

**U.S. VETERAN'S ADMINISTRATION
SETTLES DAMAGES CLAIM AND IS
REQUIRED TO RETURN KENNEY ORTHOPEDIC
TO LIST OF PREFERRED PROSTHETIC PROVIDERS**

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The Lexington, Kentucky, law firm of Morris & Morris, P.S.C., has obtained, on behalf of Kenney Orthopedic, a Lexington, Kentucky, Orthotics and Prosthetics medical provider, a substantial victory against the United States Veterans Administration.

Despite Veterans' repeated demands, including Congressional Inquiries, Investigations, and other extreme measures, that they be allowed to receive treatment from Kenney Orthopedic, the Veterans Administration and its employees had refused to allow the Veterans to exercise their legal right to use the provider of their choice. Kenney Orthopedic challenged these actions, as an interference with Kenney Orthopedic's rights to see patients, as well as the Veterans' right to use a provider of his or her choice, as explicitly provided for under Veterans Administration Policies.

Morris & Morris undertook a variety of complex actions in multiple Courts in response to the wrongful conduct of the Veterans Administration against Kenney Orthopedic, including:

Filing two (2) separate actions before the United States Court of Federal Claims in Washington, D.C.;

Bringing three (3) separate administrative actions against the Governmental agency directly involved with erroneously withholding patients from Kenney Orthopedic;

Initiating a Lawsuit against both the United States and its employees in the Eastern District of Kentucky; and

Defending an appeal taken by the United States to the Sixth Circuit Court of Appeals.

Following protracted litigation in the Eastern District of Kentucky, and a lengthy evidentiary hearing, Morris & Morris persuaded the U.S. District Judge to go against the great weight of authority to the contrary, and refuse to allow the United States to substitute itself for all of the individual employee Defendants. Instead, the Court concluded that one employee's actions were so egregious and contrary to the interests of the United States that she could not have been, under any circumstances, "acting within the scope of her employment." The ruling obtained by Morris & Morris was extraordinary inasmuch as the substitution of the United States is a perfunctory matter typically approved, without comment, by the District Court. The United States appealed that ruling to the Sixth Circuit Court of Appeals, where Oral Argument was pending at the time of settlement.

Meanwhile, in the U.S. Court of Federal Claims, in Washington, D.C., Morris & Morris demonstrated, through extensive discovery and investigation, that the United States Government

and/or its employee(s), had intentionally and/or recklessly withheld substantial evidence critical to the underlying claims, and that some of the testimony and evidence proffered by the United States to the Eastern District of Kentucky was additionally flawed and/or misstated.

During its comprehensive investigation, Morris & Morris uncovered an extensive, and ongoing, effort on the part of the Veterans Administration to ignore the express policy mandating that "Service connected veterans who have obtained their most recent limb from a non-contract provider will be allowed to have their subsequent limb manufactured by the VA non-contract provider as long as the prosthetist is willing to accept the geographic VA preferred provider payment rate for the State in which the prosthetist performs this service." VA Handbook, § 1173.2(6)(c)(1)(b). Instead, the Veterans Administration routinely bars service-connected Veterans from obtaining services from the provider of his or her election, and, instead, forces Veterans to obtain services through the Veterans Administration and/or from a different service provider than the Veteran's chosen provider.

After the Court of Federal Claims strongly suggested that the United States enter into mediation to resolve the disputes, in lieu of potential sanctions and/or attorneys' fees against the United States, both sides engaged in months of protracted negotiations before finally reaching a resolution. To obtain dismissal of all pending claims, the United States has agreed to pay Kenney Orthopedic a substantial sum of money, as well agreeing to Kenney Orthopedic's immediate return to the "preferred provider" list. With the Veterans Administration's assurance that it will not stand in the way of Veterans' rights to select Kenney Orthopedic, Kenney Orthopedic is finally once again able to provide treatment and care to the Veterans who seek its services without interference from the VA or its employees.

If you have any questions, or if you have experienced similar limitations, please contact James Michael Morris, jmorris@morris-morrislaw.com, at Morris & Morris, P.S.C., 217 North Upper Street, Lexington, Kentucky, 40507, or visit our website at www.morris-morrislaw.com.