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VA VIOLATES VETERANS DIOXIN AND RADIATION EXPOSURE COMPENSATION STANDARDS ACT – AND PUBLISHES BAD SCIENCE

VA has violated the *Veterans Dioxin and Radiation Exposure Compensation Standards Act*, in a deliberate manner to insure exposed c-123 veterans are barred from access to vital medical care for which they are

legally eligible! In particular, it has violated the section that **requires** the Secretary to produce and/or rely upon those guidelines that **withstand peer review** ("**Peer review** is the evaluation of work by one or more people of similar competence to the producers of the work"). And the VA's publication dealt with bellow has FAILED peer review offered by independent scientists and physicians, bringing into disrepute VA scientific and medical credibility.

The screenshot shows the VA website's 'Public Health' section. The main heading is 'Agent Orange Residue on Post-Vietnam War Airplanes'. The text states: 'Some veterans who were crew members on C-123 Provider aircraft, formerly used to spray Agent Orange during the Vietnam War, have raised health concerns about exposure to residual amounts of herbicides on the plane surfaces. VA's Office of Public Health thoroughly reviewed all available scientific information regarding the exposure potential. We concluded that the potential of exposure for the post-Vietnam crews that flew or maintained these planes was extremely low and therefore, the risk of long-term health effects is minimal.' A photograph of a Fairchild C-123K Provider aircraft is included. Below the main text, there is a section titled 'Testing for Agent Orange residue on planes used in Vietnam' which mentions a report from the U.S. Air Force (USAF) dated April 27, 2012, concluding that potential exposures to Agent Orange in C-123 planes used after the Vietnam War were unlikely to have put aircrew or passengers at risk for future health problems.

The guidelines required to be established in regulations prescribed under this section shall include guidelines governing the evaluation of the findings of scientific studies relating to the possible increased risk of adverse health effects of exposure to herbicides containing dioxin or of exposure to ionizing radiation. Those guidelines shall require that, in the evaluation of those studies, the Administrator shall take into account whether the results are statistically significant, are capable of replication, and **withstand peer review.**

In 2012 the Department of Veterans Affairs prepared a pivotal document, claiming to be a "*Scientific Review of Agent Orange in C-123 Aircraft*," (hereafter "*Scientific Review*") crafted to prevent

successful claims by C-123 veterans who had been exposed to dioxin while serving aboard their aircraft between 1972-1982. Those warplanes had been used until 1971 for spraying Agent Orange in Vietnam. The VA review skillfully avoided references that would agree with the veterans' exposure, and selected only those which could argue against their exposure. Interesting, however, is the fact that **one cited author (Dr. Linda Birnbaum, Director, National Toxicology Program) actually concluded veterans *were* exposed!**

Response by the medical and scientific community was immediate, and negative. Acting on behalf of fifteen other scientists and physicians, **Dr. Jeanne Stellman** (Professor Emerita of the Mailman School of Public Health, Columbia University) **submitted to the VA's Undersecretary for Veterans Benefits a scathing assessment of the VA's "Scientific Review".** In the most respectful manner, Dr. Stellman and her colleagues termed their concerns with the VA "scientific apprehensions" and concluded the VA paper was "scientifically flawed" in too many areas.

Because the VA's "Scientific Review" was crafted to prevent C-123 veterans claims from being approved, it bears careful examination as to the **failure to withstand peer review** and thus violated the Veterans Dioxin and Radiation Exposure Act:

1. VA was challenged on errors regarding dermal exposure to dioxin
2. VA was challenged on errors regarding dermal absorption of dioxin
3. VA was challenged on errors regarding failure to consider initial tests cited were completed on the aircraft seven years *after* the veterans started service aboard, and other tests up to forty years after the last Agent Orange spray missions
4. VA was challenged on errors regarding its dismissal of standard hexane and water wipe tests used to determine C-123 dioxin levels as "heavily contaminated"
5. VA was challenged on errors regarding failure to include reference to **TG312**, the acknowledged gold standard for evaluating surface contaminants
6. VA was challenged for deriding the concept of dioxin occupational exposure and for having incorrectly implied that only "sophisticated laboratory methods" could uncover the C-123 dioxin contamination of the warplanes, when in fact such sophisticated laboratory methods

are the norm for all such examinations, and are standard in toxicology, and would be the same tests used in any civil, military or other setting where contaminants were suspected

7. VA was challenged on its incorrect statement that dried dioxin is biologically unavailable; further, it was noted that biological availability is not a requirement for veterans' claims for Agent Orange exposure per the *Federal Register* 8 May 2001 (page 21663)

8. VA was challenged for its failure to integrate the findings by the [Director and Deputy Director of the Agency for Toxic Substances and Disease Registry](#), which were that C-123 veterans were exposed and further, had a far higher cancer risk (200-fold greater!)

9. VA was challenged for its failure to assess other contaminants present in Agent Orange, and for failure to address the broader issue of "military herbicides" as described in the 1991 Agent Orange Act and various promulgations, including *Federal Register* 8 May 2001

10. VA was most directly, and most importantly, challenged for its baseless conclusion that exposure levels were unlikely to have subjected C-123 veterans to "levels that could affect health" since no regulatory standards exist, and generally accepted guidelines were greatly exceeded in this instance

The VA's so-called "Scientific Review," having **failed peer review** but employed by the Under Secretary of Veterans Benefits to deny C-123 veterans' benefits claims, leaves the Secretary having violated the Veterans Dioxin and Radiation Exposure Compensation Standards Act, and to the terrible detriment of the veterans involved. Veterans thus are turned away from care for military cancers, heart disease and other Agent Orange illnesses, and forced to seek care elsewhere.

One must question what the internal process is for VA release of such "scientific" papers, which seem, judging by this low standard, mere missteps of policy statements wrapped in erroneous pseudo-science. This VA process must be compared to that of the NIH/NEIHS and other agencies dealing more satisfactorily, and more scientifically, with similar topics. And given the slanted perspective taken by the VA paper, those writing it should be called to account for their unprofessional involvement.

The importance of peer review is considered foundational in the

medical and scientific communities and acknowledged by VA. However, VHA has been challenged both from within and without regarding their own peer review processes, and in 2007, although addressing research activities and not specifically publications like “Scientific Review” the VA IG wrote:

“The peer review process, while not perfect, is the best system devised to date for the reviewing of research proposals because it ensures the evaluation of scientific merit by those most qualified to make those determinations. The peer review process acts as a check on the system even where conflicts may exist.”



The document “Scientific Review ” is not known to have been subjected to peer review within the VA or by any other agency such as the NIH, but being presented to the veterans community, and being the center piece of prohibition of Agent Orange exposure benefits to affected veterans, it is reasonable to conclude that the challenges raised by Dr. Stellman and her associates constitute an instance of the article having failed peer review and certainly had it been submitted before publication to any reasonable peer review it would not have survived.. A Freedom of Information submitted in 2011 to the VA resulted in 2013 with VA assertions that no information or records of any sort were known to exist regarding C-123 contamination, certainly clouding any understanding of creating, editing and approval cycles for this document – since the VA effectively denied its creation.

“Scientific Review” cannot be considered scientifically credible in the face of challenges by other federal agencies having statutory authority, as well as greater scientific wherewithal, in toxicological issues. The CDC/ATSDR, having concluded C-123 veterans to have been exposed, leaves VA in the indefensible position of deliberately ignoring input from much more authoritative scientific sources and doing so specifically to avoid permitting C-123 veterans successful disability claims.

Further increasing the VA’s scientifically indefensible position are

official opinions from the US Public Health Service, EPA and National Institutes of Health/National Toxicology Program, each agency also confirming the veterans' exposure. But the VA feels free to ignore as they wish, and to select which laws like Veterans Dioxin and Radiation Exposure to ignore, and which internal VA regulations to employ or ignore as they wish, yielding only to eventual corrections by the Board of Veterans Appeals or the US Court of Appeals for Veterans Claims.

These corrections, however uniformly in favor of C-123 veterans as they have been, are useless to other elderly and already-ill veterans given the three to five years delay involved – a time well past the veterans' life expectancies. When this was pointed out to staffers in the VA's Compensation Services, their only response was shrugged shoulders. Veterans are dismayed at the current situation where regional offices are required to submit C-123 veterans' claims to the VA Compensation Services where the claims are automatically, and illegally, denied, citing "Scientific Review" and the fact that VA's Veterans Health Benefits Administration has predetermined as a matter of policy that C-123 veterans were never exposed aboard their toxic warplanes.

In the end, the basic observation must be that "Scientific Review" isn't scientific, isn't veteran-friendly and certainly isn't journal quality, as it has already failed external peer review offered by the leading scientists in this field. The VA's one-sided article fails to honestly address the qualifications for care earned by C-123 veterans, due to scientific shortcomings, the failure to embrace the comments offered by outside experts, and the evident bias revealed by the references selected and not selected to achieve policy, not scientific objectives.

The United States Department of Veterans Affairs must do much better, as is the just expectation of the American public concerned about the care given to "him who shall have borne the battle."