

APPENDIX

Exhibit A

Amended Petition for Class Relief in the
Nature of a Writ of Mandamus

**IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS**

AMANDA JANE WOLFE and
PETER E. BOERSCHINGER,
individually and on behalf of others
similarly situated,

Petitioners,

v.

ROBERT WILKIE,
in his capacity as
Secretary of Veterans Affairs,

Respondent.

Vet. App. No. 18-6091

**AMENDED PETITION FOR
CLASS RELIEF IN THE NATURE OF A WRIT OF MANDAMUS**

PRELIMINARY STATEMENT

Pursuant to Court Rule 21, Petitioners Amanda Jane Wolfe and Peter E. Boerschinger, on behalf of themselves and those similarly situated, seek declaratory and injunctive relief in the nature of a writ of mandamus invalidating two systemic practices and policies adopted by Respondent Secretary of Veterans Affairs Wilkie (“the Secretary”) and his agents, both of which conflict with the binding decision of this Court in *Staab v. McDonald*, 28 Vet. App. 50 (2016).

First, petitioner Wolfe, on behalf of herself and those similarly situated (collectively, the “Wolfe Class”), seeks declaratory and injunctive relief in the nature of a writ of mandamus invalidating 38 C.F.R. § 17.1005(a)(5) and enjoining the Secretary from denying veterans reimbursement for coinsurance and deductible payments incurred during emergency visits to non-Department of Veterans Affairs (“VA”) facilities. The VA policy of denying reimbursement for these medical expenses, as expressed in 38 C.F.R. § 17.1005(a)(5), is at odds with the plain meaning of 38 U.S.C. § 1725(c)(4)(D), its legislative history, and policy interests in favor of expanding veterans’ benefits, as expressed by this Court in *Staab v. McDonald*, 28 Vet. App. 50 (2016).

Petitioner Peter E. Boerschinger, on behalf of himself and those similarly situated (collectively, the “Boerschinger Class”), seeks declaratory and injunctive relief in the nature of a writ of mandamus invalidating the VA practice and policy, in use since the *Staab* decision, of inaccurately stating in written communications to veterans in response to their requests for reimbursement of emergency medical expenses incurred in non-VA

facilities that one of the entitlement criteria for reimbursement is that the veteran have *no* coverage at all under an health plan contract. These communications are flatly inconsistent with this Court's binding decision in *Staab*, and Petitioner Boerschinger brings this petition to require the VA to cease forthwith its practice and policy of disseminating this inaccurate entitlement information and provide corrected and accurate information about the entitlement criteria to all veterans who have received these inaccurate communications.

The VA's positions with respect to the Wolfe class and the Boerschinger class conflict with this Court's decision in *Staab v. McDonald*, 28 Vet. App. 50 (2016) and the statute construed in *Staab*, by absolving the VA from reimbursing veterans who must visit non-VA hospitals for emergency medical treatment and are then left with expensive bills that are not covered by the veteran's insurance, and by providing a disincentive for veterans to obtain or continue health insurance.

RELIEF SOUGHT

Petitioners respectfully request the following relief:

First, that the Court grant Petitioner Wolfe's request to represent a class of similarly-situated individuals, all of whom have been or will be harmed by the Secretary's unlawful regulation in that the VA has already denied or will deny in the future, in whole or in part, their claims for reimbursement of emergency medical expenses incurred at non-VA facilities on the ground that the expenses are part of the deductible or coinsurance payments for which the veteran was responsible.

Second, that the Court declare that the applicable regulation, 38 C.F.R. § 17.1005(a)(5), is contrary to the statute, 38 U.S.C. § 1725(c)(4)(D), and therefore invalid to the extent that it forbids the VA from reimbursing veterans for coinsurance and deductible payments incurred while visiting non-VA hospitals for emergency treatment.

Third, that the Court (1) invalidate the decisions made by the Secretary under 38 C.F.R. § 17.1005(a)(5) to the extent that they denied reimbursement to members of the Wolfe Class for medical expenses deemed to be part of the veteran's deductible or coinsurance; and (2) order the Secretary to re-adjudicate these reimbursement claims in accordance with the Court's decision on the proper interpretation of 38 U.S.C. § 1725(c)(4)(D).

Fourth, that the Court grant Petitioner Boerschinger's request to represent a class of similarly-situated individuals, all of whom have been or will be harmed by the VA in that the VA has sent them correspondence regarding their claims for reimbursement of emergency medical expenses incurred at non-VA facilities stating, incorrectly, that one criterion for reimbursement is that the veteran have "no coverage under a health plan contract."

Fifth, that the Court (1) invalidate the decisions made by the Secretary to the extent that they denied reimbursement to veterans for medical expenses on the ground that the veteran has coverage under a health plan contract; and (2) order the Secretary to re-adjudicate these reimbursement claims in accordance with the Court's decision on the proper interpretation of 38 U.S.C. § 1725(c)(4)(D).

Sixth, that the Court enjoin the Secretary from issuing any communication to veterans that incorrectly states that one of the criteria for reimbursement is that the veteran has no coverage at all under any health plan contract, and order the Secretary to (1) re-issue all communications, sent to claimants since the Court's precedential opinion issued in *Staab* (on April 8, 2016), which incorrectly stated that one of the criteria for reimbursement is that the veteran have no coverage at all under a health plan contract; and (2) re-set the deadlines applicable to veterans who received this correspondence for appealing any VA denial of their reimbursement claims.

Seventh, that the Court order such other relief as may be appropriate in the interest of justice and in aid of the Court's jurisdiction.

JURISDICTION

This Court has the power to issue a writ of mandamus pursuant to 28 U.S.C. § 1651(a) in aid of its prospective jurisdiction pursuant to 38 U.S.C. § 7252. This Court has supervisory jurisdiction over the Secretary pursuant to 38 U.S.C. § 7261(a) to “interpret constitutional, statutory, and regulatory provisions, and determine the meaning or applicability of the terms of an action of the Secretary” and to “compel action of the Secretary unlawfully withheld or unreasonably delayed.” *See Erspamer v. Derwinski*, 1 Vet. App. 3, 7 (1990). This Court also is empowered by 28 U.S.C. § 1651(a), 38 U.S.C. § 7264(a), and the Court's inherent authority to certify and adjudicate this case as a class action. *See Monk v. Shulkin*, 855 F.3d 1312, 1318-22 (Fed. Cir. 2017).

STATEMENT OF THE CASE

I. THE HISTORY OF 38 U.S.C. § 1725(c)(4)(D) AND 38 C.F.R. § 17.1005(a)(5).

A. Congress Amended the Statute to Expand Reimbursement Eligibility to Veterans with Health Insurance.

On February 1, 2010, Congress amended 38 U.S.C. § 1725 by enacting the Emergency Care Fairness Act (Pub. Law. No. 111-137) (“ECFA”), which expanded veterans’ eligibility for reimbursement of costs of emergency treatment furnished in a non-VA facility. One critical change made by the ECFA was to amend the provisions regarding the impact of third-party coverage on reimbursement eligibility. The statute provides that, for a veteran to be eligible for reimbursement, the veteran must be “personally liable for emergency treatment.” 38 U.S.C. § 1725(b)(3). Before the amendment, § 1725(b)(3)(C) provided that a veteran was personally liable for emergency treatment only if he or she had “no other contractual or legal recourse against a third party that would, *in whole or in part*, extinguish such liability to the provider” (emphasis added). The ECFA amended this subsection by deleting the words “or in part,” which had the effect of making a veteran eligible for reimbursement even if the veteran has health insurance, as long as that insurer’s payment is partial and not full.

The other major change effected by the ECFA included expansion of § 1725(c) to clarify the Secretary’s responsibility for reimbursement. Section 1725(c) was amended to add subsection (c)(4), which provides in relevant part:

(A) If the veteran has contractual or legal recourse against a third party that would only, *in part*, extinguish the veteran’s liability to the provider of the emergency treatment, and payment for the treatment may be made both under

subsection (a) and by the third party, *the amount payable for such treatment under such subsection shall be the amount by which the costs for the emergency treatment exceed the amount payable or paid by the third party*, except that the amount payable may not exceed the maximum amount payable established under paragraph (1)(A).

(B) In any case in which a third party is financially responsible for part of the veteran's emergency treatment expenses, *the Secretary shall be the secondary payer*.

(C) A payment in the amount payable under subparagraph (A) shall be considered payment in full and shall extinguish the veteran's liability to the provider.

(D) The Secretary may not reimburse a veteran under this section for *any copayment or similar payment* that the veteran owes the third party or for which the veteran is responsible under a health-plan contract.

38 U.S.C. § 1725(c)(4) (emphasis added).

In particular, these additions ensured that the Secretary would be responsible as the “secondary payer” to reimburse veterans for treatment if a third party was “financially responsible for *part* of the veteran's emergency treatment expenses.” § 1725(c)(4)(B) (emphasis added).

In the House Report on the ECFA, the Committee on Veterans' Affairs explained that the amendment “clearly establishes that the VA is responsible for the cost of the emergency treatment which exceeds the amount payable or paid by the third-party insurer.” H.R. REP. NO. 111-55 (2009), at 6. The Committee reaffirmed that under the amendments, the VA is a “secondary payer where a third-party insurer is financially responsible for a part of the veteran's emergency treatment expenses” and made clear the intent to “protect[] veterans” by removing their liability for remaining balances due after the third-party insurer and the VA have made payments. *Id.* Congress plainly intended to

eliminate any situation in which veterans were responsible for shouldering any of the costs of their emergency medical treatment. *See generally* H.R. REP. NO. 111-55 (2009).

At the congressional hearings leading to the enactment of the 2010 amendments, one Congresswoman, speaking in support of the legislation that became the ECFA, noted that “veterans do not currently receive any reimbursement from the VA if they have third-party insurance that pays either full or a portion of the emergency care. This creates an inequity that penalizes veterans with insurance.” 155 CONG. REC. H4069-01 (daily ed. Mar. 30, 2009) (statement of Rep. Halvorson). The Congresswoman explained that “H.R. 1377, as amended, eliminates this inequity by requiring the VA to pay for emergency care in a non-VA facility, even if the veteran holds a policy that will pay for any portion of their care.” *Id.*

Congressional supporters of the ECFA argued that it would “rightfully correct a deficiency in the law” and “fill [a] hole in veterans’ health care” by “modify[ing] current law so that a veteran who has outside insurance would be eligible for reimbursement in the event that the outside insurance does not cover the full amount of emergency care.” 155 CONG. REC. S13468-01 (daily ed. Dec. 18, 2009) (statement of Sen. Akaka). The law was intended to “ensure that veterans are not saddled with massive emergency room bills.” 155 CONG. REC. H4069-01 (daily ed. Mar. 30, 2009) (statement of Rep. Brown-Waite).

B. The Secretary Adopts a Restrictive Regulation That Conflicts with Congress's Intention to Expand Coverage for Veterans.

Following the passage of the ECFA, and contrary to Congress's stated intention and the plain language of the ECFA, the Secretary adopted a regulation stating that reimbursement for emergency treatment under 38 U.S.C. § 1725 would be made only if "[t]he veteran has *no* coverage under a health-plan contract for payment or reimbursement, *in whole or in part*, for the emergency treatment." 38 C.F.R. § 17.1002(f) (2015) (emphasis added). In an April 20, 2012, notice of final rulemaking, the Secretary stated that "section 1725(b)(3)(B) requires that the veteran have 'no entitlement to care or services under a health-plan contract,' which means that any entitlement, even a partial one, bars eligibility under section 1725(b)," and the Secretary refused to remove the language "or in part" from 38 C.F.R. § 17.1002(f). 77 Fed. Reg. 23,615-16 (2012).

In *Staab v. McDonald*, 28 Vet. App. 50 (2016), this Court invalidated this regulation as inconsistent with 38 U.S.C. § 1725. The Court noted that the regulation "frustrate[d] the intent of Congress to reimburse veterans who [were] not wholly covered by a health-plan contract or other third party recourse" and that "Congress clearly intended that VA be responsible for the cost of emergency treatment which exceeds the amount payable or paid by the third-party insurer." *Staab*, 28 Vet. App. at 53-55.

The Secretary amended the regulation again, purportedly to comply with *Staab*. 83 Fed. Reg. 979 (Jan. 9, 2018). 38 C.F.R. § 17.1002(f) was amended to prohibit reimbursement only when the veteran has a health plan contract that *fully* extinguishes

medical liability for the emergency treatment. *See id.* At the same time, however, the Secretary amended 38 C.F.R. § 17.1005(a)(5) to forbid the VA from reimbursing a veteran “for any copayment, deductible, coinsurance, or similar payment” incurred during emergency treatment at non-VA hospitals, an expansion of the exclusion in 38 U.S.C. § 1725(c)(4)(d) for reimbursement of “copayments or similar payments.”

In amending these regulations effective January 9, 2018, the VA stated that “all claims [for reimbursement] involving partial payment from a health-plan contract pending on April 8, 2016 [the date of the decision in *Staab*] have been held in abeyance pending [this amended rule]. Therefore, all such . . . claims will be processed using the regulatory revisions published in this rule.” 83 Fed. Reg. 979 (Jan. 9, 2018).

II. THE PETITIONERS’ CLAIMS FOR REIMBURSEMENT AND COMMUNICATIONS WITH THE VA.

A. Petitioner Wolfe’s Emergency Medical Treatment and Denial of Reimbursement.

In September 2016, Petitioner Wolfe suffered an acute episode of appendicitis that required an emergency laparoscopic appendectomy. The procedure was performed at Mercy Medical Center in Clinton, Iowa, a non-VA healthcare facility. She was required to stay overnight and was released the following day, having incurred expenses of \$22,348.25. After payment by her employer-sponsored healthcare contract, she was left responsible for \$2,558.54. Of this amount, \$202.93 was attributable to a “copayment” and \$2,354.41 was attributable to “coinsurance.”

Petitioner Wolfe submitted a claim for reimbursement of these amounts with Iowa City VA Health Care System in Iowa City, Iowa, but her claim was denied pursuant to the VA's January 2018 amended regulation in a decision dated February 7, 2018. The stated reason for the denial was that the "[p]rior payer's . . . patient responsibility (deductible, coinsurance, co-payment) [is] not covered." On July 12, 2018, Petitioner Wolfe filed a Notice of Disagreement ("NOD"), stating that "[t]he [VA's] policy of denying reimbursement for deductibles and coinsurance, as expressed in 38 C.F.R. § 17.1005(a)(5), is at odds with the plain meaning of 38 U.S.C. § 1725(c)(4)(D), its legislative history, and policy interests in favor of expanding veterans' benefits," and that "the VA's Policy conflicts with *Staab v. McDonald*, 28 Vet. App. 50 (2016)."

Petitioner Wolfe received a response from the VA on August 14, 2018, which acknowledged receipt of her NOD but stated that, due to its current volume of appeals, it anticipated an unspecified delay in deciding her appeal.¹ The VA responded again to the NOD in a letter dated November 20, 2018, which stated that Petitioner Wolfe would not be reimbursed and concluded: "Our decision is final; appeal closed."² Documents related

¹ At the request of the VA, Petitioner Wolfe filed an amended NOD on October 9, 2018, which restated her position in letter form.

² The petitioners note that the November 2018 letter is not a Statement of the Case (SOC) and did not include a description of appellate rights for Petitioner Wolfe as required by law. 38 U.S.C. § 7105(d); 38 C.F.R. §§ 19.26(d), 19.29 (2018). As a result, despite the letter's claim that her appeal is closed, that is not the case and Petitioner Wolfe will continue to pursue her direct appeal. *See Tablazon v. Brown*, 8 Vet. App. 359, 361 (1995) (concluding that a claim remains open and pending where no SOC is issued after the filing of an NOD).

to Petitioner Wolfe’s medical care and correspondence with the VA are attached hereto as Exhibits D-H in the Appendix.

B. Petitioner Boerschinger’s Claim for Reimbursement and the VA’s Denial Letter.

In April 2018, Petitioner Boerschinger received non-service connected emergency medical care from a non-VA provider in Michigan, and he later submitted a claim to the VA for reimbursement of certain costs associated with that care. On November 27, 2018, the VA sent a letter that said his claim “has been disapproved for the reason(s) listed below.” The sole reason given for disapproval was that the “veteran must not have coverage under a health-plan contract for payment or reimbursement, in whole or in part, for the emergency treatment.” This legal proposition—which followed, almost word for word, the regulation that was expressly overruled in *Staab*—was repeated in the following paragraph of the letter, which further stated, in relevant part: “In order for VA to reimburse the non-VA provider on your behalf for the non-service connected services provided, **all** of the following eligibility criteria must be met: . . . (4) the veteran has no coverage under a health plan contract; . . .” (emphasis in original). After Medicare paid some of his bill, Petitioner Boerschinger paid the remaining \$1,340. Correspondence between Petitioner Boerschinger and the VA is attached hereto as Exhibit I.

STANDARD OF REVIEW

The Court has authority to “hold unlawful and set aside . . . regulations issued . . . by the Secretary . . . found to be – (A) . . . not in accordance with law . . . and (C) . . . in violation of a statutory right.” 38 U.S.C. § 7261(a)(3). Further, the Court has authority to

“compel action of the Secretary unlawfully withheld” 38 U.S.C. § 7261(a)(2). A challenge to the Secretary’s interpretation of a statute or regulation is an issue of law. *Lane v. Principi*, 339 F.3d 1331, 1339 (Fed. Cir. 2003); *Cacatian v. West*, 12 Vet. App. 373, 376 (1999). This Court reviews issues of law *de novo*. See 38 U.S.C. § 7261(a)(1); *Smith v. Gober*, 14 Vet. App. 227, 230 (2000). If the meaning of a statute is clear from its plain language, that meaning controls the question and that is the end of the matter. See *Chevron U.S.A., Inc. v. Natural Res. Def. Council*, 467 U.S. 837, 842-43 (1984); *Tropf v. Nicholson*, 20 Vet. App. 317, 320 (2006).

ARGUMENT

The Court may grant a writ of mandamus compelling VA officials to act when the petitioner has demonstrated a clear and indisputable right to the writ, has shown a lack of adequate alternative means to attain the desired relief, and has convinced the Court that, given the circumstances, the issuance of the writ is warranted. See *Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380-81 (2004). Further, this Court may certify classes for aggregate relief when doing so would “promot[e] efficiency, consistency, and fairness, and improv[e] access to legal and expert assistance by parties with limited resources.” *Monk v. Shulkin*, 855 F.3d at 1320-21. This Court should certify the proposed classes for aggregate relief and issue the requested writ of mandamus.

I. THE VA’S JANUARY 2018 AMENDMENTS TO 38 C.F.R. § 17.1005(A)(5) ARE CONTRARY TO LAW.

A. The Plain Meaning of 38 U.S.C. § 1725 Compels a Finding That the Secretary Is Responsible for Reimbursement of Coinsurance and Deductible Payments to a Veteran Who Undergoes Emergency Treatment at a Non-VA Facility.

As discussed above, Petitioner Wolfe’s claim for medical care reimbursement was denied because the VA determined that the amounts paid by Wolfe constituted “deductibles” or “coinsurance.” But 38 U.S.C. § 1725(c)(4)(D) only bars reimbursement of *copayments* incurred by veterans during emergency visits to non-VA hospitals. The Secretary’s interpretation of “similar payments” to include “deductibles” and “coinsurance” is not consistent with either the plain language of the statute or Congress’s intent in the ECFA to eliminate veterans’ liability for emergency medical care.

A copayment is a specific form of cost-sharing that is typically a minimal, fixed amount. *See, e.g.*, 38 C.F.R. § 17.111. A copayment is distinguishable from other forms of cost-sharing such as deductibles and coinsurance. Specifically, in contrast to copayments, the term coinsurance means the “percent of costs that the enrollee must pay.”³ This may mean that a patient must pay a certain percentage of the cost of inpatient hospital services; it is not a predetermined dollar figure, like a copayment. Thus, coinsurance has the potential to be an exorbitant amount. A deductible is separately defined as the amount an insured must pay each year before the insurance source pays its

³ CMS, MLN Matters Number MM10405 (Dec. 8, 2017).

share.⁴ This amount widely varies by the type of plan and can be thousands of dollars. Both coinsurance and deductibles can be very large costs, whereas copayments are more likely to be much smaller, and are often no more than \$20 to \$50. Thus, coinsurance and deductibles are not “similar” to copayments.

In other statutory contexts, Congress has used specific terms to include other forms of cost-sharing that differ significantly from copayments. *See, e.g.*, 38 U.S.C. § 1729(a)(3) (noting that VA may recover from third parties in certain circumstances even if the “payment of a ***deductible or copayment*** by the veteran” is not paid by the veteran) (emphasis added). Had Congress intended that deductibles or coinsurance be excluded from reimbursement by VA, it would have used such language. Instead, copayment and “similar payment” indicates that only payment obligations that are minimal and fixed are to be excluded from reimbursement. Petitioner Wolfe’s medical bills in this case are illustrative, as her coinsurance was over ten times the amount of her copayment, and she was left responsible for over \$2,500 in medical expenses.

Further, 38 U.S.C. § 1725(c)(4)(b) provides that “[i]n any case in which a third party is financially responsible for part of the veteran’s emergency treatment expenses, the Secretary ***shall*** be the secondary payer” (emphasis added). This provision clearly establishes that the Secretary is responsible for the reimbursement of any uncovered amounts. But by interpreting “copayments or similar payments” to include coinsurance

⁴ CMS, Yearly deductible for drug costs, available at <https://www.medicare.gov/part-d/costs/deductible/drug-plannedeductibles.html>.

and deductible payments, the Secretary has used the exception to swallow the rule and has made the veteran the secondary payer.

B. Refusal to Reimburse Coinsurance and Deductibles is Inconsistent with *Staab*.

As discussed above, and as noted in *Staab*, the applicable statute “was amended to its present form, to ‘allow the VA to reimburse veterans for treatment in a non-VA facility if they have a third-party insurer that would pay a portion of the emergency care.’” *Staab*, 28 Vet. App. at 53 (quoting H.R. REP. 111-55, at 3). The remaining portion, whether it is called coinsurance or deductibles, would be eligible for reimbursement. To include coinsurance and deductibles in the exclusion would be inconsistent with the *Staab* ruling, as it would leave veterans with responsibility for substantial amounts of medical expenses.

Indeed, in Petitioner Wolfe’s case, the entire cost of emergency treatment in excess of the amount payable by the third-party insurer was attributable to copayment, coinsurance, and deductible, and therefore she received the same amount of reimbursement from the VA that she would have under its pre-*Staab* regulations—\$0.00.

C. The Secretary’s Reading of the Statute Is Overly Restrictive and Contravenes the Purpose and Spirit of the Amendments.

As explained in the Statement of the Case, *supra*, the legislative history of the ECFA consistently reflects Congress’s intent that veterans be made whole when forced to incur costs at non-VA hospitals in emergency situations. The Secretary’s regulation,

refusing reimbursement for deductibles and co-insurance, undermines this clear intent in several ways.

First, 38 U.S.C. § 1725 was amended with the intent to make the VA, not the veteran, responsible for the excess cost of emergency services after the third-party insurance had paid its share. *See* 155 CONG. REC. H4069-01 (daily ed. Mar. 30, 2009) (statement of Rep. Halvorson). By expanding the exception to include coinsurance and deductibles, the Secretary has diminished (in many cases completely eliminated) the VA's responsibility for payment and increased the veterans' responsibility for payment. This result is directly contrary to the express intent of the amendments in the ECFA.

Second, the ECFA sought to protect veterans from being “saddled with massive emergency room bills.” 155 CONG. REC. H4069-01 (daily ed. Mar. 30, 2009) (statement of Rep. Brown-Waite). While the exception on reimbursement for copayments does not frustrate this goal—given that copayments are usually small, fixed amounts—the same cannot be said for coinsurance and deductibles, which, as explained above, are typically much larger payments. Indeed, Petitioner Wolfe's coinsurance payment for her emergency treatment was more than \$2,000; her copayment was minimal.

Finally, one of the goals of the ECFA was to remove the disincentive for veterans to obtain third-party insurance that had existed under the prior version of the statute. *See* 155 CONG. REC. H4069-01 (daily ed. Mar. 30, 2009) (statement of Rep. Roe). Under that prior version, veterans who had no insurance at all would receive full reimbursement from the VA for emergency treatment at non-VA hospitals, but veterans with third-party

insurance could be stuck with large bills. The Secretary's regulation creates the same disincentive that Congress sought to eliminate. The Secretary's regulation leads to the absurd result that Petitioner Wolfe here would have saved herself over \$2,500 by having no insurance, even though that result would have caused the VA to pay more than \$20,000.

II. THE VA'S PRACTICE AND POLICY OF SENDING CORRESPONDENCE TO VETERANS STATING THAT ONE OF THE ENTITLEMENT CRITERIA FOR REIMBURSEMENT OF MEDICAL EXPENSES IS THAT THE VETERAN HAVE NO COVERAGE UNDER A HEALTH PLAN CONTRACT VIOLATES THIS COURT'S DECISION IN *STAAB*.

As discussed above, Petitioner Boerschinger's claim for reimbursement was denied solely on the ground that he had other insurance coverage. Moreover, the letter he received denying his claim incorrectly stated that one of the criteria for reimbursement is that the claimant have no third-party health insurance. The Secretary's position with respect to Mr. Boerschinger and the class of veterans he seeks to represent is directly at odds with this Court's decision in *Staab v. McDonald*, 28 Vet. App. 50 (2016).

In *Staab*, the Court specifically rejected the position that the VA has taken with respect to Mr. Boerschinger and the class he seeks to represent. Under *Staab*, applicable veterans are eligible for reimbursement for non-covered medical expenses even where the veteran has partial coverage from a third-party insurer. As this Court noted, the applicable statute "was amended to its present form, to 'allow the VA to reimburse veterans for treatment in a non-VA facility if they have a third-party insurer that would pay a portion of the emergency care.'" *Staab*, 28 Vet. App. at 53 (quoting H.R. REP. 111-

55, at 3). The position taken by the VA with respect to Mr. Boerschinger and the Boerschinger class appears to ignore *Staab* altogether.

Also at odds with this Court's decision in *Staab* are the VA's official boilerplate letters and notices representing to claimants that one of the "eligibility criteria" for reimbursement is a lack of third-party health insurance coverage. Subsequent to the filing of the original Petition in this case, many veterans contacted and provided counsel for Petitioner Wolfe with copies of VA correspondence sent to them in response to their reimbursement claims. Each of the VA letters provided to counsel contained the following identical, boilerplate language: one of the entitlement criteria for reimbursement is that "the veteran has no coverage under a health plan contract." Attached hereto as Exhibits J through O are true copies (except for redactions of personal identifying information) of examples of these boilerplate VA letters, dated between February 22, 2018 and October 13, 2018, and sent from VA healthcare facilities in Minnesota, California, Montana, and Florida.

Simply listing this incorrect criteria (even when it is not the ground for denial) may cause the veteran to forego any appeal of the denial. That is, this incorrect information may lead the veteran to conclude that, even if he or she is successful in overturning the stated basis for the denial of his or her claim, he or she would still lose because of the mere existence of third-party health insurance.

Again, under *Staab*, a veteran is eligible for reimbursement even if he or she receives partial reimbursement from a third-party insurer. Yet, as exemplified by the

VA's 2018 letters to Petitioner Boerschinger and the veterans who received the letters attached as Exhibits J through O—sent more than two years after this Court's precedential opinion in *Staab*—the VA is still telling veterans that they are not entitled to reimbursement if they have health plan coverage, which is likely to cause veterans to stop pursuing their claims or an appeal of their claims. This misstatement also would be problematic in letters where the VA requests additional information, because veterans with third-party insurance are likely to stop pursuing their claim based on the mistaken belief that their other plan coverage makes them ineligible for reimbursement from the VA. The Due Process Clause of the Fifth Amendment applies to VA proceedings on claims for VA benefits. *Cushman v. Shinseki*, 576 F.3d 1290 (Fed. Cir. 2009). The inaccurate information being systematically sent to VA reimbursement claimants violates their rights under the Due Process Clause as well as the binding decision in *Staab*.

III. PETITIONERS LACK ADEQUATE ALTERNATIVE MEANS TO OBTAIN THE RELIEF SOUGHT.

Petitioners have no alternative to relief apart from petitioning this Court. Neither the agency of original jurisdiction (“AOJ”) nor the Board of Veterans’ Appeals can provide relief that is inconsistent with the Department’s regulations. *See, e.g.*, 38 C.F.R. § 19.5 (“[T]he Board is bound by applicable statutes, regulations of the Department of Veterans Affairs, and precedent opinions of the General Counsel of the Department of Veterans Affairs.”). Because the AOJ and Board are bound by VA regulations, they cannot invalidate 38 C.F.R. § 17.1005(a)(5), nor can they reimburse Petitioner Wolfe for her coinsurance or deductible payments given the language of the regulation. Petitioner

Wolfe’s only avenue to obtain the relief she seeks is from this Court, and the process of appealing to the Board, receiving a decision, and appealing to this Court is inadequate because it would take years to complete. *See Martin v. O’Rourke*, No. 17-1747 (Fed. Cir. 2018) at 5-6 (“Overall, the average time from the filing of a Notice of Disagreement to issuance of a BVA decision is over five years.”). During that time, the VA would continue to deny veterans any reimbursement for coinsurance or deductibles, and any veterans who failed to timely appeal their denials would be left without recourse even if Petitioner Wolfe ultimately prevailed. *See Tobler v. Derwinski*, 2 Vet. App. 8, 14 (1991) (the VA is bound to follow a precedential Court decision beginning *only* on the date the precedential decision is issued, and not retroactively).

In the matter of Petitioner Boerschinger, the fact that he received a letter listing as one reimbursement criterion, and denying his claim based on the same reimbursement criterion, that was invalidated by this Court two years ago shows that ordinary proceedings are inadequate to resolve that issue, too. Thus, Petitioners and the Classes lack means of an adequate alternative to obtain the relief they seek.

IV. THE RIGHT TO A WRIT IS CLEAR AND INDISPUTABLE.

Petitioners have a clear and indisputable right to a writ of mandamus. That the VA’s regulation improperly leaves Petitioners and other veterans who have third-party health insurance responsible for covering large portions of their emergency medical bills is no small matter. By the VA’s own estimates, this regulation will affect millions of claims for billions of dollars. In a motion to this Court to stay the precedential effect of

Staab, the VA estimated that it would receive over 2 million claims for reimbursement affected by the *Staab* decision in Fiscal Year 2017 alone, and over 68 million in the following 10-year period. *Staab v. McDonald*, Vet. App. No. 14-0957, Appellee’s Motion to Stay the Precedential Effect of *Staab v. McDonald*, 28 Vet. App. 50 (2016), at 7 (July 14, 2016) (the “*Staab* Stay Motion”). Further, the VA originally estimated that compliance with *Staab* would result in approximately \$2.5 billion in costs over a five-year period and \$10.6 billion in costs over a 10-year period, but later, noting that the VA would not reimburse cost sharing expenses, revised its estimates to \$1.5 billion for the five-year period and \$6.5 billion for the ten-year period. *See id*; *Staab v. McDonald*, Vet. App. No. 14-0957, Appellee’s Opposed Motion to Stay the Precedential Effect of *Staab v. McDonald*, 28 Vet. App. 50 (2016), at 9, n.2 (Feb. 17, 2017).

Without mandamus relief, billions of dollars in medical expenses will be pushed on to veterans who have third-party health insurance, while veterans without third-party health insurance will pay nothing for the same care. This Court should prevent the Secretary from enforcing a regulation that is clearly in conflict with the statute, that creates such a perverse incentive, and that denies veterans the reimbursement that Congress clearly intended them to receive. This Court should also prevent the Secretary from continuing the VA practice and policy of providing reimbursement claimants with inaccurate information that they cannot qualify for reimbursement if they have coverage under a health plan contract. Issuance of the requested writs is therefore warranted.

V. AGGREGATE RELIEF IS NECESSARY AND APPROPRIATE.

Petitioner Wolfe seeks injunctive relief under the All Writs Act, 28 U.S.C. § 1651, on behalf of the following Class:

All VA claimants who, on or after January 8, 2018, have been denied reimbursement for coinsurance or deductible payments incurred for emergency treatment at a non-VA hospital.

Petitioner Boerschinger also seeks injunctive relief under the All Writs Act, 28 U.S.C. § 1651, on behalf of the following Class:

All VA claimants who, on or after April 8, 2016, (i) filed a request, or had a request pending, with the VA for reimbursement for payments incurred for emergency medical treatment at a non-VA facility; and (ii) received a letter from the VA stating or indicating that one of the criteria for reimbursement is that the veteran has no coverage under a health plan contract.

This Court may grant certification to a class for purposes of seeking classwide relief. *Monk v. Shulkin*, 855 F.3d at 1321. Indeed, this Court should grant class certification when doing so would “promot[e] efficiency, consistency, and fairness, and improve[e] access to legal and expert assistance by parties with limited resources.” *Id.* at 1320.

Aggregate, rather than individual, relief is necessary. The issues presented here are not unique to Petitioners; rather, they affect thousands of veterans. Granting class certification, then classwide relief, would permit this Court to ensure in one stroke that affected VA claimants like Petitioners Wolfe and Boerschinger would no longer be adversely affected by the Secretary’s failure to comply with 38 U.S.C. § 1725 and the ruling in *Staab*. As the Federal Circuit stated in *Monk v. Shulkin*, class certification also

“would help prevent the VA from mooted claims scheduled for precedential review” as the VA has done in other cases. 855 F.3d at 1321.

Further, even if this Court or the Federal Circuit were ultimately to issue a precedential decision on the merits in Petitioners’ favor, a large number of similarly-situated members of the putative classes would likely be left without the relief obtained by Petitioners because of *Tobler v. Derwinski*, 2 Vet. App. 8, 14 (1991). *Tobler* provides that the VA is bound to follow a precedential Court decision beginning *only* on the date the precedential decision is issued. Without a class action, veterans who did not timely appeal a denial of their claims before such a final decision would be left without relief.

Certifying this case as a class action would therefore promote efficiency, consistency, and fairness, and improve access to legal and expert assistance by parties with limited resources. Certification would result in complete and more accessible relief, consistent with Congress’s intent for the veterans’ benefit system to function with a “high degree of ... solicitude” for all claimants. *Henderson v. Shinseki*, 562 U.S. 428, 431 (2011). It would also ensure that putative class members have access to expert legal assistance to ensure compliance with the relief, if any, granted by the Court.

This Court has stated that, until it adopts an appropriate rule on aggregate procedures, it will use Rule 23 of the Federal Rules of Civil Procedure as a guide. *Monk v. Wilkie*, 30 Vet. App. 167, 170, 174 (2018). The class action criteria for actions like this one seeking injunctive relief are set forth in Rule 23(b)(2). To certify a class under Rule

23(b)(2), the movant must also satisfy the requirements of both Rule 23(a) and Rule 23(b)(2). This action easily meets these requirements.

A. Rule 23(a)

1. Numerosity

As to numerosity of the Wolfe Class, the VA's own estimates to this Court confirm that hundreds of thousands of veterans have been or will be affected by the challenged regulation. As stated above, the VA estimated that it would receive over two million claims for reimbursement affected by the *Staab* decision in Fiscal Year 2017 alone, and over 68 million in the following 10-year period. *Staab* Stay Motion at 7. These estimates make clear that many veterans have already found themselves adversely affected by the VA's regulation, as nearly every third-party healthcare plan requires coinsurance and deductible payments. *See* Gary Claxton, *et al.*, *Increases in Cost-Sharing Payments Have Far Outpaced Wage Growth*, Peterson-Kaiser Health System Tracker (Oct. 4, 2017), <https://www.healthsystemtracker.org/brief/increases-in-cost-sharing-payments-have-far-outpaced-wage-growth/#item-start>. Similarly, a large number of these veterans also would be included in the Boerschinger Class, as the challenged criterion appears to be boilerplate language within the VA's letters to claimants, based on numerous samples provided by other putative class members since the original petition was filed in this case. The putative classes therefore easily satisfy the numerosity requirement. *See, e.g., Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995) (more than forty people in a class satisfied numerosity requirement).

2. Commonality

As to commonality, “even a single [common] question” suffices to show commonality under Rule 23(a). *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011) (second alteration in original). In *Monk v. Wilkie*, this Court found that the commonality standard was not met because the petitioners did not challenge a specific VA policy or practice, and stated that “a class proceeding is an appropriate vehicle to challenge systemic deficiencies, but only when the putative class targets specific policies or practices that allegedly violate the law.” 30 Vet. App. at 181. This action, however, presents a common challenge to a specific VA policy that applies with equal force to each Wolfe Class member’s case, as Petitioners contend that 38 C.F.R. § 17.1005(a)(5) is contrary to the ECFA and is therefore invalid to the extent that it forbids the Secretary from reimbursing veterans for coinsurance and deductible payments incurred while visiting non-VA hospitals for emergency treatment. As to the Boerschinger Class, this action presents a related, common challenge to a systematic, specific VA practice that violates *Staab* and undermines the due process rights of the putative class members.

3. Typicality

As to typicality, Petitioners’ claims are typical of the claims of the putative classes. All Wolfe Class members have been or will be adversely affected by the Secretary’s failure to comply with § 1725 of the ECFA by denying them reimbursement for coinsurance or deductible payments (or both) incurred during emergency visits to non-VA hospitals. All Boerschinger Class members have been or will be adversely

affected by the Secretary's failure to comply with *Staab* by denying them reimbursement because they have purchased third-party health coverage or stating that they are not eligible for reimbursement based on this ground.

4. Adequacy

As to adequacy, Petitioners have no interests adverse to the putative classes, and they and their counsel would fairly and adequately represent the interests of the classes. Petitioners' undersigned attorney has represented more than 4,000 claimants before this Court. Counsel are experienced in litigating class action disputes, and counsel have the resources to litigate this case vigorously on behalf of the putative classes at no charge to its members. *See* Declaration of Barton F. Stichman, attached hereto as Exhibit A; Declaration of Kara L. McCall, attached hereto as Exhibit C.

B. Rule 23(b)(2)

Rule 23(b)(2) authorizes certification when a defendant "has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). Here, the Secretary has issued a regulation that conflicts with the ECFA and adversely affects all members of the Wolfe Class, and the VA has a practice and policy that fails to align its responses to claimants regarding reimbursement eligibility with the dictates of the *Staab* decision. The unlawful denial of the putative class members' claims can be remedied by final injunctive (or analogous) relief. Accordingly, the Rule 23(b)(2) requirement is easily satisfied.

No other considerations weigh against certification of a class. For instance, the Secretary has possession of the information and records necessary to identify the members of the putative classes. *See, e.g., In re Nassau Cty. Strip Search Cases*, 461 F.3d 219, 229 (2d Cir. 2006) (noting that “determining class membership would be simple” when “defendants possess records” conclusive of membership).

Finally, this Court need not require notice to putative class members in this case. Rule 23 requires notice only for damages classes that are certified under Rule 23(b)(3). *See Wal-Mart*, 564 U.S. at 362. Because certification here would occur under Rule 23(b)(2), this court need not require notice. *See id.* (“Rule [23] provides no opportunity for . . . (b)(2) class members to opt out, and does not even oblige the District Court to afford them notice . . .”). In any event, no claimant would have reason to object to membership in a class seeking to enforce the plain language of § 1725 of the ECFA or due process rights.

CONCLUSION

Petitioners and other members of the Classes have a statutory right to reimbursement of costs of emergency medical treatment at non-VA hospitals, as well as associated due process rights. This Court should grant this Petition and award aggregate injunctive relief to remedy these unjust results.

Date: December 31, 2018

Respectfully submitted,

/s/ Barton F. Stichman

Barton F. Stichman

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APPENDIX

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EXHIBIT A

DECLARATION OF BARTON F. STICHMAN

I, Barton F. Stichman, state and declare as follows:

1. I am an attorney and Executive Director of the National Veterans Legal Services Program (“NVLSP”). This declaration is based on my personal knowledge, my years of experience with NVLSP’s practice strengths, and conversations with my colleagues regarding their experience.

2. NVLSP, working as pro bono co-counsel with the law firm of Sidley Austin LLP (“Sidley”), represents Amanda Wolfe in this action before the U.S. Court of Veterans Appeals where she seeks to represent a class of similarly situated veterans. True and correct copies of my biography and the biographies of the staff attorneys at NVLSP, as they appear on the NVLSP website, are attached as Exhibit B.

3. As Exhibit B demonstrates, NVLSP has substantial experience representing veterans before United States courts of appeal and district courts, the U.S. Court of Appeals for Veterans Claims, other federal courts, and the Department of Veterans Affairs (the “VA”). NVLSP has represented more than 4,000 individual appellants before the U.S. Court of Appeals for Veterans Claims. NVLSP also has substantial experience before federal courts litigating large-scale class actions. As a result, NVLSP is familiar with the practices and procedures of this Court and is well-positioned to prosecute this case.

4. I have devoted my entire legal career, since 1975, to representing veterans in administrative proceedings and federal court litigation and have served as lead counsel

or co-counsel on behalf of a certified class of veterans in six cases against the United States government, including *Sabo v. United States*, No. 08-899 C (Fed. Cl.); *Nehmer v. U.S. Dept. of Veterans Affairs*, No. C86-6160 (N.D. Cal.); *Giusti-Bravo v. U.S. Veterans Admin.*, No. 87-0590 (D. P.R.); *Giles v. Sec. of the Army*, Nos. 79-2393, 79-2464 (D.D.C.); and *Wood v. Sec. of Def.*, Civ. A. No. 77-0684 (D.D.C.). In *Sabo v. United States*, I negotiated a favorable settlement, on behalf of a certified class of veterans who were denied benefits for post-traumatic stress disorder, in which the United States military agreed to pay lifetime disability retirement benefits to more than 1,000 members of the class. In *Nehmer v. U.S. Dept. of Veterans Affairs*, I obtained a favorable court ruling and subsequent consent decree on behalf of a certified class of certain Vietnam veterans and their survivors, many of whom were denied VA disability or death benefits for a condition allegedly associated with herbicide (*e.g.*, Agent Orange) exposure. As a result of the 1991 consent decree in *Nehmer* and the NVLSP's subsequent class action enforcement activities, the VA has paid more than \$4.6 billion in retroactive disability and death benefits to more than 100,000 class members. I am also currently serving as co-counsel on behalf of veterans in three additional putative class actions, one pending in the U.S. Court of Appeals for Veterans Claims, one pending in the U.S. Court of Federal Claims, and one pending in a U.S. District Court, in which the courts have not yet addressed whether a class should be certified.

5. NVLSP, in cooperation with Sidley, has and will continue to zealously pursue the interests of Ms. Wolfe and the Class that she seeks to represent. NVLSP has already invested resources to investigate and prepare the petition accompanying this

declaration. NVLSP has no anticipated conflicts with the proposed Class that would undermine its ability to advocate in the best interest of the Class.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: 10/30/2018

/s/ Barton F. Stichman
Barton F. Stichman

EXHIBIT B



Bart Stichman

Executive Director

Barton F. Stichman is Executive Director of NVLSP, which he helped found in 1980. After earning law degrees from New York University School of Law (J.D. 1974) and Georgetown University Law Center (LLM 1975), he has devoted his entire professional legal career to helping veterans and their families get the federal veterans benefits to which they are entitled.

Over the last 42 years, Mr. Stichman has represented veterans and their families before U.S. district courts, U.S. courts of appeals, the U.S. Court of Appeals for Veterans Claims, the Department of Veterans Affairs, military department discharge review boards and boards for correction of military records. His litigation efforts have resulted in payment of more than six billion dollars in disability and healthcare benefits to hundreds of thousands of disabled veterans and their families.

A major part of NVLSP's mission is to increase the pool of effective advocates available to represent veterans and their family members by training lawyers and non-lawyers and providing educational publications to them in veterans benefits law. Over his career, Mr. Stichman has trained thousands of non-lawyer accredited veterans service officers, lawyers, and law students in this area of law. Mr. Stichman helped organize and currently serves as a trainer for the Veterans Consortium Pro Bono Program, a federally funded organization which has recruited and trained more than 2,000 volunteer attorneys over the last 25 years to represent those who have appealed to the Court of Appeals for Veterans Claims without a representative.

Mr. Stichman is a co-author of *The Veterans Benefits Manual*, NVLSP's 2200-page treatise on veterans benefits law that is published annually by Lexis Law Publishing and has been distributed to thousands of veterans service officers and lawyers. He is also a co-author of *The Rights of Military Personnel*, and NVLSP's *Military Discharge Upgrade Manual* and has written articles on veterans benefits law appearing in the *Administrative Law Review*, *The American University Law Review*, *The Federal Bar News and Journal*, *Clearinghouse Review*, *Stanford Law and Policy Review*, and the *Legal Times*.

Mr. Stichman is a member of the Judicial Advisory Committee of the U.S. Court of Appeals for Veterans Claims, and is a past president of the U.S. Court of Appeals for Veterans Claims Bar Association.

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Evelyn Anderson

Chief Financial Officer

Ms. Evelyn J. Anderson is the Chief Financial Officer and Secretary/Treasurer for NVLSP. As CFO, Ms. Anderson is responsible for overseeing the financial and accounting function of NVLSP, works with the Board of Directors' audit and investment committees, supervises business operations, IT, strategic planning, human resources, etc. Prior to joining NVLSP in 1998, Ms. Anderson served as the director of finance for the Agent Orange Class Assistance Program, a class action court settlement administered by the U.S. District Court for the Eastern District of New York. In this capacity, she managed the distribution of the settlement proceeds in the form of grants made to community-based organizations and higher learning institutions nationwide.

Prior to locating to the Washington, D.C. area, Ms. Anderson served as financial manager to various organizations in New York City. Ms. Anderson is a graduate of Antioch College.

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Rochelle Bobroff

Pro Bono Director

Ms. Rochelle Bobroff is the Director of the Pro Bono Program for NVLSP, supervising the attorneys in NVLSP's Lawyers Serving Warriors® program.

Previously, Ms. Bobroff was Director of the Federal Rights Project at the National Senior Citizens Law Center and Director of the Access to Courts Program at the Constitutional Accountability Center. She also worked as the Senior Attorney for Systemic Reform at AARP Legal Counsel for the Elderly and as a Senior Attorney at AARP Foundation Litigation. She served as a Commissioner on the D.C. Access to Justice Commission.

Ms. Bobroff has managed systemic reform pro bono projects and litigation regarding Veterans' housing, consumer, public benefits, and long-term care issues. She has written numerous United States Supreme Court and federal Court of Appeals amicus briefs. She also published several law review articles regarding court access for safety net and civil rights statutes. She has led workshops at national training conferences addressing pro bono innovations and court access.

Ms. Bobroff is a graduate of Yale Law School and obtained her undergraduate degree in Economics at the University of Chicago.

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Patty Briotta

Director of Communications

Ms. Patty Briotta is Director of Communications for NVLSP. In this role, Ms. Briotta drives the organization's branding and communications strategy. She works closely with NVLSP's leadership team on a variety of strategic initiatives to promote the group and its activities including legislative advocacy and NVLSP's pro bono volunteer lawyer program, Lawyers Serving Warriors®.

Prior to joining NVLSP, Ms. Briotta ran her own communications and marketing business. Ms. Briotta has held senior communications positions at the National Association of Federally-Insured Credit Unions, the Community Foundation for the National Capital Region, Lafarge North America and the National Association of Life Underwriters. She holds a bachelor's degree from New York University and she completed an executive education program Duke University's Fuqua School of Business.

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Ana Reyes

Director of Development

Ms. Ana Reyes oversees NVLSP's development and philanthropic programs, helping donors and corporations contribute to NVLSP's work helping veterans receive the disability benefits they've earned and deserve. Ms. Reyes has more than fifteen years of experience in nonprofit fundraising and management. She has effectively developed comprehensive fundraising strategies for national, regional and local organizations supporting civil rights; community services programs for those in need; and immigrant and refugee rights.

Prior to coming to NVLSP, Ms. Reyes held senior development positions at Advancement Project, The Hispanic Committee of Virginia, Norwalk Community Health Center, and other institutions. Ms. Reyes is a graduate of Columbia University (B.A., Political Science).

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Richard Spataro

Director of Training and Publications

Mr. Richard V. Spataro is the Director of Training and Publications for NVLSP. He is also the Director of Outreach and Education for the Veterans Consortium Pro Bono Program. Mr. Spataro joined NVLSP as a law clerk in 2004 and accepted a position as a staff attorney upon his graduation from law school in 2005. He was promoted to the position of senior staff attorney in 2013. He has represented hundreds of veterans before the U.S. Court of Appeals for Veterans Claims and has also represented veterans before the U.S. Court of Appeals for the Federal Circuit, the Board of Veterans' Appeals, and VA Regional Offices. He trains advocates in veterans law and mentors attorneys who participate in NVLSP's Lawyers Serving Warriors® Program and the Veterans Consortium Pro Bono Program. From November 2010 to August 2015, he was also the

managing attorney of NVLSP's Nehmer Lawsuit Division. During that time, he and his team of attorneys assisted thousands of veterans and their survivors obtain retroactive VA benefits for herbicide-related disabilities under the court orders in the class action *Nehmer v. U.S. Dept. of Veterans Affairs*.

Before embarking on his legal career, Mr. Spataro served as a Surface Warfare Officer in the United States Navy. He earned his commission through the Naval Reserve Officers Training Corps program at Duke University. He spent four years on active duty, serving first as the Auxiliaries Officer of the USS Vella Gulf and then as the Navigator of the USS Mount Whitney.

Mr. Spataro is a member of the Virginia and the District of Columbia Bars. From 2010 to 2017, he served as a Vice Chair of the Veterans Affairs Committee of the Section of Administrative Law and Regulatory Practice of the American Bar Association.

Mr. Spataro originally hails from Malone, New York. He is a graduate of Duke University (B.A., History, 1998) and American University, Washington College of Law (J.D., cum laude, 2005). He, his wife Jessica, and their two young children live in Springfield, Virginia.

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Stacy Tromble

Deputy Director of Litigation

Ms. Stacy Tromble is the Deputy Director of Litigation at NVLSP. She is admitted to practice before the U.S. Court of Appeals for Veterans Claims and is licensed to practice in the State of New York, the Commonwealth of Virginia, the Commonwealth of Massachusetts, and the District of Columbia. Ms. Tromble is also a member of the bar of the Supreme Court of the United States and is admitted to practice in several federal districts.

Prior to joining NVLSP, Ms. Tromble was a senior associate in the government enforcement group of a large international law firm. Her *pro bono* work at the firm focused on veteran and family law matters.

Ms. Tromble earned her law degree from the State University of New York at Buffalo (J.D., *summa cum laude*, 2007). She also holds a Master of Social Work degree with a mental health concentration.

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Staff Biographies



Ronald Abrams

Special Counsel

Mr. Ronald B. Abrams is Special Counsel to NVLSP, where he served as Joint Executive Director from 2004 to 2017 and Director of Training and Publications from 1989 to 2004. He is a graduate of the Temple University (B.A. 1969), and Temple University School of Law (J.D. 1973).

Mr. Abrams began his career in 1975 in the Philadelphia regional office of the Veterans Administration, serving first as an adjudicator and then as a member of the rating board. Mr. Abrams transferred to the VA's Central Office in 1977 as legal consultant to the Compensation and Pension Service (C&P), where he was recognized as an expert in due process.

As legal consultant to C&P, Mr. Abrams helped to draft the *VA Adjudication Procedures Manual M21-1*. He wrote and interpreted regulations and directives to be followed by VA staff and others, and both drafted and commented on legislation on the VA's behalf. As part of his work, Mr. Abrams was in charge of the C&P quality review section. While at VA Central Office, Mr. Abrams conducted national training sessions in adjudication and due process for VA staff.

Mr. Abrams has appeared on national television and testified on many occasions before the U.S. Congress on behalf of the nation's veterans. Mr. Abrams' experience working for VA gave him great insight into the VA system. He decided to employ this knowledge as an advocate with NVLSP. Since joining NVLSP, he has conducted hundreds of training sessions for such organizations as the National Association of State Directors of Veterans Affairs, National Association of County Veterans Service Officers, The American Legion, the Vietnam Veterans of America, the Veterans of Foreign Wars of the United States, AMVETS, Military Order of the Purple Heart, and many state and county departments of veterans affairs. He has also conducted training sessions for many state bar associations, the Legal Services Corporation, the National Legal Aid and Defender Association, and the National Association for the Advancement of Colored People.

He is the former editor of *The Veterans Advocate*, a quarterly publication on veterans' law and advocacy, editor of the *Basic Training Course in Veterans Benefits* and is a co-author and editor of *The Veterans Benefits Manual*.

**Patrick Berkshire****Staff Attorney**

Mr. Patrick A. Berkshire is a member of the District of Columbia Bar and has been a litigation staff attorney with NVLSP since July 2011. He primarily represents veterans, dependents, and survivors before the U.S. Court of Appeals for Veterans Claims, but has also represented individuals before the Department of Veterans Affairs. Additionally, Mr. Berkshire mentors volunteer attorneys participating in the Veterans Consortium Pro Bono Program. Prior to joining NVLSP, Mr. Berkshire clerked for Judge Alan G. Lance, Sr. at the U.S. Court of Appeals for Veterans Claims. Mr. Berkshire is a graduate of the University of Idaho College of Law (J.D., 2009) and the University of Washington, Seattle (B.A., 2005).

[Return to Top](#)**Hayley Boyd****Staff Attorney**

Ms. Boyd is a staff attorney for the Lawyers Serving Warriors program. While in law school, she was a managing editor of the Journal of National Security Law and Policy, Director of JAG Development of Military Law Society, and participated in the International Women Human Rights clinic. In the summer of 2017, she was an intern at the US Army JAG at Fort Myer/McNair as well as working as a research assistant for the American Criminal Law Review. In the summer of 2016, she was an intern at the US Navy, Navy-Marine Court of Criminal Appeals at the Washington Navy Yard. Prior to law school, she was an intern at the US Coast Guard General Law Office, and the Orange County District Attorney's Office Veteran's Unit.

Ms. Boyd grew up in Orange County, California. She is a graduate of the University of California, San Diego (B.A. Political Science, 2015), and Georgetown University Law Center (J.D., 2018).

[Return to Top](#)**George Burtsev****Office Assistant**

Mr. George Burtsev joined NVLSP as Office Assistant in March 2016, providing wide-ranging administrative support to the organization's Office Manager and administrative assistance to NVLSP staff attorneys. Earlier in his career, George worked as a department manager at Nordstrom Company in Annapolis, Maryland.

George received a Bachelor of Business Administration in 2010 and a Master of Business Administration in 2011 from Strayer University.

[Return to Top](#)**Kevin Chandler****Office Manager**[Return to Top](#)



Helen Chong

NVLSP

Training Associate

Ms. Helen Chong is the Training Associate for NVLSP. As a former magistrate and trial attorney, she uses her past experience in conducting judicial hearings and legal advocacy to help NVLSP provide the best training programs for attorneys and veteran service officers.

Ms. Chong is the recipient of several national and state honors, which includes being chosen from a pool of 10,000 attorneys and honored as the Young Lawyer of the Year at the Virginia State Bar Annual Conference in 2015. She has been featured in various media outlets, including Virginia Living Magazine's "Beyond the Letter of the Law" in August 2017. The American Bar Association has recognized Ms. Chong for developing successful legal and community initiatives with the Children and the Law Commission and Domestic Violence Safety Program. Ms. Chong is a graduate of the University of Virginia (B.A.) and The George Mason University School of Law (J.D.). She is admitted to practice in the Commonwealth of Virginia.

During her free time, she enjoys practicing judo, Brazilian jiu jitsu, and yoga.

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Katy Clemens

Staff Attorney

Ms. Katy Schuman Clemens has been a litigation staff attorney with NVLSP since December 2006. In that time, she has represented many veterans, dependents and survivors before the U.S. Court of Appeals for Veterans Claims, the Board of Veterans' Appeals, VA Regional Offices, and the Board for Correction of Naval Records. Ms. Clemens also trains advocates in veterans law, and mentors attorneys participating in NVLSP's Lawyers Serving Warriors® Program as well as the Veterans Consortium Pro Bono Program. Ms. Clemens has devoted significant time to the *Nehmer v. U.S. Department of Veterans Affairs* lawsuit, as well as to issues facing military sexual trauma survivors.

Prior to embarking on her legal career, Ms. Clemens was a medical assistant at Planned Parenthood Association of Utah, and worked with survivors of domestic violence with the YWCA of Salt Lake City. While in law school, Ms. Clemens was an Ella Baker intern with the Center for Constitutional Rights, a law clerk with Break the Cycle, a Crowley scholar participating in a survey of educational rights for Roma children in Romania, and co-founder of the Student Hurricane Network. Ms. Clemens also volunteered as a sexual assault and domestic violence counselor with Columbia Presbyterian Hospital.

Ms. Clemens is an active member of both the Maryland Bar and the National Lawyers Guild, where she has served on the National Executive Committee. She is also a member of the Board of the Columbia Bands, Inc. Ms. Clemens is originally from Sykesville, Maryland, and is a graduate of University of Maryland, Baltimore County (B.A., English, cum laude, 2000) and Fordham Law School (J.D., magna cum laude, 2006).

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Christine Cote Hill

Of Counsel

Ms. Christine Cote Hill is of counsel to NVLSP. She represents veterans and survivors before the U.S. Court of Appeals for Veterans Claims and other federal courts and trains and supervises NVLSP staff attorneys. She devotes much of her time to mentoring and advising pro bono attorneys representing veterans and survivors through NVLSP's Lawyers Serving Warriors® program, as well as pro bono attorneys representing appellants through the Veterans Consortium Pro Bono Program. She also trains advocates in veterans law.

Ms. Cote Hill has also spoken on matters related to veterans disability benefits, including as moderator/panelist of the session, *Navigating the National Personnel Records Center/Joint Services Records Research Center: Requesting and Searching Official Records*, during the Eleventh Judicial Conference of the Court of Appeals for Veterans Claims. She also served on the planning committee of the Twelfth Judicial Conference of the Court of Appeals for Veterans Claims.

10/25/2018] joined NVLSP in July 2005. Prior to that, she worked as an appellate litigator NVLSP Department of Veterans Affairs, Office of the General Counsel, Appellate Litigation Staff. During her tenure, she worked in the United States Senate for two years as a VA Congressional Liaison, and was selected for the agency's Regulations Re-Write Task Force. She also served as associate counsel at the Board of Veterans' Appeals.

Before moving to the Washington, D.C. area, Ms. Cote Hill was an associate at a firm in Albany, New York, specializing in criminal defense and matrimonial law. She is a graduate of the Union College (B.A., cum laude, 1994) and Albany Law School (J.D., cum laude, 1996) Honors Law and Public Policy Program, and completed the Georgetown University Legislative Studies Program.

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Monica Draper

Staff Accountant/Network Support

Ms. Monica Draper joined NVLSP in January 2006 as Staff Accountant. In that capacity, she assists the organization's Chief Financial Officer with all accounting activities.

Taking on the additional role of Network Support in 2010, Monica also maintains local area network (LAN) system support and provides oversight of the organization's computer systems.

Prior to joining NVLSP, Monica worked as an accountant and billing specialist with Interior Architects, Inc. in Washington. Before moving to the United States, she worked with the US Embassy in Monrovia, Liberia as an IT specialist managing day-to-day operations of the embassy's unclassified computer system.

Monica holds a BA in Accounting from the University of Liberia and a Master of Science in Accounting from Strayer University.

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Katherine Ebbesson

Staff Attorney

Ms. Katherine Ebbesson is a Staff Attorney with NVLSP. She is a member of the Virginia State Bar. Prior to working for NVLSP, Ms. Ebbesson worked as an attorney for Vietnam Veterans of America (VVA). While at VVA, she represented numerous Veterans before the Board of Veterans' Appeals. During law school, Ms. Ebbesson was involved in public interest work in numerous areas including immigration, criminal, family, and civil commitment law.

Ms. Ebbesson is a graduate of Seattle University School of Law (J.D., cum laude, 2014) and Lewis & Clark College (B.A., 2002).

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Jenna Goldberg

Equal Justice Works AmeriCorps Legal Fellow

Ms. Jenna A. Goldberg is an Equal Justice Works AmeriCorps Legal Fellow with NVLSP. She is working with NVLSP's Lawyers Serving Warriors® project primarily assisting veterans seeking discharge upgrades and veterans who were wrongfully discharged for personality disorder or adjustment disorder. While in law school, she interned with the Durham Legal Aid of North Carolina's Veterans Unit and the Maryland Office of the Attorney General, and clerked with the Wake County Family Court. She also participated in the Children's Law Clinic.

Ms. Goldberg grew up in Jericho, New York. She is a graduate of Tulane University (B.S. Psychology and Sociology, 2011), and Duke University School of Law (J.D., 2016).

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Ms. Alexis Marie Ivory is a staff attorney with NVLSP. She splits her time between developing training programs and conducting training sessions for veterans service officers and representing veterans and their survivors before the U.S. Court of Appeals for Veterans Claims. She is admitted to practice before the U.S. Court of Appeals for Veterans Claims and is a member of the Maryland State bar.

Prior to joining NVLSP, Ms. Ivory was counsel at The Board of Veterans' Appeals, Department of Veterans Affairs. During her tenure, Ms. Ivory was the VA representative at military bases in Japan and taught the VA portion of the Transition Assistance Program.

Ms. Ivory is from New York and is a graduate of The Catholic University of America (B.S. 2002), and The Columbus School of Law, Catholic University of America (J.D. 2005).

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Ann Kenna

Staff Attorney

Ms. Ann Kenna is a Staff Attorney in NVLSP's Nehmer Lawsuit Division. She is a member of the New York State Bar. Ms. Kenna focuses her time on ensuring Vietnam Veterans and their surviving family members receive benefits for disabilities and deaths that are associated with Agent Orange exposure as a part of the class action lawsuit: *Nehmer v. U.S. Department of Veterans Affairs*.

Ms. Kenna is a graduate of St. John Fisher College (Bachelor of Arts in Sociology, *summa cum laude*) and Syracuse University College of Law (J.D., *cum laude*, 2016). While in law school, she worked in the Syracuse University College of Law Veterans Legal Clinic and was an editorial member of the Syracuse Law Review. Ms. Kenna is a member of the Justinian Honor Society.

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Raymond J. Kim

Staff Attorney

Mr. Raymond J. Kim is a staff attorney with NVLSP. He is admitted to practice before the U.S. Court of Appeals for Veterans Claims and is a member of the Pennsylvania Bar. He originally joined NVLSP in 2014 as a Bridge Fellow from the University of Michigan Law School.

Mr. Kim is originally from Pittsburgh, Pennsylvania. He is a graduate of Pomona College (B.A. 1999), the University of Texas at Austin (Ph.D. 2008), and the University of Michigan Law School (J.D. 2014). While in law school, Mr. Kim served as a volunteer in the school's Environmental Crimes Project and also as a student attorney in the Criminal Appellate Practice clinic. In his free time, he enjoys following the Pittsburgh Pirates and painting scale miniatures.

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Amie Leonard

Staff Attorney

Ms. Amie Leonard is a Staff Attorney with NVLSP. She is admitted to practice before the US Court of Appeals for Veterans Claims and is a member of the New York State Bar. She is a graduate of The University of Scranton (B.S. 2011) and the John Marshall Law School in Chicago (J.D., 2015). While in law school Ms. Leonard served as a volunteer at the John Marshall Law School Veterans Clinic, Urban Justice Center's Veteran Advocacy Project, Citizen Advocacy Center, Illinois

Coalition for Immigrant and Refugee Rights, and the Cook County Elder Justice Center. Prior to joining NVLSP, Ms. Leonard represented veterans with less than fully honorable discharges before the Department of Veterans Affairs in New York City. She is originally from New Jersey, and is enjoying living in the DC Metro area.

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**Staff Attorney**

Ms. Esther N. Leibfarth is a Staff Attorney at NVLSP assisting active duty service members and veterans in obtaining medical military retirements through NVLSP's Lawyers Serving Warriors program. She serves as a mentor to volunteer attorneys representing service members in the military's Disability Evaluation System and before the Board for Corrections of Military Records.

Prior to joining NVLSP, Ms. Leibfarth worked as a civilian judge Advocate General with the Army's Office of Soldiers' Counsel, where she represented Army service members before the Medical and Physical Evaluation Boards. Ms. Leibfarth is a graduate of Emory University School of Law (JD, 2010) and holds a Masters of Laws in international business and economics from Georgetown Law Center (LLM, 2011). Ms. Leibfarth is admitted to practice in New York.

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**Katherine Mann****Development Associate**

Ms. Katherine Mann joined NVLSP as the Development Associate in 2018. She provides administrative support for NVLSP's fundraising initiatives, including appeals, annual fundraising events, grants, and donor stewardship.

Ms. Mann is a graduate of the Johns Hopkins University (B.A., International Studies and Spanish, 2012) and Georgetown University, School of Foreign Service (M.A. Latin American Studies, 2015).

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**Erin M. Mee****Pro Bono Coordinating Attorney**

Ms. Erin M. Mee is the Pro Bono Coordinating Attorney for NVLSP's Lawyers Serving Warriors® project. She is a member of the Virginia Bar. While in law school, Ms. Mee served on the Journal of Gender, Social Policy & the Law, the Legislation & Policy Brief, and the Alternative Dispute Resolution Honor Society's negotiation team. She also worked as a legal intern for the Poverty & Race Research Action Council, Senator Harry Reid, and the Senate Judiciary Committee.

Ms. Mee is a graduate of the College of William & Mary (B.A., Government and Sociology, 2011) and American University Washington College of Law (J.D., 2015).

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**Caitlin M. Milo****Staff Attorney**

Ms. Caitlin M. Milo is a Staff Attorney with NVLSP. She is admitted to practice before the U.S. Court of Appeals for Veterans Claims and is a member of the Maryland Bar. While in law school, Ms. Milo served as the Editor-in-Chief of the *Florida Coastal Law Review* and was awarded the Scribes Legal Writing Award and Honorable Mention in the 2012 International Association of Defense Counsel's Legal Writing Contest. Ms. Milo also interned at the U.S. Attorney's Office for the Middle District of Florida and clerked for Justice R. Fred Lewis at the Supreme Court of Florida and Judge Timothy Corrigan at the U.S. District Court for the Middle District of Florida.

Prior to joining NVLSP, Ms. Milo completed an Equal Justice Works/AmeriCorps Fellowship with the Legal Aid Society of Greater Cincinnati, where she represented veterans seeking VA benefits and facing homelessness. Ms. Milo was also an associate attorney at Mattar Veterans Advocates, a Buffalo, New York firm that assists veterans nationwide with their appeals for benefits. Ms. Milo is a member of the National Organization of Veterans Advocates, Amicus and Litigation Committee and the U.S. Court of Appeals for Veterans Claims Bar Association.

Ms. Milo is a graduate of James Madison University (B.A., *summa cum laude* with distinction, History, 2009) and Florida Coastal School of Law (*summa cum laude*, 2013). She is an active member of the Junior League of Wilmington, an organization that supports local, low-income women and children. She and her husband, a Navy veteran, live in New Jersey.

**Angela Nedd****Administrative Assistant**

Ms. Angela Nedd joined NVLSP in 2016 to provide administrative support to the organization's Co-Executive Directors, as well as paralegal support to the litigators who represent veterans before the U.S. Court of Veterans Claims. Ms. Nedd recently earned a B.A. in Psychology and a Certificate in Women's Studies from a local university. As a student, Ms. Nedd completed an externship at the PTSD Unit of a VA Hospital, where she observed group therapy sessions of combat veterans.

The veterans described not only their experiences with PTSD, but the difficulties they encountered obtaining benefits from the VA; this experience solidified her desire to serve the women and men who have served our country. In previous positions, Ms. Nedd has worked on website design and architecture, on substance abuse issues, in advocacy, in student leadership, and in facilities management.

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**Serena Nguyen****Staff Attorney**

Ms. Serena Nguyen is a Staff Attorney in NVLSP's Nehmer Lawsuit Division. As part of this division, Ms. Nguyen works to provide retroactive VA benefits to Vietnam veterans and their surviving family members for disabilities and deaths that are associated with Agent Orange exposure. Prior to joining NVLSP, Ms. Nguyen worked as an Equal Employment Opportunity Specialist at the Department of Interior. Ms. Nguyen is a member of the Maryland Bar.

Ms. Nguyen is a graduate of the University of Maryland, College Park (B.A. in Communications, 2013) and Temple University Beasley School of Law (J.D., 2016). While in law school, she served as President of the Asian Pacific American Law Student Association and was a member of Temple's Law and Public Policy Scholars, class of 2014. Ms. Nguyen currently resides in Germantown, Maryland.

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**Nnamdi Okoli****Staff Attorney**

Mr. Nnamdi Okoli is a Staff Attorney in NVLSP's Nehmer Lawsuit Division. Mr. Okoli focuses his time on ensuring Vietnam Veterans and their surviving family members receive benefits for disabilities and deaths that are associated with Agent Orange exposure as a part of the class action lawsuit: *Nehmer v. U.S. Department of Veterans Affairs*.

Prior to joining NVLSP, Mr. Okoli has worked in ensuring access to justice and improving the rule of law in international projects. Mr. Okoli is a graduate of Austin College (B.A., 2011) and of The George Washington University School of Law (J.D., 2016). Mr. Okoli is a member of the Bar of the District of Columbia.

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**Eric Schmitz****Staff Attorney**

Eric Schmitz is a Staff Attorney at NVLSP, focusing on ensuring Vietnam Veterans and their surviving family members receive benefits for disabilities and deaths that are associated with Agent Orange exposure as part of both the *Nehmer v. U.S. Department of Veterans Affairs* class action lawsuit, as well as the Lawyers Serving Warriors program.

Eric Schmitz is a graduate of the University of Colorado, Boulder (B.A., 2011) and the University of Miami School of Law (J.D., 2014). During law school, Eric interned for a federal judge and a United States Attorneys Office, both in the Southern District of Florida. Eric is admitted to the New York Bar and is currently earning an LL.M. at George Washington University Law School during the evening.

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Paul Schwen

NVLSP

Equal Justice Works Fellow

Paul is an Equal Justice Works Fellow sponsored by Northrop Grumman Corporation and Covington & Burling LLP. Paul project involves providing legal services to disabled veterans whose appeal of an initial disability denials have been systemically delayed for years and help improve the VA appellate process currently in place.

Paul served honorably in the military for eight years; first in the United States Marine Corps, then in the Utah National Guard. He deployed to both Afghanistan and Iraq. Paul is a graduate from the American University Washington College of Law (J.D. 2016) and the University of Utah (B.A., 2006).

Paul lives in Alexandria with his wife, four sons, and miniature schnauzer.

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David Sonenshine

Senior Staff Attorney

Mr. David M. Sonenshine is a senior staff attorney with NVLSP's Lawyers Serving Warriors® Project. He mentors and advises volunteer attorneys representing service members in the military's Disability Evaluation System and before the Board for Corrections of Military Records. Mr. Sonenshine's practice also involves representing veterans and survivors before the U.S. Court of Appeals for Veterans Claims. Prior to joining NVLSP, Mr. Sonenshine served three years on active duty as an officer in the U.S. Army Judge Advocate General's Corps. As a judge advocate, he served as a military prosecutor and Special Assistant U.S. Attorney in the U.S. Attorney's Office for the Eastern District of Virginia. Mr. Sonenshine is a graduate of the University of Florida (B.A., with Honors, 1999) and the University of South Carolina School of Law (J.D., 2004). Mr. Sonenshine is

admitted to practice in South Carolina and the District of Columbia. Mr. Sonenshine and his wife Joanne live in Arlington, Virginia with their two children.

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Michael Spinnicchia

Staff Attorney

Mr. Michael Spinnicchia is a staff attorney in NVLSP's Training Department. His work entails developing training programs and conducting training sessions for veterans service officers from all across the country. He has trained service officers on a variety of topics including Agent Orange-related claims, the new substitution regulations, and claims based on clear and unmistakable error. Before moving to the Training Department, Mr. Spinnicchia worked in NVLSP's Nehmer Lawsuit Division where he assisted veterans and their survivors obtain retroactive VA benefits for their herbicide-related disability claims. Prior to joining NVLSP, he worked as a law clerk for the Gowen Group Law Office and as an associate counsel for the Board

of Veterans' Appeals.

Mr. Spinnicchia grew up in New York State's Capital Region and graduated from Cornell University (B.A., Economics and Government, 2007) and the American University Washington College of Law (J.D., 2012). While in law school, he was a Note and Comment Editor for the *American University Law Review*, a member of the Moot Court Honor Society, and a student attorney for his school's General Practice Clinic. He is a member of the Massachusetts and District of Columbia bars. Before entering law school, he was a Legal Assistant for the law firm, Cravath, Swaine & Moore in New York City. Mr. Spinnicchia currently resides in Washington, DC.

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Carlie Steiner

Staff Attorney

Ms. Carlie Steiner is a Staff Attorney with NVLSP. She is a member of the Colorado Bar. Ms. Steiner is graduate of Colorado College (B.A., cum laude, 2009) and American University Washington College of Law (J.D., cum laude, 2015). While in law school, Ms. Steiner was a Public Interest Public Service Scholar, a Senior Research Associate with the Public International Law & Policy Group, and Articles Editor on the *American University Journal of Gender, Social Policy & the Law*.

EXHIBIT C

**IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS**

AMANDA JANE WOLFE,)
individually and on behalf of others)
similarly situated,)

Petitioner,)

v.)

Vet. App. No. _____

ROBERT WILKIE,)
in his capacity as)
Secretary of Veterans Affairs,)

Respondent.)

**DECLARATION OF KARA L. MCCALL IN SUPPORT OF PLAINTIFF
AMANDA WOLFE’S PETITION FOR CLASS RELIEF IN THE NATURE OF
A WRIT OF MANDAMUS**

I, Kara L. McCall, declare as follows:

1. I am a Partner in the law firm of Sidley Austin LLP (“Sidley”). Sidley, along with the National Veterans Legal Services Program (“NVLSP”), is pro bono co-counsel for Plaintiff Amanda Wolfe and the proposed Class. I submit this declaration in support of Plaintiff Amanda Wolfe’s Petition for Class Relief in the Nature of a Writ of Mandamus. I have personal knowledge of the facts set forth in this Declaration and could and would competently testify to them if called as a witness.

Sidley’s Background and Experience

2. Sidley is an international law firm with more than 2,000 lawyers in 20 offices around the globe, including Boston, Century City, Chicago, Dallas, Houston, Los Angeles, New York, Palo Alto, San Francisco, and Washington, D.C. Sidley has a substantial practice

in a number of areas, including class actions. Attorneys in Sidley’s class actions practice regularly represent clients in cases involving a wide variety of claims, including consumer protection claims, claims involving financial institutions, toxic tort claims, securities claims, antitrust claims, consumer privacy law claims, and data breach claims. The 2018 U.S. News—Best Lawyers “Best Law Firms” survey awarded Sidley a first-tier national ranking in the Mass Tort Litigation/Class Actions – Defendants category. Members of Sidley’s class action practice have been ranked as leading practitioners in *Law360*, *The Legal 500 United States*, *Chambers USA*, *The Best Lawyers in America*, *BTI Client Service All-Stars*, and *The Daily Journal*. Although the vast majority of Sidley’s class action practice is on the defense side, its experience certainly makes it well-prepared to be class counsel. In fact, Sidley has previously served as class counsel on a pro bono basis.

3. Brief backgrounds of the key Sidley personnel staffing this case are provided below. Staff biographies can be found at www.sidley.com.

a. Kara L. McCall. I joined Sidley in 2001 and was promoted to Partner in 2008. I concentrate my practice on the defense of companies in class action litigation, product liability and mass torts, and commercial litigation and disputes matters. I have substantial experience serving as trial and appellate counsel for Sidley’s clients in actions filed in courts across the country and have served as lead counsel in at least ten class actions. I have also handled class action arbitration proceedings, have briefed issues of first impression regarding the appropriateness of class actions in the context of American Arbitration Association proceedings, and have helped my clients negotiate nationwide class action settlements that have been approved by federal courts. I have earned recognition for

my work by *Who's Who Legal*, *Law360*, the *National Law Journal*, *The Legal 500* and by BTI Consulting.

b. Mark B. Blocker. Mark Blocker is a Partner at Sidley and is co-leader of the firm's global Insurance Disputes practice. He focuses his practice on class action litigation in consumer and financial services and ERISA matters. He has substantial experience defending class action claims brought under both federal and state consumer protection statutes. He has been selected as being among the world's leading pensions and benefits lawyers in *Who's Who Legal* 2016, has been recognized in *Chambers USA* 2015–2017 in ERISA Litigation, and has been recognized by *Chambers* each year since 2009. He has also been recommended in ERISA Litigation in *The Legal 500 US* 2012–2017.

c. Emily M. Wexler. Emily M. Wexler is pro bono counsel who coordinates Sidley's Veterans Advocacy Project – a project that provides legal assistance to disabled veterans seeking fair and timely benefits from the U.S. Department of Veterans Affairs and the Armed Forces. Prior to coordinating the Veterans Advocacy Project, she was an associate in the Insurance and Financial Services and Litigation groups, where she focused her practice on consumer class actions, general commercial disputes, RICO, fraud, and professional ethics.

d. Lindsay K. Eastman. Lindsay Eastman is an associate in Sidley's Intellectual Property Litigation group, where she focuses her practice on representing parties in adversarial patent matters, including infringement litigation in federal trial courts and patentability challenges before the Patent Trial and Appeal Board.

e. Eric T. O'Brien. Eric O'Brien is an associate in Sidley's Intellectual

Property Litigation group, where he focuses his practice on representing parties in adversarial patent matters, including infringement litigation in federal trial courts.

The Litigation

4. Ms. Wolfe's claim for reimbursement was denied on February 7, 2018, and Sidley, along with NVLSP, has represented her since shortly after that date. Sidley has, among other things, interviewed Ms. Wolfe, investigated her claims, researched the theories underlying Ms. Wolfe's claims, and prepared the Petition for Class Relief in the Nature of a Writ of Mandamus.

5. Sidley possesses sufficient resources to continue to effectively and thoroughly pursue the litigation no matter the ultimate Class size and is committed to working with NVLSP as co-counsel for the benefit of the Class.

Plaintiff Amanda Wolfe's Medical Bills and Correspondence with the VA

6. Attached hereto as Exhibit D is a true and correct copy of the medical bill received by Ms. Wolfe for her emergency treatment at Mercy Medical Center in Clinton, Iowa.

7. Attached hereto as Exhibit E is a true and correct copy of the letter sent to Ms. Wolfe by the VA on February 7, 2018 denying her claim for reimbursement of emergency medical treatment.

8. Attached hereto as Exhibit F is a true and correct copy of Ms. Wolfe's Notice of Disagreement submitted to the VA on August 14, 2018.

9. Attached hereto as Exhibit G is a true and correct copy of a letter sent by the VA to Ms. Wolfe on August 14, 2018 acknowledging receipt of her Notice of Disagreement.

10. Attached hereto as Exhibit H is a true and correct copy of Ms. Wolfe's amended Notice of Disagreement submitted to the VA on October 9, 2018.

I declare under penalty of perjury under the laws of the United States and the State of Illinois that the foregoing is true and correct to the best of my knowledge and that this declaration was executed in Chicago, Illinois on October 30, 2018.

/s/ Kara L. McCall
Kara L. McCall

EXHIBIT D

COLONY BRANDS, INC.
1112 7TH AVENUE
MONROE WI 53566



Forwarding Service Requested

*****SCH 3-DIGIT 612
3083 1 AT 0.399 15
AMANDA J WOLFE

Customer Service

Date: 10/10/16

Group: 325 COLONY BRANDS, INC.

EOB#: 1610105058

Claim status information or other questions relating to coverage may be answered by contacting the Customer Service number at 800-240-7976 and follow the prompts.

As a reminder --- All specialty visits require Pre-Certification.

Explanation of Benefits

Patient Name: AMANDA J WOLFE
Claim Number: 201809230684

Provider: MERCY MEDICAL CENTER CLINTON

| Dates of Service | Procedure Description | Charge Amount | Ineligible Amount | Discount Amount | Deductible Amount | Copay Amount | Co-ins Amount | R & C Amount | Penalty Amount | Remark Code | Paid Amount | Paid To | You May Owe |
|------------------|--|---------------|-------------------|-----------------|-------------------|--------------|---------------|--------------|----------------|-------------|-------------|----------|-------------|
| 09/16-09/16/2016 | PHOTACRY GENERAL CLASSIFICATION | \$352.00 | \$0.00 | \$35.20 | \$200.00 | \$200.00 | \$23.36 | \$0.00 | \$0.00 | 1 | \$93.44 | PROVIDER | \$223.36 |
| 09/17-09/17/2016 | PHOTACRY GENERAL CLASSIFICATION | \$3.25 | \$0.00 | \$0.32 | \$2.03 | \$2.03 | \$0.00 | \$0.00 | \$0.00 | 1 | \$0.00 | NO PAYMT | \$2.93 |
| 09/18-09/18/2016 | IV THERAPY GENERAL CLASSIFICATION | \$553.00 | \$0.00 | \$55.30 | \$0.00 | \$0.00 | \$99.54 | \$0.00 | \$0.00 | 1 | \$398.16 | PROVIDER | \$99.54 |
| 09/18-09/18/2016 | IV THERAPY GENERAL CLASSIFICATION | \$128.00 | \$0.00 | \$12.80 | \$0.00 | \$0.00 | \$23.04 | \$0.00 | \$0.00 | 1 | \$92.16 | PROVIDER | \$23.04 |
| 09/18-09/18/2016 | IV THERAPY GENERAL CLASSIFICATION | \$244.00 | \$0.00 | \$24.40 | \$0.00 | \$0.00 | \$43.92 | \$0.00 | \$0.00 | 1 | \$175.68 | PROVIDER | \$43.92 |
| 09/18-09/18/2016 | IV THERAPY GENERAL CLASSIFICATION | \$120.00 | \$0.00 | \$12.00 | \$0.00 | \$0.00 | \$21.60 | \$0.00 | \$0.00 | 1 | \$86.40 | PROVIDER | \$21.60 |
| 09/18-09/18/2016 | LABORATORY-CHEMISTRY | \$87.00 | \$0.00 | \$8.70 | \$0.00 | \$0.00 | \$15.66 | \$0.00 | \$0.00 | 1 | \$62.64 | PROVIDER | \$15.66 |
| 09/18-09/18/2016 | LABORATORY-CHEMISTRY | \$136.00 | \$0.00 | \$13.60 | \$0.00 | \$0.00 | \$24.48 | \$0.00 | \$0.00 | 1 | \$97.92 | PROVIDER | \$24.48 |
| 09/18-09/18/2016 | LABORATORY-CHEMISTRY | \$170.00 | \$0.00 | \$17.00 | \$0.00 | \$0.00 | \$30.60 | \$0.00 | \$0.00 | 1 | \$122.40 | PROVIDER | \$30.60 |
| 09/18-09/18/2016 | LABORATORY-CHEMISTRY | \$134.00 | \$0.00 | \$13.40 | \$0.00 | \$0.00 | \$24.12 | \$0.00 | \$0.00 | 1 | \$98.48 | PROVIDER | \$24.12 |
| 09/18-09/18/2016 | LABORATORY-HEMATOLOGY | \$93.00 | \$0.00 | \$9.30 | \$0.00 | \$0.00 | \$16.74 | \$0.00 | \$0.00 | 1 | \$66.96 | PROVIDER | \$16.74 |
| 09/18-09/18/2016 | LABORATORY-SERIES CLOVE AND BLOOD CLOVE | \$172.00 | \$0.00 | \$17.20 | \$0.00 | \$0.00 | \$30.96 | \$0.00 | \$0.00 | 1 | \$123.84 | PROVIDER | \$30.96 |
| 09/18-09/18/2016 | LABORATORY-SERIES CLOVE AND BLOOD CLOVE | \$172.00 | \$0.00 | \$17.20 | \$0.00 | \$0.00 | \$30.96 | \$0.00 | \$0.00 | 1 | \$123.84 | PROVIDER | \$30.96 |
| 09/18-09/18/2016 | LABORATORY-SERIES CLOVE AND BLOOD CLOVE | \$105.00 | \$0.00 | \$10.50 | \$0.00 | \$0.00 | \$18.90 | \$0.00 | \$0.00 | 1 | \$75.60 | PROVIDER | \$18.90 |
| 09/18-09/18/2016 | LABORATORY-URICOLOGY | \$75.00 | \$0.00 | \$7.50 | \$0.00 | \$0.00 | \$13.50 | \$0.00 | \$0.00 | 1 | \$54.00 | PROVIDER | \$13.50 |
| 09/18-09/18/2016 | LABORATORY-URICOLOGY | \$226.00 | \$0.00 | \$22.60 | \$0.00 | \$0.00 | \$40.68 | \$0.00 | \$0.00 | 1 | \$162.72 | PROVIDER | \$40.68 |
| 09/18-09/18/2016 | CT SCAN-BODY SCAN | \$2,653.00 | \$0.00 | \$265.30 | \$0.00 | \$0.00 | \$479.34 | \$0.00 | \$0.00 | 1 | \$1,917.36 | PROVIDER | \$479.34 |
| 09/18-09/18/2016 | OPERATING ROOM SERVICES-GENERAL CLINIC | \$7,414.00 | \$0.00 | \$741.40 | \$0.00 | \$0.00 | \$1,312.41 | \$0.00 | \$0.00 | 12 | \$5,249.64 | PROVIDER | \$1,312.41 |
| | | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | | \$110.55 | | \$0.00 |
| 09/18-09/18/2016 | ANESTHESIA-GENERAL CLASSIFICATION | \$2,391.00 | \$0.00 | \$239.10 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | 1 | \$2,151.90 | PROVIDER | \$0.00 |
| 09/18-09/18/2016 | EMERGENCY ROOM-GENERAL CLINIC | \$1,422.00 | \$0.00 | \$142.20 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | 1 | \$1,279.80 | PROVIDER | \$0.00 |
| 09/18-09/18/2016 | OFFICE REQUISITE SPECIFIC IDENTIFICATION DRUGS | \$81.00 | \$0.00 | \$8.10 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | 1 | \$54.90 | PROVIDER | \$0.00 |
| 09/18-09/18/2016 | OFFICE REQUISITE SPECIFIC IDENTIFICATION DRUGS | \$57.00 | \$0.00 | \$5.70 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | 1 | \$51.30 | PROVIDER | \$0.00 |
| 09/18-09/18/2016 | OFFICE REQUISITE SPECIFIC IDENTIFICATION DRUGS | \$168.00 | \$0.00 | \$16.80 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | 1 | \$151.20 | PROVIDER | \$0.00 |
| 09/18-09/18/2016 | OFFICE REQUISITE SPECIFIC IDENTIFICATION DRUGS | \$58.00 | \$0.00 | \$5.80 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | 1 | \$53.10 | PROVIDER | \$0.00 |
| 09/18-09/18/2016 | OFFICE REQUISITE SPECIFIC IDENTIFICATION DRUGS | \$90.00 | \$0.00 | \$9.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | 1 | \$81.00 | PROVIDER | \$0.00 |
| 09/18-09/18/2016 | OFFICE REQUISITE SPECIFIC IDENTIFICATION DRUGS | \$50.00 | \$0.00 | \$5.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | 1 | \$45.00 | PROVIDER | \$0.00 |
| 09/18-09/18/2016 | OFFICE REQUISITE SPECIFIC IDENTIFICATION DRUGS | \$174.00 | \$0.00 | \$17.40 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | 1 | \$156.60 | PROVIDER | \$0.00 |
| 09/18-09/18/2016 | OFFICE REQUISITE SPECIFIC IDENTIFICATION DRUGS | \$88.00 | \$0.00 | \$8.80 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | 1 | \$81.20 | PROVIDER | \$0.00 |
| 09/18-09/18/2016 | OFFICE REQUISITE SPECIFIC IDENTIFICATION DRUGS | \$59.00 | \$0.00 | \$5.90 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | 1 | \$53.10 | PROVIDER | \$0.00 |
| 09/18-09/18/2016 | OFFICE REQUISITE SPECIFIC IDENTIFICATION DRUGS | \$52.00 | \$0.00 | \$5.20 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | 1 | \$46.80 | PROVIDER | \$0.00 |
| 09/18-09/18/2016 | OFFICE REQUISITE SPECIFIC IDENTIFICATION DRUGS | \$255.00 | \$0.00 | \$25.50 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | 1 | \$229.50 | PROVIDER | \$0.00 |

Patient Name: AMANDA J WOLFE
 Claim Number: 201509220084

| Dates of Service | Procedure Description | Charge Amount | Ineligible Amount | Discount Amount | Deductible Amount | Copay Amount | Co-ins Amount | R & C Amount | Penalty Amount | Remark Code | Paid Amount | Paid To | You May Owe |
|------------------|-----------------------|---------------|-------------------|-----------------|-------------------|--------------|---------------|--------------|----------------|-------------|-------------|----------|-------------|
| 05/18-09/16/2015 | Medical Deductible | \$200.00 | \$0.00 | \$20.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | I | \$180.00 | PROVIDER | \$0.00 |
| 05/17-09/17/2015 | Medical Out-Of-Pocket | \$73.00 | \$0.00 | \$7.30 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | I | \$65.70 | PROVIDER | \$0.00 |
| 05/17-09/17/2015 | Medical Deductible | \$60.00 | \$0.00 | \$6.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | I | \$54.00 | PROVIDER | \$0.00 |
| 05/16-09/10-2015 | Medical Out-Of-Pocket | \$2,055.00 | \$0.00 | \$205.50 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | I | \$1,850.00 | PROVIDER | \$0.00 |
| CLAIM TOTALS | | \$20,142.25 | \$0.00 | \$2,014.22 | \$0.00 | \$202.83 | \$2,249.81 | \$0.00 | \$0.00 | | | | |
| Total Payment: | | | | | | | | | | | \$15,676.11 | | \$2,462.74 |

Patient Name: AMANDA J WOLFE
 Claim Number: 201509251559

| Dates of Service | Procedure Description | Charge Amount | Ineligible Amount | Discount Amount | Deductible Amount | Copay Amount | Co-ins Amount | R & C Amount | Penalty Amount | Remark Code | Paid Amount | Paid To | You May Owe |
|------------------|-----------------------|---------------|-------------------|-----------------|-------------------|--------------|---------------|--------------|----------------|-------------|-------------|----------|-------------|
| 05/16-09/16/2015 | Medical Out-Of-Pocket | \$321.23 | \$0.00 | \$174.38 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | I | \$146.85 | PROVIDER | \$0.00 |
| CLAIM TOTALS | | \$321.23 | \$0.00 | \$174.38 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | | | | |
| Total Payment: | | | | | | | | | | | \$146.85 | | \$0.00 |

Patient Name: AMANDA J WOLFE
 Claim Number: 201509270437

| Dates of Service | Procedure Description | Charge Amount | Ineligible Amount | Discount Amount | Deductible Amount | Copay Amount | Co-ins Amount | R & C Amount | Penalty Amount | Remark Code | Paid Amount | Paid To | You May Owe |
|------------------|-----------------------|---------------|-------------------|-----------------|-------------------|--------------|---------------|--------------|----------------|-------------|-------------|----------|-------------|
| 05/18-09/16/2015 | Medical Deductible | \$40.00 | \$0.00 | \$3.60 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | I | \$12.14 | PROVIDER | \$0.00 |
| 05/18-09/16/2015 | Medical Out-Of-Pocket | \$44.00 | \$0.00 | \$3.91 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | I | \$10.09 | PROVIDER | \$0.00 |
| 05/16-09/16/2015 | Medical Deductible | \$38.00 | \$0.00 | \$3.07 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | I | \$5.03 | PROVIDER | \$0.00 |
| 05/16-09/16/2015 | Medical Out-Of-Pocket | \$15.00 | \$0.00 | \$1.56 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | I | \$4.04 | PROVIDER | \$0.00 |
| CLAIM TOTALS | | \$146.00 | \$0.00 | \$13.70 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | | | | |
| Total Payment: | | | | | | | | | | | \$31.30 | | \$0.00 |

Patient Name: AMANDA J WOLFE
 Claim Number: 201509270450

| Dates of Service | Procedure Description | Charge Amount | Ineligible Amount | Discount Amount | Deductible Amount | Copay Amount | Co-ins Amount | R & C Amount | Penalty Amount | Remark Code | Paid Amount | Paid To | You May Owe |
|------------------|-----------------------|---------------|-------------------|-----------------|-------------------|--------------|---------------|--------------|----------------|-------------|-------------|----------|-------------|
| 05/16-09/16/2015 | Medical Out-Of-Pocket | \$147.00 | \$0.00 | \$44.66 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | I | \$102.44 | PROVIDER | \$0.00 |
| CLAIM TOTALS | | \$147.00 | \$0.00 | \$44.66 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | | | | |
| Total Payment: | | | | | | | | | | | \$102.44 | | \$0.00 |

DISCLAIMER

- Code Description
- PHGSHD PPO DISCOUNT Patient is not responsible for this amount
 - Your individual out of pocket amount has been met for this calendar year.

MEMBER OUT-OF-POCKET SUMMARY

| Member Name | Description | Year | Amount |
|-------------|-----------------------|------|------------|
| AMANDA J | Medical Deductible | 2015 | \$888.05 |
| AMANDA J | Medical Out-Of-Pocket | 2015 | \$948.05 |
| AMANDA J | Medical Deductible | 2016 | \$1,000.00 |
| AMANDA J | Medical Out-Of-Pocket | 2016 | \$4,000.00 |

YOUR REVIEW RIGHTS

You and/or your representative may submit a written request for a review within 180 days of this notice which should include the date of your request, your printed name and/or the printed name of your representative, the information from the top portion of your Explanation of Benefits, and the date of service in question. Send this information to Colony Brands, Inc. Benefits Department at 1112 Seventh Ave. Monroe, WI 53566 or call 800-240-7876. Colony Brands, Inc. will provide a written reply to your request for review within 30 days of receipt and no later than 60 days under special circumstances.

Please call the number located above if you need diagnosis and/or treatment code information for this claim

COLONY BRANDS, INC.
1112 7TH AVENUE
MONROE WI 53566



Customer Service

Date: 10/03/16

Group: 325 COLONY BRANDS, INC.

EOB#: 1610036672

Claim status information or other questions relating to coverage may be answered by contacting the Customer Service number at 800-240-7976 and follow the prompts.

As a reminder -- All specialty visits require Pre-Certification.

Forwarding Service Requested



*****SCH 3-DIGIT 612

16975 1 AT 0.399

AMANDA J WOLFE

58

Explanation of Benefits

Patient Name: AMANDA J WOLFE

Claim Number: 201609232292

Provider: RICKY P MADDOX MD

| Dates of Service | Procedure Description | Charge Amount | Ineligible Amount | Discount Amount | Deductible Amount | Copay Amount | Co-ins Amount | R & C Amount | Penalty Amount | Remark Code | Paid Amount | Paid To | You May Owe |
|------------------|---|---------------|-------------------|-----------------|-------------------|--------------|---------------|--------------|----------------|-------------|-------------|----------|-------------|
| 09/16-09/16/2016 | 1ST ORAL CONTRA-CEP. (BIRTH CONTROL) SECURITY | \$225.00 | \$225.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | 1 | \$0.00 | NO PAYMT | \$0.00 |
| 09/16-09/16/2016 | LAPR SURG APPENDIC | \$1,061.00 | \$0.00 | \$1,452.99 | \$0.00 | \$0.00 | \$105.60 | \$0.00 | \$0.00 | 2 | \$422.41 | DOCTOR | \$105.60 |
| CLAIM TOTALS | | \$2,206.00 | \$225.00 | \$1,452.99 | \$0.00 | \$0.00 | \$105.60 | \$0.00 | \$0.00 | | | | |
| Total Payment | | | | | | | | | | | \$422.41 | | \$105.60 |

Remark Code Description

| Code | Description |
|------|--|
| 1 | This service is included in the primary procedure and should not be billed separately. |
| 2 | PHCSHD PPO DISCOUNT Patient is not responsible for this amount. |

Deductible/Out-of-Pocket Summary

| Member Name | Description | Year | Amount |
|-------------|---------------------|------|------------|
| AMANDA J | Medical Deductible | 2015 | \$886.05 |
| AMANDA J | Medical Out-Of-Pckt | 2015 | \$946.05 |
| AMANDA J | Medical Deductible | 2016 | \$1,000.00 |
| AMANDA J | Medical Out-Of-Pckt | 2016 | \$1,547.26 |

Your Right to Appeal

You and/or your representative may submit a written request for a review within 180 days of this notice which should include the date of your request, your printed name and/or the printed name of your representative, the information from the top portion of your Explanation of Benefits, and the date of service in question. Send this information to Colony Brands, Inc. Benefits Department at 1112 Seventh Ave, Monroe, WI 53566 or call 800-240-7976. Colony Brands, Inc. will provide a written reply to your request for review within 30 days of receipt and no later than 60 days under special circumstances.

Please call the number located above if you need diagnosis and/or treatment code information for this claim.

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COLONY BRANDS, INC.
1112 7TH AVENUE
MONROE WI 53566



Customer Service

Date: 10/31/16

Group: 325 COLONY BRANDS, INC.

EOB#: 1610312615

Claim status information or other questions relating to coverage may be answered by contacting the Customer Service number at 800-240-7976 and follow the prompts.

As a reminder --- All specialty visits require Pre-Certification.

Forwarding Service Requested

*****SCH 3-DIGIT 612 54
15083 1 AT 0.399
AMANDA J WOLFE

Explanation of Benefits

Patient Name: AMANDA J WOLFE
Claim Number: 201609273361

Provider: MICHAEL E WOLTMAN MD

| Dates of Service | Procedure Description | Charge Amount | Ineligible Amount | Discount Amount | Deductible Amount | Copay Amount | Co-ins Amount | R & C Amount | Penalty Amount | Remark Code | Paid Amount | Paid To | You May Owe |
|------------------|---------------------------------------|---------------|-------------------|-----------------|-------------------|--------------|---------------|--------------|----------------|-------------|-------------|---------|-------------|
| 09/15-09/16/2016 | LEVEL 2 BLIND FROM GLOSSOPROSCOPIC AM | \$65.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | | \$65.00 | DOCTOR | \$0.00 |
| CLAIM TOTALS | | \$65.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | | | | |
| Total Payment | | | | | | | | | | | \$65.00 | | \$0.00 |

Deductible/Out-of-Pocket Summary

| Member Name | Description | Year | Amount |
|-------------|-----------------------|------|------------|
| AMANDA J | Medical Deductible | 2015 | \$888.05 |
| AMANDA J | Medical Out-Of-Pocket | 2015 | \$948.05 |
| AMANDA J | Medical Deductible | 2016 | \$1,000.00 |
| AMANDA J | Medical Out-Of-Pocket | 2016 | \$4,000.00 |

Your Right to Appeal

You and/or your representative may submit a written request for a review within 180 days of this notice which should include the date of your request, your printed name and/or the printed name of your representative, the information from the top portion of your Explanation of Benefits, and the date of service in question. Send this information to Colony Brands, Inc. Benefits Department at 1112 Seventh Ave. Monroe, WI 53566 or call 800-240-7976. Colony Brands, Inc. will provide a written reply to your request for review within 30 days of receipt and no later than 60 days under special circumstances..

Please call the number located above if you need diagnosis and/or treatment code information for this claim.

—

COLONY BRANDS, INC.
1112 7TH AVENUE
MONROE WI 53586



Forwarding Service Requested

AMANDA J WOLFE

54

Customer Service

Date: 10/31/16

Group: 325 COLONY BRANDS, INC.

EOB#: 1610312723

Claim status information or other questions relating to coverage may be answered by contacting the Customer Service number at 800-240-7976 and follow the prompts.

As a reminder --- All specialty visits require Pre-Certification.

Explanation of Benefits

Patient Name: AMANDA J WOLFE

Claim Number: 20161012448

Provider: CHRISTINA M SHIMAK DO

| Dates of Service | Procedure Description | Charge Amount | Ineligible Amount | Discount Amount | Deductible Amount | Copay Amount | Co-ins Amount | R & C Amount | Penalty Amount | Remark Code | Paid Amount | Paid To | You May Owe |
|------------------|-----------------------|---------------|-------------------|-----------------|-------------------|--------------|---------------|--------------|----------------|-------------|-------------|----------|-------------|
| 09/16-09/16/2016 | PHYSICIAN DISCOUNT | \$1,177.00 | \$0.00 | \$58.85 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | 1 | \$1,118.15 | PROVIDER | \$0.00 |
| CLAIM TOTALS | | \$1,177.00 | \$0.00 | \$58.85 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | | | | |
| Total Payment | | | | | | | | | | | \$1,118.15 | | \$0.00 |

Remark Code Description

| Code | Description |
|------|--|
| 1 | PHCSHD PPO DISCOUNT Patient is not responsible for this amount |

Deductible/Out-of-Pocket Summary

| Member Name | Description | Year | Amount |
|-------------|---------------------|------|------------|
| AMANDA J | Medical Deductible | 2015 | \$888.05 |
| AMANDA J | Medical Out-Of-Pckt | 2015 | \$948.05 |
| AMANDA J | Medical Deductible | 2016 | \$1,000.00 |
| AMANDA J | Medical Out-Of-Pckt | 2016 | \$4,000.00 |

Your Right to Appeal

You and/or your representative may submit a written request for a review within 180 days of this notice which should include the date of your request, your printed name and/or the printed name of your representative, the information from the top portion of your Explanation of Benefits, and the date of service in question. Send this information to Colony Brands, Inc. Benefits Department at 1112 Seventh Ave. Monroe, WI 53586 or call 800-240-7976. Colony Brands, Inc. will provide a written reply to your request for review within 30 days of receipt and no later than 60 days under special circumstances..

Please call the number located above if you need diagnosis and/or treatment code information for this claim.

—

EXHIBIT E



DEPARTMENT OF VETERANS AFFAIRS

Iowa City VA Health Care System
Attn: Non VA Care (136B)
601 Hwy 6 West
Iowa City, IA 52246

02/07/2018

UB Claim ID#: 752227

Non-VA Medical Care Program: 38 U.S.C. §1725

WOLFE AMANDA JANE



Provider: MERCY MEDICAL CENTER

Episode of Care Beginning: 09/16/2016

The claim noted above has been reviewed to determine if it meets eligibility requirements for payment of non-VA emergency treatment of a non-service connected condition under 38 United States Code (U.S.C.) §1725. Based on the review, we regret to inform you that your claim does not meet the requirements and has been disapproved for the reason(s) listed below:

Claim Denied - Prior payer's (or payers') patient responsibility (deductible, coinsurance, co-payment) not covered.

The following eligibility criteria must be met in order for the VA to reimburse the non-VA provider on your behalf:

- (1) Treatment was emergent according to the prudent layperson standard;
- (2) Veteran is financially liable to the provider for emergency treatment;
- (3) Veteran is enrolled in the VA health care system and received treatment within a 24-month period preceding emergency care;
- (4) Veteran has no coverage under a health plan contract;
- (5) Veteran has no other contractual or legal recourse against a third party that would, in whole extinguish liability to the provider;
- (6) VA facilities were not feasibly available and an attempt to use them beforehand would have been hazardous to life or health by prudent layperson standard; and
- (7) Emergency services were provided in a hospital emergency department, a free standing urgent care clinic, or a similar facility held out as providing urgent or emergency care to the public up to the point of medical stability.

The absence of any one of these criteria precludes payment by the US Department of Veterans Affairs.

If your claim is denied for auto insurance, third party liability, please forward proof that auto insurance did not fully cover your claim. Based on the additional information the claim may be entitled for reimbursement.

If you do not agree with this decision, you have the right to appeal within one year of the denial by submitting a written notice of disagreement and providing any new or relevant information.

You may appoint a Veteran Service Organization to assist you in preparing your written notice of disagreement by completing and signing VA Form 21-22, "Appointment of Veterans Service Organization as Claimants Representative" or VA Form 21-22a, "Appointment of Individual as Claimants Representative" to appoint an accredited representative. These VA Forms are available at www.va.gov/vaforms. If you are unable to access these VA forms, you may contact us at (319) 688-3889.

Please read the information provided carefully so that you will clearly understand the procedural and appellate rights in connection with any denied services.

If you have any questions or concerns, please contact us at the above address or call (319) 688-3889.

You may contact the numbers below based on the first letter of your last name:

A-F - 319-351-1110 x7885

G-L - 319-351-1110 x6281

M-R - 319-351-1110 x7880

S-Z & Dental - 319-351-1110 x5405

Sincerely,



Iowa City VA Health Care System

Supervisor, Non-VA Care Office

Attachments:

~~Veterans Claims Assistance Act Notice (VCAA)~~

VA4107VHA, Notice of Procedural Appellate Rights



After careful and compassionate consideration, a decision has been reached on your claim. If we were not able to grant some or all of the VA benefits you asked for, this form will explain what you can do if you disagree with our decision. If you do not agree with our decision, you may:

- Start an appeal by telling us you disagree with our decision.
- Give us evidence we do not already have that may lead us to change our decision.

This form will tell you how to appeal and how to send us more evidence. You can do either one or both of these things.

HOW CAN I APPEAL THE DECISION?

How do I start my appeal? To begin your appeal, write us a letter telling us you disagree with our decision. This letter is called your "Notice of Disagreement." If we denied more than one claim for a benefit, please tell us in your letter which claims you are appealing. *Send your Notice of Disagreement to the address included on our decision notice letter.*

How long do I have to start my appeal? You have one year to start an appeal of our decision. Your letter saying that you disagree with our decision must be postmarked (or received by us) within one year from the date of our letter denying you the benefit. In most cases, you cannot appeal a decision after this one-year period has ended.

What happens if I do not start my appeal on time? If you do not start your appeal on time, our decision will become final. Once our decision is final, you cannot get the VA benefit we denied unless you either:

- Show that we were clearly wrong to deny the benefit or
- Send us new evidence that relates to the reason we denied your claim.

What happens after VA receives my Notice of Disagreement? We will either grant your claim or send you a Statement of the Case. A Statement of the Case describes the facts, laws, regulations, and reasons that we used to make our decision. We will also send you a VA Form 9, "Appeal to Board of Veterans' Appeals," with the Statement of the Case. If you want to continue your appeal to the Board of Veterans' Appeals (Board) after receiving a Statement of the Case, you must complete and return the VA Form 9 within one year from the date of our letter denying you the benefit *or* within 60 days from the date that we mailed the Statement of the Case to you, *whichever is later*. If you decide to complete an appeal by filing a VA Form 9, you have the option to request a Board hearing. Hearings often increase wait time for a Board decision. It is not necessary for you to have a hearing for the Board to decide your appeal. It is your choice.

Where can I find out more about the VA appeals process?

- You can find a "plain language" pamphlet called "How Do I Appeal," on the Internet at: http://www.bva.va.gov/How_Do_I_Appeal.asp.
- You can find the formal rules for the VA appeals process in title 38, Code of Federal Regulations, Part 20. You can find the complete Code of Federal Regulations on the Internet at: <http://www.ecfr.gov>. A printed copy of the Code of Federal Regulations may be available at your local law library.

YOUR RIGHT TO REPRESENTATION

Can I get someone to help me with my appeal? Yes. You can have a Veterans Service Organization representative, an attorney-at-law, or an "agent" help you with your appeal. You are not required to have someone represent you. It is your choice.

- Representatives who work for accredited Veterans Service Organizations know how to prepare and present claims and will represent you. You can find a listing of these organizations on the Internet at <http://www.va.gov/vso>.

- A private attorney or an "agent" can also represent you. VA only recognizes attorneys who are licensed to practice in the United States or in one of its territories or possessions. Your local bar association may be able to refer you to an attorney with experience in veterans' law. An agent is a person who is not a lawyer, but who VA recognizes as being knowledgeable about veterans' law. Contact us if you would like to know if there is a VA accredited agent in your area.

Do I have to pay someone to help me with my appeal? It depends on who helps you. The following explains the differences.

- Veterans Service Organizations will represent you for free.
- Attorneys or agents can charge you for helping you under some circumstances. Paying their fees for helping you with your appeal is your responsibility. If you do hire an attorney or agent to represent you, a copy of any fee agreement must be sent to VA. The fee agreement must clearly specify if VA is to pay the attorney or agent directly out of past-due benefits. See 38 C.F.R. § 14.636(g)(2). If the fee agreement provides for the direct payment of fees out of past-due benefits, a copy of the direct-pay fee agreement must be filed with us at the address included on our decision notice letter within 30 days of its execution. A copy of any fee agreement that is not a direct-pay fee agreement must be filed with the Office of the General Counsel within 30 days of its execution by mailing the copy to the following address: Office of the General Counsel (022D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. See 38 C.F.R. § 14.636(g)(3).

GIVING VA ADDITIONAL EVIDENCE

You can send us more evidence to support a claim whether or not you choose to appeal.

NOTE: Please direct all new evidence to the address included on our decision notice letter. You should not send evidence directly to the Board at this time. You should only send evidence to the Board if you decide to complete an appeal and, then, you should only send evidence to the Board after you receive written notice from the Board that they received your appeal.

If you have more evidence to support a claim, it is in your best interest to give us that evidence as soon as you can. We will consider your evidence and let you know whether it changes our decision. Please keep in mind that we can only consider new evidence that: (1) we have not already seen and (2) relates to your claim. You may give us this evidence either in writing or at a personal hearing with your local VA office.

In writing. To support your claim, you may send documents and written statements to us at the address included on our decision notice letter. Tell us in a letter how these documents and statements should change our earlier decision.

At a personal hearing. You may request a hearing with an employee at your local VA office at any time, whether or not you choose to appeal. We do not require you to have a local hearing. It is your choice. At this hearing, you may speak, bring witnesses to speak on your behalf, and hand us written evidence. If you want a local hearing, send us a letter asking for a local hearing. Use the address included on our decision notice letter. We will then:

- Arrange a time and place for the hearing
- Provide a room for the hearing
- Assign someone to hear your evidence
- Make a written record of the hearing

WHAT HAPPENS AFTER I GIVE VA EVIDENCE?

We will review any new evidence, including the record of the local hearing, if you choose to have one, together with the evidence we already have. We will then decide if we can grant your claim. If we cannot grant your claim and you complete an appeal, we will send the new evidence and the record of any local hearing to the Board.

EXHIBIT F



Department of Veterans Affairs

APPOINTMENT OF VETERANS SERVICE ORGANIZATION AS CLAIMANT'S REPRESENTATIVE

Note - If you would prefer to have an individual assist you with your claim, you may use VA Form 21-22a, "Appointment of Individual as Claimant's Representative." VA Forms are available at www.va.gov/vaforms.

IMPORTANT - PLEASE READ THE PRIVACY ACT AND RESPONSE BURDEN ON REVERSE BEFORE COMPLETING THE FORM.

| | |
|---|--|
| 1. LAST-FIRST-MIDDLE NAME OF VETERAN Amanda J. Wolfe | 2. VA FILE NUMBER (include prefix) [REDACTED] |
| 3A. NAME OF SERVICE ORGANIZATION RECOGNIZED BY THE DEPARTMENT OF VETERANS AFFAIRS (See list on reverse side before selecting organization) National Veterans Legal Services Program | |
| 3B. NAME AND JOB TITLE OF OFFICIAL REPRESENTATIVE ACTING ON BEHALF OF THE ORGANIZATION NAMED IN ITEM 3A (This is an appointment of the entire organization and does not indicate the designation of only this specific individual to act on behalf of the organization) Patrick Berkshire, Service Officer | |
| 3C. EMAIL ADDRESS OF THE ORGANIZATION NAMED IN ITEM 3A patrick@nvlsp.org | |

INSTRUCTIONS - TYPE OR PRINT ALL ENTRIES

| | |
|--|--|
| 4. SOCIAL SECURITY NUMBER (OR SERVICE NUMBER, IF NO SSN) [REDACTED] | 5. INSURANCE NUMBER(S) (include letter prefix) [REDACTED] |
| 6. NAME OF CLAIMANT (If other than veteran) n/a | 7. RELATIONSHIP TO VETERAN n/a |
| 8. ADDRESS OF CLAIMANT (Rm. and street or rural route, city or P.O., State and ZIP Code) [REDACTED] | 9. CLAIMANT'S TELEPHONE NUMBERS (include Area Code) A. DAYTIME [REDACTED] B. EVENING n/a |
| | 10. EMAIL ADDRESS (If applicable) [REDACTED] |
| | 11. DATE OF THIS APPOINTMENT 07/05/2018 |

12. AUTHORIZATION FOR REPRESENTATIVE'S ACCESS TO RECORDS PROTECTED BY SECTION 7332, TITLE 38, U.S.C.
By checking the box below I authorize VA to disclose to the service organization named on this appointment form any records that may be in my file relating to treatment for drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV), or sickle cell anemia.

☒ I authorize the VA facility having custody of my VA claimant records to disclose to the service organization named in item 3A all treatment records relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV), or sickle cell anemia. Redisclosure of these records by my service organization representative, other than to VA or the Court of Appeals for Veterans Claims, is not authorized without my further written consent. This authorization will remain in effect until the earlier of the following events: (1) I revoke this authorization by filing a written revocation with VA; or (2) I revoke the appointment of the service organization named above, either by explicit revocation or the appointment of another representative.

13. LIMITATION OF CONSENT - I authorize disclosure of records related to treatment for all conditions listed in item 12 except:

☐ DRUG ABUSE ☐ INFECTION WITH THE HUMAN IMMUNODEFICIENCY VIRUS (HIV)
☐ ALCOHOLISM OR ALCOHOL ABUSE ☐ SICKLE CELL ANEMIA

14. AUTHORIZATION TO CHANGE CLAIMANT'S ADDRESS - By checking the box below, I authorize the organization named in item 3A to act on my behalf to change my address in my VA records.

☒ I authorize my official representative of the organization named in item 3A to act on my behalf to change my address in my VA records. This authorization does not extend to any other organization without my further written consent. This authorization will remain in effect until the earlier of the following events: (1) I file a written revocation with VA; or (2) I appoint another representative, or (3) I have been determined unable to manage my financial affairs and the individual or organization named in item 3A is not my appointed fiduciary.

I, the claimant named in Items 1 or 6, hereby appoint the service organization named in item 3A as my representative to prepare, present and prosecute my claim(s) for any and all benefits from the Department of Veterans Affairs (VA) based on the service of the veteran named in item 1. I authorize VA to release any and all of my records, to include disclosure of my Federal tax information (other than as provided in items 12 and 13), to my appointed service organization. I understand that my appointed representative will not charge any fee or compensation for service rendered pursuant to this appointment. I understand that the service organization I have appointed as my representative may revoke this appointment at any time, subject to 38 CFR 20.608. Additionally, in some cases a veteran's income is developed because a match with the Internal Revenue Service necessitated income verification. In such cases, the assignment of the service organization as the veteran's representative is valid for only five years from the date the claimant signs this form for purposes restricted to the verification match. Signed and accepted subject to the foregoing conditions.

THIS POWER OF ATTORNEY DOES NOT REQUIRE EXECUTION BEFORE A NOTARY PUBLIC

| | |
|---|----------------------------|
| 15. SIGNATURE OF VETERAN OR CLAIMANT (Do Not Print) Amanda Wolfe | 16. DATE SIGNED 7-12-18 |
| 17. SIGNATURE OF VETERANS SERVICE ORGANIZATION REPRESENTATIVE NAMED IN ITEM 3B (Do Not Print) | 18. DATE SIGNED |

| | | | | |
|-------------------|--|-----------|---------------------|---------------------------|
| VA USE ONLY | COPY OF VA FORM 21-22 SENT TO: | DATE SENT | ACKNOWLEDGED (Date) | REVOKED (Reason and date) |
| | <input type="checkbox"/> VR&E FILE <input type="checkbox"/> EDU FILE <input type="checkbox"/> LO FILE <input type="checkbox"/> INSURANCE FILE | | | |

NOTE: As long as this appointment is in effect, the organization named herein will be recognized as the sole representative for preparation, presentation and prosecution of your claim before the Department of Veterans Affairs in connection with your claim or any portion thereof.



Department of Veterans Affairs

NOTICE OF DISAGREEMENT

A CLAIMANT OR HIS OR HER DULY APPOINTED REPRESENTATIVE MAY FILE NOTICE EXPRESSING THEIR DISSATISFACTION OR DISAGREEMENT WITH AN ADJUDICATIVE DETERMINATION BY THE VA REGIONAL OFFICE. A DESIRE TO CONTEST THE RESULT WILL CONSTITUTE A NOTICE OF DISAGREEMENT (NOD). WHILE SPECIAL WORDING IS NOT REQUIRED, THE NOD MUST BE IN TERMS WHICH CAN BE REASONABLY CONSTRUED AS DISAGREEMENT WITH THAT DETERMINATION AND A DESIRE FOR APPELLATE REVIEW. (AUTHORITY: 38 U.S.C. 7105)

TO FILE A VALID NOD, THERE IS A TIME LIMIT OF ONE YEAR FROM THE DATE VA MAILED THE NOTIFICATION OF THE DECISION TO THE CLAIMANT. FOR CONTESTED CLAIMS INCLUDING CLAIMS OF APPORTIONMENT, THIS TIME LIMIT IS 60 DAYS FROM THE DATE VA MAILED THE NOTIFICATION OF THE DECISION TO THE CLAIMANT.

(DO NOT WRITE IN THIS SPACE)
(VA DATE STAMP)

NOTE: You can either complete the form online or by hand. Please print information using blue or black ink, neatly, and legibly to help process the form.

PART I - PERSONAL INFORMATION

1. VETERAN'S NAME (First, middle initial, last)

A m a n d a J W o l f e

2. VETERAN'S SOCIAL SECURITY NUMBER

3. VA FILE NUMBER

CCSS -

CLAIMANT'S PERSONAL INFORMATION

4. CLAIMANT'S NAME (First, middle initial, last)

A m a n d a J W o l f e

5. CURRENT MAILING ADDRESS (Number and street or rural route, P.O. Box, City, State, ZIP Code and Country)

No. & Street

Apt./Unit Number City

State/Province Country ZIP Code/Postal Code

6. PREFERRED TELEPHONE NUMBER (Include Area Code)

7. PREFERRED E-MAIL ADDRESS

PART II - TELEPHONE CONTACT

8. WOULD YOU LIKE TO RECEIVE A TELEPHONE CALL OR E-MAIL FROM A REPRESENTATIVE AT YOUR LOCAL REGIONAL OFFICE REGARDING YOUR NOD?

☐ YES ☒ NO

(If you answered "Yes," VA will make up to two attempts to call you between 8:00 a.m. and 4:30 p.m. local time of the telephone number and time period you select below. Please select up to two time periods you are available to receive a phone call.)

☐ 8:00 a.m. - 10:00 a.m. ☐ 10:00 a.m. - 12:30 p.m. ☐ 12:30 p.m. - 2:00 p.m. ☐ 2:00 p.m. - 4:30 p.m.

Phone number I can be reached at the above checked time: _____

PART III - APPEAL PROCESS ELECTION

9. SELECT ONE OF THE APPEALS PROCESSING METHODS BELOW (See Specific Instructions, Page 2, Part III for additional information)

☐ Decision Review Officer (DRO) Review Process

☒ Traditional Appellate Review Process

PART IV - SPECIFIC ISSUES OF DISAGREEMENT

10. NOTIFICATION/DECISION LETTER DATE

02/07/2018

11. PLEASE LIST EACH SPECIFIC ISSUE OF DISAGREEMENT AND NOTE THE AREA OF DISAGREEMENT. IF YOU DISAGREE ON THE EVALUATION OF A DISABILITY, SPECIFY PERCENTAGE EVALUATION SOUGHT, IF KNOWN. PLEASE LIST ONLY ONE DISABILITY IN EACH BOX. YOU MAY ATTACH ADDITIONAL SHEETS IF NECESSARY.

| A. Specific Issue of Disagreement | B. Area of Disagreement | C. Percentage (%) Evaluation Sought (If known) |
|---|--|--|
| Entitlement to reimbursement for emergency medical expenses incurred on 9/16/2016 at Mercy Med. Center. | <input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input checked="" type="checkbox"/> Other (Please specify below) 38 U.S.C. § 1725 claim | |
| | <input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify below) | |
| | <input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify below) | |
| | <input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify below) | |
| | <input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify below) | |

12A. IN THE SPACE BELOW, OR ON A SEPARATE PAGE, PLEASE EXPLAIN WHY YOU FEEL WE INCORRECTLY DECIDED YOUR CLAIM, AND LIST ANY DISAGREEMENT(S) NOT COVERED ABOVE:

The Department of Veterans Affairs' ("VA") policy of denying reimbursement for deductibles and coinsurance, as expressed in 38 C.F.R. § 17.1005(a)(5), is at odds with the plain meaning of 38 U.S.C. § 1725(c)(4)(D), its legislative history, and policy interests in favor of expanding veterans' benefits. Further, the VA's policy conflicts with *Staab v. McDonald*, 28 Vet. App. 50 (2016).

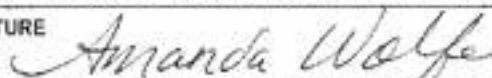
12B. DID YOU ATTACH ADDITIONAL PAGES TO THIS NOO?

☐ YES ☒ NO (If so, how many?)

PART V - CERTIFICATION AND SIGNATURE

I CERTIFY THAT THE STATEMENTS ON THIS FORM ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

13A. SIGNATURE



13B. DATE SIGNED

7-12-18

PENALTY: THE LAW PROVIDES SEVERE PENALTIES WHICH INCLUDE A FINE, IMPRISONMENT, OR BOTH, FOR THE WILLFUL SUBMISSION OF ANY STATEMENT OR EVIDENCE OF A MATERIAL FACT, KNOWING IT TO BE FALSE.

EXHIBIT G




U.S. Department of Veterans Affairs

Iowa City VA Health Care System

601 Highway 6 West
Iowa City, IA 52246
319-338-0581
1-800-637-0128
www.iowacity.va.gov

August 14, 2018

In Reply Refer to: 636-10D1B
Wolfe, Amanda (3966)

AMANDA WOLFE


Dear Ms. Wolfe:

This letter is in response VA Form 21-0958 (Notice of Disagreement) that we received in our office regarding the services provided to you at Mercy Medical Center in Clinton, Iowa from September 16, 2016 through September 17, 2016.

Due to the volume of appeals, we anticipate a delay. We review appeals in the order that they are received by this office. Please be assured that you will receive written notification of our decision.

Payment of healthcare services outside the VA is governed by strict federal guidelines; decisions are based upon eligibility criteria, medical necessity and availability of the service within the VA Healthcare System. In most cases, having VA pay for care in the community requires pre-authorization.

However, the VA has rules about who qualifies for coverage at Non-VA facilities, even in emergencies. Federal Regulations for payment to civilian hospitals for emergency medical treatment outside of the VA is under the provisions of Code of Federal Regulation (CFR) 38 CFR 17.1000 through 17.1008; 17.120 through 17.132 and 38 CFR 17.52 through 17.56. Eligibility for VA payment of emergency care, as well as deadlines for filing claims, depend upon a veteran's specific eligibility criteria for Non-VA medical care.

I apologize for the delay and thank you for your patience and cooperation during our review process.

If you have questions regarding the above-mentioned date of service, please feel free to call us at (319) 338-0581.

Sincerely,

VHA Office of Community Care- Claims Adjudication & Reimbursement

EXHIBIT H

October 8, 2018

Iowa City VA Health Care System
ATTN: Appeals, VHA Office of Community Care (10D1B)
601 Highway 6 West
Iowa City, IA 52246

Subject: **Notice of Disagreement to February 7, 2018**, denial of reimbursement for emergency medical expenses incurred of 9/16/2016 – 9/17/2016 at Mercy Medical Center in Clinton, Iowa. (In reply to **636-10D1B**, for **Wolfe, Amanda (xxx-xx-3966)**);

To Whom it may concern,

This is a **Notice of Disagreement (NOD)** to VA healthcare's February 7, 2018, decision that denied me entitlement to reimbursement under 38 U.S.C. § 1725 for emergency medical expenses incurred between September 16 and 17, 2016, at Mercy Medical Center in Clinton, Iowa. I disagree because the Department of Veterans Affairs' ("VA") policy of denying reimbursement for deductibles and coinsurance, as expressed in 38 C.F.R. § 17.1005(a)(5), is at odds with the plain meaning of 38 U.S.C. § 1725(c)(4)(D), its legislative history, and policy interests in favor of expanding veterans' benefits. Further, the VA's policy conflicts with *Staab v. McDonald*, 28 Vet. App. 50 (2016). As a result, I disagree with VA Health Care's decision.

Date: October 8, 2018

1st Amanda Wolfe
Amanda J. Wolfe



EXHIBIT I



DEPARTMENT OF VETERANS AFFAIRS
Oscar G. Johnson Medical Center
Office of Community Care- Claims Adjudication and Reimbursement
Mail Code: CAR
325 East "H" Street
Iron Mountain, MI 49801-4792
(906)-774-3300 x32657

11/27/2018

UIS Claim ID#: [REDACTED]
Fee Program: 1725

Provider: [REDACTED]
Episode of Care Beginning: [REDACTED]

The claim noted above has been reviewed to determine if it meets eligibility requirements for payment for non-service connected emergency medical care. Following our review of your claim, we have determined that your claim does not meet the requirements of 38 U.S.C. 1725 and has been disapproved for the reason(s) listed below:

Veteran has other insurance coverage eligible to make payment on the claim. The veteran must not have coverage under a health-plan contract for payment or reimbursement, in whole or in part, for the emergency treatment (this condition cannot be met if the veteran has coverage under a health-plan contract but payment is barred because of a failure by the veteran or the provider to comply with the provisions of that health-plan contract, e.g., failure to submit a bill or medical records within specified time limits, or failure to exhaust appeals of the denial of payment) 38 CFR 17.1002

In order for VA to reimburse the non-VA provider on your behalf for the non-service connected services provided, all of the following eligibility criteria must be met:

- (1) Treatment was emergent according to the prudent layperson standard;
- (2) veteran is financially liable to the provider for emergency treatment;
- (3) veteran is enrolled in the VA health care system and received treatment within a 24-month period preceding emergency care;
- (4) the veteran has no coverage under a health plan contract;
- (5) veteran has no other contractual or legal recourse against a third party that would, in whole extinguish liability to the provider;

Note: If this claim is from an automobile accident please forward proof that auto insurance did not fully cover your claim or if it has been denied for third party liability.

- (6) VA facilities were not feasibly available and an attempt to use them beforehand would have been hazardous to life or health by prudent layperson standard;

and (7) emergency services were provided in a hospital emergency department, a free standing urgent care clinic, or a similar facility held out as providing urgent or emergency care to the public, up to the point of medical stability. The absence of any one of these criteria precludes payment by the US Department of Veterans Affairs.

If you do not agree with this decision, you have the right to appeal. On November 9, 2000, the Veterans Claims Assistance Act (VCAA) was enacted requiring VA to assist Claimants who are denied medical benefits in the process by providing a Veterans Claims Assistance Act Notice (VCAA); VA Form 4107VHA, Your Rights to Appeal Our Decision; VA Form 21-22, Appointment of Veterans Service Organization as Claimant's Representative; and VA Form 21-22a, Appointment of Attorney as Claimant's Representative. Please read the information provided carefully so that you will clearly understand your procedural and appeal rights in connection with any denied services.

Additional Appeal Information.

If you do not agree with this initial decision you have the right to appeal. You have two appeal paths from which to choose, if your claim or part of your claim was not approved for payment:

Option #1: Request Iron Mountain VA Medical Center Reconsideration of Your Denied Claim (Title 38, Code of Federal Regulations, Section 17.153): Take the following steps to request reconsideration of a denied claim:

Submit a reconsideration request in writing to: Office of Community Care ATTN: CAR, Iron Mountain VA Medical Center, 325 East 11 Street, Iron Mountain, MI, 49801 within one year of the date of this letter.

State in your written request for reconsideration why the initial decision is in error and include any new and relevant information not previously provided.

In your request for reconsideration of a denied claim, you may request a meeting with the immediate supervisor of the initial VA decision-maker to discuss the matter informally, and you may be accompanied by a representative if you wish.

Submitting a timely request for reconsideration shall constitute a notice of disagreement for purposes of filing a timely notice of disagreement under Title 38, U.S. Code, Section 7105(b).

Option #2: As an alternative to Option #1, if you don't want reconsideration of your denied claim by the Iron Mountain VA Medical Center, you have the option of appealing directly to the Board of Veterans' Appeals (BVA).

Follow the steps outlined in the enclosed VA Form 4107, Your Rights to Appeal Our Decision (NOTICE). The VA Form 4107 instructs you to send your "Notice of Disagreement" to the address "at the top of our letter." (Instead of the letterhead address, and for quicker mail processing, please send your "Notice of Disagreement" to the address identified immediately below.)

Send your "Notice of Disagreement" to Office of Community Care ATTN: CAR, Iron Mountain VA Medical Center, 325 East H Street, Iron Mountain, MI, 49801.

If you have any questions or concerns, please contact us at the above address or call toll free 800-215-8262 option #5

Sincerely,
Regards,

Office of Community Care

Attachments: VA Form 4107VHA, Your Rights to Appeal Our Decision

EXHIBIT J



DEPARTMENT OF VETERANS AFFAIRS

St Cloud VA Healthcare System 136F
4801 Veterans Drive
St Cloud MN, 56301

02/22/2018

UB Claim ID#: [REDACTED]
THIS IS NOT A DENIAL



Facility: [REDACTED]

Episode of Care Beginning: [REDACTED]

We have received the above listed claim for medical care. This is not a denial letter, however you may need to contact the provider listed above to coordinate the additional information that we need. The Department of Veterans Affairs (VA) will consider this claim under 38 U.S.C. 1725.

In order for VA to reimburse the non-VA provider on your behalf for emergent non-service connected services, all of the following eligibility criteria must be met: (1) Veteran has received care or services from VA within the 24-month period preceding the emergent treatment; (2) **Veteran has no coverage under a health plan contract;** (3) Veteran has no contractual or legal recourse against a third party that would in whole extinguish liability to the provider; (4) VA facilities were not feasibly available; (5) **the claim for emergency care was filed within 90 days after the date the Veteran was discharged from the facility that furnished the emergency treatment or the date the veteran exhausted, without success, action to obtain payment or reimbursement for the treatment from a third party;** (6) **requested documentation was received within 30 days of written request;** (7) treatment was emergent according to the prudent layperson standard; (8) Veteran is financially liable to the provider for emergency treatment, and (9) services were provided in a hospital emergency department or facility that provides urgent care, up to the point the Veteran could have been safely transferred to a Federal facility.

The above referenced claim for reimbursement has been rejected for the following reason(s):

- VA records indicate that the Veteran has other health insurance (OHI), therefore VA is not primary payer. By law, VA cannot reimburse remaining costs such as copayments, cost shares or deductibles associated with a Veteran's OHI. If there is a balance due on the account that is not due to the aforementioned, please re-submit your claim along with an EOB or other equivalent remittance advice from other payers for further consideration. For more information regarding this rejection please visit our webpage for providers at www.va.gov/COMMUNITYCARE/providerinfo_payments.asp#payments

If you have any questions or concerns, please contact us at 1-320-255-0483.

VA Community Care Claims Adjudication and Reimbursement

EXHIBIT K



DEPARTMENT OF VETERANS AFFAIRS
St Cloud VA Healthcare System 136F
4801 Veterans Drive
St Cloud MN, 56301

02/26/2018

UB Claim ID#: [REDACTED]
THIS IS NOT A DENIAL

Facility: [REDACTED]
Episode of Care Beginning: [REDACTED]

We have received the above listed claim for medical care. **This is not a denial letter, however you may need to contact the provider listed above to coordinate the additional information that we need.** The Department of Veterans Affairs (VA) will consider this claim under 38 U.S.C. 1725.

In order for VA to reimburse the non-VA provider on your behalf for emergent non-service connected services, all of the following eligibility criteria must be met: (1) Veteran has received care or services from VA within the 24-month period preceding the emergent treatment; (2) **Veteran has no coverage under a health plan contract;** (3) Veteran has no contractual or legal recourse against a third party that would in whole extinguish liability to the provider; (4) VA facilities were not feasibly available; (5) **the claim for emergency care was filed within 90 days** after the date the Veteran was discharged from the facility that furnished the emergency treatment or the date the veteran exhausted, without success, action to obtain payment or reimbursement for the treatment from a third party; (6) **requested documentation was received within 30 days of written request;** (7) treatment was emergent according to the prudent layperson standard; (8) Veteran is financially liable to the provider for emergency treatment; and (9) services were provided in a hospital emergency department or facility that provides urgent care, up to the point the Veteran could have been safely transferred to a Federal facility.

The above referenced claim for reimbursement has been rejected for the following reason(s):

- VA records indicate that the Veteran has other health insurance (OHI), therefore VA is not primary payer. By law, VA cannot reimburse remaining costs such as copayments, cost shares or deductibles associated with a Veteran's OHI. If there is a balance due on the account that is not due to the aforementioned, please re-submit your claim along with an EOB or other equivalent reimbursement advice from other payers for further consideration. For more information regarding this rejection please visit our webpage for providers at www.va.gov/COMMUNITYCARE/providers/nfo_payments.asp#payments

If you have any questions or concerns, please contact us at 1-320-255-6433

VA Community Care Claims Adjudication and Reimbursement

EXHIBIT L



DEPARTMENT OF VETERANS AFFAIRS

Palo Alto Health Care System
Non-VA Medical Care Program (640/136C)
795 Willow Road
Menlo Park, CA 94025

04/02/2018

CMS 1500 Claim ID# [REDACTED]

Fee Program: 1725

[REDACTED]
Provider: [REDACTED]
Episode of Care Beginning [REDACTED]

The above listed claim has been administratively and clinically reviewed to determine if it meets eligibility requirements for payment for non-service connected emergency unauthorized medical care. We regret to inform you that your claim does not meet the requirements of 38 U.S.C. 1725.

In order for VA to reimburse the non-VA provider on your behalf for the non-service connected services provided, **all** of the following eligibility criteria must be met: (1) Treatment was emergent according to the prudent layperson standard; (2) veteran is financially liable to the provider for emergency treatment; (3) veteran is enrolled in the VA health care system and received treatment within a 24-month period proceeding emergency care; (4) the veteran has no coverage under a health plan contract. (5) veteran has no other contractual or legal recourse against a third party that would, in whole extinguish liability to the provider; (6) VA facilities were not feasibly available and an attempt to use them beforehand would have been hazardous to life or health by prudent layperson standard; and (7) emergency services were provided in a hospital emergency department, a free standing urgent care clinic, or a similar facility held out as providing urgent or emergency care to the public, up to the point of medical stability. The absence of any one of these criteria precludes payment by the US Department of Veterans Affairs.

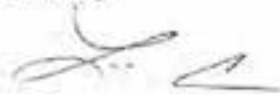
This claim for VA reimbursement has been disapproved for the reason(s) listed below:

VA records indicate that the Veteran has other health insurance (OHI) that covered a portion of the cost for emergency treatment. An Explanation of Benefits (EOB) or other remittance from the OHI is required for VA to process this claim as a secondary payer. Please re-submit your claim along with an EOB or other equivalent remittance advice, for further consideration. For more information regarding this rejection, please visit our webpage at: www.va.gov/COMMUNITYCARE/providers/info_payments.asp#payments

If you do not agree with this decision, you have the right to appeal. On November 9, 2000, the Veterans Claims Assistance Act (VCAA) was enacted requiring VA to assist Claimants who are denied medical benefits in due process by providing a Veterans Claims Assistance Act Notice (VCAA); VA Form 4107VHA, Your Rights to Appeal Our Decision; VA Form 21-22, Appointment of Veterans Service Organization as Claimant's Representative; and VA Form 21-22a, Appointment of Attorney as Claimant's Representative. Please read the information provided carefully so that you will clearly understand your procedural and appeal rights in connection with any denied services.

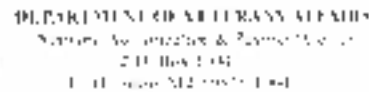
If you have any questions or concerns, please contact us at the above address or call (650) 617-2788.

Sincerely,

A handwritten signature in black ink, appearing to read 'Li Gapasin', with a stylized flourish at the end.

Li Gapasin
Chief, Health Administration Service (136)

EXHIBIT M



CA Case ID: [REDACTED]

THIS IS NOT A DENIAL

NOTE: This is not a Service Center letter. This is not a Service Center letter, however, you may need to contact the provider listed above to coordinate the additional information that we need. The Department of Veterans Affairs may be contacted at 1-800-828-0838.

[illegible]

*The copyright notice for this work has been updated to the following year.

- [illegible]

* 5'461-417-4 by Gilead Sciences, Inc. (www.gilead.com) as set forth in U.S. Pat. No. 7,238,712.

4. Community Care Claims Adjudication and Reimbursement

EXHIBIT N



DEPARTMENT OF VETERANS AFFAIRS
Office of Community Care and Reimbursement
P.O. Box 1890
Washington, DC 20501-0189

10-1002012

UB Case ID# [REDACTED]

Rating [REDACTED]
Episode of Care Beginning [REDACTED]

We have reviewed the above listed claim for medical care. The Department of Veterans Affairs (VA) will not pay this claim under 38 USC 1723.

In order for VA to reimburse the non-VHA provider on your behalf for emergency care, service connected or not, all of the following eligibility criteria must be met: (1) Veteran has received care services from VA within the 24-month period preceding the emergency treatment; (2) either no VA coverage under a health plan or lack; (3) Veteran has no participation or obligation to pay for the care; (4) VA facilities were not readily available; (5) the claim for emergency care was filed within 90 days after the date the Veteran was discharged from the facility that provided the emergency treatment or the date the Veteran contacted a third vendor, either to obtain payment or reimbursement for the payment from a third party; (6) requested documentation was received within 30 days of written request; (7) treatment was consistent according to the prudent layperson standard; (8) services were provided at a hospital, emergency department or facility that provided urgent care, up to the point the Veteran could have been transferred to a Federal facility. In addition, emergency transportation may only be considered when reimbursement is authorized under 38 USC 1723 to the facility where the Veteran was transported; (9) 38 CFR 17.1003.

The above criteria used claim for health insurance has been denied for the following reasons:

- 1. The emergency care was not provided at a VA facility.

If you do not agree with this decision you have the right of appeal as described in attachment #1027010. If you have any questions or concerns, please contact us at 1-888-TED-0773.

VA Community Care Claims Adjudication and Reimbursement (VISA 191)

Attachment: VA Form 10-1002012, Notice of Procedural Appellate Rights

EXHIBIT O



DEPARTMENT OF VETERANS AFFAIRS
VHA Office of Community Care
11601 E. US Highway 1
Orlando, Florida 32827

10/13/2014

HOTLINE 1234 1234
Pay Program: 1234



Provider: [Redacted]
Episode of Care Beginning: [Redacted]

The claim noted above has been reviewed to determine if it meets eligibility requirements for payment for non-service connected emergency medical care. Following our review of your claim, we have determined that your claim does not meet the requirements of 38 U.S.C. 1725 and has been disapproved for the reason(s) listed below:

Claim Denied - The claim was filed outside the 90 day timely filing limitation 38 CFR 17.1004 (d)

Note: Please forward proof that your insurance did not fully cover your claim if it has been denied for third party liability.

In order for VA to reimburse the non-VA provider on your behalf for the non-service connected services provided, all of the following eligibility criteria must be met:

- (1) Treatment was emergent according to the prudent layperson standard;
- (2) veteran is financially liable to the provider for emergency treatment;
- (3) veteran is enrolled in the VA health care system and received treatment within a 24-month period, precluding emergency care;
- (4) the veteran has no coverage under a health plan contract;
- (5) veteran has no other contractual or legal recourse against a third party that would, in whole, extinguish liability to the provider;
- (6) VA facilities were not feasibly available and an attempt to use them beforehand would have been hazardous to life or health by prudent layperson standard; and
- (7) emergency services were provided in a hospital emergency department, a free standing urgent care clinic, or a similar facility held out as providing urgent or emergent care to the public, up to the point of medical stability. The absence of any one of these criteria precludes payment by U.S. Department of Veterans Affairs.

If you do not agree with this decision, you have the right to appeal. On November 9, 2000, the Veterans Claims Assistance Act (VCAA) was enacted requiring VA to assist Claimants who are denied medical benefits in due process by providing a Veterans Claims Assistance Act Notice (VCAA); VA Form 4107VHA, Your Rights to Appeal Our Decision; VA Form 21-22, Appointment of Veterans Service Organization as Claimant's Representative; and VA Form 21-22a, Appointment of Attorney as Claimant's Representative. Please read the information provided carefully so that you will clearly understand your procedural and appeal rights in connection with any denied services.

If you have any questions or concerns, please contact us at the above address or call (407) 646-4000, Option 2.

Marisol Gonzalez
Orlando NVC Facility Manager
CBO Purchase Card

CERTIFICATE OF SERVICE

I hereby certify that on December 31, 2018, I caused a copy of the foregoing to be served by First-Class U.S. Mail, postage prepaid, to the following addressee:

General Counsel of the Department of Veterans Affairs,
General Counsel (027)
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420-0002

I also submitted a copy of the foregoing to:

Gregory O. Block, Clerk of Court
esubmission@uscourts.cavc.gov

/s/ Lindsay Kate Eastman
Lindsay Kate Eastman, Attorney