

# VETERANS' ADVISORY BOARD ON DOSE RECONSTRUCTION

## RECOMMENDATIONS

On the basis of the Veterans' Advisory Board's (VBDR) audits and assessments of Nuclear Test Personnel Review Program (NTPR) radiation dose assessments (RDAs) and the Department of Veterans Affairs (VA) claim procedures, and facts presented at VBDR meetings, the Board offers a number of recommendations that it believes would, if implemented, improve NTPR dose reconstruction process and the VA compensation program for atomic veterans. The Board's recommendations follow with selected explanatory text from the VBDR deliberations at the June 2006 meeting held in Austin, Texas.

### **For the Defense Threat Reduction Agency (DTRA):**

**Recommendation 1: The VBDR recommends that NTPR develop a screening procedure for skin radiation dose assessments that would allow expedited processing of those cases for which the doses are well below or well above the level likely to result in a successful claim. Worst case upper bounds should be used in this screening procedure to provide the veteran the maximum benefit of the doubt.**

The Board notes that the National Institute for Occupational Safety and Health (NIOSH) provides an abbreviated RDA when doses are considered either well below or well above the level required for a successful claim. It is not cost-effective for the government to perform detailed RDAs when the dose can be quickly shown to be clearly well below or well above the level that would result in a successful claim. Adopting an abbreviated RDA for these cases, based on a preliminary screening procedure that provides the veteran the maximum benefit of the doubt, will not only be cost effective and scientifically justifiable, but will significantly reduce the backlog of current claims and result in more expedited handling of future claims.

**Recommendation 2: The VBDR recommends that NTPR also develop a screening procedure for prostate cancer cases that would allow expedited processing of those cases for which the doses are well below the level likely to result in a successful claim.**

The lowest dose likely to result in a favorable outcome for a prostate cancer claim, ~20 rem, is far above the dose received by almost all test participants. Again, adopting an abbreviated RDA, based on a preliminary screening procedure that provides the veteran the maximum benefit of the doubt, will not only be cost effective and scientifically justifiable, but will significantly reduce the backlog of current claims and result in more expedited handling of future claims.

**Recommendation 3: The VBDR recommends that NTPR undertake a comprehensive analysis of uncertainties for all beta dose exposure scenarios.**

At present, the Board believes that some of the sources of uncertainty in beta dosimetry have not been fully addressed. Examples are non-uniform deposition on skin, manual redistribution of contaminants, differing beta-gamma ratios due to variations in body orientation, the extent of decontamination accomplished by brushing clothes, and efficiency of removal by showering. Upper bound skin doses currently assigned by NTPR dose analysts might or might not exceed the 95<sup>th</sup> percentile of dose for that individual. It is important to estimate the uncertainties in doses received by particular individuals, as opposed to the uncertainty in the dose to a population. This analysis, besides being necessary to carry out detailed RDAs for those cases that do not qualify for an expedited RDA, will also provide the justification for the worst case upper bound used for screening (see recommendation #1)

**Recommendation 4: The VBDR recommends that NTPR hire a consultant to write a quality assurance (QA) plan. The VBDR further recommends that NTPR develop and implement a QA program on a schedule that allows it to be integrated into the contracting process now ongoing, and the development of a comprehensive manual of standard operating procedures (SOPs) that address the necessary QA elements, including metrics.**

NTPR's overall quality management system spanning its multiple contractors and addressing SOPs and all key quality requirements is under development. However,

- The draft QA plan, as currently provided to the Board, focuses solely on process control and is not, in fact, a QA plan. A QA plan needs to be integrated from NTPR all the way through the organizational structure to the RDA contractor. A plan should be produced by September 30, 2006, so that it can be reviewed by VBDR prior to its next meeting.
- VBDR's audit findings indicated that SOPs and documentation do not meet overall requirements for a quality management system.
- Although well-defined SOPs are not yet spelled out, it appears that NTPR dose reconstructions apply the principle of *benefit of the doubt* in favor of the veteran. However, application of the *benefit of the doubt* principle needs to be made more consistent, especially with regard to upper bound estimates and ease of quality assessment.
- Final SOPs, quality metrics, quality assessment and NTPR participant responsibilities depend upon case handling strategy. It is not yet clear that an optimum strategy is guiding case handling and SOPs development.

**For the Department of Veterans Affairs (VA):**

**Recommendation 1: The VBDR recommends that VA provide the adjudicated case outcomes to NTPR.**

VA and the Department of Defense (DoD) Report to Congress of June 2004 states: “. . . VA will break out the presumptive and non-presumptive radiation claims information with an indication of whether they had been granted or not.” At present, VA does not provide information to NTPR regarding the resolution of claims for which RDA was provided to VA. This information would be useful to NTPR and to the Board in improving the planning and processing of RDAs in a timely and efficient manner.

**Recommendation 2: The VBDR recommends that VA grant service connection without regard to dose for those atomic veterans whose basal cell skin cancers and melanomas are claimed to be as a result of participation in aboveground nuclear test and service in Hiroshima and Nagasaki, and whose participation in these activities has been verified by DoD.**

Service connection for basal cell skin cancer and melanoma should be afforded to atomic veterans confirmed as participants in atmospheric nuclear tests and service in Hiroshima and Nagasaki for the following compelling reasons:

- The uncertainties in the development of the dose estimates and the probability of causation for these particular cancers are significantly higher than those for other conditions covered by 38 CFR 3.311.
- These cases are 53% (789 cases as of May 1, 2006) of all pending claims for reconstructed dose. The average age of these claims is 708 days and the longest is in excess of 1200 days.
- The current cost associated with the reconstructed dose and claims processing incurred by the government is estimated to be between \$9,000 and \$15,000 per dose estimate.
- The vast majority of these claimants are elderly.
- The costs being incurred by the government when taken together with the level of uncertainty in calculations far exceed the benefit.
- The average compensation benefit payable in these claims is \$1,296 annually.

**Recommendation 3: The VBDR recommends that VA centralize claims with radiation issues to a single site staffed with trained and experienced personnel, and that the Veterans Benefits Administration (VBA) should establish a centralized database to track radiation issues with both input and output information readily available. The VBDR further recommends that VA provides the Board with a timetable and status for the development of a QA plan and program, including metrics, in the radiation exposure claims adjudication process.**

The Board found many reasons for the delay in the claims process. Many of the claims were complex, with multiple diagnoses which made separating out radiation exposure difficult and time-consuming. In several cases, there were delays in initiating claim development at the VA regional offices (VAROs), and in at least one instance, a claim was sent for dose reconstruction for a presumptive condition, thus delaying the granting of disability. Some delays occurred because of the changes instituted by NTPR, although that does not explain entirely the time it took for dose reconstruction to be done and reported. Notably, the response from the Veterans Health Administration (VHA) concerning eligibility for disability using the probability of causation/assigned share criteria was almost immediate.

The Board also found that the VA claims processing management includes a broadly defined quality indicator system. The indicators are used in quality assessment, training, and improvement. However, claims from atomic veterans related to radiation exposure comprise a very small fraction of VA's overall case load, especially for many of VA regional offices. As a result, difficulties in case handling associated with radiation exposure are not likely to be detected among the far more numerous other claims being tracked by the quality indicator system.

**Recommendation 4: The VBDR recommends that VA recognize and automatically place all validated radiation issues claimants into the Ionizing Radiation Registry (IRR).**

Many of the atomic veterans, as well as many VARO staff personnel, are unaware of the IRR and the benefits which are available to the registrants. By placing such claimants automatically into the IRR and informing them of the resulting benefits, VA would enhance its service to the veteran.

**Recommendation 5: The VBDR recommends that VA award service connection retroactively to the date of the initial claim for all current and future radiation risk activity conditions held to be presumptively service connected under 38 CFR 3.309 which previously required a RDA under 38 CFR 3.311**

The Board believes that all current and future presumptive conditions, held to be service connected as a result of exposure to ionizing radiation, should be retroactive to the date of the initial claim. This is an appropriate response in equity and fairness for the following reasons:

- Atomic veterans with presumptive disabilities are currently receiving disparate treatment compared to all other veterans who qualify for service connection under other presumption rules. In all other cases where a veteran has a qualifying presumptive condition at the time the presumption is created and has previously filed a claim, the veteran is entitled to service connection back to the initial claim or one-year prior to the creation of the presumption, whichever is

less. This disparate treatment, without justification, creates an inequity for atomic veterans.

- Requiring a dose reconstruction for the sole purpose of establishing an effective date:
  - is administratively burdensome and costly, and
  - is an artificial distinction not understood by atomic veterans or their survivors, and
  - is inconsistent with the intended purpose of a compensation scheme.

**Recommendation 6: The VBDR recommends that VA improve interaction and communication with the atomic veterans. More effective approaches should be established to communicate the general meaning of information on radiation risk. In addition to presenting general information on radiation risk, information should be communicated to claimants about the significance of their doses in relation to their diseases.**

VBDR is providing a model informational brochure to VA and DTRA to review, edit, print and distribute to atomic veterans. The objectives of the brochure are to provide atomic veterans, who participated in the post-World War II occupation of Hiroshima and Nagasaki, Japan, or were prisoners of war there, or a service member who took part in atmospheric nuclear tests between 1945 and 1962 in the United States, with answers to questions related to the purpose of dose reconstruction, how radiation doses are reconstructed, information used to conduct dose reconstructions, and how the VA processes claims.

Specific topics discussed in the brochure include:

- dose reconstruction,
- presumptive conditions,
- probability of causation, and
- compensation regulations.

VBDR is also providing VA with two model letters to be used in the claims process associated with the non-presumptive conditions. The letters are designed to set reasonable expectations with regard to the length of the process and the historical outcomes of similar claims.