

VETERANS LAW

Ethics for Service Officers



“To fulfill President Lincoln's promise to care for those who have served in our nation's military and for their families, caregivers, and survivors.”



What are Ethics and Standards of Conduct?

Ethics are generally defined as the “**moral principles** that govern a person's behavior or the conducting of an activity.”

Standards of conduct are “**formal guidelines or rules** defining the expected, acceptable behaviors, ethics, and responsibilities for individuals or members within a specific organization, profession, or community, setting benchmarks for **integrity, professionalism, and legal/ethical compliance.**”



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Ethics for VSOs

- **Legal requirements** regarding the standards of conduct for accredited service officers providing representation before the VA are set forth in 38 C.F.R. § 14.632
- Other guidelines can be found elsewhere in 38 C.F.R. Part 14, including § 14.628
- While not binding on VSOs unless they are also licensed attorneys, another source of ethical guidance can be found in the Bar Association's Rules of Professional Conduct



Standards of Conduct

- The Standards of Conduct in 38 C.F.R. § 14.632 establish the appropriate behavior for VA-accredited attorneys, agents, and representatives
 - **What YOU do vs. What the VETERAN does**
- Governed by the VA Office of General Counsel and enforced by the VA Office of the Inspector General, as well as federal law enforcement agencies
- Organized into 4 “shalls” and 11 “shall nots”



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Standards of Conduct

38 C.F.R. § 14.632

- **VSOs shall:**
 - Faithfully execute their duties on behalf of a VA claimant
 - In your claimant's best interests / fiduciary duty
 - Be truthful in their dealings with claimants and the VA
 - Candor to your claimant
 - Candor to the VA





Standards of Conduct

38 C.F.R. § 14.632

- **VSOs shall:**

- Provide claimants with **competent** representation
 - Requires the **knowledge, skill, thoroughness, and preparation** necessary for the representation.
 - Includes understanding the issues of fact and law relevant to the claim as well as the applicable provisions of 38 U.S.C. and 38 C.F.R.
- Act with reasonable **diligence and promptness** in representing claimants.
 - Includes **responding promptly** to VA requests for info or assisting a claimant in responding promptly to VA requests for info



Standards of Conduct

38 C.F.R. § 14.632

- **VSOs shall not:**

1. Violate these standards of conduct
2. Circumvent a rule of conduct through the actions of another
3. Engage in conduct involving **fraud, deceit, misrepresentation, or dishonesty**
4. Violate **any** provisions of 38 U.S.C. or 38 C.F.R.
5. Enter into an agreement for, charge, solicit, or receive a fee that is . . . prohibited by law or regulation
6. **Solicit, receive, or enter into agreements for gifts** related to services for which a fee could not lawfully be charged



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Standards of Conduct

38 C.F.R. § 14.632

- **VSOs shall not:**

7. **Delay, without good cause**, the processing of a claim at any stage of the administrative process
8. Mislead, threaten, coerce, or deceive a claimant regarding benefits or other rights under VA programs
9. Engage in or **advise a claimant to engage in** acts or behavior prejudicial to the fair and orderly conduct of VA proceedings
10. **Disclose**, without the claimant's authorization, any info provided by VA for purposes of representation
11. Engage in any other unlawful or unethical conduct



Standards of Conduct

38 C.F.R. § 14.632

- VSOs shall Provide claimants with competent representation
- So, what's competency?
 1. Knowledge / Training
 2. Thoroughness
 3. Skill / Experience
 4. Preparation / Diligence

COMPETENCY





Standards of Conduct

Competency

Hypo #1:

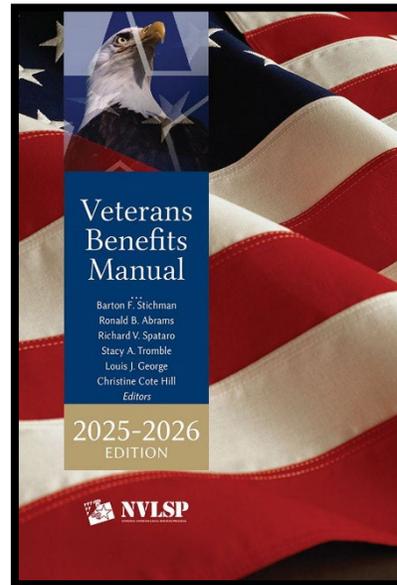
- A new service officer was hired 2 weeks ago and is in your office alone for the first time. A veteran visits and wants:
 - To file at ITF
 - A records review
 - Advice on obtaining a nexus statement for lung cancer
 - To file their claim for multiple issues
 - To appeal
- What should the new service officer do?



Standards of Conduct

Competency

- The importance of training, having the proper resources, experience, supervision before a new service officer assists (or harms) a veteran





Standards of Conduct

Competency

Hypo #2:

- Veteran asks you (an experienced service officer) to represent them on a claim for heart disease, diabetes, and knee pain
- What's the minimum you should do?





Standards of Conduct

Competency

Hypo #2:

- Take POA / Advocacy Agreement / Interview Veteran
- Submit an ITF to protect the effective date
- Review file, including STRs and post-service treatment records, if available
- Research into diagnostic codes
- After reviewing the file & interviewing the Veteran, advise on
 - What additional evidence is needed for VA to grant the claims
 - Other possible claims he should file



Standards of Conduct

Competency

Hypo #2:

- What about:
 - Identifying medical expert(s) to provide nexus opinions;
 - Writing letters to medical experts that includes:
 - Summary of relevant facts;
 - Explanation of VA rules, including standard of proof
 - Help Vet prepare lay statement;
 - Interview family / buddies and help prepare lay statements for them to sign;
 - Linking Veteran to other community resources?



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Standards of Conduct

Candor

Hypo #3:

- A veteran visits your office to file a claim for asthma due to burn pit exposure while allegedly serving in Kuwait in 1991. You review the veteran's personnel records which show he was in tech school during 1991. There is no records in the veteran's file to support the Gulf War deployment. To help with his claim, the veteran brings you a photo of him in "Kuwait City." A close look at the undated photo appears to show the veteran in Cairo during a vacation years later. The veteran insists you file the claim and photo for evidence.
- What do you tell the veteran?





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Standards of Conduct

Candor

Hypo #4:

- You represent veteran seeking SC for knee disability secondary to SC hip disability
- RO asked veteran for names of all doctors who have treated him for the knee condition
- Veteran tells you three doctors treated his knee, but one of them believes that the knee condition was caused by a post-service motorcycle injury
- The other 2 doctors (who do not know about the motorcycle accident) believe the knee disability was caused by the SC hip disability
- The veteran believes there is no way the VA could find out about third doctor, unless veteran provides this info



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Standards of Conduct

Candor

Hypo #4:

What should you do?

- A. Tell veteran not to inform RO about third doctor & the motorcycle accident because there is no way for VA to know about this negative evidence unless veteran tells the VA
- B. Tell the veteran he is obligated to provide name of third doctor, b/c VA asked for names of all doctors
- C. Tell the veteran you could no longer represent him if he decides not to inform VA about third doctor b/c you cannot assist him in submitting false information to VA; however, he would be free to obtain other representation, and you would not divulge this info
- D. Answers (b) and (c)



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Standards of Conduct

Candor

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Standards of Conduct

Candor to Client

Hypo #5:

- Veteran files claim for SC for PTSD & based on your experience, you think this disability, in combination with his other SC disabilities, prevent him from maintaining a substantially gainful occupation
- The SC claim isn't the strongest and you think that if you raise issue of TDIU with PTSD claim, it might sway VA adjudicator to deny everything, including the SC claim
- You think it would be better for Veteran to first obtain SC & then expressly raise issue of entitlement to TDIU



Standards of Conduct

Candor to Client

Hypo #5:

What should you do?

- A. File SC the claim w/out mentioning TDIU
- B. File SC claim and the TDIU claim because you don't want Veteran to later sue you for lost benefits
- C. Discuss options with Veteran, make a recommendation, and let Veteran decide what claims to file



Standards of Conduct

Candor to Client

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Standards of Conduct

Fraud, Deceit, Misrepresentation

Hypo #6:

- Veteran brings in documents to support his claim which you believe may have been altered. Do you trust your client and file the document anyway?

1. LAST NAME FIRST NAME MIDDLE NAME [REDACTED]		2. SERVICE NUMBER [REDACTED]		3. SOCIAL SECURITY NUMBER [REDACTED]		
4. GRADE OR RATE NAVAL SPECIAL WARFARE, GROUP II, MOBILITY VI		5. PAY GRADE E9		6. DATE OF RANK DAY 09 MONTH 01 YEAR 94		
7. PLACE OF BIRTH (City and State of Birth) PHOENIX, AZ		8. DATE OF BIRTH DAY 05 MONTH 24 YEAR 56		9. DATE INDICATED DAY MONTH YEAR 06 11 73		
10. SELECTIVE SERVICE NUMBER 9 0 1 S		11. SELECTIVE SERVICE LOCAL BOARD NUMBER, CITY, COUNTY, STATE AND ZIP CODE COM FLEET PAC CORONADO ISLAND, SAN DIEGO, CA				
12. TYPE OF TRANSFER OR SOURCE TRF TO MIRAMAR NAVAL BASE		13. DATE OF INSTALLATION AT WHICH EFFECTED MIRAMAR NAVAL BASE				
14. REGION AND AUTHORITY AR 65-201 SEC NAV		15. EFFECTIVE DATE 02 08 03		16. TYPE OF CERTIFICATE ISSUES NONE		
17. LAST DUTY ASSIGNMENT AND DUTY COMMAND TRF TO JWSWC PANAMA		18. CHARACTER OF SERVICE HONORABLE		19. REENTRY CODE 18R1		
20. TERMINAL DATE OF RESERVE DAY MONTH YEAR 07 15 09		21. CURRENT ACTIVE SERVICE (OTHER THAN BY INDUCTION) a. SOURCE OF ENTRY L1 ENLISTED (P/10/10/10/10) L2 ENLISTED (P/10/10/10/10) L3 REENLISTED L4 OTHER		22. TERM OF SERVICE (TEMP) DAY MONTH YEAR 06 11 73		
23. PREVIOUS ENLISTMENT NONE		24. GRADE, RATE OR RANK AT TIME OF ENTRY INTO CURRENT ACTIVE SERVICE E1		25. PLACE OF ENTRY INTO CURRENT ACTIVE SERVICE (CITY AND STATE) CAMP PENDLETON OCEANSIDE, CA		
26. HOME OF RECORD AT TIME OF ENTRY INTO ACTIVE SERVICE (Street City, State ZIP and Zip Code) IOWA ST., WESTMINSTER, CA 92603		27. CREDITABLE FOR BENEVOLENT PURPOSES a. OTHER SERVICE b. TOTAL ACTIVE SERVICE c. FOREIGN AND OVERSEA SERVICE		28. SERVICE PERIOD YEARS MONTHS DAYS 31 0 26 3 11 5 34 11 31 35 0 0 0 0 0		
29. SECURITY NUMBER AND TITLE MOBILITY VI		30. RESIDENCE ADDRESS AND D.O.T. NUMBER JOSCOM 901S		31. DECORATIONS, MEDALS, BADGES, COMMERCIAL, CIVILIAN AND OTHER AWARDS (LIST AWARDS BY CATEGORY)		
32. EDUCATION AND TRAINING COURSES GOOD CONDUCT MEDAL (X4), MERITORIOUS SERVICE MEDAL (X3), COMBAT INFANTRY BADGE, BRONZE STAR, SILVER STAR, NAVY CROSS, PURPLE HEART (X2), OPERATION JUST CAUSE, OPERATION URGENT FURY, CLASSIFIED DOD OPERATIONS (X1), PRESIDENTIAL CITATION (X3), VIETNAM SERVICE RIBBON, IRAQ SERVICE RIBBON (X2), COUNTERTERRORIST SERVICE MEDAL (X6), DESERT SHIELD DESERT STORM SERVICE RIBBON / CLASSIFIED CENTRAL INTELLIGENCE OPERATIONS (X2-91)						
33. EDUCATION AND TRAINING COURSES UCLA SCHOOL OF BUSINESS (BACHELORS DEGREE 76) (MASTERS DEGREE 94) UNITED STATES ARMY SNIPER SCHOOL (79) SCHOOL OF AMERICAS (80-82) CIA INSURGENCY (93-07) LONG RANGE RECON PATROL LEADERSHIP (80) SURVEILLANCE / COUNTERSURVEILLANCE (CLASSIFIED) SMALL UNIT TACTICS / URBAN WARFARE (82) COUNTERTERRORIST ATTACK TERRORIST (83-89)						
34. NON PAY PERIODS TIME (2007 Present)		35. DAYS OF LEAVE		36. PAY GRADE IN FORCE		
37. PAY GRADE IN FORCE		38. PAY GRADE IN FORCE		39. PAY GRADE IN FORCE		



Standards of Conduct

Fraud, Deceit, Misrepresentation

Stolen Valor Act of 2013

Covered medals include:

- Congressional Medal of Honor
- Distinguished Service Cross
- Navy Cross
- Air Force Cross
- Silver Star
- Purple Heart
- Combat Infantryman's Badge
- Combat Action Badge
- Combat Medical Badge
- Combat Action Medal



Standards of Conduct

Fraud, Deceit, Misrepresentation

Hypo #7:

- You've been assisting a veteran with a pension claim for the past several weeks. You've reviewed all of the veteran's financial records, which clearly establish financial need and eligibility.
- After pension is awarded, you learn the veteran has been posting videos on Tic Tok about how to scam the VA and has been making (unreported) money off the advertising.



Standards of Conduct

Fraud, Deceit, Misrepresentation

Hypo #7:

- What do you tell your client?
- Do you have an obligation to report them to the VA?
- What's your potential liability?





Standards of Conduct

Gifts

Hypo #8

- You work tirelessly for several years on a veteran's case before the VA finally granted service connection. As a result, the veteran received a \$435K retro award
- To show her appreciation, the veteran sent you a thank you card with:
 - \$20 bill / \$100 Starbuck Gift Card / Flowers
- What can you accept? What should you do?





Standards of Conduct

Gifts

Hypo #8:

- To show her appreciation, the veteran contacts your supervisor and offers to buy you a new car – true story!





Standards of Conduct

Competent Representation / Delay

Hypo #9:

- Wayne County is busy, and your office has been short staffed for the past few months. Simply put, you are overwhelmed! You have a full caseload and do not have help or time to devote to additional matters. You cannot take on more cases and still adequately devote the amount of time needed to take care of your current clients.



Standards of Conduct

Competent Representation / Delay

Hypo #9:

- Today, three more veterans requested your assistance which will require a substantial amount of records review and legal/medical research. You don't feel you have the time to properly represent these new veterans, as well as your existing clientele.
- What do you do? What should you do?
 - What are the risks of taking on more than you can handle?



Standards of Conduct

Competent Representation / Delay

Hypo #9:

What should you do?

- A. This Veteran needs assistance and you have an obligation to help him out, so you take on the case and do the best you can with the limited time you have
- B. Let your supervisor know that you have serious doubts that you have the time to adequately represent this Veteran
- C. Do not take on the case, but provide the Veteran with advice on where else he can get help with his claim
- D. B & C



Standards of Conduct

Competent Representation / Delay

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- B. Let your supervisor know that you have serious doubts that you have the time to adequately represent this Veteran
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D. B & C



Standards of Conduct

Unlawful Disclosure

Hypo #10:

- You've been representing an elderly Vietnam veteran for the past 5 years. He's SC at 100% and receives over \$4,000 of disability compensation each month.
- His wife contacts you directly and asks about what her husband is SC for and how much income he has been receiving?
- What can you tell her?



Standards of Conduct

Unlawful Disclosure

Hypo #10:

- His adult daughter calls to tell you her father (the veteran) is now in a nursing home and she is his guardian. She wants to know what he's service connected for and how much disability comp he's receiving.
- What can you tell her?
 - She has a General POA? "Durable" POA? Court Order?



Standards of Conduct Violations

- VA may suspend or terminate your accreditation
 - All of them, regardless of what employer / VSO says
 - Impact to your employment
- Reported to bar association / courts admitted (attorneys)
- Report to federal and state law enforcement agencies if criminal misconduct is suspected (fraud, larceny)
- County and/or State Liability - sued by veteran or survivors
- **Personal** Liability –
 - “Scope of your employment”
 - Which POA do you use?

