

# VETERAN ADVOCACY PROJECT

## DISCHARGE UPGRADE CLINIC

### The Need:

Members of the military leave service with one of six discharges that determine the benefits and health care they are entitled to receive as veterans. Far too many servicemembers face discipline for acts of misconduct that are actually symptoms of invisible wounds: post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI). Discipline for symptomatic behavior can lead to administrative proceedings or courts-martial that result in less-than-honorable discharges. Known as "bad paper," these discharges bar veterans from accessing VA health care and benefits and prevent them from healing. Simply put, vets are being cut off from care because of the very conditions they need treated.

The rate of mental health conditions among veterans with less-than-honorable discharges is staggering. A government study revealed that 62 percent of servicemembers who were discharged for misconduct from 2011-2015 had *already been diagnosed* with PTSD. When these individuals are faced with possible court-martial proceedings, many accept an administrative "other than honorable" discharge instead, avoiding a trial and allowing them to go home. But the consequences of bad paper can be dire: The VA's own records show that an average of **17 veterans die by suicide each day**; yet for vets with involuntary discharges the **suicide rate is double** that of other veterans; and those discharged for misconduct are nearly three times as likely to die by suicide than other vets. Further, bad discharges are the **second highest predictor of homelessness** and exponentially increase the risk for justice-involvement in civilian life.

The problem is deeply compounded by systemic racism and other injustices: studies show that Black servicemembers are disciplined and sent to courts-martial at twice the rate of their white counterparts. Sexual assault survivors are twice as likely to be improperly discharged. Other populations have been left behind, too. More than 100,000 vets were given less-than-honorable discharges for their sexual orientation, often under the guise of disciplinary action or during the years of the "Don't Ask, Don't Tell" policy. It is not just the physically wounded who have been cast aside.

### Our Clients:

The Veteran Advocacy Project's Clinic started with a Marine who experienced multiple IED blasts while in Iraq. Though he lost consciousness a couple of times, he was told that if he reported the head injuries he would be separated from a team that relied on each other to stay alive. The message to keep silent was clear. Prior to his deployment, he had never been in trouble. Yet, when he came home, he immediately began getting in fights every night and drinking to the point of blacking out. Within a few months he was found with drugs, court-martialed, and given a bad conduct discharge. Friends described his personality change after war as "radical"; one of his civilian psychiatrists said the Marine was certainly in a psychotic state while on trial.

The Marine came to VAP's office with a cane on one side and his wife supporting him on the other. Five years after the blasts he suffered, he wore sunglasses inside because light was painful. He could not remember his middle name during the intake interview. Despite saying that he was not suicidal, he recounted driving the wrong way down a highway at night with his headlights off.

There are many more Marines, soldiers, airmen, and sailors like him. Over half a million servicemembers were given less-than-honorable discharges during Vietnam and the number of bad

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discharges in the Post-9/11 era surpassed that. The Veteran Advocacy Project believes we owe it to these veterans to fight for their access to treatment and benefits.

## VAP's Discharge Upgrade Clinic (DUC)

Our team conducts training and is available every step of the way.

1. Firms are provided with case placement memos (CPMs) for review and selection. When a CPM is chosen, the veteran is then contacted about placement and VAP staff ensures the veteran is ready to engage in the process.

Each CPM has:

- Basic biographical info about the vet;
  - A summary of facts;
  - Suggested legal arguments;
  - Suggested next steps, mapping out the case.
2. VAP provides a "Quick Launch" training at the firm (that can also be conducted virtually). The 100-minute presentation, with detailed slides that serve as a reference guide, covers:
    - Basics on the laws and regulations governing discharge boards;
    - An overview of the practical steps in a case, including briefs and hearings;
    - Best practices and tips for working with veterans who have experienced trauma.
  3. Teams or individual attorneys get their CPM along with the veteran's records, including the official military personnel file, service treatment records, and a VA claims file if there is one.

The timeline for completing a case is flexible, as the statute of limitations is usually years away or waivable; volunteers often work periodically on the application over a 6- to 12-month period, depending on factors such as turnaround time on additional records or locating witnesses. Some cases may require a forensic evaluation—a cost that we ask firms to cover, since our clients do not have the means—and others offer an opportunity for oral advocacy at a hearing (which are now all via videoconference). VAP has a resource website, including a database of samples, and will be as "hands on" as each team prefers.

A win provides psychological healing, removes barriers to employment, and opens the door to a lifetime of **health care and benefits—the top three VA benefits alone are conservatively estimated at over \$12 million**, including the invaluable educational opportunities of the GI Bill that can impact a family for generations.

*Partners include:* Akin Gump Strauss Hauer & Feld LLP; Cleary Gottlieb Steen & Hamilton LLP; Con Edison; DLA Piper LLP; Greenberg Traurig LLP; JPMorgan Chase; Latham & Watkins LLP; Orrick Herrington & Sutcliffe LLP; Sidley Austin LLP; and others.

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