

United States District Court  
For the Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

VETERANS FOR COMMON SENSE and	)	No. C-07-3758 SC
VETERANS UNITED FOR TRUTH, INC.,	)	
	)	[ <del>PROPOSED</del> ] ORDER
Plaintiffs,	)	ESTABLISHING
	)	DISCOVERY OBLIGATIONS
v.	)	IN CONNECTION WITH
	)	APRIL 21, 2008,
JAMES B. PEAKE, Secretary of	)	<u>HEARING</u>
Veterans Affairs, <u>et al.</u> ,	)	
	)	
Defendants.	)	
	)	
	)	

After considering both parties' proposed discovery orders and additional filings related to these orders, the Court enters the following Order to establish the scope of discovery prior to the April 21, 2008, hearing.

**I. Documents to be Produced to Plaintiffs by Defendants.**

A. Defendants shall produce to plaintiffs, on the schedule set forth in paragraph I.F, herein, and subject to the Protective Order entered by the Court on March 7, 2008, the following documents to the extent that they exist, excluding any responsive documents for which defendants have or will assert privilege or which are prohibited by law from being disclosed:

1. Incident reports and/or incident briefs prepared following a suicide or attempted suicide of any veteran who was receiving medical care from the Department of Veterans Affairs

1 (VA), or who had requested medical care from the VA, as described  
2 by Dr. Cross, for all suicides occurring from January 1, 2005 to  
3 the present, and any compilations of data or information about  
4 such suicides or attempted suicides.

5 2. The suicide tracking database described on pages  
6 44-45 of the VA OIG Report 06-03706-126, Healthcare Inspection:  
7 Implementing the Veterans Health Administration's (VHA) Mental  
8 Health Strategic Plan Initiatives for Suicide Prevention, as  
9 described during the testimony of Dr. Cross.

10 3. VHA training manuals or training programs relating to  
11 national and VISN-level policies for: (a) screening of patients  
12 who present to any VHA medical facility with medical or  
13 psychiatric issues; and (b) making a determination as to whether  
14 such individuals are in need of emergent or urgent care.

15 4. Suicide data compilations underlying the Han Kang  
16 study of suicide among OEF/OIF veterans, as described by Dr.  
17 Cross.

18 5. Data compilations, studies, reports or other  
19 substantive communications compiling VHA statistics regarding  
20 suicides or attempted suicides of any veteran who was receiving  
21 medical care from the VA, or who had requested medical care from  
22 the VA, for fiscal years 2005 to present, including without  
23 limitation all data compilations resembling documents produced by  
24 defendants and labeled VA003-00001459-VA00300001463,  
25 VA003-00001488-VA003- 00001491, VA000027-VA000034, or  
26 VA000001-VA000002.

27 6. The VHA portion of VA's Monthly Performance Reviews,  
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1 such as those described in the testimony of Dr. Cross, from  
2 October 2007 to March 2008.

3 7. The Long Journey Home Reports on the Treatment of  
4 Posttraumatic Stress Disorder in the Department of Veterans  
5 Affairs, for fiscal years 2006 and 2007 (including the most  
6 current draft of the fiscal year 2007 report, if the final report  
7 is not published and available for production by April 11, 2008),  
8 and any underlying data compilations relating to these reports.

9 8. The National Mental Health Performance Monitoring  
10 System Final Reports for fiscal years 2005, 2006 and 2007,  
11 (including the most current draft of the fiscal year 2007 report,  
12 if the final report is not published and available for production  
13 by April 11, 2008).

14 9. The VA study (or the most recent draft) entitled  
15 "Barriers and Facilitators to Treatment-Seeking for PTSD," the  
16 existence of which was testified to by Dr. Cross in the April  
17 12, 2007 Senate Hearing to Receive Testimony on the Departments of  
18 Defense and Veterans Affairs Disability Rating Systems and  
19 Transition of Service Members from the Department of Defense to  
20 the Department of Veterans Affairs.

21 10. Studies and reports on workload by type of mental  
22 health professional, including workload per psychiatrist and  
23 workload per psychologist, at the VISN or national VA level.

24 11. Documents and substantive communications regarding  
25 Suicide Prevention Coordinator conference calls, reports, or  
26 meetings, as described by Dr. Zeiss in her testimony, maintained  
27 by Dr. Zeiss, Dr. Katz and Jan Kemp, Ph.D., National Suicide  
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1 Prevention Coordinator, but not documents maintained by each of  
2 approximately 153 suicide coordinators.

3 12. Quarterly Reports by Dr. Han Kang, from the  
4 inception of such reports, or January 1, 2005, whichever is later,  
5 regarding OEF/OIF separated veterans who have sought mental health  
6 care at VA, as described by Dr. Zeiss in her testimony.

7 13. Outpatient patient satisfaction survey reports for  
8 FY 2006 to present.

9 14. "Secret Shopper" reports as described by Dr. Zeiss  
10 in her testimony.

11 15. Policies and directives regarding VHA's Patient  
12 Advocacy program, including but not limited to Patient Advocate  
13 handbooks and/or training materials.

14 16. Reports or studies tracking or monitoring the  
15 number and resolution of complaints alleging that the VHA did not  
16 provide adequate or timely mental health care at VA medical  
17 facilities.

18 17. Substantive communications regarding the CBS study  
19 on veteran suicide.

20 18. Regular monthly reports regarding the suicide  
21 hotline, as discussed in the testimony of Dr. Zeiss.

22 19. Office of Policy and Procedure quarterly reports on  
23 suicides as discussed by Dr. Zeiss from the inception of the  
24 preparation of such quarterly reports or January 1, 2005,  
25 whichever is later.

26 20. Monthly reports regarding electronic wait lists  
27 and/or patient waiting times for mental health appointments,  
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1 including printouts related to such reports by VISN, from January  
2 1, 2007 to March 1, 2008, as described by Dr. Murawsky in his  
3 testimony.

4 21. Reports and studies generated by the Northeast  
5 Program Evaluation Center regarding suicide and PTSD from January  
6 1, 2005 to the present.

7 22. Reports and studies regarding delays or timing in  
8 the adjudications of claims for benefits and/or  
9 service-connection, from January 1, 2005 to the present at the  
10 regional office level, the Board of Veteran Appeals (BVA), and  
11 United States Court of Appeals for Veterans Claims (CAVC) and the  
12 most directly relevant underlying data for such reports and  
13 studies, available to the VA. Chief Judge Greene, of the CAVC  
14 shall not be required to respond to this request.

15 23. Training manuals and all operating procedures,  
16 policies or protocols regarding the medical reviews relating to  
17 service-connection determinations in the adjudications process,  
18 where the alleged disability is related to a mental health  
19 diagnosis.

20 24. Data compilations or reports regarding average  
21 claims processing times at the regional office level, at the BVA  
22 and at CAVC, available to the VA. Chief Judge Greene, of the  
23 CAVC shall not be required to respond to this request.

24 25. Written protocols or guidelines provided to intake  
25 staff or appointment schedulers regarding what actions to take  
26 when interviewing a veteran who: (a) states that he or she is  
27 suicidal or in distress; or (b) appears to the intake staff or

1 appointment scheduler to be suicidal or in distress, regardless of  
2 whether the veteran himself or herself makes such assertion.

3 Defendants shall produce such protocols or guidelines prepared or  
4 issued by: (a) VA Central Office (i.e. the VA's headquarters in  
5 Washington D.C.); and (b) each of the VA's 21 VISNs; however, VA  
6 need not produce such protocols or guidelines prepared or issued  
7 by each of VA's 153 Medical Centers.

8 26. Suicide data compilations gathered or prepared by  
9 VA's Center of Excellence at Canandaigua, NY, from January 1, 2005  
10 to present, and any final report(s) regarding this information,  
11 (or the most recent draft report as of April 11, 2008 if no final  
12 report is available).

13 27. Reports, studies and data compilations regarding  
14 the creation of a "suicide flag" in the VA's electronic medical  
15 record (VISTA) to identify patients who are a potential risk to  
16 themselves others, as described by Dr. Zeiss in her testimony.

17 28. Reports (or the most recent draft of any such  
18 report) regarding the Uniform Mental Health Package identified by  
19 Dr. Katz in his testimony.

20 29. Reports and spreadsheets regarding veteran suicides  
21 by geographic region, as identified by Dr. Katz in his testimony,  
22 including but not limited to reports relied upon to identify  
23 suicide "hot spots."

24 30. Serious Mental Illness Treatment Research and  
25 Evaluation Center (SMITREC) reports regarding veteran suicide  
26 rates, including but not limited to reports reflecting suicide  
27 rates by the VHA facility and/or VISN, from January 1, 2005 to the  
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1 present as described by Dr. Katz in his testimony.  
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3 B. As used herein, the words or phrases such as data, data  
4 compilations, reports, studies, policies, protocols, substantive  
5 communications, shall be construed to have their ordinary, common  
6 sense meaning and not any meaning or construction ascribed to them  
7 in the pleadings, correspondence or discovery documents of any  
8 party.  
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10 C.1 Defendants shall produce electronic documents in TIFF  
11 images (electronic images of paper documents) and will produce  
12 associated Concordance load files (permitting some degree of  
13 computerized search of the documents produced). Defendants need  
14 not produce all of the twenty-nine electronically-searchable data  
15 fields requested by plaintiffs in their letter of October 10,  
16 2007. Instead, defendants shall satisfy their obligations by  
17 producing Concordance load files that permit documents to be  
18 searched by: available metadata that can be automatically  
19 extracted, and machine-generated full-text. Defendants are not  
20 required to change the format or configuration of electronic data  
21 in response to plaintiffs' requests. Paper documents will be  
22 scanned and produced in standard PDF format.  
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24 C.2. If, due to the volume of documents identified in  
25 response to plaintiffs' document production requests, defendants  
26 are unable to produce all documents in the format ordered in  
27 paragraph C.1, defendants shall provide written notice to  
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1 plaintiffs and defendants may produce documents in a PDF or native  
2 format.

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4 D. Unless a load file that contains source information is  
5 provided, see ¶ C.1, defendants shall provide source logs,  
6 identifying the office and employee who produced each document or  
7 category of documents produced. Such source logs shall be produced  
8 to plaintiffs within seven days of when the document or category  
9 of documents is produced.

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11 E. Defendants shall prepare privilege logs which shall be  
12 served on plaintiffs within fourteen days of when the privileged  
13 documents are produced to defendants' litigation contractor.

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15 F. Unless otherwise agreed by the parties, all documents  
16 shall be produced in the form of electronic copies of the  
17 documents, placed on a compact disc, and transmitted to plaintiffs  
18 by Federal Express for next day, morning delivery. Defendants  
19 shall act expeditiously and take all reasonable steps to produce  
20 documents to plaintiffs on a rolling production and shall produce  
21 responsive documents that have been collected and are available  
22 for production on the following dates:

23 March 21, 2008

24 March 28, 2008

25 April 4, 2008

26 April 11, 2008

27 April 17, 2008.



1 G. Any direction herein that defendants produce a draft of a  
2 document shall not be construed as overruling defendants'  
3 assertion of their right not to produce pre-decisional drafts of  
4 documents based on the deliberative process privilege or any other  
5 privilege with respect to any other documents.

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7 **II. Depositions By Plaintiffs**

8 Plaintiffs may take eleven depositions (the number of  
9 depositions identified on by plaintiffs in Court on March 6, 2007  
10 as the number of depositions necessary to prepare for the April  
11 21, 2008 hearing, see Attachment A at 4-5) prior to the April 21,  
12 2008 Hearing from among the following eighteen deponents (as  
13 identified on Plaintiffs' Designation of Documents and  
14 Depositions, D.E. (169):

- 15 1. **William Feeley**, Deputy Under Secretary for Health for  
16 Operations and Management, U.S.  
17 Department of Veterans Affairs
- 18 2. **Robert Rosenheck, M.D.**, Director Northeast Program Evaluation  
19 Center
- 20 3. **Marcus Nemuth, M.D.**, Director, Psychiatry Emergency Service,  
21 VA Puget Sound Health Care System
- 22 4. **Frances M. Murphy, M.D.**, Former Deputy Under Secretary for  
23 Health Policy Coordination
- 24 5. **Larry Dewey, M.D.**, Chief Psychiatry Service, VA Medical  
25 Center, Boise, Idaho

26 **VA's Person Most Knowledgeable on the following topics, under Rule**  
27 **30(b)(6):**

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1 6. All VA policies, procedures and practices that inform the  
2 treatment of veterans with mental  
3 health issues, including but not limited to suicidal veteran and  
4 veterans suffering from PTSD.

5 7. The result of VA's "secret shopper" program.

6 8. Calculation of appointment wait times for both new and  
7 existing VA patients based on "desired dates" in VA's VISTA  
8 program.

9 9. VHA's electronic waiting lists and the policies and procedures  
10 for creation and maintenance of patient waiting lists.

11 10. Tracking of VA suicide data and incident reports related to  
12 suicides and attempted suicides.

13 11. **Daniel Cooper**, Under Secretary for Benefits, Veterans  
14 Benefits Administration, U.S. Department of Veterans Affairs.

15 12. **Bradley Mayes**, Director, Compensations & Pension Service,  
16 U.S. Department of Veterans Affairs.

17 13. **Ronald Aument**, former Deputy Under Secretary for Benefits,  
18 U.S. Department of Veterans Affairs.

19 14. **Tom Pamprim**, Deputy Director for Policy and Procedures,  
20 Veterans Benefits Administration, U.S. Department of Veterans  
21 Affairs.

22 15. **Jack McCoy**, Former Associate Deputy Under Secretary for  
23 Benefits, Veterans Benefits Administration, U.S. Department of  
24 Veterans Affairs.

25 **VA's Person Most Knowledgeable on the following topics, under Rule**  
26 **30(b)(6):**

27 16. VA's incentive compensation system and any investigations of  
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1 VA employees known or suspected to have tampered with or destroyed  
2 any document or portion of a veteran's claim file.

3 17. VA Central Office's supervision, statistical analysis of, or  
4 monitoring of grants of service connection for PTSD and appeals of  
5 PTSD grant decision or request for increased rating at its  
6 regional offices and all actions taken with respect to regional  
7 offices exhibiting higher than average grant rates or any  
8 perceived statistical abnormalities.

9 18. The methods of calculation of the times SCDDC claims are  
10 pending at each stage of the proceeding from regional office level  
11 through Federal Circuit, the actual amount of times those claims  
12 have been pending at each level, and the grant rates for those  
13 claims.

14 Plaintiffs shall notify defendants of the identity of their  
15 proposed deponents within three days of this Order.

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17 **III. Documents to be Produced to Defendants by Plaintiffs**

18 Plaintiffs shall act expeditiously and take all reasonable  
19 steps to produce non-privileged documents in response to  
20 defendants' thirty Requests for Production of Documents (attached  
21 hereto) on a rolling production. Plaintiffs shall produce  
22 responsive documents, in the same manner as is set forth in  
23 section I, herein, that have been collected and are available for  
24 production on the following dates:

25 March 21, 2008

26 March 28, 2008

27 April 4, 2008

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April 11, 2008

April 17, 2008.

Plaintiffs shall also comply with the obligations to provide source logs and privilege logs, as set forth in paragraphs I.D and I.E, herein. Unless otherwise agreed by the parties, all documents shall be produced in the form of electronic copies of the documents, placed on a compact disc, and transmitted to defendants by Federal Express for next day, morning delivery.

**IV. Depositions by Defendants**

Defendants may take the following depositions of plaintiffs prior to the April 21, 2008 hearing:

1. A Rule 30(b)(6) deposition of plaintiff Veterans for Common Sense generally inquiring about the allegations in the complaint.

2. A Rule 30(b)(6) deposition of plaintiff Veterans United for Truth generally inquiring about the allegations in the complaint.

3. Paul Sullivan, Executive Director of Veterans for Common Sense.

IT IS SO ORDERED.

Dated: March 13, 2008



UNITED STATES DISTRICT JUDGE