

U.S. DEPARTMENT OF HEALTH
AND HUMAN SERVICES

PERSONNEL POLICY MEMORANDUM



PPM 07-011
EFFECTIVE DATE: 29 August 2007

By Order of the Assistant Secretary for Health:

ADM John O. Agwunobi

TO: All Regular and Reserve Corps Officers on Extended Active Duty

SUBJECT: Disciplinary Action

1. This Personnel Policy Memorandum (PPM) supplements Commissioned Corps Directive (CCD) 111.02 (formerly referenced as [CC46.4.1](#), "Disciplinary Action") by:
 - a. Providing additional clarification as to what constitutes misconduct under Section D. of CC46.4.1, "Types of Misconduct";
 - b. Reaffirming the independence of an appointed special investigator to conduct a full and thorough inquiry and prepare a written report which forms the basis for determining whether disciplinary action is warranted (See Section F. of CC46.4.1);
 - c. Ensuring the integrity of the investigative and prosecutorial process is maintained by reaffirming the independence of the PHS Representative to conduct investigation(s) and prosecution of cases before a Board of Inquiry (BOI)(See Sections I. and J. of CC46.4.1);
 - d. Establishing additional procedures for officers called before a BOI (See Section J. of CC46.4.1, "Officer's Rights"); and
 - e. Establishing supplemental rules governing the conduct of the BOI proceedings (See Sections I and K. of CC46.4.1;
2. Additional Clarification as to What Constitutes Misconduct. Pursuant to Section D. of CC46.4.1, misconduct shall constitute grounds for disciplinary action and includes violations of law, Federal regulations, or official government policy. Misconduct also includes, but is not limited to, a number of other specific actions that are listed in Sections D1 – D12. To ensure that officers are further advised as to what constitutes misconduct for purposes of being subject to disciplinary action under CC46.4.1, officers are hereby advised that in addition to the examples of misconduct listed in Section D. of CC46.4.1, misconduct also includes, but is not limited to, violation of the Standards of Ethical Conduct for Employees of the Executive Branch set forth at [5 C.F.R. Part 2635](#), the Supplemental Standards of Ethical Conduct for Employees of the Department of Health

and Human Services (HHS) set forth at [5 C.F.R. Part 5501](#); or the policies for any HHS or non-HHS Federal government agency to which the officer is assigned or detailed.

3. Reaffirmation of Special Investigator's Independence in Execution of Official Duties. Section F. of CC46.4.1, "Investigations," provides for the appointment of a Special Investigator to conduct a full and thorough inquiry and prepare a written report which forms the basis for determining whether disciplinary action is warranted. When such an appointment is made, the Office of the Surgeon General (OSG) shall be responsible for providing administrative support to the special investigator in collaboration with any other relevant HHS or non-HHS organizations. However, the special investigator shall be free to conduct the inquiry and produce any written report(s) as he or she deems necessary to fully execute the responsibilities of the appointment without undue influence from any employee or officer. Upon completion of the written report(s), the Special Investigator shall provide a signed copy of the report(s) to the Director, Office of Commissioned Corps Operations (OCCO), for initial processing and consultation with the Surgeon General and final consideration by the Assistant Secretary for Health (ASH) or designee.
4. Reaffirmation of PHS Representative's Independence in Execution of Official Duties.
 - a. Section I. of CC46.4.1 establishes the role of the PHS Representative within the Corps disciplinary system and assigns the representative both investigative and prosecutorial responsibilities. When an officer is appointed to serve as PHS Representative, the representative shall serve either on a full-time basis or on an intermittent basis while performing his or her regularly assigned duties. The OSG shall be responsible for providing administrative support to the PHS Representative in collaboration with any other relevant HHS or non-HHS organizations. The PHS Representative shall be free to investigate all circumstances of the case without undue influence from any employee or officer, and shall refer allegations of violations of Federal criminal law to the Office of Inspector General as required by Section I and F.2.
 - b. Upon completion of his or her investigation, the PHS representative shall draft the Notice of Charges and Specifications against the officer and represent the interest of the Federal government and Corps before the BOI. To ensure the integrity of the investigative and prosecutorial process is maintained, the PHS Representative must be afforded appropriate independence to properly execute the functions of the position. Accordingly, the PHS Representative shall be free from undue influence from any employee or officer, and officers and employees should refrain from seeking information regarding pending BOI substantive matters from the PHS Representative except as specifically needed to carry out their official duties. In addition, the PHS Representative should limit communication of information regarding matters before a BOI to those within HHS who need to know such information for the discharge of their official duties.
5. Additional Procedures for Officers Subject to a BOI.
 - a. Section J.1 of CC46.4.1 states that an officer being considered for separation shall be given at least 30 days advance written notice that such proceedings are being initiated against him/her. To ensure that officers receive sufficient notice to adequately defend themselves against allegations of misconduct that warrant consideration for involuntary separation/termination of commission, the PHS Representative shall provide the officer (and her or her counsel, if represented) with a signed and dated copy of the Notices of Charges and Specifications at least 45 calendar days prior to the BOI hearing date. The PHS Representative shall also provide copies to the Presiding Officer upon appointment, BOI special advisor, Surgeon General, and the Director, OCCO. The Notice of Charges and

Specifications provided to an officer and any amendments to the original notice shall be effected in a provable manner such as hand delivery, certified mail return receipt required, or Federal Express.

- b. Section J.6 of CC46.4.1 provides that upon request, an officer shall be furnished copies of any records which the Presiding Officer considers relevant to the officer's case at any time during the BOI proceedings. Section J.7 of CC46.4.1 states that an officer shall have no right to discovery (such as the taking of depositions or serving of interrogatories), beyond what may be informally arranged and mutually agreed to by the PHS Representative and the subject officer or his/her counsel. To ensure that the rights of officers are protected while maintaining the integrity of the BOI process, the PHS Representative and officer shall exchange and provide a copy to the Presiding Officer those documents that each intends to use in his or presentation to the BOI in a prompt and timely fashion, and absent extraordinary circumstances related to the availability of such documents, generally not less than 10 working days prior to the scheduled BOI hearing date. Likewise, they shall exchange a list of the witnesses they desire to call, the witnesses' current contact telephone numbers and addresses, and a brief statement of the witnesses' relevance to the matter at least 10 working days prior to the scheduled hearing date. Unless either side indicates an objection to the documents and intended witnesses within a time period specified by the Presiding Officer (in which case the Presiding Officer shall rule on the objection), and unless the Presiding Officer objects, copies of documents and witness lists should also be provided to the Board members by the PHS Representative and the officer for their review prior to the Board hearing. The Presiding Officer shall not share either the documents submitted or the proposed list of witnesses with other members of the Board, until the latter of 72 hours before the hearing or until the Presiding Officer has ruled on the admissibility of the proposed evidence and presentation of witnesses. In the case of any documentary information or identification of witnesses not so exchanged prior to the hearing, the Presiding Officer shall decide whether or not to consider such information, considering the respective unfairness to the interests of the officer and the Government (See Section K. of CC46.4.1).

6. Supplemental Rules Governing the Conduct of BOI Proceedings.

- a. Appointment of Presiding Officer and Board Members. The Presiding Officer and other Board members shall be appointed not less than 45 calendar days in advance of the day the BOI hearing is scheduled to convene.
- b. Presiding Officer's Duties. The Presiding Officer shall perform the following duties:
 - (1) Schedule and conduct any pre-hearing conferences requested by the officer and/or the PHS Representative and considered necessary by the Presiding Officer;
 - (2) Address and resolve any pre-hearing procedural issues raised by the officer and/or the PHS Representative. Where he or she is unable to resolve such matters with the assistance of the Board's special advisor, seek guidance/assistance from or refer the matter to the ASH or designee;
 - (3) Decide initially on any challenges to other Board members or the composition of the Board, or, if he or she is unable to resolve such matters with the assistance of the Board's special advisor, seek

guidance/assistance from or refer the matter to the ASH, or designee, for further action (See Section J.5 of CC46.4.1);

- (4) Approve requested witnesses or decline to accept as potential witnesses any individual whose testimony he or she deems cumulative or not sufficiently relevant and probative of the matters at issue in the case; and

Note. The BOI is not limited by the formal rules of evidence, but will maintain reasonable bounds of competency, relevancy, and materiality (See Section K. of CC46.4.1).

- (5) Rule on the admissibility of evidence proffered by either party. Evidence may be ruled inadmissible if he or she deems it cumulative or not sufficiently relevant and probative of the matter at issue.

Note. The BOI is not limited by the formal rules of evidence, but will maintain reasonable bounds of competency, relevancy, and materiality (See Section K. of CC46.4.1)

- c. Burden of Proof. The PHS Representative shall bear the burden of proving the existence of misconduct by a preponderance of evidence – existence of misconduct is more probable than not.
- d. Consultation with HHS Office of the General Counsel (OGC). The PHS Representative and Presiding Officer may consult with the HHS OGC as necessary to obtain legal advice or guidance to carry out their duties.

7. This PPM shall remain in effect until rescinded.

/s/

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Assistant Secretary for Health