Disability Benefits Questionnaires (DBQs) and Requesting Medical Opinions

Instructor Lesson Plan

Time Required: 2 Hours

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| Lesson Description |
| The information below provides the instructor with an overview of the lesson and the materials that are required to effectively present this instruction. |
| TMS # | 4201874 |
| Prerequisites | N/A  |
| target audience | The target audience for Requesting Medical Opinions is RVSR, EntryAlthough this lesson is targeted to teach the **RVSR Entry** employee, it may be taught to other VA personnel as mandatory or refresher type training. |
| Time Required | 2 hours |
| Materials/TRAINING AIDS | Lesson materials:* Disability Benefits Questionnaires (DBQs) and Requesting Medical Opinions PowerPoint Presentation
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| Training Area/Tools  | The following are required to ensure the trainees are able to meet the lesson objectives: * Classroom or private area suitable for participatory discussions
* Seating, writing materials, and writing surfaces for trainee note taking and participation
* Handouts, which include a practical exercise
* Large writing surface (easel pad, chalkboard, dry erase board, overhead projector, etc.) with appropriate writing materials
* Computer with PowerPoint software to present the lesson material

Trainees require access to the following tools: * VA TMS to complete the assessment
* Microsoft Lync
* VBA Schoolhouse
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| Pre-Planning  | * Become familiar with all training materials by reading the Instructor Lesson Plan while simultaneously reviewing the corresponding PowerPoint slides. This will provide you the opportunity to see the connection between the Lesson Plan and the slides, which will allow for a more structured presentation during the training session.
* Become familiar with the content of the trainee handouts and their association to the Lesson Plan.
* Practice is the best guarantee of providing a quality presentation. At a minimum, do a complete walkthrough of the presentation to practice coordination between this Lesson Plan, the trainee handouts, and the PowerPoint slides and ensure your timing is on track with the length of the lesson.
* Ensure that there are copies of all handouts before the training session.
* When required, reserve the training room.
* Arrange for equipment such as flip charts, an overhead projector, and any other equipment (as needed).
* Talk to people in your office who are most familiar with this topic to collect experiences that you can include as examples in the lesson.
* This lesson plan belongs to you. Feel free to highlight headings, key phrases, or other information to help the instruction flow smoothly. Feel free to add any notes or information that you need in the margins.
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| Training Day  | * Arrive as early as possible to ensure access to the facility and computers.
* Become familiar with the location of restrooms and other facilities that the trainees will require.
* Test the computer and projector to ensure they are working properly.
* Before class begins, open the PowerPoint presentation to the first slide. This will help to ensure the presentation is functioning properly.
* Make sure that a whiteboard or flip chart and the associated markers are available.
* The instructor completes a roll call attendance sheet or provides a sign-in sheet to the students. The attendance records are forwarded to the Regional Office Training Managers.
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| Introduction to Requesting Medical Opinions |
| INSTRUCTOR INTRODUCTION | Complete the following:* Introduce yourself
* Orient learners to the facilities
* Ensure that all learners have the required handouts
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| time required | 0.25 hours |
| Purpose of LessonExplain the following: | This lesson is intended to provide information about when and how to request a medical opinion. This lesson will contain discussions and exercises that will allow you to gain a better understanding of: * Disability Benefits Questionnaires (DBQs)
* Requesting medical opinions
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| Lesson ObjectivesDiscuss the following:Slide 2  | In order to accomplish the purpose of this lesson, the RVSR will be required to accomplish the following lesson objectives.Upon completion of the training and given access to appropriate resources, the RVSR will: * locate and identify appropriate DBQs for each body system,
* identify when an examination, a medical opinion, or both are required to fulfill the duty to assist, and
* determine appropriate medical opinion request types for a variety of claims.
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| Explain the following: | Each learning objective is covered in the associated topic. At the conclusion of the lesson, the learning objectives will be reviewed.  |
| STAR Error code(s) | B2, H1, H2, H3, H4, H5, H6 |
| ReferencesSlides 3 -5 | Explain where these references are located in the workplace.All CFR references are found in the [eCFR Website](https://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58).All Court references are found in the [Live Manual Website](https://vaww.compensation.pension.km.va.gov/).All M21-1 references are found in the [Live Manual Website](https://vaww.compensation.pension.km.va.gov/).* [38 CFR §3.159 Department of Veterans Affairs assistance in developing claims](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58)
* [38 CFR §3.303 Principles relating to service connection](https://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58)
* [38 CFR §3.304 Direct service connection; wartime and peacetime](https://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58)
* [38 CFR § 3.306 Aggravation of preservice disability](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58)
* [38 CFR § 3.310 Disabilities that are proximately due to, or aggravated by, service-connected disease or injury](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58)
* [38 CFR §3.326 Examinations](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58)
* [38 CFR §4.2 Interpretation of examination reports](https://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.4&rgn=div5)
* [38 CFR §4.6 Evaluation of Evidence](https://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.4&rgn=div5)
* [*Allen v. Brown*, No. 93-245, March 17, 1995](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm)
* [*Charles v. Principi*,No. 01-1536, October 3, 2002](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm)
* [*Duenas v. Principi*, No. 03-1251, December 15, 2004](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm)
* [*McLendon v. Nicholson*, No. 04-0185, June 5, 2006](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm)
* [*Jandreau v. Nicholson*, 492 F. 3d 1372, 1377 (Fed. Cir. 2007)](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014836/Jandreau-v.-Nicholson%2C-Jul-3%2C-2007%2C-492-F.3d-1372)
* [*Gardin v. Shinseki*, 613 F. 3d 1374, July 16, 2010](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=)
* [*Jones v. Shinseki*,23 Vet App. 382, March 23, 2010](file:///%5C%5Cvaww.vba.esp.va.gov%40SSL%5CDavWWWRoot%5Csites%5CSPTNCIO%5Cfocusedveterans%5Ctraining%5CVSRvirtualtraining%5CCurriculum%20Library%5C%28RVSR%20Challenge%29%20DBQ%20and%20Requesting%20Medical%20Opinions%20-%5CFinal%20Documents%5CDBQ%20and%20Medical%20Opinion%20Requests%20RVSR%20IWT_NEW_N.Atterole.pptx)
* [*Walker v. Shinseki*, No. 2011-7184, February 21, 2013](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm)
* [*Waters* v. Shinseki, No. 2009-7071, April 6, 2016](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm)
* [M21- Part I.1.C. – Requesting Records](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=)
* [M21-1 Part III, Subpart iv.3.A. – Examinations](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=)
* [M21-1 Part III, Subpart iv.5.A. – Principles of Reviewing Evidence and Decision Making](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014203/M21-1-Part-III-Subpart-iv-Chapter-5-Section-A-Principles-of-Reviewing-Evidence-and-Decision-Making)
* [M21-1 Part IV, Subpart ii.2.B: Determining Service Connection](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=)
* [M21-1 Part IV, Subpart ii.2.F: Compensation Based on Individual Unemployability](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=)
* [Disability Benefits Questionnaires Switchboard](http://vbacoweb03.dva.va.gov/bl/21/DBQ/default.asp)
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| Topic 1: Disability Benefits Questionnaires |
| Introduction | This topic will allow the trainee to understand key changes to the DBQ’s that pertain to medical opinions and additional information that affect the manner in which exams are requested. |
| Time Required | 0.5 hours |
| OBJECTIVES/Teaching Points | Topic objectives:* Given the appropriate references, identify the DBQs that contain medical opinions.
* Given the appropriate references, identify the DBQs that contain additional information for special issues.
* Given the appropriate references, identify the DBQs that are for internal use only.
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| Purpose of Examinations and Medical Opinions*Slide 6*DBQ OverviewSlide 7 | * Examinations and medical opinions are pieces of evidence that support *findings of fact*.
* Adjudicators use findings of fact to support *conclusions of law*.

 * To conclude service connection is warranted for a disability, evidence must establish a *standard of proof* to the level of *relative equipoise*.

***Talking Points:*** *This training covers the basics of examinations in the form of disability benefits questionnaires (DBQs) and medical opinions. Before beginning discussion on the DBQ overview, explain the purpose of these pieces of evidence to trainees. Reference M21-1 III.iv.5.A.1.**At its most basic level, a grant of service connection (to include the appropriate evaluation(s), the correct effective date(s), and the legal basis for the grant) is a conclusion of law based on findings of fact.**Findings of fact are true facts a decision maker finds to exist after analysis of all evidence of record. Conclusions of law are the ultimate determinations made regarding whether legal requirements defined by a claim are proven to the level of the appropriate standard of proof.* *In rating, findings of fact are numerous. For the purposes of this training, they include the symptoms found to exist on examination and in medical records (to conclude that a certain evaluation is warranted), and they also include medical opinions, which, in combination with a review of the pertinent evidence, can lead to the conclusion that a disability was incurred coincident with service in the Armed Forces.**Explain to trainees that evidence must meet a standard of evidentiary proof (qualitative in nature) to the level of relative equipoise – that is, evidence must persuade the decision maker that the fact is at least as likely as not (sometimes called 50/50 probability).* * DBQs (and other pieces of medical evidence) exist to answer the question “what percentage should I assign?”
* DBQs are derived directly from the disability rating criteria in the VA Schedule for Rating Disabilities.
* DBQs enable private physicians to provide disability assessment information.
* DBQs from private physicians may preclude the need for VA exams in many cases; however, weigh and evaluate all evidence – not just the DBQ.

***Talking Points:*** *Stress for trainees that the purpose of a DBQ, or examination, is different than the purpose of a medical opinion. DBQs are used to determine evaluations for service-connected conditions – in simple terms, they help us decide what percentage to assign for a disability if adequate medical evidence is not of record.**Prepare discussion of the first bullet point by having a DBQ at hand. Pull up the corresponding section of the rating schedule, and demonstrate how the DBQ sections correspond with evaluative criteria.* *Recall for trainees the importance of 38 CFR §4.6 in relation to this training – all pieces of pertinent evidence, whether they be a DBQ, private medical records, VA medical records, or lay or expert testimony, must be examined and afforded probative value in the claims process. RVSRs are responsible for review of all evidence prior to making a determination.Though certainly the easiest evaluation evidence to read, ease of use is not a valid reason to assign a DBQ more probative value over other medical evidence.* |
| Finding and Reviewing DBQs for Evaluation Criteria Slide 8 | * The [Disability Benefits Questionnaire (DBQ) Switchboard](http://vbacoweb03.dva.va.gov/bl/21/DBQ/default.asphttp%3A/vbacoweb03.dva.va.gov/bl/21/DBQ/default.asp) contains all internal and public use DBQs currently in circulation.
* The [Index of DBQ/Exams by Disability](http://vbacoweb03.dva.va.gov/bl/21/DBQ/DBQByDisab.asp) has a search function that can be a helpful starting point.
* The “[What’s New](http://vbacoweb03.dva.va.gov/bl/21/DBQ/whatsnew.asp?rows=200)” archive documents changes to DBQs from May 23, 2011 to the present day.

***Talking Points:****Demonstrate for the trainees how to access the DBQ Switchboard from the rating job aids page (first “book” on the left to access the index search, then “DBQ Switchboard” at the top right of the screen).* *Show trainees how the left column of internal DBQs differs from the public use DBQs in the right column – some examinations are not approved for public use, the general medical examinations, audiological, and initial posttraumatic stress disorder examination being the most common exclusions seen.**Note that while the search function is a helpful starting point, it is no replacement for a thorough knowledge of the DBQs themselves. For instance, inputting “knee” into the search bar provides five different DBQ options, only one of which is appropriate for a knee disability. Attempting a more concrete diagnosis like “patellofemoral pain syndrome” gives no results, but “chondromalacia patella” (essentially the same condition), gives the correct DBQ.**The “What’s New” link can be a helpful method of tracking DBQ updates – most recently for VASRD evaluative criteria changes.****Comprehension Check:*** *Ask the trainees for examples of DBQs not authorized for non-VA providers.*  |
| Evaluation of DBQ Evidence in Disability EvaluationSlide 9 | * Review the totality of the evidence in making disability determinations.
* It is improper to “exclude” evidence solely due to its source.
* Exercise the same weighing of probative value for internal-use DBQs  that are completed by a non-VA provider.

***Talking Points:*** *Remind trainees that the DBQ is one piece of evidence within the totality of the claims folder. Assignment of probative value is a required step of the evaluation of the totality of the evidence. The amount of probative value a piece of evidence has is determined by the competency, credibility, thoroughness, precision, relevancy, and date of the evidence.* *Whether a competent, credible source is a VA physician or a private physician has no effect on probative value. If an internal-use only DBQ is completed by a non-VA provider, the DBQ must still be assigned probative value based on the merits of the examination itself. It cannot be excluded due to the procedural incorrectness of the a non-VA provider being in possession of an internal form.*  |
| **Evaluation of non-DBQ Evidence in Disability Evaluation** Slide 10 | * Thoroughly review private and VA medical records (to include completed DBQs) submitted in support of a claim.
* Make a disability determination when the records are sufficient.
* Additional disability examinations will be requested when the available evidence is not sufficient to decide the claim.

***Talking Points:*** *This slide emphasizes the impact of 38 CFR §3.326 – specifically, that medical evidence accompanying a claim, whether submitted by the claimant or received from a federal records custodian, might render a claim ready for decision without the need of further examination or development. This scenario is frequently seen with cases of active, presumptive cancer, or increase claims for total arthroplasty – an examination would give the adjudicator no useful information that they do not already possess from the medical records.* |
| Insufficient ExmainationsSlide 11 | * Examinations lacking required information are insufficient for rating purposes.
* An *incomplete* examination is not necessarily *insufficient*.
* Return insufficient examinations to the examiner for resolution.
* Follow procedural guidance for returning examination reports through CAPRI, CAATS, and/or VBMS.

***Talking Points:*** *Examples of required information include the signature of the examiner, unanswered questions on the exam that are necessary to evaluate the condition, a medical opinion unsupported by a valid rationale, etc. (See M21-1 III.iv.3.D.3.)**Though an examination might be missing some information, that does not necessarily render it insufficient – for example, if the Heart DBQ neglects to provide a metabolic equivalents (METs) score, but also indicates the veteran has chronic congestive heart failure.* *Examinations lacking required information must be returned to the examiner – each examination provider (VHA through CAPRI, and contractors through CAATS and VBMS) has a different procedure for the return of examinations. Briefly show trainees the charts at M21-1 III.iv.3.D.3.e-f., noting that they will not encounter insufficient examinations until live case work in residency.* |
| Acceptable Clinical Evidence (ACE)Slide 12 | * Joint effort by VBA & VHA
* Allows VHA examiners to complete DBQs based on available records & by telephone
* Not available for contract examiners

***Talking Points:*** *The ACE initiative is designed to save time for both the Veteran and the VA by allowing VHA clinicians to review medical evidence in VAMC and eFolder records to complete DBQs. Examiners also have the option of obtaining information via telephone.**Explain that though there are some limitations, the discretion to use the ACE process usually lies with the VA examiner.* *Contractors are not permitted to use the ACE process, as they do not have electronic access to VAMC records outside of the VBMS eFolder.* |
| Examination Requests and ACESlide 13 | * Notes the use of ACE
* Specifically identifies evidence material to report findings or opinion
* Documents rationale for relying on ACE
* If insufficient exam, follow same DBQ process for insufficient in-person examination

***Talking Points:*** *Any DBQ completed using the ACE process must document the use of ACE (a checkbox on the DBQ), identify what evidence the examiner used to complete the DBQ, and provide a medical rationale for why ACE is appropriate.* *Adjudicators should thoroughly review the relied-upon records to ensure that there are no contradictions between the records and the DBQ.**If a DBQ completed via ACE is insufficient, the same procedural guidelines for returning an examination through CAPRI apply.* |
| Prohibitions on AceSlide 14 | * VBA specifically requires in-person exam
* BVA remand
* Pre-discharge claim
* Electronic medical records not available to VHA

***Talking Points:*** *Despite the general ability of VHA personnel to determine when the ACE process is appropriate, some prohibitions from VBA do apply.* *VBA requires in-person examinations for general medical examinations, female sexual arousal disorder (FSAD) examinations, and mental disorder examinations, to include medial opinions for conditions claimed secondary to a service-connected metnal disorder.**Remands from the Board of Veterans Appeals (BVA) and claims processed through BDD or IDES pre-discharge programs are also not suited to the ACE process.* *Finally, if the eFolder or the Computerized Patient Record System (CPRS) are unavailable to the VHA clinician, an ACE examination cannot be completed.* |
| Topic 2: Medical Opinions |
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| Introduction | This topic will allow the trainee to understand the process steps required to complete the Medical Opinion DBQ or multiple medical opinion requests in CAPRI and CAATS. |
| Time Required | 0.5 hours |
| OBJECTIVES/Teaching Points | Topic objective:* Given the appropriate references, identify the appropriate medical opinion for basic (reconciliation, direct, and secondary via causation) situations.
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| Medical Opinion OverviewSlide 15 | * Medical opinions exist to answer the question “what is the etiology of this disability?”
* Sufficient medical opinions have two components:
	1. an etiology determination, and
	2. a valid medical rationale

***Talking Points:*** *Medical opinions provide medical evidence to determine whether a current diagnosed disability has an etiology that supports a finding of service connection. Whether the adjudicator requests a nexus opinion for direct service connection or a progression opinion for a newly diagnosed disability, the underlying request is for evidence to define the etiology of the condition with a level of certainty to at least equipoise.**These determinations must be supported by a valid medical rationale – the examiner cannot simply state that evidence either reaches or does not reach the level of equipoise without also stating* why*.* *Remind trainees that if a medical rationale is contradicted by the medical evidence of record, it should be afforded no probative value (e.g., if an audiologist rationalizes that the Veteran’s tinnitus cannot be a result of military noise exposure because there are no complaints of tinnitus in the service treatment records, but the service treatment records contain a complaint of tinnitus, the opinion cannot be accepted because the evidence of record directly contradicts its rationale).*  |
| Specific Medical Opinions*Slide 16* | * Some specific purposes of medical opinions include:
	+ the reconciliation of conflicting medical evidence,
	+ establishment of a link (nexus) between current disabilities and events in military service,
	+ establishment of a causal relationship between separate disabilities, and
	+ establishment of permanent aggravation of a pre-existing or nonservice-connected disability by events in military service or service-connected disabilities, respectively.

***Talking Points:*** *Provide trainees with an explanation of each type of cited medical opinion – note that aggravation opinions are covered in later slides, so gloss over the last two points.*1. *The reconciliation of medical evidence opinion is required when the medical evidence provided appears to contradict itself and/or when an opinion on such evidence is unclear or absent.*

***Example:*** *The Veteran is service-connected for chronic adjustment disorder and files a claim for increase. An examination is ordered; the examiner diagnosis major depressive disorder, but does not indicate whether the new diagnosis is a progression of the service-connected diagnosis. A reconciliation opinion should be requested.*1. *The establishment of a link between a current disability and an event in military service is required for a finding of direct service connection.*

***Example:*** *The Veteran files a claim for a left knee condition. Service treatment records document left knee patellofemoral pain syndrome, and the Veteran provides a statement that his knee condition has continued since service and still bothers him. An opinion to determine whether it is at least as likely as not that the current condition is a continuation of the in-service complaint should be requested.*1. *The establishment of a causal relationship between separate disabilities is essential for a finding of secondary service connection (causation).*

***Example:*** *The Veteran is service-connected for left knee degenerative arthritis and files a claim for a back condition secondary to his left knee condition. An opinion to determine whether the back condition (if shown) is due to or caused by the left knee arthritis should be requested.* |
| Medical Opinion Requests Must Contain*Slide 17* | * The request for a medical opinion should be clear as to the specific information or opinion that is being requested.
* Direct the examiner to review the folder (electronic or paper), and provide a medical rationale for any opinion rendered.
* Identify pertinent evidence for examiner review.
* Most opinions should be requested using a legally recognized phrase (“is it at least as likely as not…”).

***Talking Points:*** *Remind trainees that the opinions they receive can only be so good as the opinion requests they input. If they are unclear as to what medical information the examiner should provide, it is likely the examiner will be unable to provide it.* *Examiners must review all evidence in the claims folder prior to rendering a medical opinion, but adjudicators are charged with identifying pertinent information in the claims folder for the examiner’s review – the clearer the adjudicator is in focusing the examiner’s review on only the pertinent evidence, the more likely it is that a clear opinion will result.**Though most opinion requests are phrased to request an equipoise determination, reconciliation of conflicting medical evidence is often an exception, requiring the adjudicator to identify the contradicting medical evidence and request resolution of the conflict.* |
| Improper Medical Opinion Requests*Slide 18* | * Legal determinations vs. medical determinations
	+ Is the right knee strain service connected?
	+ Is the current right knee strain at least as likely as not due to/caused by the right knee injury during active duty service?
* Use of VBA acronyms, abbreviations, or jargon
* Use of a biased tone or an indication that a particular outcome is preferred

***Talking Points:*** *Explain to trainees that adjudicators are legal professionals; examiners are medical professionals. Adjudicators make legal determinations, and examiners make medical ones.* *As shown in the example on the slide, service connection is a legal determination. An examiner cannot state that a disability is or is not service-connected. We ask examiners instead to determine whether it is at least as likely as not that a current disability is causally linked to the in-service event, and then assign probative value to that opinion after consideration of all pertinent evidence of record.**Use of VBA acronyms or jargon in an opinion request will likely result in confusion, as the examiners are not legal professionals familiar with our terms and abbreviations. Citing regulation or manual procedure to an examiner is equally pointless.* *Finally, remind trainees that they must remain objective when requesting a medical opinion. Use of a biased tone, slanting of the facts in the claims folder, or communication that VA prefers one outcome over another is not appropriate.* |
| Topic 3: Special Considerations |
| Introduction | This topic will allow the trainee to understand the criteria to order medical opinion requests on claims considered based on aggravation and when to order independent medical opinions. |
| Time Required | 0.5 hours |
| OBJECTIVES/Teaching Points | Topic objectives:* Given the appropriate references, identify the appropriate medical opinion and evidence requirements for aggravation claims.
* Given the appropriate references, determine the correct procedure for submission of an independent medical opinion (IMO).
 |
| Special Considerations for Claims Based on Aggravation*Slide 19* | * There are two types of service connection based on aggravation:
	+ Aggravation of a condition that pre-existed entrance into service under 38 CFR § 3.306
	+ Aggravation of a nonservice-connected disability by a service-connected disability under *Allen v. Brown* (38 CFR § 3.310(b))

***Talking Points:*** *The establishement of permanent aggravation by medical opinion is required in two instances – first, if a disability pre-exists active duty service, a medical opinion is required to determine whether an event during service permanently aggravated the pre-existing disability.* *Second, if a causal relationship between a service-connected and non service-connected disability cannot be shown in a secondary claim, we must determine whether the service-connected disability permanently aggravated the non service-conncted disability beyond its normal progression.**Remind trainees that the claimant need not claim aggravation for it to be considered. Veterans often claim direct service connection for conditions that pre-existed but were asymptomatic, such as pes planus.*  |
| In-Service Aggravation of Pre-Service DisabilitySlide 20 | * Permanent increase in severity beyond normal progression
* Two presumptions:
	+ the presumption of soundness
	+ the presumption of aggravation

 * Deduct the entrance disability evaluation from the current disability evaluation, unless..

***Talking Points:*** *At its most basic, this type of service connection is warranted when a condition that existed prior to enrance into service, commonly referred to as a “pre-existing condition,” is permanently aggravated by an event during active duty service. Note for trainees that some evidence of in-service worsening must be present before a medical opinion is appropriate.**Two presumptions must be considered here – first, the claimant is presumed sound on entrance except for disabilities noted on the entrance examination.* *Second, if an increase in disability during service is proven, it is presumed aggravated by such service unless the evidence shows the increase is due to the natural progress of the disease.**The presumption of aggravation necessarily requires medical evidence – a claims adjudicator lacks the medical competence to attribute an increase in disability to either an event in service or to the natural progress of the disease without speculating.* *Each presumption is rebuttable by clear and unmistakable evidence only. The presumption of soundness is unaffected by lay statements the Veteran made during active duty (although later statements post-service can and must be weighed in determining whether the presumption of soundness is rebutted).* ***Example:*** *The Veteran files a claim for bilateral pes planus; service treatment records document bilateral, asymptomatic pes planus on the entrance examination. Mild, symptomatic pes planus is shown on the discharge examination. A medical opinion is required to determine whether the in-service worsening represents a permanent aggravation not due to the natural progress of the disease.**If service connection is granted, deduct the evaluation based on symptoms at entrance from the current evaluation. If a 100 percent evaluation is appropriate, an entrance evaluation cannot be ascertained, or the entrance symptoms are consistent with a 0 percent evaluation, no deduction is necessary.* |
| **NSC, Secondary, or Allen Aggravation**Slide 21 | * Permanent increase in severity of an NSC disability due to an SC disability
* Medical evidence is required to establish a baseline, either:
	+ before onset of aggravation, or
	+ as soon as possible after aggravation before the date of evidence showing current level of severity.
* Deduct the baseline evaluation from the current evaluation in all cases.

***Talking Points:*** *In* Allen*,the Court held that entitlement to service connection on a secondary basis may be established when it is shown that a service-connected disability aggravates a non service-connected disorder. 38 CFR 3.310 was amended in 2006 as a result of this 1995 holding. Note for trainees that this type of opinion requires medical evidence documenting baseline symptoms before a medical opinion can be rendered.No exeamination or medical opinion should be requested without such medical evidence.**When a medical opinion is warranted, one of the easiest ways to determine the applicable deduction is to ask the examiner for the date of aggravation as shown by medical evidence. Deduct symptoms before or on that date from current symptomns to receive the NSC aggravation evaluation.**Remind trainees that the baseline must be deducted in* all *NSC aggravation cases, to include total evaluations, unlike pre-service disability aggravation’s caveats.* ***Example:*** *The Veteran files a claim for kidney disease secondary to diabetes mellitus, type II. Review of treatment records shows that nephropathy pre-existed the diagnosis of diabetes by at least a decade. An opinion as to whether the Veteran’s nephropathy was permanently aggravated beyond its normal progression by the diabetes should be requested.* |
| Independent Medical Opinions (IMOs) under 38 CFR § 3.328Slide 22 | * An IMO may be obtained from medical experts who are ***not*** VA employees, if warranted by the medical complexity or controversy of a pending claim.
* Regional offices, claimants, and representatives can request an IMO.
* Ulitmate determination of merit lies with Compensation Service (211)

***Talking Points:*** *First and foremost, explain to trainees that independent medical opinions are extremely rare. Almost all medical opinions can be provided by either VA medical center staff or contract providers.**If an IMO is required, either the rating activity or the representative will bring it to the attention of the VSCM, who will determine if it has merit. If yes, the VSCM will submit to the Policy staff of Compensation Service (211) to make an identical determination. Only then is the IMO submitted to the appropriate, non-VA provider.**Note that for IMO puproses, contractors are not a viable option, as they are hired in the service of VA and cannot be said to be entirely independent.* |
| Questions*Slide 23* | Ask the trainees if there are any questions. |
| note(s) | N/A |
| DEMONSTRATION | N/A |

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| Lesson Review, Assessment, and Wrap-up |
| IntroductionDiscuss the following: | The Requesting Medical Opinions lesson is complete. Review each lesson objective and ask the trainees for any questions or comments. |
| Time Required | 0.25 hours  |
| Lesson Objectives | You have completed the Requesting Medical Opinons lesson. The trainee should be able to: * locate and identify appropriate DBQs for each body system,
* identify when an examination, a medical opinion, or both are required to fulfill the duty to assist, and
* determine appropriate medical opinion request types for a variety of claims.
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| Assessment  | N/A |