

# Appeals court blasts VA mental health care system

By **PAUL ELIAS**

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Noting that an average of 18 veterans a day commit suicide, a federal appeals court on Tuesday ordered the Department of Veterans Affairs to dramatically overhaul its mental health care system.

In the strongly worded ruling, the 9th U.S. Circuit Court of Appeals said it takes the department an average of four years to fully provide the mental health benefits owed veterans.

The court also said it often takes weeks for a suicidal vet to get a first appointment.

The "unchecked incompetence" in handling the flood of post-traumatic stress disorder and other mental health claims is unconstitutional, the court said.

"No more veterans should be compelled to agonize or perish while the government fails to perform its obligations," Judge Stephen Reinhardt wrote for the three-judge panel. "Having chosen to honor and provide for our veterans by guaranteeing them the mental health care and other critical benefits to which they are entitled, the government may not deprive them of that support through unchallengeable and interminable delays."

The VA could ask the appeals court to reconsider its decision with a special 11-judge panel; ask the U.S. Supreme Court to take the case; or abide by the ruling.

VA spokesman Josh Taylor declined comment, citing the pending litigation.

The court said one of every three soldiers returning from Iraq and Afghanistan was treated by the VA for mental health issues, including post-traumatic stress syndrome. A 2008 Rand Institute study found that 18.5 percent of soldiers returning from those countries were diagnosed with PTSD, and the study concluded 300,000 soldiers currently deployed suffer from it or major depression.

The 9th Circuit ruling overturned a 2008 verdict by U.S. District Judge Samuel Conti. After a two-week trial, Conti ruled that a lawsuit filed by two veterans groups seeking a judicial order for an overhaul of the VA was misdirected.

Conti said he was powerless to act because Congress narrowly limited the authority courts have in reviewing VA benefit decisions.

Conti didn't find a system-wide crisis in which health care is not being provided within a reasonable time to the roughly 5 million veterans enrolled in the VA's health care system, which includes 153 hospitals and 800 clinics.

The appeals court, however, said there's ample evidence the VA is falling down in its duty to provide timely care for the mental health needs of the country's military veterans.

"The delays have worsened in recent years, as the influx of injured troops returning from deployment in Iraq and Afghanistan has placed an unprecedented strain on the VA, and has overwhelmed the system," Reinhardt wrote.

The court said a 2007 report by the Office of the Inspector General found significant delays in timely referrals from VA doctors for treatment of PTSD and depression. Fewer than half of the patients received same-day mental evaluations while others had to wait as long as two months for a counseling session.

"These extensive waiting times can have devastating results for individuals with serious mental illnesses," Reinhardt wrote. He was joined by Judge Proctor Hug.

The appeals court sent the case back to Conti in the trial court and ordered him to work with the VA and the veterans groups toward a new mental health care plan that implements a speedier process to appeal denied benefits, provides timely mental health treatment and ensures suicidal vets are seen immediately.

If the VA fails to come up with an acceptable plan, the appeals court told Conti to fashion his own plan. Conti scheduled a court hearing for May 27.

Chief Judge Alex Kozinski dissented. He argued the ruling Tuesday tramples congressional limits on judicial review of VA decisions.

"The majority hijacks the Department of Veterans Affairs mental health treatment and disability compensation programs and installs a district judge as reluctant commander-in-chief," Kozinski wrote

Paul Sullivan, executive director of Veterans for Common Sense, which filed the lawsuit along with Veterans United for Truth, said vets had their day in court and won.

"Now we urge VA to move forward so no veteran is delayed or denied health care or disability benefits," he said

During the two-week trial without a jury in April 2008, lawyers for the groups showed the judge e-mails between high-ranking VA officials confirming high suicide rates among veterans and a desire to keep quiet the number of vets under its care who attempt suicide.

"Shhh!" began a Feb. 13, 2008, e-mail from Dr. Ira Katz, a VA deputy chief. "Our suicide prevention coordinators are identifying about 1,000 suicide attempts per month among the veterans we see in our medical facilities. Is this something we should (carefully) address ourselves in some sort of release before someone stumbles on it?"

Katz wrote in another e-mail that 18 veterans kill themselves daily on average.

After the trial another e-mail surfaced that was written by VA psychologist Norma Perez suggesting that counselors in Texas make a point to diagnose fewer post-traumatic stress disorder cases. The veterans' lawyers argued that e-mail showed the VA's unwillingness to properly treat mental health issues.

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