

What is the VA Duty to Assist?

The VA Duty to Assist is an oft-quoted duty ... both by Veterans, their advocates, and those who adjudicate claims.

38 U.S.C. § 5103A is the statute that lays out the VA Duty to Assist. It includes many things, but the principle components of that duty are:

- The Duty to Notify the Veteran of the elements of the claim
- The Duty to Notify the Veteran of the evidence needed to prove the claim
- The Duty to Provide Medical Exams – both diagnostic and nexus – in certain situations
- The Duty to Assist the Veteran in developing the evidence
- The Duty to make reasonable efforts to obtain relevant records.

The VA Duty to Assist by Getting Relevant Medical Records.

Let's say that you need medical records to prove your entitlement to service connection for your back condition.

Secondary service connection, for example, absolutely requires medical proof. Without medical records connecting 2 medical conditions to each other in an etiological chain.

Etiology is fancy doctor speak for "origin". The etiology of a medical condition is its origin. It is not so much a "cause" of the medical condition, as it is a historical frame of reference for the root origin of a medical disease, illness or injury.

A claim urging the VA to grant direct service connection of a current back disability by demonstrating continuity of symptomatology from discharge to diagnosis will likely also benefit from (but not necessarily require) medical records.

So, knowing that you need – or at least would benefit from – getting medical records to the VA, you tell the VA that "Dr. B" – a private doctor – treated you for your back condition from 1984 – 1990.

3 Things:

- 1) The VA's duty to assist is not triggered until YOU "adequately identify" those records. 38 USC § 5103A(b)(1)**
- 2) Those reasonable efforts consist of the following: an initial request, and 'at least' one follow-up request. 38 C.F.R. § 3.159(c)(1)(2014)**
- 3) If the VA cannot get records that you "adequately identified", after a "reasonable request", they have a duty to tell you that fact. 38 USC § 5103A(b)(s); 38 C.F.R. § 3.159(e).**