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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION

16 VIETNAM VETERANS OF AMERICA, et al.,

17 Plaintiffs,

18 v.

19 CENTRAL INTELLIGENCE AGENCY, et al.,

20 Defendants.
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Case No. CV 09-0037-CW (EDL)

**ARMY'S JANUARY 3 STATUS
REPORT PURSUANT
TO MEDICAL CARE INJUNCTION**

1 Pursuant to paragraph 4.b of the Court’s April 4, 2017 injunction, ECF No. 597, the
2 Department of the Army provides the following status report:

3 **BACKGROUND**

4 On April 4, 2017, the Court entered an injunction requiring the Army to provide medical
5 care to class members for any injury or disease that was proximately caused by their
6 participation in the Army’s long-since terminated chemical or biological substance testing
7 programs. Injunction Regarding the Provision of Medical Care (“Medical Care Injunction”),
8 ECF No. 597. As required by the Injunction, Army submitted a status report on July 3, 2017
9 ““describing its implementation of policies and procedures to facilitate its compliance with [the
10 Court’s] Injunction.”” Department of the Army Status Report Pursuant to the Court’s April 4,
11 2017 Injunction at 1, ECF No. 599, quoting Medical Care Injunction at ¶ 4a.

12 The Army submits this status report in compliance with the Medical Care Injunction’s
13 requirement to submit a status report every six months for six years following its initial report,
14 which shall describe “how many applications [for medical care] have been received and
15 considered, including a list of the applications approved, denied and pending.” Medical Care
16 Injunction at ¶ 4.b. This information is included in Section VII. In Sections I-VI of the current
17 report, Army provides an update to its July 3, 2017 status report regarding its progress in
18 implementing the policies and procedures required by the Medical Care Injunction.

19 **DISCUSSION**

20 **I. THE ARMY’S EFFORTS TO PROVIDE NOTICE TO CLASS MEMBERS OF**
21 **THE POTENTIAL AVAILABILITY OF ARMY-PROVIDED MEDICAL**
22 **CARE.**

23 **A. Individual Notifications**

24 In its July 3 status report, the Army informed the Court of its plans for notifying class
25 members for whom the Army has contact information of the availability of medical care and how
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1 to apply for such care at Military Treatment Facilities (“MTF”) for the treatment of any injury or
2 disease that was a proximate result of the applicant’s participation in the Army’s chemical or
3 biological substance testing programs (hereafter, testing-related medical care). *See* Medical Care
4 Injunction at ¶ 3a. The Army stated that it anticipated being prepared to mail out the first round
5 of notification letters on October 1, 2017, but that if it was unable to meet this timeframe it
6 would notify the court. Prior to October 1, counsel for the parties conferred and agreed that it
7 was appropriate to delay the notifications until November 1 to allow the parties additional time
8 to continue discussions that might impact the nature and content of the notifications. Thereafter,
9 on October 31, 2017, notification letters were sent to 3,696 class members by first class, certified
10 mail, return receipt requested. The notification letters included instructions on how to apply for
11 medical care at a MTF, the required documentation (as set forth in the Court’s April 4, 2017
12 injunction) that must be included for an application for medical care to be complete, as well as
13 the newly-established MEDCOM Standardized Form (SF) 840, APPLICATION FOR
14 MEDICAL CARE.
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18 On November 30, 2017 MEDCOM sent out a second round of these notification letters to
19 an additional 223 individuals. The second mailing was sent to 207 World War II veterans whose
20 names were included in a Veteran Affairs’ (VA) database that was provided to MEDCOM after
21 the initial notification letters had been prepared. The other individuals who received the
22 November 30 notification letter were veterans who called the Army’s Medical Care Information
23 hotline (discussed below in section II) and provided their contact information as well as several
24 individuals whose first letters were returned as undeliverable but for whom MEDCOM was able
25 to locate a second address.
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1 In total, as of December 4, 2017, 3,919 notification letters have been mailed to all known
2 class members for whom Army has contact information, with about 424 letters returned as
3 undeliverable or delivery refused.¹

4 **B. Public Notification**

5 On November 1, 2017, the Army launched an information campaign to provide notice about
6 the potential availability of testing-related medical care at MTFs, including establishing a
7 publicly-accessible website and using existing social media accounts to post relevant
8 information.² See Medical Care Injunction at ¶ 3a (requiring Army to “provide notice via public
9 media and outreach to the VA and to veterans’ service organizations”). In addition, MEDCOM
10 Directorate of Public Affairs Office (DPA) prepared news releases and other notification
11 materials for a strategic communications plan that were sent to major news and military media
12 about the application process on November 2, 2017. On November 14, 2017, DPA provided
13 another news release and three email notifications that were sent to the VA, Military Service
14 Organizations (MSOs) and Veterans Service Organizations (VSOs) to provide information that
15 those organizations could publicize to their members. On November 1, 2017, the Chief
16 Consultant of Post-Deployment Health Services at the VA sent a letter to the VA’s Veteran
17 Integrated Service Network (VISN) Leads, all environmental health coordinators and clinicians
18 at the VA, and directors at the War Related Illness and Injury Study Center notifying them of the
19 need to assist veterans in completing the MEDCOM Form 840, Application for Medical Care, as
20 well as providing veterans with medical diagnoses or VA- service connection decisions. On
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26 ¹ The parties have agreed that Army will send a supplemental letter to the class members
27 addressing certain inquiries that the Army has received in relation to the application packet and
28 the notification letters. The parties are currently working on a draft of the supplemental letter.

² As noted, *see supra*, the parties agreed to delay Army’s notification efforts until November 1.

1 November 15, 2017, the VA sent the Army application to all VA Medical Centers notifying them
2 of the Army's Program.

3 **II. THE ARMY'S EFFORTS TO ESTABLISH A MEDICAL CARE INFORMATION**
4 **HOTLINE.**

5 On November 1, 2017, the Army Medical Care Information hotline, based on "a
6 previously established DoD toll-free number," Medical Care Injunction at ¶ 3.b., became fully
7 operational to field questions from veterans who believe they may qualify for testing-related
8 medical care. *See* Medical Care Injunction at ¶ 3.b. (requiring Army to establish hotline). This
9 toll-free Medical Care Information hotline provides 24-hour/7-day assistance to callers. As of
10 December 28, 2017, the toll-free number had received 199 calls from former service members
11 who received notification letters as well as other veterans who were advised of the application
12 process by friends, or via news or MSO/VSO releases.

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14 MEDCOM provided scripts to the hotline call-screeners with information on potential
15 areas of inquiry and answers to frequently asked questions. These scripts also included all
16 relevant contact information within MEDCOM so that call-screeners can provider callers with
17 points of contact and other relevant information, including where to obtain research participation
18 records, how to apply to the Army Board for Correction of Military Records, how to obtain VA
19 records and a service connection decision, and information regarding enrollment in the VA's
20 comprehensive healthcare system.

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22 For callers whose participation is confirmed and who have not received a notification
23 letter, MEDCOM call-screeners provide the Form 840, application form, and other testing-
24 related medical care information, such as relevant points of contacts, locations of DoD MTFs,
25 and information on how to apply for testing related medical care and VA-provided medical care.
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1 This information is available on a MEDCOM internet site, and call-screeners have this
2 information available to provide should a caller not have access to the Internet.

3 In order to “assist veterans in determining whether they participated in the relevant
4 research programs,” Medical Care Injunction at ¶ 3.b., MEDCOM is establishing procedures to
5 assist callers with obtaining proof of research participation, including any exposure information
6 that is available in the VA’s Chemical Biological Warfare Exposure System (“CBWES”)
7 database. These procedures should be complete by January 30, 2018.
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9 **III. THE ARMY’S EFFORTS TO ESTABLISH A PROCEDURE FOR CLASS**
10 **MEMBERS TO APPLY FOR TESTING RELATED MEDICAL CARE.**

11 **A. Application Process**

12 MEDCOM Form 840 is the application established by the Army for receiving requests
13 for medical care from eligible Veterans. Medical Care Injunction at ¶ 3.c. As of October 31,
14 2017, MEDCOM has established procedures for reviewing applications to ensure all documents
15 and information required under the Medical Care Injunction were provided by the Veteran. The
16 Army will coordinate with other agencies to get any other available information related to
17 individual applicants which can be made part of the class member’s application. It will then
18 prepare complete applications for review by the Benefits Application Panel (“BAP”). *See infra*
19 Section IV (discussing the BAP).
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22 **B. Assisting Class Members with Diagnostic Medical Examinations**

23 MEDCOM obtained Secretarial Designee (SECDES) status from the Office of the
24 Assistant Secretary for Manpower and Reserve Affairs (ASA M&RA) for any Veteran in the
25 class who needs a medical examination for purposes of obtaining a diagnosis to support an
26 application.” Medical Care Injunction at ¶ 3.c (requiring Army to provide no cost medical
27 examination at a MTF for class members unable to pay for an examination). The SECDES
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1 authorization allows the Veteran to receive an outpatient examination at the closest DoD MTF
2 with capability and capacity to best serve the Veteran. MEDCOM will coordinate the medical
3 examination location so that the Veteran can document their diagnosis in support of their
4 application for medical care. As of December 28, 2017, two Veterans have requested a
5 diagnostic medical examination. The first Veteran received his examination at Travis Air Force
6 Base on December 19, 2017 and coordination continues for a diagnostic exam for the second
7 Veteran. The Army is working with the VA to establish procedures for referring any class
8 members to VA facilities for such examinations. The VA has agreed to provide examinations for
9 Veterans with current VA eligibility.
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11 **IV. THE ARMY'S EFFORTS TO ESTABLISH A BENEFITS APPLICATION PANEL** 12 **TO REVIEW COMPLETE APPLICATIONS.**

13 As of December 28, 2017, the Army has established two BAPs – one to review chemical
14 exposure cases and one to review biological exposure cases. See Medical Care Injunction at ¶
15 3.d. MEDCOM has established a procedure for the BAPs to review and issue recommendations
16 on completed applications for testing-related medical care, to notify applicants of BAP
17 recommendations, including a procedure to notify the MEDCOM Staff Judge Advocate (SJA) if
18 the BAP will be unable to issue a decision in a case within the 120-day timeline outlined in the
19 Court's injunction. Medical Care Injunction at ¶ 3.d.
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22 When the BAP recommends approval of an application, the procedures established in 32
23 C.F.R. 108, DoDI 6025.23 and Secretary of the Army Memo, dated 24 Oct 2016, *Delegation of*
24 *Authority-Secretarial Designee Program*, are used to recommend the Secretary of the Army or
25 appropriate designee grant SECDES status.
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27 Those applicants recommended by the BAP for medical care will be contacted by the
28 Program Management Office (PMO)/Nurse Case Manager (NCM) and notified of the qualifying

1 condition for which care will be authorized. The NCM will coordinate their care at the nearest
2 DoD MTF capable of treating the qualifying condition. The PM will work with the SECDES
3 PM for approval once the appropriate MTF is determined. The NCM will ensure the Veteran has
4 the documentation necessary to allow access to the medical facility. If the nearest MTF is more
5 than fifty (50) miles from the applicant's home, or in situations where necessary treatment is not
6 available through a MTF, the Army will assist the applicant in requesting health care from the
7 VA. If the necessary treatment is also not available from the VA, the Army will facilitate the
8 identification of an appropriate service provider and any available payment-assistance programs.
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10 Plaintiffs' counsel will receive notice of all denied applications for medical care via
11 electronic mail. These notices will not include any protected medical or personal information.
12

13 **VI. THE ARMY'S EFFORTS TO PROVIDE MEDICAL CARE TO ELIGIBLE** 14 **CLASS MEMBERS**

15 In order to ensure seamless integration of services for the provision of testing-related
16 medical care under the Court's injunction, the Army has reviewed its current policies and
17 established processes for providing testing-related medical care. The procedures include a
18 process to notify individual MTFs, via the Regional Health Command, of a class member's
19 approval for medical care for a specified qualifying condition, including any special provision
20 and exclusions of medical care, to ensure no gap in care following approval. Additionally, the
21 Army is reviewing each MTF's capabilities and capacity to better assist approved class members
22 with locating the nearest MTF to treat their condition. The Army has notified the VA of this
23 program and is coordinating with the VA to establish procedures to assist approved class
24 members in requesting health care from the VA, as necessary, and to identify appropriate service
25 providers and available payment-assistance programs when authorized treatment is not available
26 from the DoD or the VA. Medical Care Injunction at ¶ 3.f.
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1 The Army anticipates these procedures will be completed by January 28, 2018.

2 **VII. APPLICATIONS RECEIVED**

3 In response to the Court's direction in the Medical Care Injunction to provide information
4 on how many applications have been received and considered, including a list of the applications
5 approved, denied and pending, the Army reports that, as of December 28, 2017, the Army has
6 received 46 applications for medical care from Veterans and has forwarded them to the PM to
7 review for completeness before providing them to the BAP. The BAP anticipates it will
8 adjudicate applications within the Court's 120 day deadline from receipt of each application.
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10 Dated: January 3, 2018

Respectfully submitted,

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Attestation Pursuant to Civil Local Rule 5-1

I, Cesar A. Lopez-Morales, am the ECF User whose ID and password are being used to file this document.

Date: January 3, 2018

/s/ Cesar A. Lopez-Morales
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