

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service

Chapter CC43 -- Staffing
Subchapter CC43.7 -- Termination
Personnel INSTRUCTION 1 -- Termination of Officers' Commissions in the Regular
and Reserve Corps Without the Consent of the Officers Involved

CONTENTS

<u>Section</u>	<u>Subject</u>	<u>Page</u>
A.	Purpose and Scope	1
B.	Authority	2
C.	Involuntary Termination Boards	2
D.	Termination of Reserve Corps Officers' Commissions	3
E.	Termination of Regular and Reserve Corps Officers' Commissions	6
F.	Termination of Regular Corps Officers' Commissions	8
G.	Voluntary Termination In Lieu of Disciplinary Action	9
H.	Cross References	10
I.	Historical Notes	10
J.	Privacy Act Provisions	11

Section A. Purpose and Scope

This INSTRUCTION contains regulations governing the termination of officers' commissions in the regular and reserve components of the Public Health Service (PHS) Commissioned Corps without consent of the officers concerned. These regulations pertain only to commissioned officers with less than 20 years of

creditable service for retirement eligibility purposes as defined in Section 211(d) of the PHS Act (42 United States Code (U.S.C.) 212(d)).

Section B. Authority

Sections 203, 207(a)(2), 210(g), 210(i), and 215(a) of the PHS Act (42 U.S.C. 204, 209(a)(2), 211(g), 211(h), 211(i), and 216(a) and 10 U.S.C. Chapter 61 provides the authority for these regulations. The President delegated the authority to terminate commissions of PHS officers to the Secretary, Department of Health and Human Services (HHS), as provided in Executive Order 11140, dated January 30, 1964. Pursuant to 53 Federal Register 5046-5047, February 11, 1988, the Secretary retained the authority to promulgate regulations.

Section C. Involuntary Termination Boards

Except in the case of summary dismissals or cases involving the termination of an officer's commission by a Board of Inquiry (BOI) pursuant to CC46.4-I1, "Disciplinary Action," requests for involuntary termination will be reviewed by an Involuntary Termination Board (ITB). In the case of a reserve officer, an ITB will be composed of at least three senior health professionals and program managers, the majority of whom will be commissioned officers. The ITB will review the officer's service records and relevant documents and recommend either (1) retention with or without reassignment, temporary grade reversion or other disciplinary action, or (2) termination with or without placement in the inactive reserve. The Director, Division of Commissioned Personnel (DCP), will render a final decision. The officer may seek reconsideration by the Surgeon General (SG). If the ITB recommends termination, the officer will be provided at least 30 days notice prior to the effective date of the termination. The Director, DCP, will render a decision whether the characterization of the officers' termination will be "Honorable" with a notation "For the Good of the Service." The officer may seek reconsideration of the termination characterization from the SG.

In the case of a regular corps officer, an ITB will be composed of at least three senior officers, at least one of whom will be of the same category. The ITB will, upon request of the officer or his/her representative, conduct a hearing in accordance with provisions described in Part 2 of the Commissioned Corps Personnel Manual (CCPM). The ITB will recommend either (1) retention, with or without reassignment, demotion or other disciplinary action or (2) termination. The Secretary or his/her designee will render the final Departmental decision on the termination of a regular corps officer. If the officer is terminated as a result of a Board's recommendation, the termination will be characterized as "Honorable" with a notation "For the Good of the Service."

Section D. Termination of Reserve Corps
Officers' Commissions

In addition to the actions that may be taken under Section E. below, the commission of an officer of the reserve corps may be terminated without consent of the officer when such termination would be in the best interest of PHS and any one of the following conditions is present:

1. Probationary Period. A reserve corps officer will serve a probationary period consisting of the first 3 years of any tour of active duty. The commission of any reserve corps officer on active duty may be terminated without cause at any time during the 3-year probationary period. A reserve corps officer may not be assimilated into the regular corps until completion of the 3-year probationary period.
2. Limited Tours of Duty. The commission of a reserve corps officer who is called to active duty under terms of a personnel order which limits the tour of active duty to a specified period of time may be terminated without cause on the terminal date as specified in the personnel order. The first 3 years of such a tour of duty will also be considered the probationary period, as specified in item 1 of this Section.
3. No Suitable Assignment. The service record of a reserve corps officer with more than 3-years of active service during the officer's current tour, may be referred to an ITB for the following reasons:
 - a. No program requirement exists for an officer of his/her grade, category, profession, or speciality, or
 - b. The officer is unable to obtain an appropriate assignment consistent with his/her pay grade within 120 days of notice that he or she is being returned to PHS from a detail.
4. Misconduct. The service record of a reserve corps officer with more than 3 years of active service during the officer's current tour of duty and with less than 19 years of creditable service for retirement eligibility purposes, as defined in Section 211(d) of the PHS Act (42 U.S.C. 212(d)), may be referred to an ITB if there is evidence that the officer engaged in misconduct. This subsection does not limit the authority of the PHS however, to refer an officer to a Board of Inquiry (BOI) pursuant to CC46.3-I1.
5. Reduction-in-Strength. A reserve corps officer may be released from active duty, without cause, when the SG declares a reduction-in-strength of the commissioned corps. Reduction-in-Strength rosters will be

established by professional category and by profession within the category, where appropriate. Retention preference will be based on the following criteria:

- a. Officers in critical shortage professions or specialties;
 - b. Officers who have demonstrated sustained superior performance;
 - c. Officers in long-term training;
 - d. Officers serving periods of obligated service;
 - e. Officers with 18 to 20 years of creditable service for retirement eligibility purposes as defined in Section 211(d) of the PHS Act (42 U.S.C. 212(d));
 - f. Officers in the Health Services Officer, Engineer, or Environmental Health Officer categories who have 5 or more years of active duty in the PHS Commissioned Corps and who, because of statutory or regulatory restrictions, are not eligible for appointment to the regular corps;
 - g. Officers with the greatest number of years of active service in the PHS Commissioned Corps; or
 - h. Officers with the most creditable service for retirement eligibility purposes.
6. Failure of Promotion; Assistant Grade. A reserve corps officer who has completed less than 20 years of creditable service for retirement eligibility purposes as defined in Section 211(d) of the PHS Act (42 U.S.C. 212(d)) and who is otherwise eligible but once fails to be recommended for permanent promotion to the Assistant grade will have his/her commission terminated.
7. Failure of Promotion; Senior Assistant or Full Grades. A reserve corps officer who has completed less than 20 years of creditable service for retirement eligibility purposes as defined in Section 211(d) of the PHS Act (42 U.S.C. 212(d)) and who is otherwise eligible but twice fails to be recommended for permanent promotion to the Senior Assistant grade or the Full grade will have his/her commission terminated.
8. Failure of Promotion; Senior Grade. A reserve corps officer who has completed less than 20 years of creditable service for retirement eligibility purposes as defined in Section 211(d) of the PHS Act (42 U.S.C. 212(d)) and who is otherwise eligible but twice fails to be

- recommended for permanent promotion to the Senior grade will have his/her service records referred to an ITB.
9. Failure of Promotion; Director Grade. A reserve corps officer who has completed less than 20 years of creditable service for retirement eligibility purposes as defined in Section 211(d) of the PHS Act (42 U.S.C. 212(d)) and who is otherwise eligible but twice fails to be recommended for permanent promotion to the Director grade will have his/her service records referred to an ITB.
10. Request for Inactivation. An officer of the reserve corps who submits form PHS-1373, "Separation of Commissioned Officer," and requests separation from active duty and placement in the inactive reserve will have his/her commission terminated if one of the following conditions exists:
- a. The Agency/Operating Division (OPDIV)/Program or program to which the officer was assigned while in active-duty status recommends in writing that the officer not be placed in the Inactive Reserve Corps.
 - b. An officer voluntarily requests to be released from active duty prior to completion of 2 years of service in active-duty status.
 - c. An officer voluntarily requests to be released from active duty prior to completion of an active-duty obligation.
 - d. A determination is made by appropriate authority that, based on established criteria, there is no potential program requirement for an officer of his/her grade, category, profession, or specialty.
11. Termination from the Inactive Reserve Corps. The commission of an officer in the Inactive Reserve Corps may be terminated without consent of the officer concerned under any one of the following circumstances:
- a. PHS is not able to contact the officer after 2 written inquiries over a period of 90 days or the officer fails to respond to PHS attempts to make contact;
 - b. The officer fails to comply with a call-to-active duty order to a program in which the officer has volunteered to serve;
 - c. The officer fails to comply with a call-to-active duty order during a National emergency; or

- d. The officer is not available for active duty because of professional, personal, or medical reasons.
- e. The officer is not qualified for recall to active duty due to professional, medical or suitability/conduct issues.

Section E. Termination of Regular and Reserve Corps
Officers' Commissions

1. Refusal to Undergo Physical Examination and/or Furnish Information. The commission of an active-duty officer may be terminated if the officer (a) refuses to undergo a physical or psychiatric examination as directed by a Medical Review Board (MRB), or (b) is being considered by Medical Affairs Branch, DCP, for a review by a MRB to determine the officer's fitness-for-duty and/or refuses to supply requested information or undergo examination in preparation for review by such board.
2. Refusal to Accept Medical Supervision. The commission of an active-duty officer who fails to comply with an official order issued by the Director, DCP, to undergo medical evaluation or supervision may be terminated. The same applies to a directed psychiatric evaluation with the exception that such examination requires a certification of need from a licensed psychiatrist or medical psychologist. A directive by DCP to undergo medical or psychiatric treatment, as opposed to evaluation, is not mandatory, however, failure to comply with treatment will be taken into account by either an administrative or medical board upon determination of appropriate disposition.
3. Physically Unfit to Perform Duties. If a MRB finds that an active-duty officer has a physical disability which renders the officer physically unfit to perform the duties of his/her billet, office, rank, or category, and which is rated less than 30 percent, to include zero percent, the MRB will report its findings and recommendations to the appropriate authority. If such officer is not retirement eligible, he/she will be separated from active service, with severance pay.
 - a. A reserve officer who is found fit for return to full duty following a period on the Temporary Disability Retirement List (TDRL) may be placed in the Inactive Reserve Corps (IRC) if no suitable assignment can be found.
 - b. A reserve or regular corps officer who is found fit for return to full duty following a period on TDRL is subject to any and all administrative actions, including involuntary termination, that were pending prior to placement on the TDRL.

4. Pre-existing Physical Disability. If, at any time during the first 3 years of an officer's call-to-active duty (CAD), evidence becomes available that an officer has a medical condition which would have disqualified the officer for appointment had the existence of the condition been known to PHS at the time of appointment, the evidence will be reported to the Director, DCP. The Director, DCP, will review the evidence and make a determination whether or not a material non-disclosure occurred. Material non-disclosure is defined as the withholding of significant and relevant information during the application process regarding one's medical history or condition, or failing to inform Medical Affairs Branch, DCP, of a change in medical status following completion of the entry physical and his/her CAD. If the non-disclosure is considered to represent a significant risk or burden to the Government, then the withholding of information is deemed material and relevant. If the record contains evidence of material non-disclosure, the officer will be subject to disciplinary action pursuant to CC46.4-11.
5. Medical Misconduct. Cases of serious illness, injury or disability that a MRB determines are the result of the officers' intentional misconduct or willful neglect or incurred during a period of unauthorized leave will be referred to the appropriate authority for disciplinary action, including possible termination.
6. Absence Without Leave (AWOL). The commission of an officer in the regular corps or the reserve corps may be terminated if the officer is absent without leave for 30 consecutive calendar days. The termination will be characterized as "dropped from the roll."
7. Security Requirements. The provisions of Executive Order No. 10450, dated April 27, 1953, as amended, entitled "Security Requirements for Government Employment," will be applicable to commissioned officers of the PHS; and, the Secretary, in accordance with the standards and procedures prescribed therein or adopted pursuant thereto, will (a) cause investigations to be made of commissioned officers of the PHS and of candidates for commission in the regular or reserve corps, in order to ensure that their appointments and their retention in office are clearly consistent with the interests of the national security, and (b) suspend from assigned duties or separate from the PHS any such officer upon a determination that such suspension or termination is necessary or advisable in the interests of the national security. (See 215, 58 Stat. 690; 42 U.S.C. 216; E.O. 10497, dated October 27, 1953).
8. Marginal or Substandard Performance. An officer's service records may be referred to an ITB when evidence exists that the officer's performance is marginal or substandard.

9. Misconduct. An officer may be referred to a BOI when evidence exists that the officer has committed acts of serious misconduct covered by CC46.4-11. Based on findings and recommendations of the BOI, disciplinary action, including termination of commission and characterization of the discharge as less than honorable, may be taken against the officer.
10. Licensure/Certification Noncompliance. The service records of an officer may be referred to an ITB when there is evidence that the officer has been disciplined by a State, National or other licensing/certifying authority, had a license revoked or suspended, or the officer is otherwise in non-compliance with the licensure/certification requirements established for PHS commissioned officers in his/her professional category or discipline.

Section F. Termination of Regular Corps
Officers' Commissions

In addition to any actions that may be taken under Section D. above, the commission of an officer of the regular corps may be terminated without consent of the officer when such termination would be in the best interest of PHS and any one of the following conditions is present:

1. 3-Year File Review. At the end of an officer's first 3 years of service in the regular corps, the record of each officer originally appointed to the regular corps in the Senior Assistant grade or above will be reviewed by the Agency/OPDIV/Program and the Director, DCP, in accordance with applicable INSTRUCTIONS in Part 2 of the CCPM. The service records of officers who failed to meet established criteria will be referred to a 3-year File Review Board. The board will be composed of three or more commissioned officers of the regular corps, the majority of whom, so far as practicable, will be of the same professional category as the officer whose record is under review. Based on a review of the officer's service records, the board will recommend either: (a) that the officer be retained in the commissioned corps, with or without reassignment, temporary grade reversion or other disciplinary action, or (b) that the commission of the officer be terminated. If the commission of an officer is terminated under the provisions of this subsection, the officer will be paid 6 months of basic pay and allowances in accordance with Section 210(i) of the PHS Act (42 U.S.C. 211(i)).

2. Failure of Promotion of a Junior Assistant Grade Officer. A regular corps officer who has completed less than 20 years of creditable service for retirement eligibility purposes as defined in Section 211(d) of the PHS Act (42 U.S.C. 212(d)) and fails to be recommended for permanent promotion to the Assistant grade will have his/her commission terminated.
3. Failure of Promotion of an Assistant Grade Officer. A regular corps officer who has completed less than 20 years of creditable service for retirement eligibility purposes as defined in Section 211(d) of the PHS Act (42 U.S.C. 212(d)) and twice fails to be recommended for permanent promotion to the Senior Assistant grade will have his/her commission terminated and paid 6 months of basic pay and allowances in accordance with Section 210 (g) (1) of the PHS Act (42 U.S.C. 211 (g) (1)).
4. Failure of Promotion of a Senior Assistant Grade Officer. A regular corps officer who has completed less than 20 years of creditable service for retirement eligibility purposes as defined in Section 211(d) of the PHS Act (42 U.S.C. 212(d)) and after having been twice examined for promotion and fails to be recommended for promotion to the Full grade will have his/her commission terminated. A regular corps officer whose commissioned is terminated pursuant to this subsection will be paid 1 year of basic pay and allowances in accordance with Section 210(g) (2) of the PHS Act (42 U.S.C. 211(g) (2)).
5. Failure of Promotion of a Full Grade Officer. A regular corps officer who has completed less than 20 years of creditable service for retirement eligibility purposes as defined in Section 211(d) of the PHS Act (42 U.S.C. 212(d)) and who twice fails to be recommended for permanent promotion to the Permanent Senior grade will be considered not in line for promotion and will, at such time thereafter, as the SG determines, be retired from the PHS with retired pay. See generally Section 210(g) (3) of the PHS Act (42 U.S.C. 211(g) (3)). If retained on active duty however, the officer will serve in his or her permanent grade.

Section G. Voluntary Termination In Lieu of Disciplinary Actions

An officer may voluntarily separate from active duty in lieu of facing disciplinary actions. In such cases, the discharge will be characterized as "Honorable" with a notation "For the Good of the Service."

Section H. Cross References

1. CC23.4-I1, "Permanent Promotion Program."
2. CC23.4-I2, "Temporary Promotion Program."
3. CC23.4-I5, "Failure of Permanent Promotion."
4. CC23.5-I4, "Billet Program."
5. CC23.5-I9 "Short Tours."
6. CC23.6-I3, "Form PHS-1373, 'Separation of Commissioned Officer'."
7. CC23.7-I1, "Involuntary Termination During the Probationary Period Served by Officers on Active Duty in the Reserve Corps."
8. CC23.7-I3, "Reduction in Strength Within the Public Health Service Commissioned Corps Due to Program Reductions."
9. CC23.7-I4, "Involuntary Termination of Regular Corps Officers for Marginal or Substandard Performance."
10. CC23.7-I6, "Involuntary Termination of Reserve Corps Officers for Marginal or Substandard Performance."
11. CC23.8-I1, "Types of Retirement and Creditable Service for Retirement Eligibility."
12. CC23.8-I4, "Involuntary Retirement After 20 Years of Service."
13. CC43.4-I1, "Promotions."
14. CC43.8-I1, "Retirement of PHS Commissioned Officers."
15. CC46.4-I1, "Disciplinary Action."
16. CC49.3-I1, "Medical Review Boards."

Section I. Historical Notes

This INSTRUCTION replaced CC43.7-I1, "Separation of Officers in the Regular and Reserve Corps Without Consent of the Officers Involved," Transmittal No. 560, dated December 8, 1992, in which procedures for termination of Regular and Reserve corps officers' commissions were clarified.

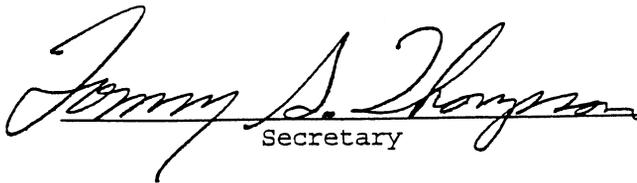
PHS Commissioned Corps No. 560, dated December 8, 1992, amended CC43.7-I1, "Separation of Officers in the Regular and Reserve Corps Without Consent of the Officers Involved," Transmittal No. 310, dated February 20, 1980, in which the Secretary approved amendments to the regulations authorizing termination of the commissions of officers in the PHS Commissioned Corps who failed to comply with the PHS licensure policy.

PHS Commissioned Corps No. 310, dated February 20, 1980, CC43.7-I1, "Separation of Officers in the Regular and Reserve Corps Without Consent of the Officers Involved," Transmittal No. 290, dated October 25, 1979, in which the Secretary approved regulations pertaining to PHS commissioned officers who have less than 20 years of active service for retirement credit purposes, and includes a number of important administrative provisions.

PHS Commissioned Corps Transmittal No. 290, dated October 25, 1979, in which the Secretary, Health, Education, and Welfare, approved a Final Rule which deleted certain PHS Commissioned Corps regulations from the Code of Federal Regulations (CFR) and authorized their publication in the CCPM. The Final Rule was published in the Federal Register on August 9, 1979 (44 Fed. Reg. 46846-46847).

Section J. Privacy Act Provisions

Personnel records are subject to the Privacy Act of 1974. The applicable systems of records are 09-40-0001, "PHS Commissioned Corps General Personnel Records, HHS/PSC/HRS"; 09-40-0003, "PHS Commissioned Corps Board Proceedings, HHS/PSC/HRS"; and 09-40-0004, "PHS Commissioned Corps Grievance, Investigatory and Disciplinary Files, HHS/PSC/HRS."


Secretary

APR 22 2002

Date