found that only 43 percent of the agency's medical centers had standard operating procedures in place for endoscopic equipment and could show they properly trained their staffs for using the devices.

The VA has said for months that there is no way to prove that the positive tests for infectious diseases stem from exposure to improperly cleaned or erroneously rigged equipment while getting colonoscopies at Murfreesboro or Miami or while getting treatment at the ear, nose and throat clinic in Augusta.

In a statement, the VA expressed regret for the mistakes but also said the agency has aggressively dealt with them, including warning former patients who in some cases were treated five years ago to get follow-up blood tests. The statement also said veterans have been informed of their legal right "to submit disability claims on account of VA negligence."

The law that governs claims for compensation includes a "benefit of doubt" provision that in disputed cases give the claimant a favorable decision if there is an "approximate balance of positive and negative evidence."

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