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June 10, 2014

The Honorable Sloan Gibson
Acting Secretary
U.S. Department of Veterans Affairs
810 Vermont Ave., NW
Washington, DC 20420

Steven W. Young
Acting Director
Phoenix VA Health Care System
650 E. Indian School Road
Phoenix, AZ 85012

Re: Phoenix VA Health Care System Claimants' Request for "Litigation Hold"

Dear Acting Secretary Gibson and Acting Director Young:

I represent a number of the families with potential claims against the United States Department of Veterans Affairs and the Phoenix VA Health Care System.

I write to request the immediate issuance of a revised and more comprehensive Litigation Hold of all relevant hard copy and electronic documents relating to the "Wait List" scandal in the possession, custody or control of the Phoenix VA Health Care System and/or the U.S. Department of Veterans Affairs. We request that a Litigation Hold be issued for all documents relating to the Phoenix VA Health Care System's Electronic Waiting List ("EWL"), all documents relating to, or referenced in, the VA Office of Inspector General Interim Report of May 28, 2014, all documents relating to, or relied upon in the compilation of all VA Office of Inspector General Reports listed as Appendix D to the VA Office of Inspector Interim Report of May 28, 2014, all documents relating to the implementing the April 26, 2010 Memorandum from the Department of Veterans Affairs (re: "Inappropriate Scheduling Practices"), all relevant medical records and files at the Phoenix VA Health Care System, all documents relating to complaints received by the Phoenix VA Health Care System and/or the Department of Veterans Affairs regarding patient wait times and documents relating to all internal memoranda regarding scheduling practices and policies in the Phoenix VA Health Care System.

I understand from the communications between Representative Jeff Miller and former Secretary Eric K. Shinseki that certain records are currently subject to a "Litigation Hold" pending the ongoing Congressional investigation. Secretary Shinseki's response letter of May 7, 2014 to Chairman Miller fails to satisfy our concerns with respect to the overall scope of the current Litigation Hold. Specifically, the May 7th letter references the Federal Records Act and VA Handbook 6300 as a basis for removal of certain documents. For purposes of this request, no relevant documents may be destroyed, moved or otherwise archived, without prior notice to

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my office, including documents potentially covered by VA Handbook 6300 and/or the Federal Records Act. We are requesting significantly broader protection of all potentially relevant documents from intentional, inadvertent and/or normal course of business destruction.

The families are in the process of complying with the pre-filing procedures under the Federal Tort Claims Act. In the meantime, media reports have surfaced that employees at the Phoenix VA Health Care System had concerns regarding the potential destruction of documents, including electronic documents. These reports indicate that, even after the purported Litigation Hold was issued by the Office of General Counsel on April 17, 2014, employees at the Phoenix VA Health Care System felt the need to independently preserve documents regarding patient appointment materials out of a "fear" that the relevant documents would be removed from the electronic data base.


Even assuming full compliance with the above request, my clients do not waive any claims against the Phoenix VA Health Care System or the Department of Veterans' Affairs associated with the past destruction of any relevant records based on failure to timely issue or enforce an adequate Litigation Hold. Furthermore, my clients may have an independent claim for spoliation to the extent that the Department of Veterans Affairs and/or the Phoenix VA Health Care System failed to honor its duty to preserve relevant documents.

In closing, I specifically request to be provided:

1. A copy of the current Litigation Hold and all instructions associated with the current Litigation Hold;
2. An outline of the scope and extent of dissemination of the current Litigation Hold; and
3. Copies of the updated Litigation Hold issued in response to the above request.

If you have any questions, please contact me directly. Otherwise, I look forward to your prompt response.

Respectfully Yours,



William M. Audet
waudet@audetlaw.com

On behalf of the Families

cc: The Honorable Jeff Miller
The Honorable John McCain
The Honorable Michael H. Michaud