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Communicator

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***Last Thursday of the Month
Unless Notified Otherwise!***



TIME & PLACE COMMITTEE

(Fresno County CVSO Charles Hunnicutt, Chair)

Dates & Locations of Upcoming Conferences



February 21-26, 2016
Holiday Inn, Sacramento CA



June 5—10, 2016
Doubletree Hotel
Bakersfield, CA



October Conference Info
TBD LATER

NewsLetter DEADLINE

**Last Thursday of the Month
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OUT OF THE NORM—ISSUE # 207

(A feature of the Education Committee by Mr. Norm Gillett, CACVSO Training Consultant)

In the December *Out of the Norm* column I gave a very brief overview of the Federal Tort Claims Act (FTCA) and its application to personal injuries or death suffered as a result of VA malpractice. This is not a veteran's or survivor's only recourse in such a circumstance, however. The FTCA is a general law, but there is also a specific law for VA malpractice—compensation or DIC under 38 US Code 1151 for additional disability or death as a result of VA examination, hospitalization, or medical or surgical treatment, *as if* it was service-connected. A veteran or survivor may choose to pursue either or both of these avenues, although the advice and counsel of an attorney is highly recommended.

In certain respects, the requirements of the two laws are similar: both must be for personal injury or death due to a negligent or wrongful act or omission, which must be committed by a government (VA) employee in a government (VA)-controlled facility, who is acting within the scope of his/her employment. An injury or death caused by the action or inaction of an independent contractor will not confer entitlement under either law.

There are also several significant differences in the two laws—for FTCA, whether an act was negligent is determined by the law of the state where it occurred, whereas entitling considerations under 38 USC 1151 are specified in the law and the implementing regulations (see 38 CFR 3.361 and 3.800), and are uniform throughout the country. Under FTCA it is not required that a claimant be present at the facility for a specific reason; he/she could be an innocent passer-by when the entitling event occurred, so long as he/she suffers an injury or death as a result. On the other hand, 38 USC 1151 and the implementing regulations specifically requires that the veteran be at the VA facility for the purpose of hospitalization or to receive examination or medical or surgical treatment; simply coincidentally being at a VA facility when a potentially compensable event occurs will not in and of itself establish entitlement to benefits.

An award under FTCA is a one-time payment, whereas compensation or DIC under 38 USC 1151 is paid monthly. A claim under FTCA may be settled or compromised for all or some part of the sum being claimed, but an award under 38 USC 1151 may only be for the rate of compensation specified by the Rating Schedule for that particular condition at that level of severity (in other words, all or nothing).

FTCA has a statute of limitations—the claim *must* be filed within the specified time or it will be dismissed. There is no time limit for a claim under 38 USC 1151, although the beginning date of entitlement is determined by whether or not the claim was filed within one year of the compensable event—if more than one year later, entitlement is from the date VA receives the claim. Finally, an award under FTCA is taxable income, while *all* VA monetary benefits, on any basis, are tax-free.

Although there may be some exceptions, there is a general prohibition against dual compensation—that is, payments from two or more Federal sources for the same service or for the same disability. This applies also when a claimant receives an award, settlement or compromise under FTCA and has established, or will establish, entitlement to compensation or DIC under 38 USC 1151 for the same disability or death. In such cases, the compensation or DIC payments for the compensable disability or death are withheld until the full amount of the FTCA award, settlement or compromise has been recovered. (This does not apply if the disability or death which is the basis of the FTCA claim is *actually* service-connected, rather than simply being compensable *as if* service-connected under 38 USC 1151.)

To sum up, a claim under the FTCA for disability or death arising from VA malpractice is *not* a veterans' benefits issue, and the VSO is well-advised to stay as far away from the matter as possible. If a client raises the issue, he/she should be referred to his/her attorney, or to the local Bar Association or Legal Aid if he/she does not have an attorney. On the other hand, a claim under 38 USC 1151 is specifically a veterans' benefits issue, and should be handled as any other veterans' benefits claim.

This Month's Featured County

Butte County is a county located in the U.S. state of California. As of the 2010 census, the population was 220,000. The county seat is Oroville. Butte County comprises the Chico, CA Metropolitan Statistical Area. It is located in the California Central Valley, north of the state capital of Sacramento. Butte County is known as the "Land of Natural Wealth and Beauty." Butte County is watered by the Feather River and the Sacramento River. Butte Creek and Big Chico Creek are additional perennial streams, both tributary to the Sacramento. The county is the home of California State University, Chico and of Butte College.



LEGISLATIVE ADVOCATE REPORT

PROPOSED RULEMAKING FOR COUNTY SUBVENTION PROGRAM

As you know, the California Department of Veterans Affairs (CalVet) is in the process of adopting regulations for the County Subvention Program. The formulation and adoption of regulations by a state agency must conform to the California Administrative Procedures Act (APA). As per the APA, CalVet released the proposed regulations to the public. The public then has 45 days to comment on those proposed regulation. December 28 is the deadline.

After seeking input from the CVSO's, the Association officially notified CalVet via letter of its concerns with various portions of the proposed regulations. Those concerns were also distributed to all CVSO's.

After December 28, CalVet can choose to amend the proposal based on the public's comments. If they are substantial changes, CalVet must make those changes available to the public again for 15 days. The Association has requested to be notified of any changes.

CalVet must then consider comments received during the 15-day comment period which is specifically directed to the proposed modifications. CalVet has the option of conducting more than one 15-day opportunity to comment on modifications, or it can adopt the regulations.

SUBVENTION VS. LOCAL ASSISTANCE:

Historically, these two terms have been used synonymously; "Subvention" by CalVet /CVSO's and "Local Assistance" by the Legislature. Jack Kirwan, CACVSO Budget Consultant has clarified the two terms:

Local Assistance funds are those monies appropriated by the Legislature to the counties to help with funding CVSO offices. Subvention is the act of distributing those funds. Also, the amount distributed is called subvention.

Without the Legislature appropriating and the Governor approving Local Assistance funds, there are no funds to distribute as Subvention to the counties. Therefore, we should all try to call them Local Assistance funds because this is what we are fighting to maintain every year.

VETERANS SERVICE ORGANIZATIONS; VETERAN OUTREACH GRANT FUNDING:

Legislation is being drafted to authorize CalVet to create a competitive grant process for Veterans Service Organizations to apply for funds to help outreach to veterans regarding their benefits. The major Veterans Service Organizations active at the Capitol will be sponsoring this legislation in 2016.

In 2004, Veteran Service Organizations began asking the state for money to help in veterans outreach. This was at a time when the CVSO's were also asking to have their Local Assistance funding increased. The Legislature viewed this as two groups of veterans fighting over the same pot of money and immediately treated the issue like a hot potato by disengaging and nobody got anything.

Eventually an agreement was between the CACVSO and the Veterans Service Organizations that when the CVSO's received their full \$5 million funding, a joint effort would be launched to help all groups receive funding to help relieve the backlog of veterans' claims in California.

This agreement resulted in Section 699.5 of the Military and Veterans Code, which clarified that State General Fund monies shall not be allocated for grants to Veterans Service Organizations until the annual budget for county veteran service officers reaches \$5 million.

SAVE THE DATE – SACRAMENTO TRAINING CONFERENCE

The CACVSO will be holding its Sacramento Training Conference on February 22-26, 2016. On Wednesday, February 24, CVSO's will travel to the Capitol to visit legislative offices and educate legislators and staff on how they help veterans. If you have pamphlets from your county office on what you do and the benefits you provide, please bring them. To maximize your efficiency, you can contact your local Senator(s) and Assemblymember(s) well before the conference and make an appointment to meet with them on the 24th.

DATES OF INTEREST

JANUARY 2016

- 1 New Years Day
- 10 Save the Eagles Day
- 11 Amelia Earhart Day
- 18 Martin Luther King Jr.

FEBRUARY 2016

- 1 National Freedom Day
- 2 Ground Hog Day
- 4 Rosa Parks Day
- 7 Boy Scout Day
- 10 Ash Wednesday
- 14 Valentine's Day
- 15 Presidents Day



Freedom isn't Free



Support Our Troops

