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Medical Opinion Checklist

Medical Opinion Checklist Instructional Guide

I. Definition

A medical opinion is a conclusion made by an examiner that may be required when

There is evidence in the record of a current disability, and

That disability may be associated with active service, but

The record does not contain enough information for VA to make a decision on the claim.

Specifically, you may be asked to provide a medical opinion to help with any of the following:

- 1) to determine a medical condition's relationship to an event, injury, illness, or disease during a claimant's military service
- 2) to determine relationships between different medical conditions
- 3) to reconcile diagnoses or differing opinions
- 4) to determine the etiology of a condition.

A medical opinion is only one of many factors that are used to determine a claim, but it is an important one, and the better supported the opinion is, the more valuable it is. However, a conclusion alone is not a sufficient basis for VA to adjudicate (officially decide) a claim.

A medical opinion must always include both a definite conclusion, using VA-recommended legal language (at least as likely as not, etc.) and a well-reasoned supporting rationale. The rationale must support the conclusion with clear, logical, and understandable reasons for the conclusion based on case-specific data.

Details about developing a sufficient rationale are discussed below under Section IV.

II. Types of opinions

1. Direct service connection opinion (nexus opinion).

Determine whether a claimed disability began in service or is due to an event, injury, disease, or illness in service.

2. Secondary service connection opinion.

Determine whether a claimed condition is due to a condition that is already service-connected (SC).

The condition might be directly due to the SC condition (direct secondary service connection) or if not, it might have been aggravated in service beyond its natural progression by the SC condition (aggravation opinion). The 2 conditions needs not stem from the same etiology.

3. Aggravation of a preexisting condition opinion

Determine whether a condition that existed prior to service was **permanently worsened** during service beyond its natural progression. For this opinion, you need to address 5 items: what the baseline severity of the condition was at entrance to service, what the severity was at separation, how much of any change was due to natural progression, what the current severity is, and, in conclusion, whether the pre-existing condition was permanently worsened during service beyond natural progression .

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4. Reconciliation of conflicting diagnoses or medical opinions.

Determine which diagnosis or opinion is more correct or better supported.

III. Elements of a good opinion.

Have a clear scope of the opinion: Before you start, you need to understand the scope of the opinion – determine exactly what is being claimed – and direct the opinion to the specific question asked to ensure that the opinion statement is exactly tailored to the medical opinion requested.

Use correct language: You must use correct VA-supplied legal language – at least as likely as not, less likely than not, etc. The term “at least as likely as not” means that there is at least a 50% probability that the evidence supports a positive opinion. This language is based on VA’s standard of proof, which states that when the evidence in favor of a claim is stronger than the evidence against the claim, it is correct to say that it is at least as likely as not, but when the evidence against a claim is stronger than the evidence in favor of the claim, it is correct to say that it is not at least as likely as not.

Evidence: Provide an Evidence Review that lists dates and places of relevant treatment in service and sometimes post-service, and gives citation for any supporting medical literature reviewed. When the evidence for and against a claim are equivalent or approximately in balance, VA tips the balance in favor of the claimant, and gives the claimant what it calls “the benefit of the doubt.” Your role is to take an unbiased approach and weigh all available evidence for and against a claim and use your clinical expertise along with any pertinent medical literature to formulate and substantiate a medical opinion.

Give a definitive opinion: You must give a definitive opinion, with no hedging – no use of probably, possibly, could be, most likely, etc.

IV. Elements of a good rationale.

Dates: Include dates of service and other relevant dates – for treatment, surgery, etc., as needed.

Evidence: As available and relevant, include information from the following sources:

- a. Service treatment records – a careful review is of great importance
- b. Post-service VA and private medical records
- c. Previous examinations
- d. Current examination
- e. Medical literature citations – if cited, the reference should be cited as well (i.e., Doe, J. (2015). XXXX “JAMA ...”) instead of saying “medical literature supports...”
- f. Lay statements – Lay evidence is any evidence or statement offered by a person without a medical background or training and may include the claimant. It usually consists of personal observations made through the senses or firsthand knowledge. Lay evidence in the records should always be addressed and taken into account but not necessarily accepted without question.

Make the rationale credible, logical, and persuasive. Adding literature citations makes for a stronger rationale.

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Connect the opinion to the supporting data. Tell how specific items of evidence, clinical data, and medical literature support the opinion. The rationale is the most important part of the opinion.

Document supporting evidence in the body of the medical opinion DBQ and discuss it in the medical opinion rationale. Just including the information as evidence statements is not sufficient.

When a claimed condition develops after another condition, including in the same body part or system, explain the relationship, if any, and do not rely on time sequence alone, but also discuss any intercurrent causes that might have resulted in the development of a new condition that would indicate that the time sequence is only coincidental. Explain why, in that particular case, there is a relationship.

If there has been an **extended break in time since service**, provide a nexus/link/continuity, to include discussion of any intercurrent causes, including type of employment since service, effects of aging, any significant injuries, etc.

Don't ignore negative evidence. Be sure you take into account evidence that is both positive and negative regarding the claim, weigh it, and explain why some items of evidence are more significant than others.

Be aware that a claimant may have had **only signs or symptoms of a condition** and not a named diagnosis in service. If the signs and/or symptoms during service were the first manifestations of a later diagnosed condition, you should consider this as an indication that the condition began in service, if consistent with medical knowledge about the course of the condition.

Speculation: In the rare case where you believe it is impossible to provide a medical opinion without speculation, you need to make very clear that you considered all available data, including a literature search, that bear on the issue. Since this determination would itself be a medical opinion, it requires a rationale that explains the basis of the opinion and reports exactly what facts you are unable to determine. The inability to provide an opinion should be based on the limitations of knowledge of the medical community as a whole, not just on the limitations of your own knowledge.

V. Presumption of soundness

This is a legal term that you need to be familiar with in cases where the issue of whether a condition pre-existed service is relevant. A condition that began before service may be aggravated by service but could not be directly service-connected. A condition that did not begin before service may be directly service-connected.

Presumption of soundness means that VA will consider a Veteran to have been in sound condition, i.e., good health, when examined, accepted and enrolled for service, except as to defects, infirmities, or disorders noted at entrance into service, or where clear and unmistakable (obvious or manifest) evidence demonstrates that an injury or disease existed prior thereto and was not aggravated by such service.

If a condition is noted, or documented, by a clinician on the physical examination portion of the service entrance examination, presumption of soundness does not apply. However, it is very important to know that even if you feel that a condition very likely or possibly or even almost certainly existed prior to service, **unless there is documentation of the condition at entrance to service, the claimant is considered to have been in sound condition at entrance to service.**

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Example: If a claimant is claiming allergic rhinitis, for example, and it is not documented at entrance to service, but on your examination he or she says it began in childhood, the doctrine of presumption of soundness applies, and you must treat it as if it did not pre-exist service. If allergic rhinitis had been documented on the entrance examination, the presumption of soundness would not apply.

The following checklists offer frameworks for providing medical opinions of various types, and you should incorporate your responses to these questions, reinforced by appropriate details, into your rationale.

Direct Service Connection

- | | | |
|---|-----|----|
| 1. Shown in service/active duty | YES | NO |
| 2. Shown in post service records, if any | YES | NO |
| 3. Shown in current examination | YES | NO |
| 4. Continuity of symptoms | YES | NO |
| 5. Condition caused by/first occurred in military service | YES | NO |

Secondary Service Connection

- | | | |
|--|-----|----|
| 1. Service connected for primary condition | YES | NO |
| 2. Claimed secondary condition shown in current examination | YES | NO |
| 3. Evidence supports that primary condition CAUSED secondary condition | YES | NO |
| 4. Conclusion: primary condition caused secondary condition | YES | NO |

Aggravation

- | | | |
|---|-----|----|
| 1. STRs support the condition existed prior to entry in service (no presumption of soundness) | YES | NO |
| 2. Treatment while in service | YES | NO |
| 3. Examination supports a current diagnosis | YES | NO |
| 4. Evidence supports worsening while in SVC | YES | NO |
| 5. Conclusion: Aggravated by/while in military service | YES | NO |
| 6. If yes, the 5 required pieces of information listed in Section II are provided | YES | NO |