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From the Los Angeles Times

VA failing Mideast vets, lawsuit contends

Troops returning from Iraq and Afghanistan are not getting proper medical and mental health care, the suit says, citing post-traumatic stress disorder as a particular problem.

By Henry Weinstein

Times Staff Writer

July 24, 2007

SAN FRANCISCO — The U.S. Department of Veterans Affairs was accused in a major lawsuit Monday of "shameful failures" in providing medical and mental healthcare to injured servicemen and women returning from the wars in Iraq and Afghanistan.

The 73-page suit, filed in federal court here on behalf of hundreds of thousands of veterans, is the first of its kind and seeks to dramatically transform the way the VA operates.

The suit targets what it describes as the agency's "unconscionable" backlog of 600,000 claims, the adequacy of its services and the long waits to receive mental health care, particularly for post-traumatic stress disorder, which is described as the "signature problem" of vets returning from the current fighting.

A recent report by a special Pentagon task force found that 38% of soldiers and 50% of National Guard members coming home from Iraq or Afghanistan have mental health issues, ranging from stress disorder to brain injuries. But only 27 of the VA's 1,400 hospitals around the country have in-patient post-traumatic stress disorder programs, the plaintiffs' lawyers said.

The individuals suffering from post-traumatic stress disorder, or PTSD, are being deprived of mental health services in the early phases of the illness, when identification and treatment are critical, the suit alleges. Left untreated, severe PTSD can lead to substance abuse, depression and suicide, the lawyers said.

"A number of veterans have committed suicide shortly after having been turned away from VA facilities either because they were told they were ineligible or because the wait was too long," the lawsuit states.

In response to the suit, the VA issued a formal statement, saying it "is committed to meeting the special needs of our latest generation of heroes, and it would be inappropriate to comment directly upon a potential or pending lawsuit."

"Through outreach efforts, the VA ensures returning Global War on Terror service members have access to the widely recognized quality healthcare they have earned, including services such as prosthetics or mental health care. VA has also given priority handling to their monetary disability benefit claims."

Attorney Gordon P. Erspamer, one of the lead lawyers for the plaintiffs, said at a news conference that the lawsuit, which seeks class-action status, is an attempt

to establish a basic set of "civil rights" for veterans.

"This isn't a case about isolated problems or the type of normal delays and administrative hassles we all occasionally experience with bureaucracies," said Erspamer, of San Francisco's Morrison & Foerster, which has taken the case pro bono. "This case is founded on the virtual meltdown of the VA's capacity to care for men and women who served their country bravely and honorably, were severely injured and are now being treated like second-class citizens."

"This is the first class-action lawsuit to directly challenge" the adequacy of care for post-traumatic stress disorder and "the VA's unconscionable backlog of claims," added attorney Sid Wolinsky of Disability Rights Advocates, a nonprofit advocacy group that also is representing the plaintiffs.

Symptoms of post-traumatic stress syndrome, the suit says, include intense anxiety, persistent nightmares, depression, uncontrollable anger and difficulties coping with work, family and social relationships.

Veterans suffering from PTSD and other psychiatric problems are less able to handle battles with the VA bureaucracy than other vets, according to retired Marine Col. James Cook, who spoke at the news conference. He brandished a 23-page standard form that veterans must fill out to seek help.

"The VA's outmoded systems for providing medical care and disability benefits" have been overwhelmed by "the huge influx of injured troops returning from Iraq and Afghanistan," the suit states. About 1.6 million men and women have served in the two countries since the Sept. 11, 2001, terrorist attacks.

The VA had significant problems even before the two current wars were launched, but its current backlog has become an "insurmountable barrier" that has made a mockery of the VA's mandate, said attorney Melissa Kasnitz, of Disability Rights Advocates.

"The VA's motto, taken from Abraham Lincoln's second inaugural address is, 'To care for him who shall have borne the battle and for his widow and orphan.' The VA is not living up to its motto or its obligation to care for our disabled veterans," she said.

The named plaintiffs are two veterans' advocacy groups, Veterans for Common Sense, based in Washington, D.C., and Veterans United for Truth, based in Santa Barbara. The case was not filed on behalf of individuals because "veterans fear retaliation," Erspamer said.

However, Paul Sullivan, executive director of Veterans for Common Sense, said that individual veterans would be speaking out in the future. "Since the Iraq and Afghanistan wars began, the VA has betrayed our veterans," said Sullivan, who served in the Army during the first Gulf War and worked as a project manager for the VA from 2000 to 2006, monitoring the disability claims of veterans from the Gulf War and the recent wars in Afghanistan and Iraq.

"Instead of hiring more doctors and claims processors," as he recommended, Sullivan said, "the VA instituted new policies that block veterans' access to prompt mental health care."

Sullivan is scheduled to testify Thursday at a hearing of the House Committee on Veterans Affairs, which will be considering a recently issued report by the Institute of Medicine examining how the VA handles treatment and compensation claims for PTSD.

The defendants in the lawsuit include R. James Nicholson, outgoing VA chief, several other ranking VA officials and Atty. Gen. Alberto R. Gonzales. A spokesman for the Justice Department said the agency would have no immediate comment because its lawyers were just beginning to review the suit.

The plaintiffs' lawyers emphasized that they were not seeking monetary damages. Rather, they said the suit was designed to stop repeated violations of federal laws that guarantee healthcare for returning veterans.

The plaintiffs' lawyers assert that the VA's claims-processing and appeal procedures for denied claims violate the veterans' constitutional rights to due process under the 5th Amendment and their right to petition for redress, guaranteed by the 1st Amendment.

Erspamer said the VA had created perverse incentives to deny claims by awarding employees bonuses based on the number of claims processed. Rather than considering veterans' claims carefully, he said it was much easier and faster to deny a claim, particularly a complicated one, than to grant it.

Moreover, the suit contends that the VA "has consistently presented misleading statistics" understating the length of time it takes to decide a claim, the number of veterans who need mental health services and the amount of money the agency needs to meet its obligations to veterans.

Sullivan said the two recent wars have generated more than 220,000 disability claims. The lawsuit also alleges that government officials have improperly persuaded many soldiers suffering from PTSD to accept "personality disorder" discharges by telling them they will get help faster. In fact, the suit states, agreeing to that bars veterans from obtaining disability benefits and from receiving ongoing medical treatment because the "disorder" is characterized as a "pre-existing condition."

Unless "systemic and drastic measures are instituted immediately, the costs to the veterans, their families and our nation will be incalculable, including broken families, a new generation of unemployed and homeless veterans, increases in drug abuse, increases in alcoholism and crushing burdens on the health care delivery system and other social services in our communities," the suit charges.

The attorneys said that although they were hoping for help from the federal court, congressional action also was needed to increase funding and other resources for the VA.

henry.weinstein@latimes.com

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