

**In The
Supreme Court of the United States**

—◆—
FREDDIE H. MATHIS,

Petitioner,

v.

ROBERT MCDONALD,
SECRETARY OF VETERANS AFFAIRS,

Respondent.

—◆—
**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Federal Circuit**

—◆—
**BRIEF OF LAW SCHOOL VETERANS CLINICS
AND ATTORNEYS AS *AMICI CURIAE*
IN SUPPORT OF THE PETITION
FOR A WRIT OF CERTIORARI**

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INTEREST OF *AMICI CURIAE*¹

Amici curiae listed in Appendix D are law school clinic directors and attorneys who regularly represent veterans and other claimants in connection with benefits administered by the United States Department of Veterans Affairs (VA). *Amici* believe the decision of the United States Court of Appeals for the Federal Circuit in this matter will continue to detrimentally affect veterans in pursuit of the benefits to which they are rightfully entitled and undermines the veteran-friendly design of the VA adjudication process. *Amici* support certiorari in this case in order to address the serious consequences the underlying decision has on those who have bravely served our country.



SUMMARY OF ARGUMENT

The Federal Circuit's decision to uphold a presumption of competence for examiners who conduct compensation and pension (C&P) examinations as part of the VA's claims process places a significant burden on veterans and is inconsistent with the VA's pro-claimant adjudicatory system.

¹ Pursuant to Sup. Ct. R. 37.6, *amici curiae* state that none of the parties to this case nor their counsel authored this brief in whole or in part, and that no person or entity made a monetary contribution specifically for the preparation or submission of this brief. *Amici curiae* file this brief with the written consent of all parties, copies of which are on file in the Clerk's Office. All parties received timely notice of *amici curiae*'s intention to file this brief.

First, the creation of a presumption of competence impedes the rights of veterans, requiring them to rebut the presumption without providing them with the information necessary to do so. This squarely conflicts with the VA's statutory duty to assist veterans. The VA's adjudicatory process is designed to be uniquely pro-claimant. The provision of adequate C&P examinations is a crucial part of this system. As discussed in the case examples in Section II below, the presumption is effectively un rebuttable, even with the assistance of counsel, and this constitutes a serious obstacle to proper development of claims.

Second, the presumption of competence is dubious both as to its legal pedigree and its factual basis. The Federal Circuit's derivation of the presumption from earlier cases is strained and the presumption is not supported by VA's own data. In Section VI below, a statistical analysis of the accuracy and competence of VA C&P examiners demonstrates that VA underestimates the frequency of errors related to the adequacy of examinations and the competence of examiners, errors significant enough to undermine any defense of a presumption of competence.

Third, the Federal Circuit failed to explain why the canon of constitutional avoidance did not control its interpretation of VA's duty to assist. Because the presumption of competence raises significant concerns under the Due Process Clause, the canon of constitutional avoidance should have been addressed.

Finally, the decision below has created an entrenched circuit conflict, which has no realistic probability of being resolved without the intervention of this Court. Given the numbers of veterans' lives impacted by the decision, the granting of certiorari in this case is appropriate and necessary to ensure due process for the millions of veterans participating in the VA disability compensation process.

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ARGUMENT

I. THE DEPARTMENT OF VETERANS AFFAIRS (VA) HAS A STATUTORY DUTY TO PROVIDE ADEQUATE COMPENSATION AND PENSION (C&P) EXAMINATIONS.

As part of a system intended to facilitate claims by non-lawyers, Congress imposed on VA a duty to assist veterans in its adjudication process of compensation and pension benefits. VA must order a C&P examination when the record “does not contain sufficient medical evidence for the Secretary to make a decision on the claim.” 38 U.S.C. § 5103A(d)(4). VA generally uses its own examiners. Alternatively, “VA may use contractors or VA partners who are medical experts with experience working with Veterans. . . .” *VA Claim Exam Frequently Asked Questions*, U.S. Dep’t of Veterans Affairs, available at <http://www.benefits.va.gov/COMPENSATION/docs/claimexam-faq.pdf> (Claim Exam FAQ). The C&P benefits program serves over 5.0 million veterans and survivors. *Fy2017 VAs Budget Fact Sheet*, U.S. Dep’t of Veterans Affairs, available at <https://www.va.gov/budget/docs/summary/Fy2017-VAsBudgetFactSheet.pdf>.

VA uses specialists for only four types of examinations: hearing, vision, dental, and psychiatric.² Examination Requests Overview, *VA Adjudication Manual*, M21-1MR, Part III, Subpart iv, Chapter 3, §A.6.a. For all other C&P examinations, the choice of examiner is left to VA's discretion, without regulatory guidance or guidelines. *Id.* The Federal Circuit's "presumption of competence" for all VA examiners ignores the VA's lack of rigor in selecting examiners, and assumes competence despite VA's great reliance on non-VA employee contractors in the performance of C&P examinations. This reliance is demonstrated by VA's recent announcement that it now has 12 different contracts with five separate firms nationwide, at a cost to VA of \$6.8 billion, for contractors assisting with the medical examination of veterans. *VA Awards \$6.8 Billion for Medical Disability Examinations* (Press Release 9/9/16), available at <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=2821>.

A veteran can rebut the presumption only by objecting to the examiner's competence, requesting the examiner's qualifications, and providing specific reasons as to incompetence. *Rizzo v. Shinseki*, 580 F.3d 1288 (Fed. Cir. 2009). As discussed below, although examinations are frequently inadequate, the presumption of competence is usually impossible to rebut.

² In limited circumstances, VA will grant a veteran's request for examination by a specialist, when VA considers it "essential for rating purposes." Examination Requests Overview, *VA Adjudication Manual*, M21-1MR, Part III, Subpart iv, Chapter 3, §A.6.a.

II. VETERANS' EXPERIENCES DEMONSTRATE SERIOUS PROBLEMS WITH THE PRESUMPTION OF COMPETENCE.

The following examples illustrate the injustice of the presumption of competence. Because difficulty in rebutting a judicially imposed presumption is a factor in determining its propriety, *see U.S. Department of Justice v. Landano*, 508 U.S. 165, 177 (1993), the examples support Mr. Mathis' Petition.

A. Veteran Elton Gildersleeve

Elton Gildersleeve, a client of the Veterans Clinic at the University of Missouri School of Law (Missouri Clinic), is a U.S. Marine Corps veteran. While in the Marines, Mr. Gildersleeve developed a serious genitourinary condition, which worsened after service.

After appeal to the Court of Appeals for Veterans Claims (CAVC) in 2011, his case was remanded to secure an adequate medical opinion. Although multiple opinions were sought, none addressed whether the genitourinary condition was related to service, and none properly considered a service treatment record noting prostatitis. A subsequent CAVC appeal in 2014 was necessitated by a C&P examiner's failure to follow an explicit instruction to "assume that the Veteran's reported history of onset of genitourinary symptoms in service, with continuity of the same thereafter, is true."

After the second CAVC remand, counsel submitted a report from a board certified urologist and Clinical

Professor of Urology who concluded it was as likely as not that Mr. Gildersleeve's disorder was related to service. Notwithstanding this report from a highly qualified urologist, the Board of Veterans' Appeals (BVA) sent Mr. Gildersleeve for yet another exam, to an occupational medicine specialist (according to a Google search) at a VA Medical Center. This C&P examiner opined that "it is less likely as not" that the genitourinary issues are related to service. The RO accepted the C&P opinion and again denied the claim, which is now pending before the BVA.

The Clinic challenged the C&P examiner's qualifications to rebut the urologist's opinion. To support this challenge, the Clinic made five requests to the VA between July 2015 and October 2016 for the C&P examiner's CV. As of this writing, VA has not provided the CV, yet the BVA denied the claim December 13, 2016 stating the veteran failed to challenge the C&P report. This result is stunningly unfair, given Mr. Gildersleeve's repeated requests.

B. Veteran Howard Flett

Mr. Flett testified he suffers from back pain, and has since the time of a 1957 in-service incident, a fact his wife corroborates. The BVA made a "Finding of Fact" that he had suffered "[s]ymptoms of low back pain continuously since service."

Nevertheless, on July 7, 2014, the BVA denied the claim, assigning weight to an examiner's opinion that no nexus existed between the in-service injury and the

current back condition. On appeal to the CAVC, Mr. Flett, now represented by the Missouri Clinic, obtained a remand based on inadequacy of the medical opinion.

On remand, Mr. Flett provided an opinion from a board certified orthopedic doctor asserting a nexus between the 1957 incident and the current back issue. The RO nonetheless denied the claim again, relying upon a C&P examination by a Nurse Practitioner (NP). In his report, the NP concluded that no nexus existed because a 1992 x-ray was negative for degenerative changes, an earlier examination was “essentially normal,” and back pain had been reported inconsistently in the medical records. (Many of Mr. Flett’s records were destroyed in the 1973 fire at the National Personnel Records Center (NPRC) in St. Louis.) Though the NP had been instructed to read the claims file, he failed to acknowledge the BVA’s Finding of Fact that Mr. Flett experienced back pain *continuously* since service.

Mr. Flett challenged the C&P opinion. He submitted medical articles that contradicted the examiner’s conclusions. He also submitted the opinion of a second board certified physician (in Emergency Medicine), who explained why a nexus existed between the 1957 event and the current back issue. Nonetheless, the same NP re-issued his report, again finding no nexus.

On three occasions the Clinic requested, under *Nohr v. McDonald*, 27 Vet. App. 124 (2014) and Section 5103A, the NP’s curriculum vitae (CV). The BVA eventually ordered that the CV be produced, but it was not

provided until it was attached to the Supplemental Statement of the Case denying the claim again.

The CV revealed that the NP's qualifications did not remotely match those of the board certified doctors who submitted contrary opinions. The NP's only specialization appeared to have been in podiatry, long ago. Most disturbing, the CV reflects that NP's licensure and certification expired in 2013, a fact that completely undermines a presumption of competence.

C. Veteran JJ

A client of the Lewis B. Puller, Jr. Veterans Benefits Clinic at William & Mary Law School (Puller Clinic), JJ encountered a C&P examiner who was both hostile and perfunctory, performing an examination for an injury for which the veteran had made no claim.

Before examining JJ's left foot on December 8, 2014, the examiner disclosed that he was not a podiatrist. The examination then consisted solely of the examiner feeling JJ's shoeless feet. The examiner commented that JJ did not have "flat feet." But JJ had never claimed she had flat feet.

Moreover, the examiner informed JJ that his report would likely cause her to lose her benefits, and urged her to withdraw her claim because "VA is financially broke." The examiner further questioned JJ's representation by counsel, and asked why her claim was being handled in the Huntington, West Virginia RO. To the best of her knowledge, JJ's case had never

been assigned to the Huntington RO. JJ later had difficulty securing the results of her examination from the Salem VA Medical Center.

The lack of professionalism and expertise, as well as inappropriate interference in the claims process, demonstrate the imprudence of a blanket presumption of competence.

D. Veteran with Secondary Back Injury

Another veteran represented by a Puller Clinic attorney asserted a claim for a back injury secondary to a service-connected leg injury. The BVA denied the claim, relying on a C&P examiner's negative nexus opinion that cited two medical articles in support. The BVA did not obtain the articles.

One of the articles was irrelevant, dealing with whether an injury to one leg could cause effects *in the other leg*. The second article did address a leg injury causing a secondary back injury, but said the determination must be made case-by-case. Neither article supported the C&P opinion that problems in a leg do not cause problems in the back.

As in *Nohr*, it took a lawyer to recognize the misleading citations, which neither the veteran nor the BVA perceived. Because the articles were not in the record before the CAVC, it was sheer good fortune that the title of one article revealed enough about its substance to satisfy the court as to its dubious value.

E. Surviving Spouse Linda Ferrell

Linda Ferrell is the widow of Army combat veteran James Ferrell, who served in Vietnam as a mechanic, gunner, and helicopter crew chief. He fought in the Tet Offensive and in 1967 suffered head trauma when his helicopter was shot down. VA rated him at 100% for Post-Traumatic Stress Disorder (PTSD), based on this event; he was also deemed presumptively exposed to Agent Orange.

In 2008, Mrs. Ferrell noticed her husband stumbling, with slurred speech and glassy eyes. The VA emergency room evaluated him for six minutes, provided no treatment, and discharged him with a diagnosis of “bronchitis.” When his symptoms did not improve, Mrs. Ferrell took him to a private hospital where tests revealed a fast-acting brain tumor. Eighteen days after VA had discharged him, Mr. Ferrell died at the age of sixty.

Mrs. Ferrell applied for benefits under 38 U.S.C. § 1151, based on the VA emergency room staff’s negligence, as well as for Dependency and Indemnity Compensation (DIC) arising from her husband’s death. The RO denied all claims. On appeal, the BVA remanded in order to secure additional medical opinions.

VA subsequently provided three medical opinions, each summarily dismissing any connection between Mr. Ferrell’s brain tumor and a “head injury” or any “other incident” in service. The opinions concluded that the VA hospital staff was not negligent. Relying on these opinions, the BVA denied Mrs. Ferrell’s claims.

At the CAVC, Mrs. Ferrell, now represented by the Veterans Legal Clinic at Harvard Law School (Harvard Clinic), argued that the opinions were inadequate because they lacked rationale and relied on an inaccurate factual premise. For example, the VA examiner concluded that the brain cancer was not related to service because no published studies identified head trauma as a risk factor for cancer. But, such studies *did* exist. Because VA had not supplied the examiner's credentials, Mrs. Ferrell could not challenge the examiner's competence and could only argue that the opinions themselves were inadequate. She asked the Court to take judicial notice of the existence of the studies in order to support a finding that the VA examiner's opinions were inadequate.

Ultimately, the VA agreed to remand Mrs. Ferrell's case, acknowledging VA's failure to provide an adequate medical opinion. Mrs. Ferrell was eventually approved for benefits on the basis of a private medical opinion. But the VA's presumption of competence precluded early scrutiny of the VA examiner's experience, leading to a federal court appeal that added years to Mrs. Ferrell's claim.

F. Veteran MST Survivor

In 2003, a veteran who served in the late 1960s filed a claim for PTSD based on Military Sexual Trauma (MST). This veteran was persistently sexually harassed and raped by a fellow service member. She

became pregnant as a result of the rape and was discharged. She raised this child, but never married. She was later diagnosed with depression, anxiety, and ultimately PTSD.

VA requested a C&P opinion on whether the evidence showed that a trauma occurred. The examiner concluded that there was no such evidence. The claim was denied, in large part due to the examiner's conclusion that the veteran's account of the rape was not credible.

But the examiner was unqualified to opine on the question. She had no qualifications in, or experience with, trauma and sexual assault. Her written opinion implicitly conceded she lacked expertise concerning sexual assault. For example, she indicated she needed to consult with a clinical social worker in order to provide an opinion as to whether the veteran's behavior was consistent with MST survivors. There is no indication that this social worker met the veteran or reviewed her file. Regardless, the examiner relied on the social worker's extemporaneous input about sexual trauma, input that was not part of the record, in order to form her own "expert" opinion.

The VA examiner also grounded her opinion on scientifically unsupported assumptions about rape victims, including that the veteran's post-service sexual history precluded a finding of PTSD as a result of MST, because a person with PTSD would typically avoid situations that remind her of the trauma, suggesting that an actual rape victim would remain celibate in the

forty years following the attack. A licensed clinical social worker, who has conducted several studies on MST victims and who was consulted by counsel, described the VA examiner's assertion as an inaccurate and uninformed statement of PTSD symptomology.

The BVA twice denied this veteran's claim, relying each time on the examiner's opinion. The unrepresented veteran achieved two remands after appeal to the CAVC.

In a third appeal to the BVA in 2016, the veteran's counsel requested the examiner's CV, explicitly basing this request on the BVA's duty to assist and the veteran's right to challenge the examiner's competence. The BVA denied the request, erroneously treating it as a request made under the Freedom of Information Act (FOIA) rather than an obligation under its duty to assist. In fall 2016, counsel reiterated that the request was made pursuant to the VA's duty to assist, citing the recent CAVC decision in *Nohr v. McDonald*. Counsel simultaneously appealed the FOIA denial.

Recently, the Office of General Counsel responded to the FOIA appeal contending that the duty to assist did not apply to this type of request, instructing counsel to instead file a separate FOIA request with the VA healthcare facility that conducted the examination. VA provided no information about the examiner's qualifications. Nor did VA assist the veteran in developing evidence that would allow the veteran to challenge the examiner's competence.

These accounts of actual cases illustrate the difficulty faced by veterans burdened with inadequate or misleading medical opinions that they cannot effectively challenge.

III. THE FEDERAL CIRCUIT’S BASIS FOR ITS PRESUMPTION OF COMPETENCE IS LEGALLY DUBIOUS.

In the decision below, the Federal Circuit traced the history of the presumption of competence for VA examiners to *Rizzo v. Shinseki*, 580 F.3d 1288, 1290 (Fed. Cir. 2009), as the first case to express the doctrine by “adopt[ing] the reasoning of the Veterans Court in *Cox v. Nicholson*, 20 Vet. App. 563, 568 (2007).” *Mathis v. McDonald*, 643 Fed. Appx. 968, 971 (Fed. Cir. 2016). The *Cox* decision, however, did not provide any “reasoning” for the presumption of competence it articulated; rather, the CAVC merely stated that “the Board is entitled to assume the competence of a VA examiner.” *Cox v. Nicholson*, 20 Vet. App. 563, 569 (2007), citing *Hilkert v. West*, 12 Vet. App. 145, 151 (1999). In *Hilkert*, the CAVC deemed the VA examiner an “expert witness” and dismissed the veteran’s concern relating to competence by noting the BVA “implicitly accepted [the VA examiner’s] competency by accepting and relying on the conclusion in her opinion.” 12 Vet. App. at 151. Hence the only “reasoning” the Federal Circuit adopted in *Rizzo* was a circular assertion that the BVA is entitled to do what it did.

In *Hilkert* (and later in *Cox*), the CAVC relied on the presumption of regularity for the proposition that it is the veteran who bears the burden of demonstrating error in VA's reliance on its examiner. 12 Vet. App. at 569, citing *Butler v. Principi*, 244 F.3d 1337, 1340 (Fed. Cir. 2001). But the Federal Circuit went a step further in *Rizzo*, stating that the presumption of regularity "supported [its] judgment" in the presumption of competence. 580 F.3d at 1292, citing *Miley v. Principi*, 366 F.3d 1343, 1347 (Fed. Cir. 2004). Moreover, the Federal Circuit held that "nothing in [its] precedent limits the presumption to procedural matters," even though the cases on which it relied (e.g., *Butler* and *Miley*) involved only administrative functions such as mailing documents.

IV. STATISTICAL ANALYSES DEMONSTRATE THE PRESUMPTION OF COMPETENCE IS ILL ADVISED.

A. The VA's estimations of accuracy do not adequately capture errors attributable to C&P examinations.

The Veterans Benefits Administration (VBA) purports to assess, through statistical sampling, the quality of its decision-making nationwide, including the accuracy and competence of C&P examiners. *VBA Quality Assurance Sampling Methodology*, U.S. Dep't of Veterans Affairs, http://benefits.va.gov/REPORTS/mmwr/vba_accuracy_sampling_methodology_03092016.docx (last updated Mar. 9, 2016). The VBA reports a 95.5% accuracy rate; reflecting a 4.5% error rate.

The Veterans Health Administration in 2015 completed 2,899,593 individual [DBQs] and/or disability examination templates. *Mathis v. McDonald*, 834 F.3d 1347, 1352 (Fed. Cir. 2016) (en banc). In VA's assessment of accuracy, it breaks down errors by type, including exam-related and evaluation-related errors. See Appendix A. Of the errors, 6.27% were attributed to the insufficiency of VA medical examination. See Appendix A, Chart 3 and Chart 4. Similarly, 12.52% of the errors were deemed caused by an over- or under-evaluation of the rating. See Appendix A, Chart 3 and 5. Based on VBA's error rate of 4.5%, the number of medical assessments completed in 2015 that may contain error could be as high as 8,076 (0.27854775%³ of 2,899,593) based on the insufficiency of the examinations, and as high as 16,146 (0.5568463%⁴ of 2,899,593) based on errors identified in assignment of rating. See Appendix A. Because the VBA only identifies broad categories of rating errors and does not provide the exact cause of an error, its analysis does not identify the number of errors attributable to a VA examiner's incompetence. Thus, VA's sampling is likely not taking into consideration the competence of examiners, as the following study finds.

³ Calculation of 6.27% of the 4.5% error rate.

⁴ Calculation of 12.52% of the 4.5% error rate.

B. The “Syracuse Study” found high rates of error related to C&P examinations.

Under guidance from faculty members in both law and statistics, students at Veterans Legal Clinic at Syracuse University College of Law analyzed appellate decisions where appeal issues involved the validity and adequacy of C&P examinations (the “Syracuse Study”). *See* Appendices B & C.

At BVA, the validity and adequacy of the C&P examination was a material issue in 33 out of 100 cases⁵ randomly selected. *See* Appendix B. A determination by the BVA to grant the benefit or remand the case was deemed to imply that the examiner’s assessment was incorrect or inadequate. The BVA granted the benefit 33% of the time, and remanded 42% of the time, in these 33 cases.⁶ Thus, 25 times out of the 33 times that the C&P examination was a material issue of the case (76%), the BVA held that the examiner either was wrong or the examination was inadequate.

⁵ A random sample of 100 cases was taken from January 1, 2016, to October 5, 2016 of BVA Decisions of the 30,514 decisions handed down. In order to ensure randomization, numbers were assigned to every case, and a random number generator was used to produce this case sample.

⁶ The overall rates for the sample of 100 cases, which includes all issues, were as follows: 49% remanded, 25% granted, 9% affirmed, 19% denied, 6% dismissed. These rates are nearly identical to those published by the VA. *See* U.S. Dep’t of Veterans Affairs, Board of Veterans Appeals Annual Report FY 2015, 1, 26-29, (last visited Oct. 31, 2016), http://www.bva.va.gov/docs/Chairmans_Annual_Rpts/BVA2015AR.pdf.

The adequacy of the C&P examination was at issue in 17 of the 100 CAVC sample cases.⁷ Of those 17 cases, 12 were remanded, which is 71% of the time.⁸ See Appendix C.

Accordingly, the results of the Syracuse Study show that, in fact, the C&P examination was defective 25% of the time. Importantly, this percentage is likely understated. The Study's sampling was drawn from appealed cases only, in which strict deadlines apply, and cannot quantify claims that veterans abandon after a defective examination results in a denial. Further, only three decisions noted the doctor's specialty. As discussed above, VA does not readily disclose examiner qualifications. Without this information,⁹ a veteran, especially proceeding *pro se*, is unlikely to question competence on appeal.

⁷ A random sample of 100 cases was taken from January 1, 2016, to October 5, 2016 of CAVC Decisions of 2,000 decisions handed down. In order to ensure randomization, numbers were assigned to every case, and a random number generator was used to produce this case sample.

⁸ Overall rates for the CAVC sample were as follows: 64% remanded, 3% granted, 32% affirmed/denied, 6% dismissed, and 1% were not reopened. The Syracuse investigation divided these rates into somewhat broader categories than the CAVC's published statistics, so comparison between the two is difficult. See U.S. Court of Appeals for Veterans Claims, Annual Report FY 2015, 1, 2, (last visited Oct. 31, 2016), <https://uscourts.cavc.gov/documents/FY2015AnnualReport.pdf>.

⁹ C&P examination reports are not made public without a formal request.

The presumption of competence is not appropriate where the presumed competent party errs so frequently. Based on VA's estimate of approximately 3 million evaluations per year as cited in *Mathis*, 834 F.3d at 1352, a 25% error rate leaves 725,000 veterans with inadequate examinations.

V. THE BURDEN ON THE VETERAN TO CHALLENGE COMPETENCE CONFLICTS WITH VA'S STATUTORY DUTY TO ASSIST.

The Secretary of the VA (Secretary) has an obligation to "make reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate the claimant's claim for a benefit..." 38 U.S.C. § 5103A(a)(1). Indeed, as the Federal Circuit notes, "the statute *only* excuses the VA from making reasonable efforts to provide such assistance, if requested, when 'no reasonable possibility exists that such assistance would aid in substantiating the claim.'" *Wood v. Peake*, 520 F.3d 1345, 1348 (Fed. Cir. 2008) (quoting 38 U.S.C. § 5103A(a)(2)) (emphasis added). Because of the vital importance of C&P examinations to the outcome of decisions, equipping veterans to challenge the competence of VA examiners is essential to § 5103A.

The BVA relied on a VA medical opinion in denying Mr. Mathis's claim. See *Mathis v. McDonald*, 643 Fed. Appx. 968, 970 (Fed. Cir. 2016). Because the VA medical opinion was integral to the adverse decision, Mr. Mathis would further substantiate his claim by

successfully challenging the competence of the examiner. *See* 38 C.F.R. § 20.901 (noting that medical opinion must be “from an *appropriate* health care professional” (emphasis added)). Mr. Mathis could only effectively challenge the medical examiner’s competence with “specific reasons . . . that the expert is not qualified to give an opinion.” *Mathis*, 643 Fed. Appx. at 971 (citation omitted) (internal quotations omitted). But, as the foregoing accounts of clinic clients in Section II illustrate, claimants typically have no information about the VA’s medical examiners and have trouble obtaining it. *See also id.* at 975 (Reyna, J., concurring) (finding that VA does not, by default, provide a medical examiner’s qualifications, nor will it provide them upon request unless ordered to do so). On the other hand, VA has this information, which Mr. Mathis could use to further substantiate his claim. The inaccessibility of this information to the veteran and VA’s failure to disclose it seriously undermines VA’s statutory duty to assist.

VI. AS A PRACTICAL MATTER, THE PRESUMPTION OF COMPETENCE IS EFFECTIVELY UNREBUTTABLE.

In his concurrence in this case, Judge Hughes discounted the significance of the problem just discussed, citing *Nohr v. McDonald*, 27 Vet. App. 124 (2014), as demonstrating that “the VA’s obligations to develop the record and to assist the veteran . . . ensure that a veteran will have access to information regarding a medical examiner’s credentials when appropriate.”

Mathis v. McDonald, 834 F.3d 1347 (Fed. Cir. 2016). Judge Hughes paints a rosy picture of *Nohr*'s holding as one example in a line of "cases where the veteran has requested the CV of his examiner, [and] the VA has been directed to comply with this request." *Id.* But this characterization of *Nohr* is incorrect: even with distinct advantages uncharacteristic of typical VA claimants, Mr. Nohr had to go through a lengthy, complicated request process that did not actually result in an order for the VA to hand over its examiner's credentials.

Mr. Nohr had two key advantages most VA claimants do not have: (1) attorney representation and (2) a VA examiner who admitted she may not be qualified. With an attorney, Mr. Nohr was able raise a constitutional claim, issue interrogatories, request a subpoena, and submit an affidavit. 27 Vet. App. 124, 125, 128 (2014). *Pro se* veterans rarely have the knowledge or experience necessary to initiate such efforts. Mr. Nohr's legal representation stands in stark contrast to the nearly 87% of VA claimants who are *pro se*. *Board of Veterans' Appeals Annual Report*, U.S. Dep't of Veterans Affairs, 35 (2015), http://www.bva.va.gov/docs/Chairmans_Annual_Rpts/BVA2015AR.pdf.

Second, Mr. Nohr was substantially aided by the examiner's use of a qualifying phrase – "while I recognize my personal limitation . . ." – in her opinion. *Nohr*, 27 Vet. App. at 127. The CAVC cited this admission as an indication that the credentials request was not a "fishing expedition." *Id.* at 132-33. It is unlikely VA examiners will typically be so forthcoming, making a

“fishing expedition” characterization likely for the average claimant.

Even with these vital advantages, it took over two years to obtain an order directing limited access to the examiner’s qualifications. *Id.* at 127. Notably, the CAVC did *not* actually require the VA to provide the examiner’s credentials. *Id.* at 133 (“At a minimum, Mr. Nohr’s request required a response from the [BVA] – i.e., a statement of reasons or bases why Mr. Nohr was not entitled to answers to his questions and why clarification was unnecessary.” (citations omitted)).

In short, *Nohr* did not make it easier for a veteran to obtain examiner credentials. The case was narrowly grounded in the VA examiner’s admission that she may have lacked the appropriate expertise. *Id.* (noting “a potentially ambiguous statement by [the VA medical examiner]”). Furthermore, it was Mr. Nohr’s *counsel* who initially acted upon this ambiguous statement, *id.* at 127-28, and most veterans do not have counsel. Judge Hughes’ view is wrong: *Nohr* does not demonstrate that veterans have access to the information necessary to challenge competence. On the contrary, the difficulty of obtaining VA medical examiners’ credentials in the ordinary course makes the presumption effectively un rebuttable.

VII. THE FEDERAL CIRCUIT ERRED BY FAILING TO EXPLAIN WHY THE CANON OF CONSTITUTIONAL AVOIDANCE DID NOT CONTROL ITS INTERPRETATION OF 38 U.S.C. § 5103A.

The canon of constitutional avoidance requires that “[a] statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also *grave doubts* upon that score.” *U.S. v. Jin Fuey Moy*, 241 U.S. 394, 401 (1916) (emphasis added) (citations omitted). The canon applies not only where the issue is actual unconstitutionality, but where there is a question whether the interpretation creates constitutional risk. *See N.L.R.B. v. Catholic Bishop of Chicago*, 440 U.S. 490, 502 (1979). The canon acts as “a tool for choosing between competing plausible interpretations of a statutory text, resting on the reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts.” *Clark v. Martinez*, 543 U.S. 371, 381-82 (2005) (citations omitted).

The Federal Circuit’s creation of the presumption of competence raises grave doubts about the constitutionality of 38 U.S.C. § 5103A. Judge Reyna outlined these constitutional issues:

. . . [A] veteran’s entitlement to disability benefits is a property interest protected by the Due Process Clause of the Fifth Amendment to the United States Constitution. . . . Since the presumption of competence leaves veterans with no way to effectively challenge the

nexus between the VA examiners' qualifications and their opinions, due process afforded other individuals in other legal disciplines is not extended to veterans.

...

In the veterans' uniquely claimant friendly system of awarding compensation, breaches of the duty to assist are at the heart of due process analysis. . . . If the Constitution provides no protection against the occurrence of such breaches, then the paternalistic interest in protecting the veteran is an illusory and meaningless assurance.

...

Denying veterans information about the qualifications of their examiners denies them both the assistance necessary to make their claims and their due process rights in making those claims. . . .

Mathis v. McDonald, 834 F.3d 1347, 1356-59 (Fed. Cir. 2016), Reyna, J., concurring (internal citations omitted).

These concerns about due process are well placed. This Court considers three factors in assessing alleged Fifth Amendment Due Process violations: (1) the private interest affected by a government action, (2) the risk of an erroneous deprivation, and (3) the government's interest, including fiscal and administrative burdens. *Mathews v. Eldridge*, 424 U.S. 319, 334-35

(1976). The balance of these factors here demonstrates a constitutional violation.

With regard to the first factor, a veteran's interest in easy navigation of the benefits claims system is high. *See Walters v. National Ass'n of Radiation Survivors*, 473 U.S. 305, 311 (1985) ("The [VA benefits] process is designed to function throughout with a high degree of informality and solicitude for the claimant."). The Syracuse Study demonstrates that the risk of an erroneous deprivation is also high. *See* Section IV, *supra*. As for the third factor, VA faces a minimal administrative burden in providing its examiners' qualifications, and indeed has done so in the past. *See Mathis v. McDonald*, 834 F.3d 1347 (Fed. Cir. 2016) (VA could meet its duty to assist by . . . having examiners attach their CV); 643 Fed. Appx. 968, 981 (post-*Rizzo* the Board directed that CVs be provided). In view of the balance of the *Mathews*' factors, a presumption of competence as part of 38 U.S.C. § 5103A creates grave doubts about the constitutionality of the statute. Accordingly, interpretation of 38 U.S.C. § 5103A demands consideration of the canon of constitutional avoidance. The Federal Circuit erred by failing to even *consider* the canon of constitutional avoidance in its controlling opinions.

VIII. THE WRIT OF CERTIORARI SHOULD BE GRANTED IN THIS UNIQUE CASE BECAUSE THERE IS AN ENTRENCHED CIRCUIT CONFLICT WITH NO REALISTIC POSSIBILITY OF RESOLUTION ABSENT THIS COURT'S REVIEW.

The Federal Circuit denied Mr. Mathis' request for rehearing en banc 7-5, despite a remarkable¹⁰ intra-circuit split. *See generally Mathis v. McDonald*, 834 F.3d 1347 (Fed. Cir. 2016). This Court typically allows courts of appeals to resolve internal divisions "because their doing so may eliminate any conflict with other courts of appeals." *Joseph v. United States*, 135 S. Ct. 705, 707 (2014) (cert. denied). Here, however, because the Federal Circuit is the *only* circuit with the authority to hear statutory VA claims, *see* 38 U.S.C. § 7292(c), there is no chance of competing circuit court judgments.

Additionally, the Federal Circuit itself is unlikely to revisit its holding in *Mathis* via en banc review at some later point. The Federal Circuit very seldom sits en banc.¹¹ Given that there is no realistic opportunity for any federal court, including the Federal Circuit, to further address this intra-circuit split on an issue that

¹⁰ More than 96% of Federal Circuit decisions are unanimous. Christopher A. Cotropia, *Determining Uniformity Within the Federal Circuit by Measuring Dissent and En Banc Review*, 43 Loy. L.A. L. Rev. 801, 815 (2010).

¹¹ The Federal Circuit has an unusually low rate of en banc review: 0.18 of one percent. Christopher A. Cotropia, *Determining Uniformity Within the Federal Circuit by Measuring Dissent and En Banc Review*, 43 Loy. L.A. L. Rev. 801, 817 (2010).

affects millions of veterans with disabilities, this Court should grant certiorari.

◆

CONCLUSION

This case raises significant due process concerns for veterans seeking VA disability benefits. The presumption of competence is of dubious legal lineage, unsupported by data, and effectively irrebuttable in practice, placing veterans who are seeking disability benefits at a distinct disadvantage in a system that was designed instead to provide them with the “benefit of the doubt.” The decision below represents a circuit split that will remain unresolved without the intervention of this Court. Given the commitment our nation has made to honor the men and women who served, especially those with disabilities, this issue is of significant importance to society in general. *Amici* respectfully request that the petition for a writ of certiorari be granted.

Respectfully submitted,

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APPENDIX A

VBA Compensation Service Quality Charts

Chart 1

	Current Claim-Based Accuracy		Current Issue-Based Rating Accuracy		Current Authorization Accuracy
	12-Month	3-Month	12-Month	3-Month	12-Month
Nation	88.07%	85.98%	95.55%	94.85%	89.64%
12-Mo Issue-Based Accuracy			Each displayed month in this chart represents the 12-month cumulative period that ends with the displayed month. Example, “Jun-15” represents Jul14-Jun15 data. Issue-Based rating accuracy is based on EP disposition dates. The chart will be updated monthly to reflect the current 12-month cumulative period as posted in the STAR reports.		
Current Issue-Based Rating Accuracy			This table provides the issue-based rating accuracy for the current 12- and 3-month cumulative periods, for both the station and the nation. The data is based on EP disposition dates. The table will be updated monthly to reflect the current 12- and 3-month cumulative periods as posted in the STAR reports.		

Chart 2

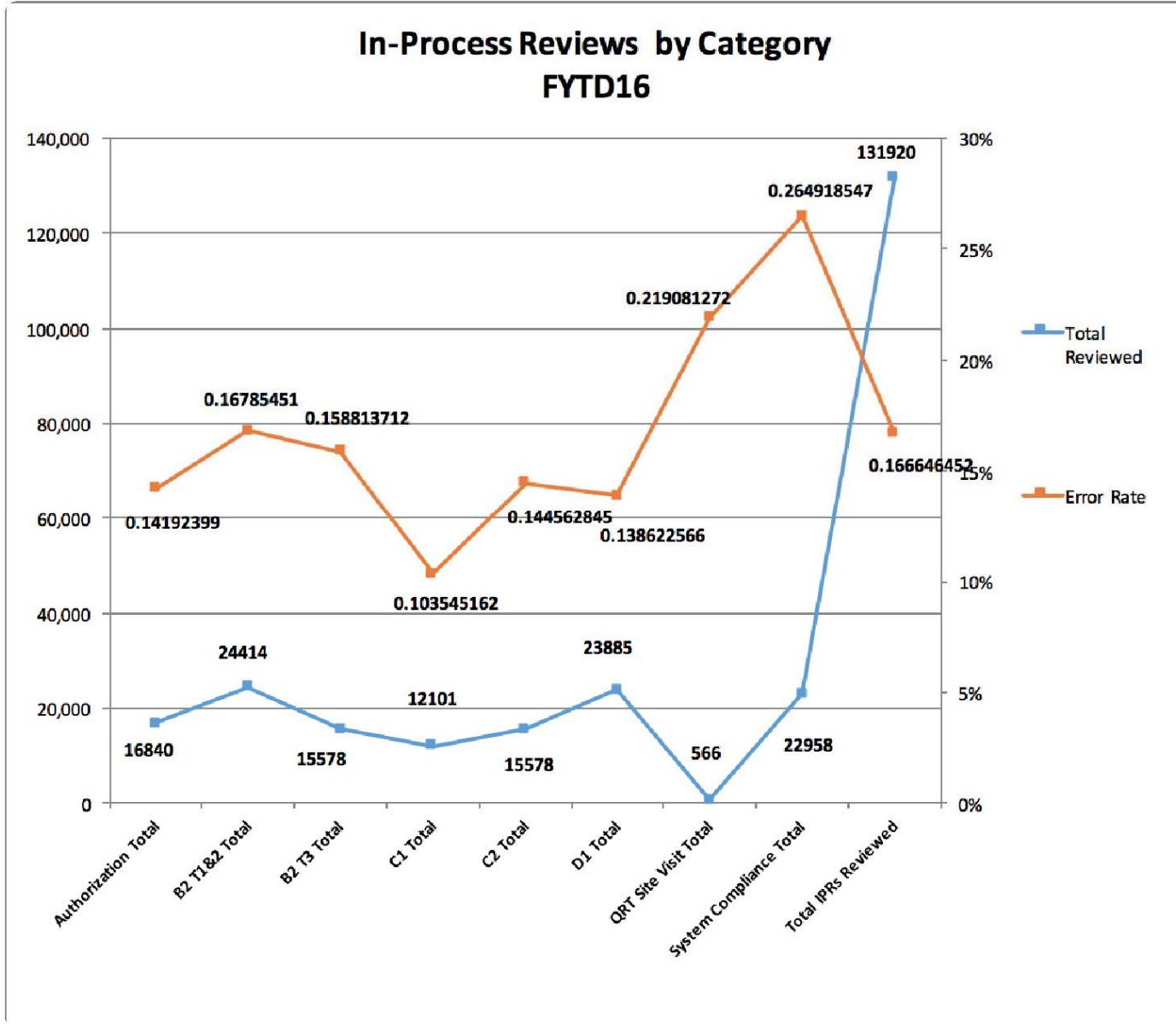
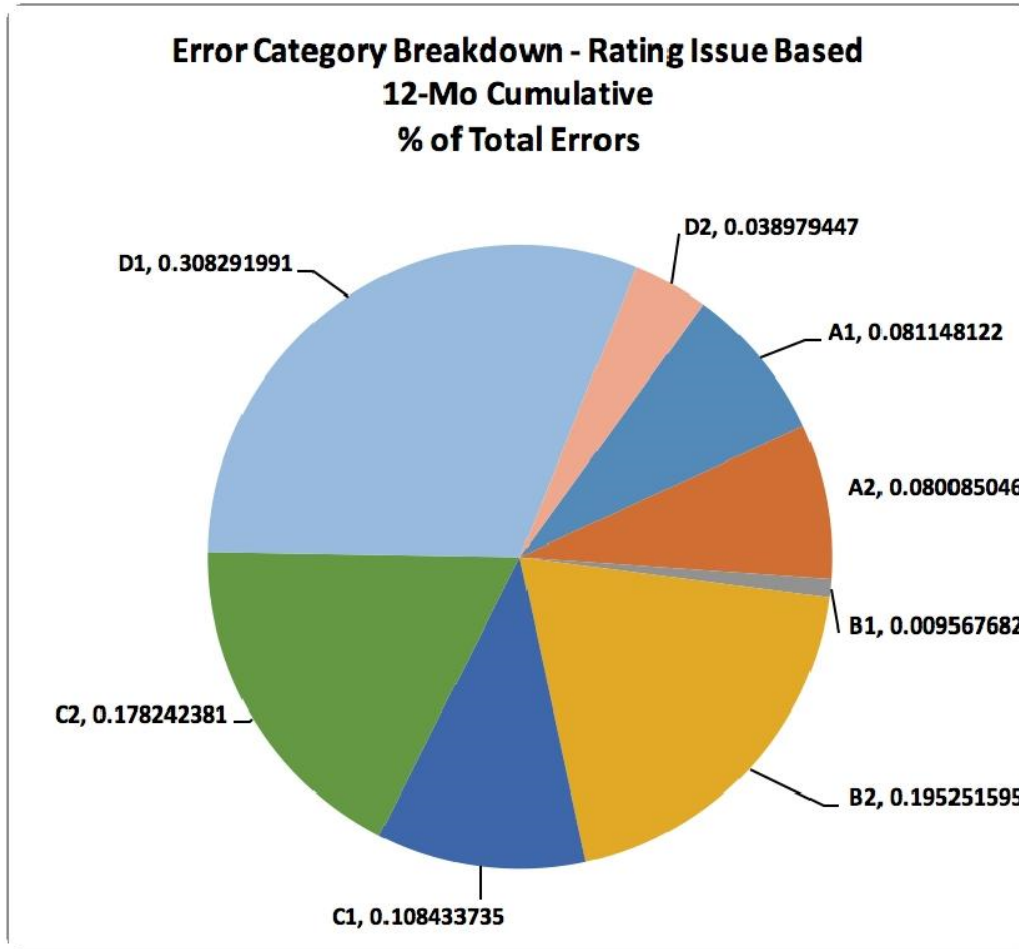


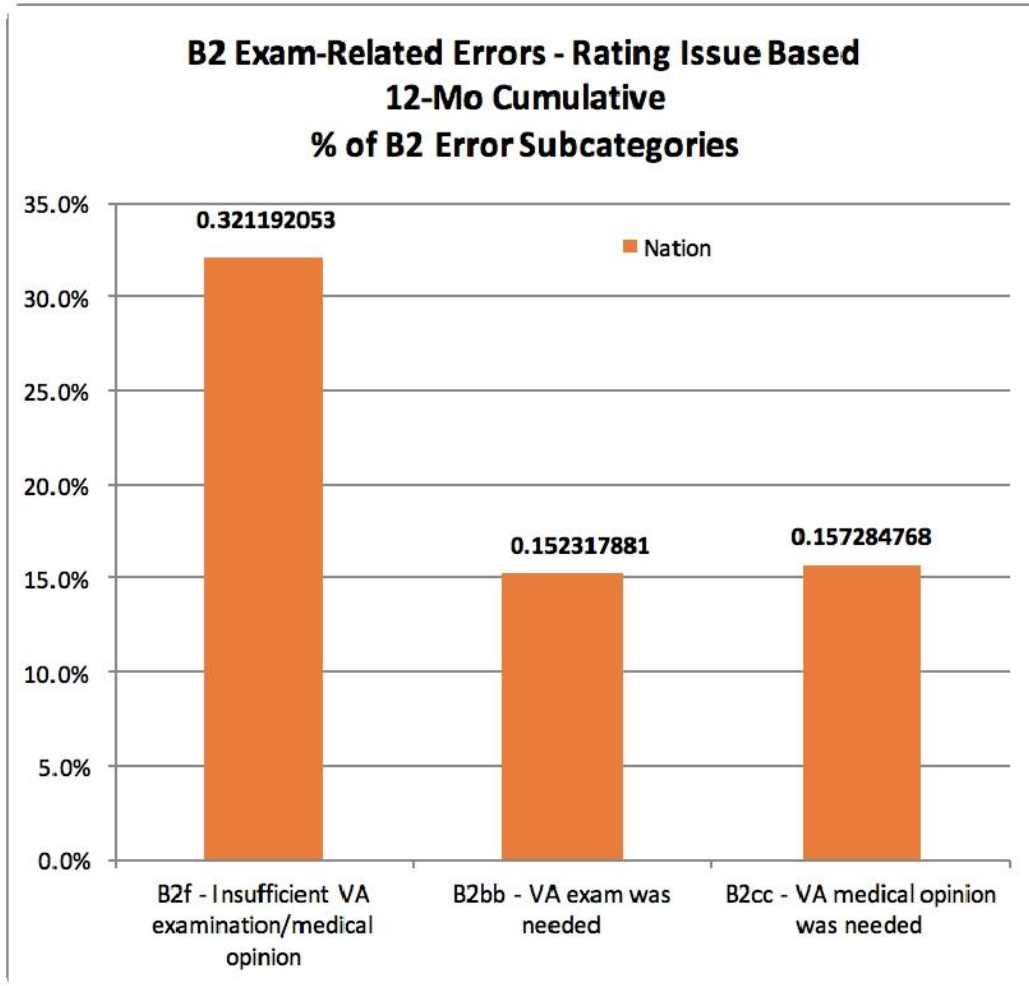
Chart 3



Error Category Breakdown
Rating Issue-Based
12-Mo Cumulative
% of Total Errors

This pie chart displays each of the station's rating issue-based benefit entitlement error categories as a percentage of the station's total issue-based rating benefit entitlement errors. The date range included is the current 12-month cumulative period. The data is based on EP disposition dates and the chart will be updated monthly to reflect the current 12-month cumulative period as posted in the STAR reports.

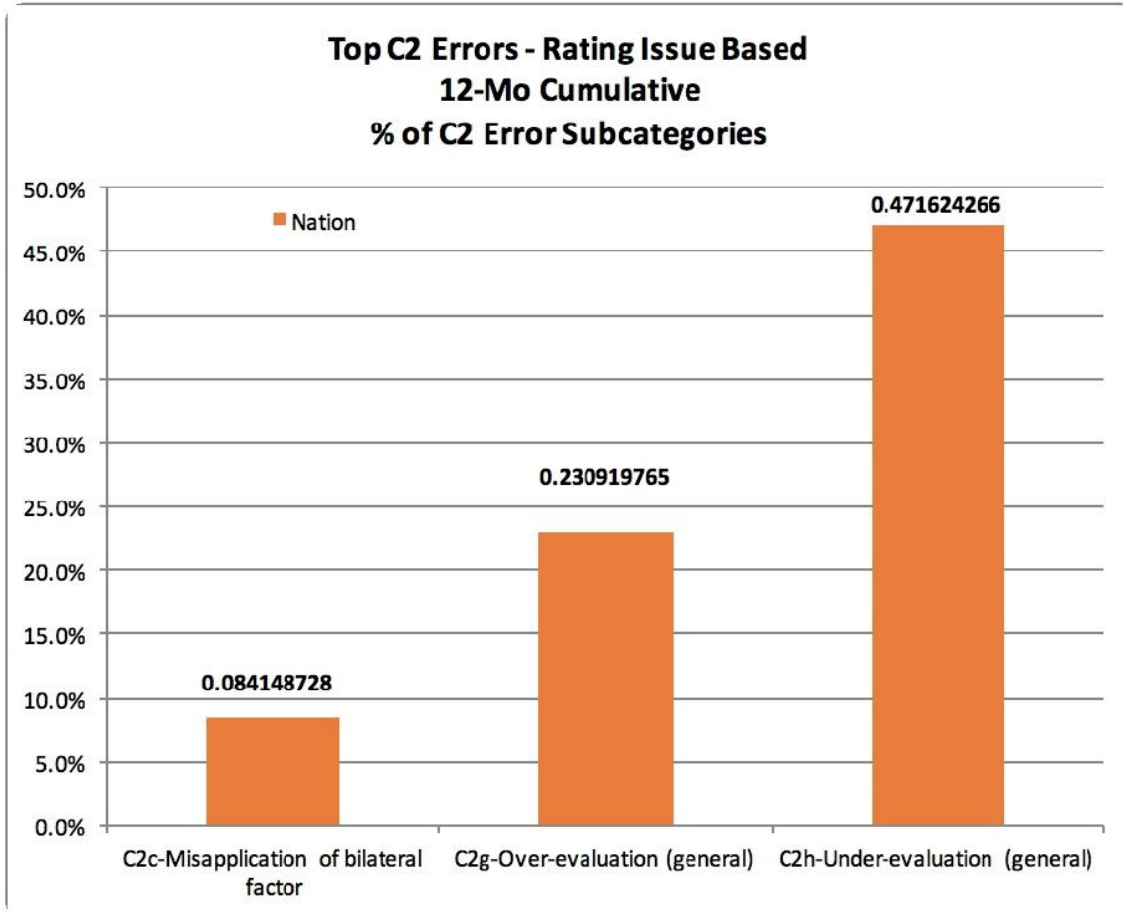
Chart 4



B2 Exam-Related Errors
Rating Issue-Based
12-Mo Cumulative
% of B2 Error Subcategories

This bar chart displays each of the 3 exam-related rating issue-based B2 subcategories (Insufficient Exams/Medical Opinions, VA Exam was Needed, and VA Medical Opinion was Needed) as a percentage of total B2 error subcategories, for both the station and the nation. The date range included is the current 12-month cumulative period. The data is based on EP disposition dates and will be updated monthly to reflect the current 12-month cumulative period as posted in the STAR reports.

Chart 5



Top 3 C2 Errors
Rating Issue-Based
12-Mo Cumulative
% of C2 Error Subcategories

This bar chart displays each of the nation’s top 3 rating issue-based C2 subcategory errors as a percentage of the nation’s total rating issue-based C2 error subcategories. It also compares the station’s data for the same 3 subcategories. The date range included is the current 12-month cumulative period. The data is based on EP disposition dates and will be updated monthly to reflect the current 12-month cumulative period as posted in the STAR reports.

Chart 6

Station Quality Charts by District									
RO#	Pacific District	RO #	Continental District	RO#	Southeast District	RO #	Midwest District	RO #	North Atlantic District
340	Albuquerque	442	Cheyenne	316	Atlanta	328	Chicago	313	Baltimore
463	Anchorage	339	Denver	319	Columbus	325	Cleveland	301	Boston
347	Boise	436	Ft. Harrison	327	Louisville	333	Des Moines	307	Buffalo
459	Honolulu	362	Houston	322	Montgomery	329	Detroit	308	Hartford
344	Los Angeles	323	Jackson	320	Nashville	437	Fargo	315	Huntington
358	Manilla	350	Little Rock	355	San Juan	326	Indianapolis	373	Manchester
343	Oakland	351	Muskogee	317	St. Petersburg	334	Lincoln	306	New York
345	Phoenix	321	New Orleans			330	Milwaukee	309	Newark
348	Portland	341	Salt Lake City			438	Sioux Falls	310	Philadelphia
354	Reno	349	Waco			331	St. Louis	311	Pittsburgh
377	San Diego					335	St. Paul	304	Providence
346	Seattle					452	Wichita	314	Roanoke
								402	Togus
								372	Washington
								405	White River Junction
								460	Wilmington
								318	Winston-Salem

APPENDIX B
SYRACUSE STUDY
BOARD OF VETERANS APPEALS

Case #	Regional Office	C&P Material Issue (Y/N)	Granted/ Remanded/ Affirmed	Type of Examiner	Specialty of Examiner	Disability
1600334	Montgomery	Yes	Granted	n/a	n/a	PTSD
1600557	Muskogee	Yes	Remanded	n/a	n/a	Back problem
1600640	Nashville	No	Remanded	n/a	n/a	Foot problem
1600886	Columbia, SC	Yes	Denied	n/a	n/a	Depression
1602232	Indianapolis	No	Granted	n/a	n/a	Hearing loss
1602495	New Orleans	Yes	Remanded	n/a	Back & Foot	Back/Foot probs
1602798	Montgomery	No	Remanded	n/a	n/a	Tinnitus/Bilateral hearing loss
1603026	St. Petersburg	No	Dismissed	n/a	n/a	Ischemic heart disease
1603147	St. Petersburg	Yes	Remanded	n/a	n/a	hypoparathyroidism, hypothyroidism, heart condition
1603269	San Diego	No	Remanded	n/a	n/a	Epilepsy
1603536	Atlanta	No	Denied	n/a	n/a	Vascular Hypertension; Sleep Apnea
1604134	Walla Walla	No	Remanded	n/a	n/a	Medical Expense Reimbursement
1604352	Fort Harrison	No	Denied	n/a	n/a	Outbreak due to Asbestos Exposure/n/a
1604926	Columbia, SC	No	Granted	n/a	n/a	n/a
1605095	Montgomery	No	Remanded	n/a	n/a	n/a
1605315	San Diego	No	Granted	n/a	n/a	n/a
1605362	Detroit	No	Remanded	n/a	n/a	Knee Disorder
1605525	Muskogee	No	Denied	n/a	n/a	Diabetes Mellitus; Low Back Disability;
1605721	Milwaukee	Yes	Remanded	n/a	n/a	Sleep Apnea
1606351	Boise	No	Denied	n/a	n/a	Shoulder Injury
1606966	Oakland	No	Remanded	n/a	n/a	Septicemia; Arthritis
1607090	Columbia, SC	No	Remanded	n/a	n/a	Spine Injury
1607506	Houston	No	Denied	n/a	n/a	Non-Hodgkin's Lymphoma
1607804	Milwaukee	No	Remanded	n/a	n/a	Back Problems
1607830	Columbia, SC	No	Denied	n/a	n/a	Hearing Loss/Neck Injury
1608252	Waco	No	Denied	n/a	n/a	Diabetes mellitus, type II
1608379	Indianapolis	No	Remanded	n/a	n/a	tinnitus, depression, cervical spine

1608396	Muskogee	No	Denied	n/a	n/a	n/a	n/a
1609145	Roanoke	No	Dismissed	n/a	n/a	n/a	disease
1609226	Roanoke	No	Remanded	n/a	n/a	n/a	Lower back disability
1609782	Winston-Salem	No	Denied	n/a	n/a	n/a	Left foot
1609913	St. Louis	No	Granted	n/a	n/a	n/a	n/a
1610445	Albuquerque	Yes	Denied in part, Remanded in part, Granted in part	n/a	n/a	n/a	Spine issues
1610617	Milwaukee	No	Remanded	n/a	n/a	n/a	Special Monthly Pension
1610770	St. Petersburg	No	Denied in part, remanded in part	n/a	n/a	n/a	Knee, hip, neck disabilities
1610997	Boston	No	Granted	n/a	n/a	n/a	Back and Neck
1611480	Seattle	Yes	Granted in part, denied in part	n/a	n/a	n/a	Foot and ankle condition
1611538	San Juan	Yes	Granted	n/a	n/a	n/a	Lower back disability
1611558	Huntington	No	Remanded	n/a	n/a	n/a	lung cancer
1612588	Roanoke	No	Denied	n/a	n/a	n/a	Lumbar/cervical strain
1612684	Winston-Salem	No	Remanded	n/a	n/a	n/a	Prosthetic knee joint
1612730	St. Petersburg	No	Remanded	n/a	n/a	n/a	Lumbar spine disability
1612764	Houston	Yes	Granted in part, denied in part	n/a	n/a	n/a	Hearing loss
1612796	San Diego	No	Remanded	n/a	n/a	n/a	Right knee disability
1612878	Hartford	No	Denied	n/a	n/a	n/a	Back disability
1613212	Los Angeles	No	Dismissed	n/a	n/a	n/a	Bilateral hearing loss
1613861	Montgomery	Yes	Granted	n/a	n/a	n/a	Hip disability
1614887	St. Petersburg	No	Remanded	n/a	n/a	n/a	Knee and back condition
1615402	Muskogee	Yes	Remanded	Audiologist	Audology	n/a	Bilateral hearing loss
1615520	Seattle	No	Remanded	n/a	n/a	n/a	Low back disorder, both hands
1615670	Houston	No	Affirmed	n/a	n/a	n/a	Hypertension
1617499	Nashville	Yes	Affirm in part, Remand in part	n/a	n/a	n/a	hearing loss, back pain, foot issue
1618705	Denver	Yes	Remanded	n/a	n/a	n/a	multiple back issues
1618908	Cleveland	Yes	Remanded	n/a	n/a	n/a	neck problems
1619111	Chicago	No	Remanded	n/a	n/a	n/a	mental health

1619277	Honolulu	No	Granted	n/a	n/a	neck/head
1619508	Phoenix	Yes	Affirm in part, remand in part	n/a	n/a	back, mental health
1619688	Wichita	No	Granted	n/a	n/a	hearing loss
1619983	LA	No	Remanded	n/a	n/a	migraines
1619991	Louisville	Yes	Affirmed	n/a	n/a	skin disease
1620781	Houston	No	Denied	n/a	n/a	eye iritis
1620978	St. Paul	Yes	Granted	n/a	n/a	hearing loss
1621104	Des Moines	No	Remanded	n/a	n/a	PTSD
1621128	Hartford	No	Denied	n/a	n/a	shoulder
1621291	Providence	Yes	Remanded	n/a	n/a	PTSD
1621374	Little Rock	Yes	Remanded	n/a	n/a	sinus, back pain
1622001	LA	Yes	Remanded	n/a	n/a	neck, shoulder
1622189	Baltimore	Yes	Affirm in part, Remand in part	n/a	n/a	Hep C, mental health issues
1622349	Atlanta	No	Remanded	n/a	n/a	DDD; neck fusion; fibromyalgia
1622723	Roanoke	No	Remanded	n/a	n/a	back issues
1623339	Atlanta	No	Denied	n/a	n/a	heart problem
1623626	Jackson	No	Remanded	n/a	n/a	Left shoulder, spine, neuropathy
1623651	Indianapolis	No	Dismissed	n/a	n/a	PTSD
1623930	Columbia	No	Remand in part, Affirm in part	n/a	n/a	brain and lung cancer, COPD, GERD
1624205	Lincoln	No	Granted	n/a	n/a	prostate cancer
1624248	Columbia	No	Affirmed	n/a	n/a	TBI; Ankle
1624369	St. Paul	Yes	Granted	n/a	n/a	Headaches
1624411	Chicago	Yes	Granted	n/a	n/a	Knee
1624623	Nashville	Yes	Granted	n/a	n/a	Mental Health
1624997	Winston-Salem	No	Affirmed	n/a	n/a	Back
1625140	Atlanta	Yes	Granted	n/a	n/a	Back
1625486	Houston	Yes	Granted	n/a	n/a	Hypertension; Heart; Sleep Apnea; Skin; Hearing Loss; IVDS; ED
1626441	Waco	No	Remanded	n/a	n/a	Peripheral Neuropathy
1626576	North Little Rock	No	Remanded	n/a	n/a	Back; Tinnitus; Hypertension; Sinus; Shoulder; Headache; Hearing
1626740	St. Petersburg	Yes	Remanded	n/a	n/a	Respiratory Condition
1626810	Newark	No	Remanded			DIC
1627019	Nashville	No	Remanded			TBI
1627063	Winston-Salem	n/a	Dismissed			

1628083	Milwaukee	No	Granted			Cancers
1628302	Waco	Yes	Granted			Back

1628330	San Juan	n/a	Dismissed			
1628400	San Juan	Yes	Granted			Hearing Loss; GERD; Back; Tinnitus
1628637	Columbia	No	Granted			PTSD; TDIU
1628687	Gainesville	No	Affirmed			Medical Treatment
1628826	Roanoke	Yes	Remanded			Hands; Knee; Hemmoroids; Feet
1628975	St. Petersburg	Yes	remanded			foot, back, knee problems
1629052	Oakland	Yes	Remanded			Sleep Apnea
1629808	Reno	No	Affirmed			Paget's Disease
1630048	Atlanta	No	Granted			Hearing; Skin
1630194	Columbia	No	Remanded			back; deviated septum

APPENDIX C
SYRACUSE STUDY
COURT OF APPEALS FOR VETERANS CLAIMS

Case #	Regional Office	C&P Material Issue (Y/N)	Granted/ Remanded/ Affirmed	Type of Examiner	Specialty of Examiner	Disability
12-3323	Phoenix	No	Affirmed	n/a	n/a	PTSD
13-2288	Milwaukee	Yes	Affirmed	n/a	n/a	Back Injury
13-3347	Houston	Yes	Denied	n/a	Gastroenterologist	Pancreatitis
14-1137	Salt Lake City	No	Affirmed	n/a	n/a	Spinal Injury
14-1478	Jackson, MS	No	Affirmed	n/a	n/a	Spinal Injury
14-1809	Sioux Falls	No	Granted	n/a	n/a	Heart Disease; Diabetes
14-2151	Louisville, KY	Yes	Remanded	n/a	n/a	Respiratory Disorder
14-2187	Waco	No	Remanded	n/a	n/a	Artery Disease
14-2398	St. Petersburg	Yes	Affirmed	n/a	n/a	Shoulder Injury
14-2425	Nashville	Yes	Remanded	n/a	n/a	Spinal Injury
14-2626	New Orleans	No	Remanded	n/a	n/a	n/a
14-2732	Newark	No	Remanded in part, Affirmed in part	n/a	n/a	Knee Injury
14-2825	Montgomery	Yes	Affirmed	n/a	n/a	Foot Injury
14-2924	San Juan	No	Remanded	n/a	n/a	Back Injury
14-3036	Wichita	No	Remanded	n/a	n/a	Bipolar; Anxiety; Depression; Personality Disorder; PTSD
14-3094	Philadelphia	No	Remanded	n/a	n/a	Skin Disability; Migraines
14-3180	Cleveland	No	Remanded in part, Affirmed in part	n/a	n/a	Foot Injury
14-3248	Seattle	Yes	Remanded	n/a	n/a	PTSD; Hearing Loss
14-3375	Philadelphia	No	Affirmed	n/a	n/a	n/a
14-3510	St. Petersburg	No	Dismissed in part, Affirmed in part	n/a	n/a	Joint Injury; Headaches
14-3567	Winston-Salem	Yes	Remanded	n/a	n/a	Gastric Carcinoma
14-3617	San Juan	No	Dismissed	n/a	n/a	Heart Disease
14-3676	Denver	No	Remanded	n/a	n/a	Bronchiectasis
14-3768	St. Petersburg	Yes	Remanded	n/a	n/a	Ulcer

14-3837	Louisville, KY	No	Denied	n/a	n/a	Insanity
14-3879	St. Petersburg	No	Remanded	n/a	n/a	disability
14-3937	Oakland	No	Denied	n/a	n/a	Psychiatric disorder, PTSD
14-4079	Atlanta	No	Denied	n/a	n/a	DEA Eligibility
14-4163	New Orleans	No	Denied	general	n/a	Back disability, TDIU
14-4178	Lincoln	No	Remanded	n/a	n/a	Back disability, CAD, anxiety
14-4254	Atlanta	No	Denied	n/a	n/a	disease
14-4368	Albuquerque	No	Denied	n/a	n/a	Mental disorder
14-4417	Houston	No	Denied	n/a	n/a	PTSD
14-647	Roanoke	No	Affirmed	n/a	n/a	Knee Injury
15-1010	Roanoke	Yes	Remanded	n/a	n/a	low back disability
15-105	St. Paul	No	Denied	n/a	n/a	Business/vocational training
15-1074	Oakland	No	Affirmed	n/a	n/a	hearing loss
15-1116	St. Louis	No	Remanded	n/a	n/a	leukemia
15-1192	Atlanta	No	Remanded	n/a	n/a	PTSD; depression
15-1256	Lincoln	No	Remanded	n/a	n/a	hearing loss, Gerd
15-1293	Muskogee	Yes	remanded	n/a	n/a	PTSD; feet;ankle; knee
15-1344	Waco	No	remanded	n/a	n/a	hearing
15-1401	Chicago	No	Affirmed	n/a	n/a	schizophrenia
15-1437	Winston-Salem	No	Remanded	n/a	n/a	asthma, fungal infection,COPD
15-1468	New Orleans	No	Remanded	n/a	n/a	sleep apnea, heart disease, eye disorder, undiagnosed illnesses
15-1576	Albuquerque	No	Remanded	n/a	n/a	multiple mental health issues, neck, head, TBI, etc
15-1591	N. Little Rock	Yes	Remanded	n/a	n/a	PTSD, Jaw fracture
15-163	Winston-Salem	Yes	Remanded	n/a	n/a	Deviated septum, sinusitis
15-1672	Montgomery	No	Remanded	n/a	n/a	hearing loss
15-1689	St.Louis	No	Remanded	n/a	n/a	uvulopalatophary ngoplasty
15-1742	New York	No	Remanded	n/a	n/a	death

15-1828	Waco	No	Remanded	n/a	n/a	n/a	asbestosis, pes planus
15-1876	Denver	No	Remanded	n/a	n/a	n/a	adhesions
15-1931	Montgomery	No	Remanded	n/a	n/a	n/a	TBI; GERD; Tendonitis
15-1968	N. Little Rock	No	Remanded	n/a	n/a	n/a	Knee disorder
15-1991	St. Paul	No	Remanded	n/a	n/a	n/a	Knee arthritis
15-2058	Nashville	No	Remanded	n/a	n/a	n/a	right wrist disability
15-2069	St. Petersburg	No	Remanded	n/a	n/a	n/a	psych disorder
15-2116	Oakland	No	Remanded	n/a	n/a	n/a	psych disorder
15-2154	St. Petersburg	No	Remanded	n/a	n/a	n/a	sinus condition, sleep apnea, multiple psych disorders
15-2188	Waco	n/a	Dismissed	n/a	n/a	n/a	bladder, kidney issues; prostate cancer; hypertension
15-2262	Muskogee	No	Remanded	n/a	n/a	n/a	Shoulder; Skin
15-229	Portland	Yes	Remanded	n/a	n/a	n/a	PTSD
15-2302	Houston	No	Remanded	n/a	n/a	n/a	PTSD
15-2330	Huntington	Yes	Remanded	n/a	n/a	n/a	Migraines; CFS; Knee; Spine
15-2380	Denver	No	Remanded	n/a	n/a	n/a	PTSD
15-2389	Reno	No	Remanded	n/a	n/a	n/a	Back
15-2461	Boston	No	Remanded	n/a	n/a	n/a	Hearing Loss
15-2502	Atlanta	No	Remanded	n/a	n/a	n/a	Coronary Artery Disease
15-2531	Nashville	No	Remanded	n/a	n/a	n/a	Tinnitus
15-2552	Honolulu	No	Remanded	n/a	n/a	n/a	Cysts
15-2611	St. Paul	n/a	Dismissed	n/a	n/a	n/a	Pension
15-2648	Lincoln	n/a	Dismissed	n/a	n/a	n/a	PTSD; CAD; Hypertension
15-2714	Houston	n/a	Dismissed	n/a	n/a	n/a	Eye
15-273	St. Petersburg	No	Denied	n/a	n/a	n/a	Psychiatric disorder
15-2760	White River Junction	No	Remanded	n/a	n/a	n/a	PTSD
15-2785	Sioux Falls	No	Remanded	n/a	n/a	n/a	Back; Eye
15-2806	Cleveland	No	Remanded	n/a	n/a	n/a	Knee
15-2847	Atlanta	No	Remanded	n/a	n/a	n/a	Chronic Fatigue Syndrome
15-2871	Montgomery	No	Remanded	n/a	n/a	n/a	Prostate Cancer
15-2937	Houston	No	Affirmed	n/a	n/a	n/a	undiagnosed illness, sleep apnea, headaches

15-2971	Waco	No	Remanded	n/a	n/a	PTSD
15-2985	Waco	Yes	Remanded	n/a	n/a	Hearing Loss; Tinnitus
15-3023	St. Petersburg	No	Remanded	n/a	n/a	Diabetes
15-3052	Des Moines	No	Remanded	n/a	n/a	Back
15-3100	Chicago	No	Remanded	n/a	n/a	Abdominal; Hand; Shoulder; Leg; Feet
15-3147	Los Angeles	No	Remanded	n/a	n/a	
15-3178	New Orleans	No	Remanded	n/a	n/a	Back
15-362	Montgomery	No	Denied	n/a	n/a	Psychiatric disorder, PTSD
15-412	Jackson, MS	No	Denied	n/a	n/a	Prostate cancer
15-417	Denver	No	Denied	n/a	n/a	Ulcers, psychiatric disorder
15-551	Honolulu	No	Denied in part, remanded in part	n/a	n/a	Bladder and prostate cancer
15-605	Muskogee	No	Remanded in part, denied in part	n/a	n/a	Tinnitus, back disability
15-61	Jackson, MS	No	Denied	n/a	n/a	Lower back disorder
15-615	Houston	n/a	Granted in part, Denied in part	n/a	n/a	Lower back, tinnitus, sleep apnea, deviated spetum
15-731	Columbia	Yes	Granted in part, Denied in part	n/a	n/a	Sleep disorders
15-791	Atlanta	No	Remanded	n/a	n/a	Joint, knee injury, hypertension
15-870	Nashville	No	Not Reopened	n/a	n/a	Cervical spine disability
15-912	Lincoln	No	Remanded	n/a	n/a	shoulder disability, gastrointestinal disability, PTSD
15-957	Detroit	No	Remanded	n/a	n/a	Death and accrued benefits, arthritis, amputation, lower back

APPENDIX D

Mathis Amicus Signatories:

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