



CCI 211.04  
EFFECTIVE DATE: 19 October 2015

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**By Order of the Acting Assistant Secretary for Health:**

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SUBJECT: Complaints and Redress

1. **PURPOSE:** This Instruction provides the policy and procedures for submitting a formal request for examination and necessary adjudication, as appropriate, by active-duty officers of the Commissioned Corps of the U.S. Public Health Service (Corps) who believe they have been wronged by an official action, and who, upon due application, are refused or denied corrective remedy.
2. **APPLICABILITY:** This Instruction applies to all Corps officers serving on active duty, to include Regular Corps officers, officers in training, and members of the Ready Reserve. This Instruction does not apply to the following activities or actions:
  - 2-1. Board recommendations or resulting decisions, including but not limited to, promotion, long-term training, special pay, retention, retirement, separation, and reduction-in-grade;
  - 2-2. Situations where there are other established hearing or appeal procedures, including but not limited to, equal opportunity; protected communications; assessment of pecuniary liability; or payment under Department of Defense, Office of Hearing and Appeals;
  - 2-3. Situations involving reduction-in-strength;
  - 2-4. Situations involving officers who are detailed in accordance with 42 U.S.C. §215 to a non-Department of Health and Human Services (HHS) organization. Officers who are detailed to non-HHS organizations must use the complaint and redress procedure of the organization to which detailed unless the agreement between HHS and the organization provides otherwise. However, the provisions of Sections 8-8 and 8-9 regarding requesting an evaluation by the Surgeon General (SG) and failure to exhaust administrative remedies prior to making an application to the Board for Correction of PHS Commissioned Corps Records, respectively, applies to officers detailed to non-HHS organizations; and
  - 2-5. Reassignments within or between two Agencies/Operating Divisions (OPDIV), Staff Divisions (STAFFDIV)/Programs. However, redress may be sought to the limited extent that the reassignment is believed to be arbitrary, capricious, or inconsistent with Corps policy.

3. AUTHORITY:
  - 3-1. [42 U.S.C.§215](#), "Detail of Service personnel."
  - 3-2. [42 U.S.C.§216](#), "Regulations."
  - 3-3. Commissioned Corps Directive (CCD) CCD111.02 ([CC46.4.1](#)), "Disciplinary Action."
  - 3-4. CCD 111.01 ([CC46.1.1](#)), "Equal Opportunity."
4. PROPONENT: The proponent of this Instruction is the Assistant Secretary for Health (ASH). The responsibility for assuring the day-to-day management of the Corps is the SG.
5. SUMMARY OF REVISIONS AND UPDATES: This is the first issuance of this Instruction within the electronic Commissioned Corps Issuance System (CCIS) replacing the rescinded CC26.1.5, "Grievances," dated 16 April 2001.
  - 5-1. This update prohibits inappropriate complaints, outlines the type of complaint which may be submitted, eliminates the requirement to cite reasons for rejecting a remedy and clarifies the SG's role in evaluating a complaint.

## 6. POLICY:

## 6-1. Definitions:

- a. Days. All references to days indicate calendar days, to include weekends and holidays.
- b. Final Reviewer. The next higher level official of the secondary reviewer within the OPDIV/STAFFDIV possessing authority over the subject matter of the complaint. The highest level reviewer will be the OPDIV/STAFFDIV Head. In the case of an officer assigned to a Regional Office, the highest level of review shall be the Regional Director.
- c. Inappropriate complaint. Includes, but is not limited to, a complaint that lacks merit, not reasonably purposeful, filed to harass, seeks redress for unofficial action/inaction, seeks redress for issues for which redress may not be sought, or is repetitive in that it is substantially the same as a previous complaint(s) by the same officer.
- d. Primary Reviewer. Typically the immediate supervisor of a Corps officer; however, it may be another official if the immediate supervisor lacks the authority to resolve the matter. If the primary reviewer is an OPDIV/STAFFDIV Head or Regional Director, that individual will be the final reviewer.
- e. Redress. A relief or remedy.
- f. Secondary Reviewer. The next higher level official of the primary reviewer who possesses the authority over the subject matter of the complaint. If the Secondary reviewer is the OPDIV/STAFFDIV Head or Regional Director, that individual will be the final reviewer.
- g. Wrong. An official action that directly affects the officer and is in violation of a law, executive order, regulation, or policy; beyond the legitimate authority of the official taking the action; an arbitrary or capricious act; an abuse of the official's discretion; or materially unfair. This may include a deprivation, restriction, or limitation of any right, privilege, benefit, or entitlement.

6-2. Officers and supervisors will display attitudes of professionalism, cooperation, reasonableness, and maturity in the conduct of official business.

6-3. Redress may be sought for official actions that directly affect the officer and are, but not limited to:

- a. Discretionary acts or omissions of a supervisor or senior official that has a direct and adverse effect on the officer or are in violation of law, executive order, regulation, or policy;
- b. Beyond the legitimate authority of that supervisor or senior official;
- c. Arbitrary, capricious, or an abuse of discretion; and/or
- d. Clearly unfair (e.g., selective application of standards).

6-4. Redress may not be sought for instances or occurrences that are, but not limited to:

- a. Related to the working environment (e.g., location of duty station, office

temperature, lighting).

- b. Interpersonal relationships between the officer, coworkers, and/or supervisor unrelated to duty requirements or expectations.
  - c. Mid-cycle performance review or the issuance of a performance improvement plan (PIP).
  - d. A counseling session regarding performance and/or conduct.
  - e. A recommendation or decision to separate a Ready Reserve officer from active duty, or a recommendation or decision to terminate an officer's commission during the probationary period.
  - f. Complaints seeking disciplinary action against another officer or employee.
- 6-5. Resolution of complaints. The Corps' policy is to resolve complaints, when possible, at the lowest level of command and to provide adequate administrative procedures for such resolution.
- 6-6. An officer will not be restrained or deterred from exercising his/her right to seek redress. However, officers who abuse the process by filing inappropriate complaints may be subject to disciplinary action.
- a. A determination that a complaint is inappropriate, and initiating suitable discipline, is made and taken by the Director, Division of Commissioned Corps Personnel and Readiness (DCCPR). Any of the reviewers who feel that a complaint may be inappropriate shall promptly submit, through their Commissioned Corps Liaison, a request to the Director, DCCPR, to make a determination.
  - b. If the Director, DCCPR, determines that the complaint is not inappropriate, he/she shall notify the reviewer and officer of the determination. The complaint will be returned to the reviewer, who will have 30 days from the date of the Director's determination to review the request in accordance with Sections 8-4, 8-5, or 8-6, as applicable.
  - c. An officer may not submit a complaint under this Instruction that seeks redress for a disciplinary action that is the direct result of the officer filing an inappropriate complaint.
- 6-7. The filing of a complaint does not, in any way, affect the initiation or processing or implementation of any personnel action including, but not limited to:
- a. Fitness-for-duty determination.
  - b. Non-Duty With Pay, reassignments, temporary duty, permanent change of station, or separations.
  - c. Disciplinary/Administrative actions, boards, or processes.
  - d. Temporary Promotion Revocation Board determinations.

## 7. RESPONSIBILITIES:

- 7-1. The ASH is responsible for establishing policies.

- 7-2. The SG is responsible for assuring the day-to-day management of the Corps.
- 7-3. The Director, DCCPR, is responsible for making a determination regarding whether a complaint is inappropriate and taking action as appropriate.
- 7-4. The primary, secondary, and final reviewers of the complaint are responsible for:
- a. Conducting or directing further investigation of the matter, as appropriate.
  - b. Notifying the officer, in writing, of the action taken on the complaint.
  - c. Referring the officer to appropriate channels that exist specifically to address the alleged wrongs (e.g., equal opportunity, protected communications, assessment of pecuniary liability). Such referral constitutes final action and the officer may not appeal or submit a complaint under this Instruction.
  - d. Rendering a decision. These officials are prohibited from delegating his or her responsibilities to act on complaints.
- 7-5. Commissioned Corps Liaison (Liaison) is responsible for:
- a. Retaining a complete copy of the file, including the complaint, all decision(s), the officer's appeal(s), and associated documents. The Liaison will retain the file in compliance with the system of records 09-40-0004, "PHS Commissioned Corps Grievance, Investigatory and Disciplinary Files," for a minimum of four years.
  - b. Providing a complete copy of the file to the SG when an officer requests an evaluation by the SG or when a copy is requested by DCCPR.
- 7-6. An officer who files a complaint and the reviewing officials are responsible for adhering to the timelines set forth in this Instruction.
- a. Any of the cited timelines may be extended upon mutual agreement of all concerned parties as long as the parties agree to the extension prior to the end of the cited time limitation. To avoid any confusion, the agreement to extend a timeline should be in writing and included in the complaint file.
  - b. A primary, secondary, or final reviewer's failure to render a decision by the date due is considered a denial of the officer's redress request and the officer may appeal to the next level as outlined in Section 8.
  - c. An officer's failure to accept or reject the primary, secondary, or final reviewer's decision by the date due is considered an acceptance of the decision and the decision shall be final.
- 7-7. Officers are responsible for initiating informal resolution when they believe they have been wronged. When a formal complaint is filed, an officer must inform his/her Liaison.
8. PROCEDURES:
- 8-1. The first attempt to resolve a perceived wrong must be between the officer and the official whom the officer believes committed the wrong. If such informal measures are unsuccessful, the officer may submit a formal complaint that seeks redress under this Instruction.

- 8-2. A formal complaint must:
- a. Be in writing;
  - b. Be submitted within the time limits established;
  - c. State clearly and concisely the facts of the matter or incident(s) giving rise to the complaint, how the matter or incident(s) directly affected the officer, and under which subsection(s) of Section 6-3 the matter or incident(s) falls. Complaints that fail to address these issues may be returned to the officer without action and, in such cases, the officer shall have 10 days to rectify the deficiencies in his/her complaint;
  - d. Provide a statement regarding what attempts were made to resolve the complaint informally with the official; and
  - e. Specify the redress sought.
- 8-3. Issues that arise after a complaint is submitted to the primary reviewer must be addressed in a new complaint.
- a. The primary, secondary, and/or final reviewer may consolidate multiple complaints and provide one response when he/she determines it is appropriate to do so.
  - b. Although an officer may appeal the decision of either the primary or secondary reviewer as well as request that the SG evaluate the final reviewer's decision, such appeals/requests must be confined to the circumstances that gave rise to the original written complaint and an appeal that revises or adds to the original written complaint shall not be accepted and must be returned to the officer without action. In such cases, the officer shall have 10 days to rectify the deficiencies in his/her appeal/request.
- 8-4. Initial Presentation.
- a. Within 30 days of the incident or action, the officer will submit the written complaint to his/her immediate supervisor. The officer will also provide a copy of the complaint to their OPDIV Liaison. The officer may request an extension of the time to file a complaint if a good cause can be shown, such as: incapacitation; deployment; or, delays due to a legitimate attempt to informally resolve the perceived wrong as long as the informal attempt was initiated within 30 days of the incident or action.
  - b. The primary reviewer will consider the complaint and inform the officer, in writing, of his/her decision within 30 days of receipt of the complaint. The decision will include the name, title, and address of the secondary reviewer to whom an appeal may be sent if the officer does not accept the primary reviewer's decision, which may be:
    - (1) Grant the remedies sought in full or in part;
    - (2) Reject the complaint due to an untimely application or other procedural defects;
    - (3) Deny the remedies sought;

- (4) Offer a solution which in the reviewer's judgment will resolve the matter; or
  - (5) A determination that he/she lacks the authority to resolve the matter. In this situation, the primary reviewer will refer the complaint to the official who has the authority to resolve the matter. If the case is referred, it continues to be a part of the "Initial Presentation." The appropriate official (hereafter referred to as the primary reviewer) has 30 days upon receipt of the referral to render a written decision on the matter. A decision to refer the complaint to another official may not be appealed and may not be the subject of another complaint.
- c. Within 10 days of receipt of the decision, the officer must indicate in writing to the primary reviewer:
- (1) Acceptance of the decision; or
  - (2) Rejection of the decision and if appealing the decision, a request to forward the original complaint and initial decision to the secondary reviewer. When the decision is appealed:
    - (a) The officer will submit a copy of the appeal request to the secondary reviewer.
    - (b) The primary reviewer will forward the appeal request and all documents from the initial presentation to the secondary reviewer within 5 days of the request.
- d. If the officer accepts the decision or does not appeal the decision within 10 days, the decision becomes final and copies of all documents associated with the complaint will be submitted by the primary reviewer to the Liaison.

#### 8-5. Secondary Presentation.

- a. The secondary reviewer will review the presentation and render a decision, in writing, within 30 days of receipt of the complaint. The secondary reviewer's decision options include those outlined in Section 8-4.b.(1) through (4). Although the secondary reviewer may continue to make similar offers, he/she is not bound by any of the remedies or other solutions offered to the officer by the primary reviewer. The secondary reviewer's decision will also include the name, title, and address of the final reviewer to whom an appeal may be sent if the officer does not accept the secondary reviewer's decision.
- b. Within 10 days of receipt of the decision, the officer must indicate in writing to the secondary reviewer:
  - (1) Acceptance of the decision; or
  - (2) Rejection of the decision and if appealing the decision, a request to forward the original complaint along with the primary and secondary reviewers' decisions to the final reviewer. When the decision is appealed:
    - (a) The officer will submit a copy of the appeal request to the final reviewer.

- (b) The secondary reviewer will forward the appeal request and all documents from the initial and secondary presentations to the final reviewer within 5 days of the request.
  - c. If the officer accepts the decision or does not appeal the decision within 10 days, the decision becomes final and copies of all documents associated with the complaint will be submitted by the secondary reviewer to the Liaison.
- 8-6. Final Presentation.
  - a. The final reviewer will elect one of the options outlined in Section 8-4.b.(1) through (4), or he/she may appoint a special investigator to make findings and recommendations for resolution of the complaint. These recommendations, however, are not binding on the final reviewer nor are any of the remedies or solutions offered to the officer by either the primary or secondary reviewers. The final reviewer will notify the concerned parties of the appointment of a special investigator and a timetable for resolution of the matter.
  - b. The final reviewer, within 30 days of receipt of the complaint, or within 90 days if a special investigator is appointed, will notify the officer of the final decision.
  - c. After the final decision is rendered, copies of all documents associated with the complaint will be submitted to the Liaison.
- 8-7. The officer may withdraw his/her complaint at any time throughout the reviewing process.
- 8-8. Request for SG Evaluation.
  - a. An officer may request that the SG evaluate the final decision when the officer believes the final decision may be in violation of law, executive order, regulation, policy, or is believed to be arbitrary and capricious.
    - (1) The officer must submit in writing, within 10 days of the final decision, a memorandum specifying which law, executive order, regulation, or policy he/she believes has been violated, and/or must clearly state why they believe the final decision is arbitrary and capricious.
    - (2) If the SG or ASH is the final reviewer, no further evaluation is available.
  - b. The officer must also provide the following in his/her request for evaluation:
    - (1) The officer's PHS number and Direct Access Employee Identification number;
    - (2) The officer's current assigned OPDIV/STAFFDIV and address;
    - (3) The officer's organization at the time of the incident which gave rise to the wrong;
    - (4) The individual whose act or omission is the subject of the complaint; and
    - (5) The final reviewer's decision date or a statement that the final reviewer's decision was not received within the time limits outlined in this Instruction.



- c. The request must be submitted to the address listed on the SG's website at <http://www.surgeongeneral.gov/>.
  - d. The SG shall review the officer's request and final reviewer's decision and will:
    - (1) Return the request to the officer if incomplete or not in writing and signed by the officer. In such cases, the officer shall have 10 days to rectify the deficiencies in his/her request;
    - (2) Find that the final decision did not violate any law, executive order, regulation, or policy, and that the preponderance of evidence indicates that the decision was not arbitrary or capricious. Such a determination shall close the officer's complaint and it may no longer be redressed; or
    - (3) Remand the matter to the final reviewer for further review upon a finding that the decision was in violation of law, regulation, policy, executive order, or if the final decision appears to be arbitrary or capricious. Such a determination shall place the complaint back into the "Final Presentation" stage of the process.
  - e. The SG, or his/her designee, will notify the officer of his/her determination.
  - f. The SG may consolidate requests for evaluation of multiple complaints if he/she determines it is appropriate to do so.
  - g. Inappropriate requests for evaluation shall not be accepted and will be returned to the officer as closed after the SG determines whether disciplinary action is appropriate.
- 8-9. Board for Correction of PHS Commissioned Corps Records. An officer who feels that an error or injustice remains in his/her record may make application to the Board for Correction only after exhausting all administrative remedies. Failure to initiate a complaint for redress in accordance with this Instruction or failure to complete/initiate other available administrative remedies shall be construed as the officer relinquishing their right to proceed with an application to the Board for Correction.
9. HISTORY: This is the first issuance of this Instruction within the electronic CCIS.