

Military Sexual Trauma & Representing Survivors

Professor Samantha Kubek

Robert W. Entenmann Veterans Law Clinic

Maurice A. Deane School of Law at Hofstra University

Chesley Roberts, Esq.

Equal Justice Works Fellow, sponsored by Lockheed Martin Corporation

The Veterans Consortium

Objectives:

Provide

- Provide an understanding of what constitutes military sexual trauma ("MST")

Address

- Address common misconceptions

Discuss

- Discuss how to conduct proper records review for MST cases

Educate on

- Educate on methods of providing trauma-informed legal services to survivors, particularly with regard to interview techniques

Walk through

- Walk through steps of an MST claim and provide best practices at each step of the process

What is Military Sexual Trauma?

38 U.S.C §1720d(a)(1):

- A psychological trauma resulting from a physical assault of a sexual nature battery of a sexual nature or sexual harassment which occurred while the veteran was serving an active duty, active duty for training or inactive duty training.

Can include:

- Unwanted sexual touching or grabbing
- Threatening/offensive remarks about a person's body/ sexual activities
- Threatening and unwelcome sexual advances

Prevalence of MST

Every 30 minutes, a servicemember is assaulted

- 1 in 3 women report MST
- 4% of male veterans

2014: ~28 sexual assaults occurred everyday

2018: ~13,000 women experienced MST

2020: in cases where the military could act, only 4% were prosecuted and 0.8% of offenders were convicted

Roughly $\frac{3}{4}$ of survivors do not report the crime

Intersection of Race and MST

- Department of Defense has not broken down sexual assault and harassment statistics by race
- However, often times racism is related to experiences of MST
 - When relevant, include references to the environment and race-related issues experienced by the veteran in your brief/veteran's personal statement



MST \neq Other Trauma

The military environment is unique:

- Where You Work
- Where You Live
- Cannot “Just Quit”
- Loyalty
- Honor
- Duty
- Family

MST Myths and Misconceptions

There are many beliefs held by advocates and veterans that can disrupt the process of obtaining VA benefits for survivors.

Who is an MST survivor?

Gender

Age

**Sexual
Orientation**

Demeanor

Common Myths

All survivors are Women


All survivors have PTSD

All MST-related wounds are mental

All survivors remember the details

All survivors engage in treatment

Sexual Assault = Rape



Common Misconceptions

If I didn't report, I can't file a claim for benefits

If I didn't get treatment in the military, I can't file a claim for benefits

If I didn't get treatment for years, I can't file a claim for benefits

If I don't have PTSD, I can't file a claim for benefits

If I don't take medication, I can't file a claim for benefits

If I wasn't raped, I can't file a claim for benefits

If I consented under pressure, I can't file a claim for benefits

Effects of MST

Veterans can differ in their reactions to MST, especially based on their gender, race, ethnic background, religion, sexual orientation, previous stressful life experiences, and other background factors

Diagnoses that are related to MST include:

- Depression
- Mood disorders
- Substance abuse disorders
- PTSD

MST and Post- Traumatic Stress Disorder (PTSD)

PTSD is a potentially debilitating psychological condition arising from traumatic events. With PTSD the survivor regularly experiences unwanted or intrusive memories or relives the trauma on a frequent and sustained basis

Research has shown that sexual assault is more likely to result in symptoms of PTSD, compared to other types of trauma, including combat

VA Disability Compensation for MST-Related Diagnoses

MST is associated with both mental health and physical health problems

MST is an experience, not a diagnosis. MST is the underlying trauma to the medical condition

The veteran will not receive service-connection for the MST, but for the underlying condition that the veteran is diagnosed with

Obtaining Service Connection for MST-Related Illnesses

VA Benefits and MST

Historically, claims for service-connected disability compensation for PTSD claims based on MST have been disproportionately denied.


- In 2013, a lawsuit by the ACLU and Service Women's Action Network highlighted the fact that there was a 10% difference between the denial rates of PTSD claims for men and women
- In 2018, VA's Office of Inspector General found that there were still many problems with the processing of PTSD claims based on MST
- In 2021, VA's OIG once again found that problems persist with the processing of MST-related claims
 - Specifically, the OIG found that more than half of MST-related claims were improperly processed



Three Elements of a Successful Claim

1. In-service injury or event
2. A current physical or mental health condition
3. A nexus (a link between the in-service event and current disability)

For MST claims, proving elements #1 and #3 are often complicated.

- Often not “proof” of the assault
 - Pre and post-service trauma can cause ambiguity with nexus
- 

What if the veteran didn't report?

Addressing the "proof" of the event can be incredibly difficult

On top of all the reasons many sexual assault survivors do not report, add in:

- It's your workplace
- You live there
- You may be trying to survive combat

As access to medical care is tied to reporting, many survivors go without medical care as well

VA uses "markers" when there is no hard evidence of the MST

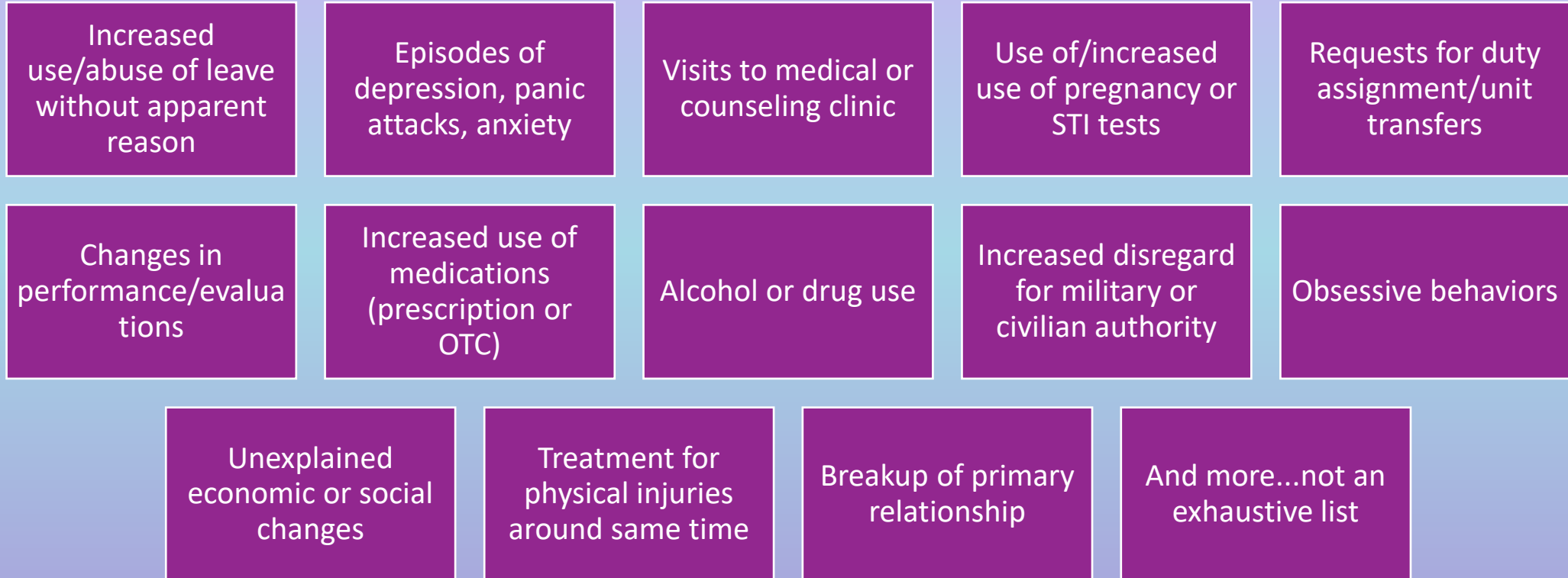
Things to Look for in In-Service Records

- Pregnancies
- Termination of pregnancy
- STD tests
- Trips to gynecologist
- Mental health related visits
- Requests for duty transfer
- Requests to be discharged
- References to "bullying"

HEALTH RECORD		CHRONOLOGICAL RECORD OF MEDICAL CARE	
DATE	SYMPTOMS, DIAGNOSIS, TREATMENT, TREATING ORGANIZATION (Sign each entry)		
JAN 18 1977	U.S. ARMY HEALTH CLINIC, HANAU APO NEW YORK 09165		
	T-99		
	URI		
	Vaginal infection		
	Eyes hurt		
	fa		
	Annew col. 1		
	Luso m n		
	Fat out		
	Check 1		
	Gut 2		
	Ruf Vap		
	Rape a broken down		
	D.V.C. team.		
	Bennett. song at ball mt.		
	D.H.		
	D.H.		

References to "vaginal infection" and potentially "Rape" in in-service records

Keep Markers in Mind*



*VA M21-1, Part III, Subpart iv, Chapter 4, Section O, 3.4

The Veteran's Personal Statement

What is the personal statement?



In support of the veteran's application, the veteran can submit a "Statement in Support" of their claim

For MST-related claims, the VA uses a special version of this form: VA Form 0781a



This is the veteran's opportunity to tell their story, exactly as it happened to them



Writing the statement can be very re-traumatizing/triggering for the veteran

VA 21-0781a:
*Statement in
Support of Claim
for Service
Connection for
PTSD Secondary
to Personal
Assault*

Department of Veterans Affairs		VA DATE STAMP DO NOT WRITE IN THIS SPACE
STATEMENT IN SUPPORT OF CLAIM FOR SERVICE CONNECTION FOR POST-TRAUMATIC STRESS DISORDER (PTSD) SECONDARY TO PERSONAL ASSAULT		
IMPORTANT: If you or someone you know is in crisis, call the Veterans Crisis Line at 1-800-273-8255 and press 1, or visit https://www.veteranscrisisline.net/ to chat online, or send a text message to 838255 to receive confidential support 24 hours a day, 7 days a week, 365 days a year. Support for deaf and hard of hearing individuals is available.		
INSTRUCTIONS: List the stressful incident or incidents that occurred in service that you feel contributed to your current condition. For each incident, provide a description of what happened, the date, the geographic location, your unit assignment and dates of assignment. Please complete the form in detail and be as specific as possible so that research of military records and other sources you identify can be thoroughly conducted. If more space is needed, attach a separate sheet, indicating the item number to which the answers apply.		
SECTION I: VETERAN'S IDENTIFICATION INFORMATION		
NOTE: You can either complete the form online or by hand. Please print the information requested in ink, neatly and legibly to help process the form.		
1. VETERAN/BENEFICIARY NAME (First, Middle Initial, Last)		
<input type="text"/>		
2. SOCIAL SECURITY NUMBER	3. VA FILE NUMBER (if applicable)	4. DATE OF BIRTH (MM/DD/YYYY)
<input type="text"/>	<input type="text"/>	Month Day Year
5. VETERAN'S SERVICE NUMBER (if applicable)	6. PREFERRED E-MAIL ADDRESS (Optional)	
<input type="text"/>	<input type="text"/>	
7A. PRIMARY TELEPHONE NUMBER (Include Area Code)	7B. SECONDARY TELEPHONE NUMBER (Include Area Code)	
<input type="text"/>	<input type="text"/>	
SECTION II: STRESSFUL INCIDENT(S)		
8A. DATE FIRST INCIDENT OCCURRED (MM/DD/YYYY)		
Month Day Year		
<input type="text"/>		
8B. DATES OF UNIT ASSIGNMENT (MM/DD/YYYY)		
FROM: Month Day Year TO: Month Day Year		
<input type="text"/>		
8C. LOCATION OF INCIDENT (City, State, Country, Province, landmark or military installation)		
<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
8D. UNIT ASSIGNMENT DURING INCIDENT (Such as, DIVISION, WING, BATTALION, CAVALRY, SHIP)		
<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
8E. DESCRIPTION OF THE INCIDENT		
<input type="text"/>		

Too small!

Personal Statement

Do NOT limit yourself or the veteran to the form

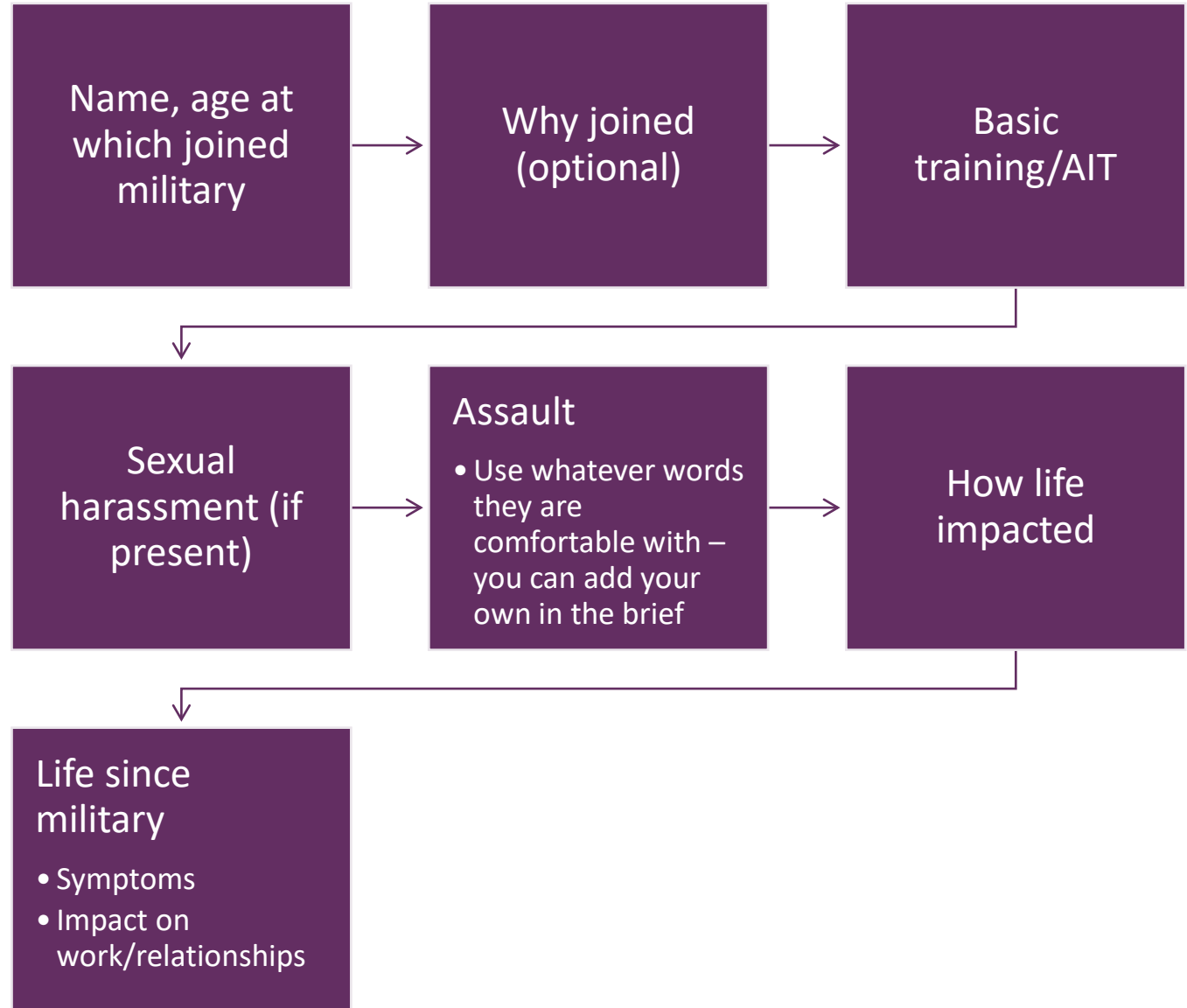
- Include the form (VA 21-0781a)
- "See attached."

Most claims denied due to lack of detail provided

Need the FULL story of their service and its impact

- Why joined
- Basic training, AIT
- Pre-Assault harassment (if present)
- The assault (if present)
- Post-assault service and discharge
- Life since the military

Statement Format



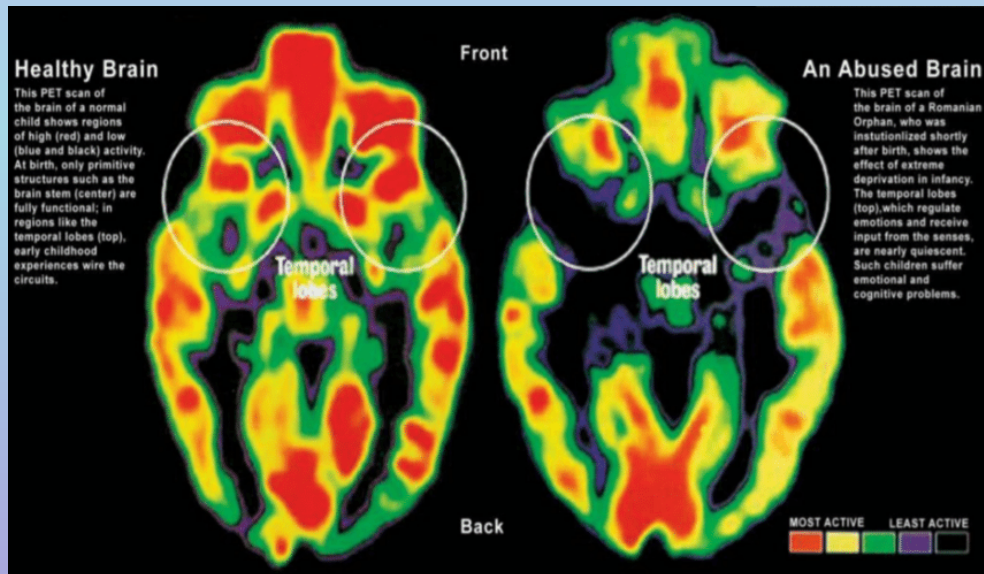


Trauma Informed Interviewing

Best Practices

Trauma Survivors

- Trauma is the experience of severe psychological distress following any terrible or life-threatening event.

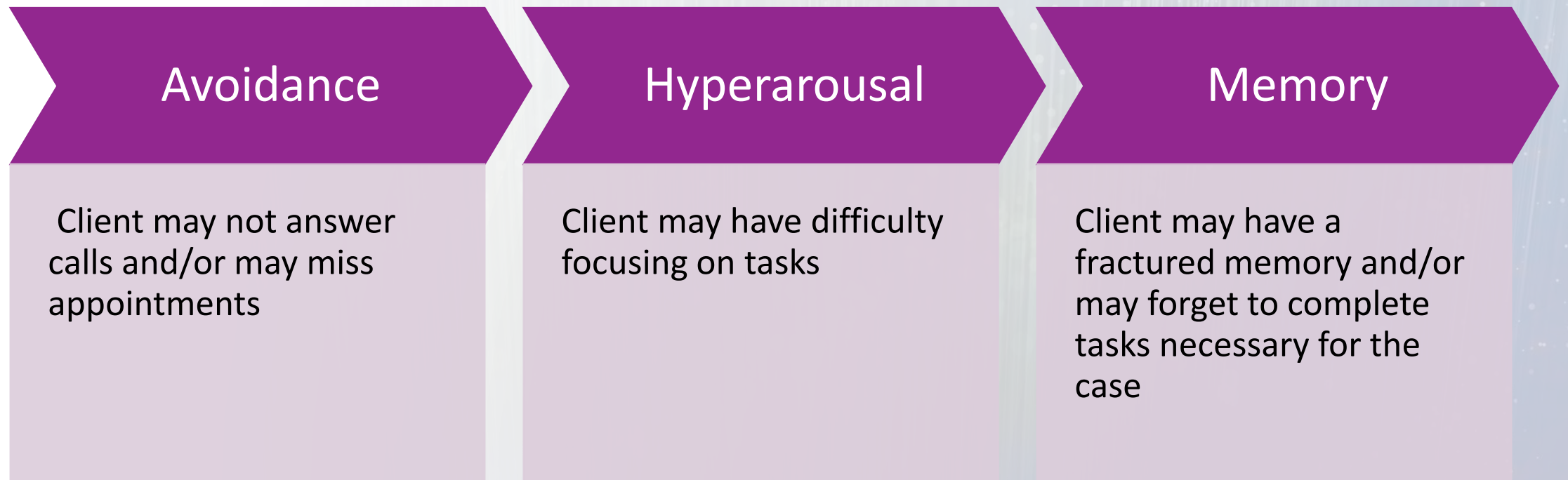


Common reactions:

- Re-experiencing the trauma
- Emotional
- Avoidance
- Changed view of the world
- Hyper-arousal

Impact on the Case


- **These cases require delving into the veteran's trauma history, which can create challenges for the attorney-client relationship.**
- If you understand why a veteran reacts a certain way, you will be able to tailor your approach to fit the veteran's needs





Impact on the Case

Tips for navigating the attorney-client relationship and building rapport:

- Acknowledge how your client is feeling
 - Set limits
 - Set a schedule
 - Set expectations of each meeting
 - Circle back
 - Use grounding techniques
- 

The Initial Meeting

Create

Create Structure

- "Here's what we're going to do today."
- "This meeting will last about 40 minutes."
- "Today I need to make sure I get X information from you."

Establish

Establish Roles

- Determine your client's expectations and be honest and realistic about how you can help
- "What are you seeking help with today?"
- "I'll be able to do X, but I need you to do Y."

Identify

Identify Other Players

- Who can help the client obtain a document they need?
- Who, if anyone, can you contact about the client's case?
- Is there a family member, friend, or social worker who can offer support?

Set

Set Boundaries

- It's okay to say no, even for simple things.
- Defer to institutional policies if need be.
- "We have a policy against sharing our personal phone numbers, but you can call me at the office at X time."

The Initial Meeting

- **Do NOT ask the client to retell their story – you just met!**
- **INSTEAD,**
 - Give the client an overview of how the process will unfold, through VA decision
 - Take the opportunity to empower the client
 - Complete simple tasks (I.e., paperwork)
 - SF 180
 - VA Medical Records
 - Other Records

Interview Techniques



Repeat things the client has said, or paraphrase them back to ensure you are understanding.

- Client: "I didn't want to be around my supervisor. He yelled at me and frightened me."
- You: "It sounds like you were concerned about your safety when you were alone with your supervisor."

Encourage the client to elaborate.

- Client: "The military really treated me unfairly."
- You: "Can you tell me some of the things they did that were unfair?"

Interview Techniques

Question Style

- Asking yes/no questions, or questions with definitive answers, can be helpful when you are trying to get very specific, concrete information from the client.
- Open-ended questions can be helpful when you are trying to better understand your client's situation and/or desires

Circling Back

- "I understand you recently left the military. You mentioned something about your supervisor sending you a nasty email several months before you were discharged. Can you tell me more about that?"

Interview Techniques

- Provide a warning before jumping into a difficult topic
- Explain why the question is necessary to the case
- Listen first and ask questions later
- Monitor your client's reactions and your own reactions
- Be comfortable with silence as things are remembered
- Leave the door open for other things to be shared later

Trauma Interview

- **When possible, provide options for format**
- **Convey support and belief**
- ~~"I understand"~~
- "That must have been incredibly difficult for you." "I can't imagine what that must have been like."
- **Ask questions to learn, not to disprove**
- "The majority of survivors don't report their assault. Did you? It's okay if not, but if you did, we'll want to make sure we include that."
- **Most veterans discount details as unimportant, so follow up questions are often needed.**
- **If *you* are comfortable with the questions you are asking, the client will be more comfortable providing the answers**

Advocate's Brief

Pulling it all Together

Elements of the Brief

Introduction

- "This is an application/appeal for disability compensation for VETERAN. [VETERAN] served in the U.S. [BRANCH] from [YEAR] to [YEAR]. [VETERAN] has been diagnosed with [DIAGNOSIS]. It is as likely as not that [VETERAN]'s [DIAGNOSIS] stems from traumatic incidents (s)he endured during his/her military service, specifically incidents related to military sexual trauma ("MST"). (S)he should therefore be awarded VA compensation for her chronic and debilitating [DIAGNOSIS].

Facts

- Cite to both the affidavit AND all relevant other records
- Create clear timeline of military service through the present and all markers, symptoms, etc.

Analysis

- Any arguments needed to supplement the facts
 - Tie goes to the veteran
 - Cite to the marker regulations in the M-21
 - Relevant precedent (often does not exist)
 - If appealing, lay out specific issues of the initial decision
 - Address any flawed C&Ps if relevant

Conclusion (optional)

- Similar to introduction

Other Evidence

Buddy Statement(s)

- Helpful if you need to either identify timing of the assault or if there has been a long gap in time since service

Friend/Family Statement(s)

- Helpful if there have been issues in the relationship that they are comfortable talking about (marker)

Medical Opinion(s)

- Helpful if there has been a long gap in time since service
- Helpful for secondary conditions (sexual arousal disorder, incontinence, etc.)
- Helpful if other traumas present in veteran's life

Medical Literature

- Helpful to support client's credibility where there have been differing accounts of the trauma
- Helpful to establish basis for connection between primary and secondary conditions

Prepare the Client

Navigating C&P Exams and Hearings

C&P Exam Prep

- **Prep with client shortly before scheduled exam (1-2 days)**
- **Let them know what to expect:**
 - Length of time
 - Location (may be at unfamiliar place)
 - Examiner
 - **Under 38 U.S.C § 1165, Veterans can now choose the gender of their examiner**
 - Questions (look to DBQ for this)
- **Support**
 - Can a friend or family member go with the client?
 - Can offer to go with the client yourself
 - Potentially schedule meeting with therapist for following exam if concerned re: safety

Hearing Prep

- **Roadmap of hearing**
 - What to expect
 - Can take breaks, etc.
- **No surprises (from you, at least)**
 - Legal arguments
 - Evidence
- **Testimony**
 - Amount of preparation can be client dependent, but at the very least make sure the client knows what questions they'll be asked by you

Appeals

What to Do if the First Attempt Failed

First Thing's First: What went wrong?

Need to pinpoint the issue that is to be the focus of the appeal (aka, what issues did the VA have with the claim?)

- Proof of in-service event?
- Proof of nexus?
- Proof of diagnosis?
- Proof of severity of symptoms?

Address negative evidence head on

Common Errors by the VA

- Evidence gathering issues, such as not requesting private treatment records
 - VA must make reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate the veteran's claim for benefits
- The evidence was sufficient to request a medical exam, but staff did not request one
 - VA's duty to assist may include providing a medical examination when the evidence shows a current disability or symptoms of a disability, or there is insufficient medical evidence on the file for the VA to make a decision
- The claim was decided based on an insufficient medical opinion
 - The opinion must sufficiently inform the reader of the medical expert's judgment, provide a rationale for the opinion, and be based on all medical history

Bad C&P Exam?

Address it in your appeal!

Concretely lay out the problems

- Specialty of the examiner?
- Understanding of sexual assault?
- Ignoring evidence?
- Not reviewing file?

As well as having to work with the Marine (single) in her hop who she engaged in the single consensual sexual encounter (though she admits they were intoxicated) earlier this year which resulted in the pregnancy. [REDACTED]

When possible, get a DBQ or at minimum a letter from the treating provider to combat the negative C&P

- Then in your brief you can argue that the treating provider has more knowledge about the veteran
- This may lead to a new C&P exam being ordered

Vicarious/Secondary Trauma

How This Work Can Impact You

Trauma Survivors: Impact on YOU

Sometimes our clients' experiences can trigger us

- Shared experiences: abuse, illness, discrimination
- Mortality

Symptoms: may mirror your clients

- Behaviors including exhaustion, anger, and irritability.
- Interpersonal relationship difficulties.
- Apathy, detachment, and hopelessness.
- Avoidance

Trauma Survivors: Impact on YOU (cont'd)

- Tips:
 - Lean on your colleagues and supervisor
 - **Talk about it—don't stay silent**
 - Address secondary trauma
 - Talk to your own support system
 - Engage in self-care
 - **Set boundaries**





Questions??