

DEPARTMENT OF VETERANS AFFAIRS

Office of Research and Development; Government Owned Invention Available for Licensing

AGENCY: Office of Research and Development, VA.

ACTION: Notice of government owned invention available for licensing.

SUMMARY: The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 and/or CRADA Collaboration under 15 U.S.C. 3710a to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: Sal Sheredos, Department of Veterans Affairs, Acting Director Technology Transfer Program, Office of Research and Development, 810 Vermont Avenue, NW., Washington, DC 20420; fax: (202) 254-0473; e-mail at: saleem@vard.org. Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The invention available for licensing is: U.S. Provisional Patent Application No. 60/600,797 "Human and Mouse Alkaline Ceramidase 1 and Skin Disease".

Dated: January 26, 2005.

Anthony J. Principi,
Secretary, Department of Veterans Affairs.
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DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Systems of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, 5 U.S.C. 552a(e), the Department of Veterans Affairs (VA) is publishing notice of amendment and alteration to its system of records known as

"Veterans Appellate Records System-VA (44VA01)," and "Representatives" Fee Agreement Records System (81VA01)." VA is merging the information currently maintained in Representatives' Fee Agreement Records with the "Veterans Appellate Records System." The amendments will affect the sections entitled System Location; Categories of Individuals Covered by the System; Categories of Records in the System; Purpose(s); Routine Uses of Records Maintained in the System; and Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System. VA is publishing the combined system notice in its entirety at this time.

DATES: Comments must be received by VA on or before March 7, 2005, which is the date the amended system will become effective.

ADDRESSES: Mail or hand-deliver written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or fax comments to (202) 273-9026; or e-mail comments to VAregulations@mail.va.gov. Comments should indicate that they are submitted in response to the Notice of Amendments to a System of Records. All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call 202 273-9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals (012), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565-5978.

SUPPLEMENTARY INFORMATION: The Veterans Appellate Records System (44VA01) was first established in 1975 to track claims for veterans benefits that had been appealed to the Board of Veterans' Appeals (BVA or Board). With the expansion of advanced technology and increased electronic data collection capacity, traditional methods of recordkeeping have changed significantly. BVA now maintains most of the records covered by 44VA01 in a computer database entitled Veterans Appeals Control and Locator System (VACOLS).

One of the traditional paper-based methods of keeping track of appeals at the Board was use of the Briefface folder. These Briefface folders traditionally reflected the status of the appeal as it traveled through the Board until an appeal was decided. Thereafter,

the Briefface was removed from the claims folder before the folder was returned to the VA Regional Office (VARO). The Briefface remained at BVA as a document in system 44VA01 until disposed of in accordance with procedures approved by the Archivist of the United States. However, since all the information contained in the Briefface is now tracked electronically, the Briefface is obsolete. Therefore, the Board is discontinuing this method of collecting data. Brieffaces in use as of March 31, 2002, will be maintained in an offsite storage facility once the Board has decided an appeal. They will be disposed of by shredding or burning after 18 months according to the timeline and procedural requirements of General Records Schedule 16, Item 7.

The Representatives' Fee Agreement Records System—VA, identified as 81VA01, was established in 1991 to allow the Board to monitor fee agreements between attorneys-at-law or accredited agents and claimants being represented before VA according to the provisions of 38 U.S.C. 5904. The information contained in this system includes paper copies of fee agreements and correspondence related to fee agreements and electronic information with regard to names and addresses of both parties to the agreements and VA identification numbers or social security numbers. Since most of this information is already contained in VACOLS (44VA01), we believe that merging the two systems will obviate the need to retain 81VA01 and will eliminate redundant data entry.

In addition, providing the information through VACOLS allows a VARO to locate any existing fee agreement that requires withholding of a portion of the payment of past due benefits to a beneficiary. As of April 1, 2003, fee agreements and powers of attorney received by the Board have been scanned and electronically available in VACOLS. Thus, VARO personnel no longer need to contact the Board in every instance where the question of fee agreements arises and the Board need not create paper file folders to hold duplicate copies of fee agreements. The original fee agreement remains in the claimant's file folder and the electronically attached copy along with other pertinent data, becomes part of VACOLS.

The System Location notice has been updated to reflect the locations of the computer servers that house the system as well as VA sites where non-electronic records (e.g., tapes of hearings) are housed, as well as the address of the Board's contractor.

The section, Categories of Individuals Covered by the System, refers to the persons by whose names records may be retrieved from the system. The notice has been amended to remove categories of individuals on whom information may be stored in VACOLS, but which cannot be retrieved by the individual's name or other personal identifier.

The Categories of Records section in the system notice has been expanded to reflect the addition of information pertaining to contesting parties, agents, and private attorneys; to include digital recordings of hearings, copies of written fee agreements and documents relating to the filing and review of fee agreements; procedural information on the disposition of claims where a Board decision has been remanded from or overturned by the United States Court of Appeals for Veterans Claims; and to describe more fully the older, non-electronic records in the system.

The Purpose statement has been amended to include the monitoring of attorney fee agreements, statistical evaluation of the appellate process and evaluation of employee performance.

VA proposes to add five new routine uses and rewrite and consolidate existing ones. Because this system contains material relating to employee evaluations, four of these will permit release of information to the Merit Systems Protection Board, the Equal Employment Opportunity Commission, the Federal Labor Relations Authority and the employee's union. Permission to release information from this system to law enforcement personnel and security guards has been clarified, indicating that release is permitted in order to alert them to the presence of dangerous persons in VA facilities or at VA activities conducted in non-VA facilities. The routine use permitting release of information regarding the legality or ethical propriety of representatives has been expanded to permit release to other Federal and State agencies and to Federal courts. The remaining new routine use is carried over from system 81VA01 and permits release of attorney fee information to the United States Court of Appeals for Veterans Claims when an order of the Board has been applied to that Court in accordance with the provisions of 38 U.S.C. 5904(c)(2).

The Storage portion of the notice has been amended to reflect changes in the nature of records kept. Verbatim recordings of hearings, previously recorded on magnetic tape will be recorded and stored digitally until a transcript has been made and electronically attached in VACOLS. According to Rule 714 of the Board's

Rules of Practice, 38 CFR 20.714, when a transcript of a hearing is made, the transcript becomes the official record of the hearing and the recording is retained as a duplicate record of the hearing for 12 months, after which time it is destroyed according to NARA approved standards. With the change from audio to digital recordings and the practice of creating a transcript of all hearings, destruction of hearing recordings will follow procedures to be established in revisions to Rule 714 of the Board of Veterans' Appeals Rules of Practice, 38 CFR 20.714, that will permit challenge to the accuracy of the transcription prior to destruction of the recording.

The Retrieval section has been amended to note that information from this system that is stored in VACOLS can now be retrieved by any searchable field in the VACOLS program. However, this system notice covers only information retrieved by an individual's name or other personal identifier. Retrieval of archived materials not stored in VACOLS is unchanged except that attorney fee agreements and related correspondence received prior to the practice of incorporating them in VACOLS and kept in file folders may be retrieved by the name of the appellant.

The Privacy Act, 5 U.S.C. 552a(b)(1) provides that agencies may disclose records contained in a system of records "to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties." The Safeguards statement currently provides that records in this system "are under custody of designated employees with access only to employees of the Board of Veterans' Appeals and its contractor who needs to know." It has become advisable for Department of Veterans Affairs Regional Office (VARO) employees to be able to follow the progress of appeals and answer veteran and other appellant questions on the process. More appellants file multiple and concurrent appeals for a variety of issues than ever before. Because BVA may or may not already have made a decision on any one of these appeals, and because of the increasing numbers of these multiple and concurrent actions, it is in the best interest of the VAROs to have an electronic indicator of what actions have taken place. Therefore it has become necessary to expand the population of employees with access to VACOLS to include employees of the VA Compensation and Pension Service (C&P) and VAROs. VACOLS can be set to automatically limit the access of individuals to specified records. Designated VARO and C&P employees are able to view any

records in VACOLS so that they can respond to inquiries from appellants, representatives and Members of Congress. Designated employees of the VARO where an appeal originates have the ability to modify electronic records based on the status of the appeal. For example, if an appeal is in advance status (ADV), the appeal is in the process of being developed and the VARO can modify any part of the electronic record. When a claim has been certified to the Board on appeal and the file has been received at the Board, its status is converted to active (ACT). When a case is in ACT status, VARO employees cannot modify any part of the VACOLS record. This is also true when a case is in remand (REM) status or after the Board enters a final decision and the file goes into history (HIS) status.

VACOLS is available to authorized persons through the VA wide area network (WAN), which means that access is limited to those who are actually in VA buildings, ROs, Medical Centers, etc. Because 38 U.S.C. 5902 and 38 CFR 14.635 permit VA to provide office space to Veterans Service Organizations (VSOs), it is possible to provide representatives of those organizations who work in VA buildings with limited access to VACOLS if they have a valid, current power of attorney or prior written consent. VSOs with access to the VA computer network may only view VACOLS records of individuals for whom they are the representatives of record. VSO access is read only, meaning that they are not able to alter, delete or add to those records. Other properly designated representatives who are not located in buildings that permit access to VACOLS may request a paper copy of the records in this system that pertain to their clients.

Provision for the disposal of digitally recorded material through erasure has been added to the Retention and Disposal section, and will be governed by procedures to be established in Rule 714, 38 CFR 20.714.

Approved: January 11, 2005.

Anthony J. Principi,

Secretary of Veterans Affairs.

44VA01, "Veterans Appellate Records System-VA," as described in the **Federal Register** publication, "Privacy Act Issuances, 1989 Compilation, Volume II," page 904, and amended at 56 FR 15663 (April 17, 1991), 63 FR 37941 (July 14, 1998), and 66 FR 47725 (Sept. 13, 2001) is republished in its entirety below to incorporate the system's merger with 81VA01, "Representatives" Fee Agreement

Records System," first published at 56 FR 18874 (April 24, 1991) and amended at 57 FR 8792 (March 12, 1992), 63 FR 37941 (July 14, 1998), and 66 FR 47725 (Sept. 13, 2001), and the proposed changes. The system 81VA01, "Representatives" Fee Agreement Records System" is discontinued.

44VA01

SYSTEM NAME:

Veterans Appellate Records System-VA.

SYSTEM LOCATION:

Board of Veterans' Appeals, Department of Veterans Affairs (VA), Vermont Avenue, NW., Washington, DC 20420, at the Wilkes-Barre VA facility, 100 North Wilkes-Barre Boulevard, Wilkes-Barre, PA 18702, and with the Board's contractor, Promisel & Korn, Inc., 3228 Amberley Lane, Fairfax, VA 22031.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Veterans, other appellants, Veterans Law Judges, Board staff attorneys and Members of Congress.

CATEGORIES OF RECORDS IN THE SYSTEM:

The computer database entitled Veterans Appeals Control and Locator System (VACOLS) is a part of this system and includes electronically attached copies of Board of Veterans' Appeals decisions, remands and development memoranda; personal information on appellants and contesting parties including names, addresses, identifying numbers, phone numbers, service dates and issues on appeal; names, addresses and phone numbers of representatives, powers of attorney and attorney fee agreements; information on and dates of procedural steps taken in claims; records of and copies of correspondence concerning appeals, diary entries, notations of mail received, information requests; verbatim recordings and transcripts of hearings; tracking information as to file location and custodian; and employee productivity information. Material in this system that is not maintained in VACOLS includes copies of written fee agreements and documents relating to the filing and review of fee agreements received prior to the Board's practice of electronically attaching fee agreements and powers-of-attorney in VACOLS; microfiche decision locator tables and indices to decisions from 1983 to 1994; and microfiche reels with texts of decisions from 1977 to 1989.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C. 7101(a), 7104, 5904.

PURPOSE(S):

Initial decisions on claims for Federal veterans' benefits are made at VA field offices throughout the nation. Claimants may appeal those decisions to the Board of Veterans' Appeals. See 38 U.S.C. Chapter 71. The Board gathers or creates the records in this system in order to carry out its appellate function, to statistically evaluate the appellate process, to monitor attorney fee agreements, and to evaluate employee performance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure to law enforcement personnel and security guards in order to alert them to the presence of dangerous persons in VA facilities or at VA activities conducted in non-VA facilities.

2. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

3. A record from this system of records may be disclosed to a veteran, claimant or a third party claimant (e.g., a veteran's survivors or dependents) to the extent necessary for the development of that claimant's claim for VA benefits.

4. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

5. Disclosure may be made to the National Archives and Records Administration (NARA) in records management inspections conducted under authority of Title 44 U.S.C.

6. A record from this system (other than the address of the beneficiary) may be disclosed to a former representative of a beneficiary to the extent necessary

to develop and adjudicate a claim for payment of attorney fees to such representative from past due benefits under 38 U.S.C. 5904 (d) or to review a fee agreement between such representative and the beneficiary for reasonableness under 38 U.S.C. 5904 (c)(2).

7. Where VA determines that there is good cause to question the legality or ethical propriety of the conduct of a person or organization prospectively, presently or formerly representing a person in a matter before VA, a record from this system may be disclosed, on VA's initiative, to any or all of the following: (1) Applicable civil or criminal law enforcement authorities; (2) a person or entity responsible for the licensing, supervision, or professional discipline of the person or organization prospectively, presently or formerly representing a person in a matter before VA; (3) to other Federal and State agencies and to Federal courts when such information may be relevant to the individual's or organization's provision of representational services before such agency or court. Names and home addresses of veterans and their dependents will be released on VA's initiative under this routine use only to Federal entities.

8. Disclosure may be made to the VA-appointed representative of an employee, including all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by VA under medical evaluation (formerly fitness-for-duty) examination procedures or Department-filed disability retirement procedures.

9. Disclosure may be made to officials of the Merit Systems Protection Board, or the Office of the Special Counsel, or both, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

10. Disclosure may be made to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

11. Disclosure may be made to the Federal Labor Relations Authority,

including its General Counsel, when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised and matters before the Federal Service Impasses Panel.

12. Disclosure of attorney fee information may be made to the United States Court of Appeals for Veterans Claims when an order of the Board has been applied to that Court in accordance with the provisions of 38 U.S.C. 5904(c)(2).

Note: Any record maintained in this system of records which may include information relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus or sickle cell anemia will be disclosed pursuant to an applicable routine use for the system only when permitted by 38 U.S.C. 7332. To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.*, individually identifiable health information, that information cannot be disclosed under a routine use unless there is also specific regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is kept in a computer database entitled Veterans Appeals Control and Locator System (VACOLS) and backed up on computer tape. Archived records that were created prior to expansion of the BVA's electronic storage capability may be stored in filing folders or cabinets, microfiche, computer disks, computer tape and magnetic tape (hearings). Records in this system are essential to protecting legal and financial rights of individual citizens and the government and are maintained indefinitely as Category B Vital Records. Under the Vital Records Schedule, electronic back-up tapes are updated quarterly. A back-up tape is transferred weekly to the Board's contractor for quick access back-up tape storage. Hearings before the Board are recorded and stored digitally until a transcript has been made. Transcripts are then electronically attached to the record in VACOLS. Attorney fee agreements and related correspondence received prior to the Board's practice of attaching this information in VACOLS are kept in file folders. These files will

be scanned into VACOLS, at which time original documents will be forwarded for association with the appropriate claims file. The now discontinued Briefcase folders are maintained at the Board according to provisions of General Records Schedule 16, Item 7, for a minimum of 18 months.

RETRIEVABILITY:

VACOLS records in this system may be retrieved by any searchable field in the VACOLS database. This system notice covers only information retrieved by an individual's name or other identifier. Archived material from this system that is not in VACOLS may be retrieved by veteran's name, VA file number, or BVA archive citation number.

SAFEGUARDS:

Files are under custody of designated employees of the Department of Veterans Affairs, including employees of the Board of Veterans' Appeals and its contractor, all of who have a need to know the contents of the system of records in order to perform their duties. Access to VACOLS is strictly limited to reflect the need individual employees have for the different records in the system. Where a VSO office is located in a VA facility and has access to VACOLS through the Wide Area Network (WAN), that access is strictly limited to viewing records of current clients of the organization. No personal identifiers are used in statistical and management reports, and personal identifiers are removed from all archived BVA decisions and other records in this system before VA makes them available to the public. Files kept by the contractor are in a locked safe in locked rooms in a secured building.

RETENTION AND DISPOSAL:

Records in this system, in VACOLS and those collected prior to VACOLS use as a repository, are retained indefinitely as Category B Vital Records unless otherwise specifically noted. Under the Vital Records Schedule, electronic back-up tapes are destroyed by erasure upon receipt of the next quarterly tape set. Transcriptions of recordings of hearings will be attached electronically in VACOLS. Following procedures established in Rule 714, 38 CFR 20.714, transcripts will become the official records of hearings and the recordings will be destroyed through erasure after the hearing subject has had the opportunity to challenge the

accuracy of the transcript. Briefcase folders are shredded after 18 months as described in General Records Schedule 16, Item 7.

SYSTEM MANAGER(S) AND ADDRESS:

Chairman (01), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

NOTIFICATION PROCEDURES:

An individual desiring to know whether this system of records contains a record pertaining to him or her, how he or she may gain access to such a record, and how he or she may contest the content of such a record may write to the following address: Privacy Act Officer (01C1), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. The following information, or as much as is available should be furnished in order to identify the record: Name of veteran, name of appellant other than the veteran (if any), and Department of Veterans Affairs file number. For information about hearing transcripts or tape recordings, also furnish the date, or the approximate date, of the hearing.

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to information contained in this system of records may write, call or visit the Board of Veterans' Appeals Freedom of Information Act Officer, whose address and telephone number are as follows: Freedom of Information Act Officer (01C1), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565-9252.

CONTESTING RECORD PROCEDURES:

(See notification procedures above.)

RECORD SOURCE CATEGORIES:

VA Claims, insurance, loan guaranty, vocational rehabilitation, education, hospital records, and outpatient clinic records folders and associated folders; Board of Veterans' Appeals records; data presented by appellants and their representatives at hearings and in briefs and correspondence; and data furnished by Board of Veterans' Appeals employees.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

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