

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Chapter CC23--Staffing
Subchapter CC23.7--Separation
Personnel INSTRUCTION 6 -- Involuntary Termination of Reserve Corps Officers'
Commissions for Marginal or Substandard Performance

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Section A. Purpose and Scope

This INSTRUCTION states the policies and procedures under which the commissions of officers on active duty in the reserve corps of the Public Health Service (PHS) may be terminated without their consent because of marginal or substandard performance.

Section B. Authority

1. Section 215 of the PHS Act (42 U.S.C. 216) authorizes the President to prescribe regulations with respect to termination of commissions in the PHS Commissioned Corps. This authority has been delegated to the Secretary of Health and Human Services under Executive Order 11140, dated January 30, 1964. The authority for daily administration of the PHS Commissioned Corps has been redelegated to the Director, Division of Commissioned Personnel, Human Resources Service, Program Support Center.
2. Regulations which provide for the involuntary separation of reserve corps officers with less than 20 years of retirement eligibility credit are set forth in the Commissioned Corps Personnel Manual (CCPM), INSTRUCTION 1, Subchapter CC43.7, "Separation of Officers in the Regular and Reserve Corps Without Consent of the Officers Involved," of this manual.

Section C. Policy

1. General. All commissioned officers assume a continuing responsibility for effective performance of their assigned duty. An officer who fails to meet and maintain the standards of performance expected of his/her grade and experience may be separated under the procedures set forth in this INSTRUCTION.
2. Opportunity to Demonstrate Capabilities. While the maintenance of high performance standards is essential, insistence on these standards will be combined with consideration of the officer's capabilities. Continuing efforts may be made to assign officers where they can best demonstrate and optimize their capabilities. Ineffective performance in one assignment may be a basis for termination.

Section D. Identification of Ineffective Officers

Ineffective officers must be identified promptly and positive action must be taken to assist them in improving their performance prior to the initiation of action against them under this INSTRUCTION. When an officer's performance is less than satisfactory, the immediate supervisor will be responsible for:

1. Discussing the performance with the officer in person;
2. Determining the reasons for the unsatisfactory performance;
3. Taking reasonable and timely action to assist the officer to improve his/her performance; and
4. Documenting the actions taken to assist the officer

Discussion with the officer should be prompt and not be delayed until the annual Commissioned Officers' Effectiveness Report (COER) is due. It should be held at any time appropriate and sufficiently in advance to give the officer an opportunity to improve his/her performance before the report is due. Counseling sessions shall be documented in a clear and concise manner, and a copy of the counseling report should be provided to the officer, so that the officer understands what to expect in his/her performance evaluation. The supervisor will then discuss his/her evaluation of the officer when rating him/her at the time the regular annual COER is due. Interim COER may be used as a management tool in providing guidance and counseling to the officer. For further discussion on the COER, see CCPM INSTRUCTION 1, Subchapter CC25.1, "Commissioned Officers' Effectiveness Report," of this manual.

An accurate appraisal and reporting of an officer's performance are basic requirements. It is imperative both to the officer and to the Service that reports be candid and objective since they are the basis for personnel actions involving assignment and promotion. While under-rating, the officer may affect his/her career, over-rating is of dubious benefit to him/her since it may lead to assignment and promotion with responsibilities for which he/she is not, in fact, qualified, thus resulting in adverse action.

Section E. Initiation of Action

1. Who May Recommend Action

- a. A supervisor may initiate the recommendation for action under the provisions of this INSTRUCTION by submitting the recommendation through component administrative channels to the Department of Health and Human Services (HHS) Operating Division (OPDIV) or Program Head for endorsement as required by Section E. 3., below.
- b. An official in the officer's administrative chain may recommend termination of an officer within his/her jurisdiction;
- c. The Director, DCP, may also initiate action of involuntary termination of any officer when such action is warranted. In such a case, DCP will seek input from the OPDIV or Program before convening a Board.

2. When Action is Appropriate. A recommendation for action under this INSTRUCTION is appropriate when the officer's performance is marginal or substandard as evidenced by the existence of one or more of the following or similar circumstances:

- a. Failure to demonstrate acceptable qualities of leadership required of an officer in his/her position and grade;

- b. Failure to achieve and maintain acceptable standards of professional competency required of an officer of his/her grade and category;
 - c. Failure (including lack of ability) to properly discharge assignments commensurate with grade and experience;
 - d. A progressive downward trend in overall performance resulting in an unacceptable record or a consistent record of substandard service;
 - e. A record of marginal performance over an extended period of time as indicated by COERs or other documentation; or
 - f. Apathy or other attitudinal or behavioral characteristics indicating that the officer is unable or unwilling to expend the effort required to maintain expected levels of performance or competence.
3. Submittal of Recommendation. A recommendation for termination under this INSTRUCTION must be logically arranged and indexed and shall include a statement of all pertinent facts as listed below:
- a. Statement of allegation(s) lodged against the officer, specifically including dates, places, events, and persons involved, to the extent known or readily ascertainable, for each separate allegation;
 - b. Description of standard of performance requirements;
 - c. Summary of all past and current discussions with the officer and his/her superiors concerning the officer's performance;
 - d. Statement regarding action taken to place the officer in a suitable assignment; and
 - e. Current evaluation by superiors of the officer's performance in his/her present assignment including whether the duties and responsibilities are in line with the grade held and experience of the officer.

The recommendation should be submitted through administrative channels to the HHS OPDIV or Program Heads or their designees, for endorsement and transmittal to the Director, DCP.

4. Suspension from Duty. The subject officer may be placed in nonduty with pay status pending the outcome of proceedings conducted under this INSTRUCTION. This may be advisable when retention of the officer on duty status could result in damage to Government property or could be detrimental to the interests of the Government or be injurious to the officer, other officers and employees, patients, or the general public.

5. Referral to Board. If the Director, DCP, determines that such action is warranted, the case will be referred to an Involuntary Termination Board (ITB) appointed as provided in Section F., below. The Director, DCP, will notify the officers, with copies to the officer's OPDIV or Program, giving the specific reason(s) for the referral.

Section F. Review and Board Referral

Recommendations submitted by the OPDIVs or Programs will be reviewed by the Director, DCP. If the facts indicate that termination should be considered, the case will be referred to an ITB (see Section G., below). The Director, DCP, will notify the officer, with copies to the officer's OPDIV or Program, giving specific reason(s) for the referral. The officer should be given all the documentation that will be submitted to the ITB, so that the officer can respond fully to all of the allegations against him/her. At this time, the officer may (a) enter into the record any pertinent facts or statement on his/her behalf for consideration by the Board; or (b) request voluntary termination.

Section G. Board Review

1. ITB reviews all the written records of an officer's performance as reflected in the officer's personnel records, documentation submitted by the OPDIV or Program, and materials submitted by the officer.
2. ITB will be appointed and convened by the Director, DCP, as the need occurs. Such Boards will consist of at least three senior officers, at least one of which shall be of the same profession or category as the officer being considered for termination. No board member will be part of the administrative line which considered the case in the review by the OPDIV or Program.

The Director, DCP, will make every effort to assure that the Board does not consist entirely of men or women or entirely of individuals of one race, but no Board member will be selected on the basis of gender or race.

3. Board recommendations will be based on the material in the records submitted to them for review by the OPDIVs or Programs, the officer in question, and DCP, and on other material which each Board member may find necessary to request or add to the record during their deliberations, to supplement or clarify previous notations in the record. Upon conclusion of its review, the Board may recommend involuntary termination, retention with or without demotions, retention with or without reassignment, or reprimand.

Section H. Action Following Board Review

1. Upon receipt and consideration of the Board's report and recommendation, the Director, DCP, will make a final determination and notify the officer of the decision. Notice to the officer will be transmitted to the OPDIV or Program Head or designee for delivery to the officer by an appropriate official who will obtain and forward to the Director, DCP, the officer's written acknowledgment of its receipt.
2. If the decision is to terminate the officer's commission, notice to the officer will include the specific basis for the action, and the date of termination (as determined by DCP and the OPDIV or Program). To the extent possible and justified by the circumstances, the date of termination will be determined to give the officer and OPDIV or Program a reasonable period to formulate plans. The termination date will not exceed 60 calendar days from the date of the decision to terminate.

Section I. Review by the Surgeon General

1. An officer may request a review by the Surgeon General (SG) of the decision to terminate his/her commission. The request must be made within 10 calendar days from the date the officer receives notice of the decision from DCP. The request must be sent to the SG through the Director, DCP.
2. Request for review will be made by the officer in writing, giving reasons as to why he/she should be continued on active duty.
3. The SG's decision of the officer's request for review will be final.

Section J. Cross References

1. For information on involuntary separation of reserve corps officers during their probationary period, refer to Subchapter CC23.7, CCPM INSTRUCTION 1, "Involuntary Separation during the Probationary Period Served by Officers on Active duty in the Reserve Corps," of this manual.
2. For information on involuntary retirement of regular and reserve corps officers, refer to Subchapter CC23.8, CCPM INSTRUCTIONS 3 and 4, "Retirement of an Officer with 30 Years of Active Service," and "Involuntary Retirement After 20 Years of Service," of this manual, respectively.

Section K. Privacy Act Provisions

Personnel records are subject to the provisions of the Privacy Act of 1974. The applicable systems of records are 09-37-0002, "PHS Commissioned Corps Personnel Records," HHS/OASH/OSG; and 09-37-0005, "PHS Commissioned Corps Board Proceedings," HHS/OASH/OSG.