

Why Veterans Guardian's Services are Consistent with Federal Law

The statute and regulations governing VA disability benefit claims limits its restrictions on “preparation, presentation, or prosecution of any claim” to those who “act as an agent or attorney.” 38 U.S.C. § 5901; *accord* 38 U.S.C. § 5904; 38 C.F.R. §§ 14.629, 14.636. The word “act” is plainly modified by “as an agent or attorney.” Thus, the operative phrase is “act *as an agent or attorney*,” not simply “act.”

Veterans Guardian does not act as an agent or attorney. Veterans Guardian's clients do not authorize the company to take any action on their behalf, and we do not complete VA Form 21-22, authorizing or acting as an official “Agent of Record” for our clients.

See Black's Law Dictionary (11th ed. 2019) (defining “agent” as “[s]omeone who is authorized to act for or in place of another”); Restatement (Third) of Agency § 1.01 (defining “agency” as a “fiduciary relationship that arises when one person (a ‘principal’) manifests assent to another person (an ‘agent’) that the agent shall act on the principal’s behalf”).

In addition, Veterans Guardian explicitly informs clients that it is not a law firm, has no attorney on staff, is not licensed to practice law, and while its services may include discussions of legal issues and procedures, its statements are only the company's opinion and are not legal assistance or advice.

It is therefore clear under the plain language of the statute and regulations that Veterans Guardian's services are not restricted.

Beyond the clarity of the governing law, the cannon of constitutional avoidance requires interpretation of the statute and regulations to avoid violating the First Amendment rights of Veterans Guardian and our clients.

An interpretation that Veterans Guardian cannot advise veterans—a speech-defined activity—on their benefits claims and veterans cannot receive the company's advice on their petitions to the government would impose an impermissible, content-based restriction on speech.

See, e.g., Holder v. Humanitarian Law Project, 561 U.S. 1, 26–27 (2010) (rejecting government's argument that the “only thing truly at issue in litigation [challenging a federal bar on support to organizations designated for government sanctions, including expert advice or assistance] [was] conduct, not speech[,]” citing in particular the plaintiffs “communicat[ion] [of] advice derived from ‘specialized knowledge’ . . .”).

Interpreting the statute to prevent Veterans Guardian from assisting in the preparation of a disability claim would also mean the statute violates the rights of the veteran to petition their government for disability benefits and to associate for that purpose, contrary to the First Amendment. The statute must be interpreted to avoid those unconstitutional results.

The plain language of the statute and the canon of constitutional avoidance thus require the conclusion that Veterans Guardian's services are not restricted and are consistent with the law.