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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VIETNAM VETERANS OF AMERICA et
al.,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY, et
al.,

Defendants.

No. CV 09-0037-CW

INJUNCTION
REGARDING THE
PROVISION OF
MEDICAL CARE

_____/

WHEREAS the Court has granted Plaintiffs summary judgment that Defendant Department of the Army has an ongoing duty to provide medical care to the members of the class for any injury or disease that is the proximate result of their participation in Defendant's chemical or biological substance testing programs;

IT IS HEREBY ORDERED that said Defendant is enjoined as follows:

1. To fulfill the obligations under Army Regulation 70-25 (AR 70-25) to provide medical care to former members of the armed forces who participated as research subjects in the Army's chemical or biological substance testing programs, for

1 any injury or disease that is the proximate result of their
2 participation in the research, medical care will be provided to
3 requesting class members as set forth below.

4 2. If the class member is determined, under the process
5 set forth below, to have any health condition having a
6 sufficiently strong causal link such that a reasonable person
7 could find that the injury or disease was caused by testing
8 exposure or participation in research, the Army will provide the
9 requisite health care at Department of Defense (DoD) medical
10 treatment facilities (MTFs), whether by using the Secretarial
11 Designee (SECDES) statutory authority, *see, e.g.*, 10 U.S.C. §
12 1074(c), DoD Instruction 6025.23, AR 40-400,¹ or otherwise.

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14 3. The Army will implement the following process to
15 determine eligibility for medical care:

16 a. Notice to the Class. The Army will notify
17 individuals who may qualify for research related medical
18 care of the potential availability of Army provided medical
19 care and the process to apply for such care. The Army will
20 provide individual notification via first class mail to
21 those class members for whom the Army has contact
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24 ¹ The health care provided through this plan is supplemental to
25 the comprehensive care a plaintiff is entitled to receive through
26 the Department of Veterans Affairs (VA) based on his or her
27 status as a veteran. *See* 38 CFR 17.36(b). This plan will have
28 no bearing and has no effect on the provision of care or benefits
independently performed by the VA under its own statutory and
regulatory requirements, separate from this plan.

1 information. The Army will also provide notice via public
2 media and outreach to the VA and to veterans' service
3 organizations.

4 b. The Army will use a previously established DoD
5 toll-free number for veterans who believe they may qualify
6 for research related medical care to obtain additional
7 information about potential eligibility for medical care and
8 the process for applying for such care. The Army will make
9 reasonable efforts to assist veterans in determining whether
10 they participated in the relevant research programs by
11 providing internet and toll-free contact information to
12 obtain records of participation in the relevant research
13 programs, to obtain medical records from the VA concerning a
14 diagnosis (the veteran does not have to use a diagnosis from
15 the VA), and to obtain a VA determination concerning service
16 connected disability. The Army will also provide
17 application information to veterans eligible for enrollment
18 in the VA's comprehensive healthcare system. Once a veteran
19 obtains records substantiating research participation, a
20 diagnosis, and any pending or complete VA service connection
21 determination, the veteran may apply (electronically or
22 through the mail) for medical treatment in a military
23 treatment facility.

24 c. Application: To apply for medical care, an
25 applicant will submit an application to the Army. The
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1 application for medical care will consist of a form to be
2 completed by the applicant and treating physician, and
3 documentation to support the applicant's claim, including:
4 any civilian, VA, or Army medical records showing a
5 diagnosis the applicant believes is proximately caused by
6 exposure or participation during research, Army personnel
7 records relating to research participation,² any VA service
8 connection decisions³, and a short statement about why the
9 physician believes the injury or illness is caused by the
10 exposure or participation during research. Complete
11 applications will include (1) records of participation in
12 relevant research; (2) a medical diagnosis believed caused
13 by research participation; and (3) any VA service connection
14 decision. In the event a class member is unable to pay for
15 a medical examination for purposes of obtaining a diagnosis
16 to support an application, the Army will arrange for the
17 class member to be examined at no cost at the nearest DoD
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20 ² To the extent that former research participants do not have
21 records to show participation, the Army will inform applicants how
22 to apply to the Army Board for the Correction of Military Records
23 (ABCMR). Applicants must then provide the ABCMR with sufficient
24 information to prove research participation in order to have their
25 records corrected to validate their participation in the medical
26 research programs. Upon record correction to indicate research
27 participation, a veteran can apply for medical care under this
28 plan.

³ The Army will make independent proximate result determinations
and will be informed by but not bound to any VA service
connection decision.

1 MTF or VA facility. Upon receipt of a complete application,
2 the Army will make the determination required in paragraph d
3 below.

4 d. Review of Application: Complete applications will
5 be reviewed by a Benefits Application Panel. This Panel
6 will be established by the Army Medical Command (MEDCOM).
7 The panel will consist of at least three medical
8 professionals from either the US Army Medical Research
9 Institute of Chemical Defense (for chemical exposure cases)
10 or the US Army Medical Research Institute of Infectious
11 Disease (for biological exposure cases) and may include
12 additional specialty members based on the type of illness or
13 injury being considered. The panel will conduct a record
14 review of the application, extrinsic medical evidence, VA
15 records, and Army records and will determine, by a
16 preponderance of the evidence, whether the applicant's
17 diagnosed condition was a proximate result of his or her
18 participation in the specific research program.

19 A decision shall be issued within 120 days of when the
20 application is completed.

21 The Panel's decision will be based on a majority vote.
22 A "proximate result" is defined as a sufficiently strong
23 causal link such that a reasonable person could find that the
24 injury or disease was caused by the research. In evaluating
25 medical care claims under this standard, the Panel will
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1 reasonably weigh the following evidence:

2 (1) the nature of the applicant's participation in the
3 research, to include the type of substance, means of
4 administration, dosage, and frequency of exposure;

5 (2) the applicant's health condition during and after
6 his or her research participation, including timing
7 and severity of the onset of symptoms of medical
8 illness, disease, or injury, as supported by the
9 applicant's medical evidence and available records
10 from the DoD and VA;

11 (3) the nature of the applicant's current medical
12 condition, as supported by the applicant's submitted
13 medical evidence and available records from the DoD
14 and VA;

15 (4) available scientific evidence concerning the long
16 term health effects of the chemical or biological
17 substance to which the applicant was exposed,
18 including any relevant information retrieved from the
19 Chem-Bio Database, the Mustard Gas Database, the
20 Chemical, Biological, Radiological & Nuclear Defense
21 Information Analysis Center ("CBRNIAC") Database and
22 other related databases created in conjunction with
23 Battelle Memorial Institute, and the Defense
24 Technical Information Center ("DTIC") repository; and
25 (5) all information provided by the applicant.
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1 In making its determination the Panel, in its discretion,
2 may equitably weigh the following:

3 (1) the medical research occurred over 40 years ago;

4 (2) records concerning the research may be limited or
5 incomplete;

6 (3) scientific studies on the long-term health effects
7 of certain chemical or biological substances may be
8 limited or incomplete; and

9 (4) evidence related to the precise proximate cause of
10 a particular diagnosed medical condition may not be
11 definitive.

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13 e. If the Panel determines there is a sufficiently
14 strong causal link such that a reasonable person could find
15 the applicant's condition was caused by participation in the
16 specific research program claimed, the Panel will submit a
17 recommendation to provide the applicant with necessary
18 medical care for the research related medical condition to
19 the Secretary of the Army or his designee.
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21 f. The Secretary of the Army or his designee will
22 review the Panel's recommendation in accordance with the
23 criteria specified in 32 C.F.R. 108 and DoDI 6025.23 and the
24 Court's orders. If medical care is granted to the
25 applicant, the applicant will be provided with information
26 for the nearest DoD MTF with the capability to treat the
27 approved condition and given a limited access ID card, as
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1 necessary, entitling him to receive treatment at the MTF for
2 the specific medical condition, injury, or disease determined
3 to be the proximate result of the research. If the nearest
4 MTF is more than fifty (50) miles from the applicant's home,
5 or in situations where necessary treatment is not available
6 through a MTF, the Army will assist the applicant in
7 requesting health care from the VA. If the necessary
8 treatment is also not available from the VA, the Army will
9 facilitate the identification of an appropriate service
10 provider and any available payment-assistance programs.

11 g. Final Agency Action: When an application to the
12 Army for medical care is denied, the Army shall inform class
13 counsel. Any disputes regarding the denial of medical care
14 may be presented to the Court as a motion to enforce the
15 injunction.
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18 4. Reporting and Jurisdiction

19 a. Within ninety (90) days of the date of entry of
20 this Injunction, the Army shall file with the Court a report
21 describing its implementation of policies and procedures to
22 facilitate its compliance with this Injunction.

23 b. After this initial report, the Army shall file
24 status reports every six (6) months, for the next six years,
25 to update the Court on how many applications have been
26 received and considered, including a list of the
27 applications approved, denied and pending.
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1 c. The Court retains jurisdiction to enforce the
2 terms of this Injunction and Order.

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4 IT IS SO ORDERED.

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6 Dated: April 4, 2017



CLAUDIA WILKEN
United States District Judge

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