SUBJECT: Disciplinary Action

1. PURPOSE: This Directive establishes the types of disciplinary action that may be taken against an officer in the Commissioned Corps of the Public Health Service Commissioned Corps (Corps) and the requirements and procedures applicable to the separation of such officers for misconduct.

2. APPLICABILITY: The provisions of this Directive shall apply to all commissioned officers, whether on active duty or retired. Officers detailed for duty with other uniformed services shall also be subject to the laws and regulations of the service to which detailed. The authority to terminate an officer’s commission shall continue to reside with the Secretary, unless otherwise delegated. During the effective period of any Executive Order declaring the Corps to be a military service and prescribing that the Corps is subject to the Uniform Code of Military Justice (UCMJ), disciplinary action may be prosecuted in accordance with the Executive Order or in accordance with this Directive. In addition to officers detailed to the armed forces pursuant to 42 U.S.C. § 215(a), officers assigned to and serving with the armed forces, may also be subject to the UCMJ under 10 U.S.C. §802(a)(8).

3. AUTHORITY:

3-1. 42 U.S.C. §216, “Regulations”

3-2. 42 U.S.C. §215, “Detail of Service personnel”

3-3. 10 U.S.C. §802(a)(8), “Art. 2. Persons subject to this chapter”


4. PROPOSENT: The proponent of this Directive is the Secretary of the Department of Health and Human Services (HHS).

5. SUMMARY OF REVISIONS AND UPDATES: This is the first issuance of this Directive in the electronic Commissioned Corps Issuance System (eCCIS) and replaces Commissioned Corps Personnel Manual (CCPM) CC46.4.1, “Disciplinary Action,” dated 26 April 1983.

5-1. Adds sexual harassment and criminal traffic violations as types of misconduct.


5-4. Eliminates the two year restriction on how long a Letter of Reprimand (LOR) may be maintained in an officer’s Official Personnel Folder (OPF) and authorizes the Assistant Secretary for Health to establish the length of time an LOR is maintained in the OPF; however, the current 2 year limitation remains in place until the ASH issues a policy that establishes the lengths of time to retain an LOR.

5-5. Authorizes the termination of an officer’s commission due to 90 or more nonconsecutive days of absence without leave and clarifies the circumstances under which the commission of officer who is eligible for retirement may be terminated.

5-6. Adds eligibility for awards and retirement as recommendations available to a Board of Inquiry (BOI).
6. POLICY:

6-1. Compliance with Orders. Officers are required to observe and promptly obey the lawful orders of all official superiors.

6-2. Types of Misconduct. 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 below. To ensure that officers are further advised as to what constitutes misconduct for purposes of being subject to disciplinary action, officers are hereby advised that in addition to the examples of misconduct listed below, 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 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.

   a. Disobedience of the lawful orders of an official superior;
   b. Negligence or carelessness in obeying orders or in performing official duties;
   c. Unauthorized use or consumption of controlled substances or alcohol while on duty, being under the influence of such substances or alcohol while on duty, or illegally possessing, transferring, or ingesting controlled substances at any time;
   d. Engaging in action or behavior of a dishonorable nature which reflects discredit upon the officer, the Corps, or both;
   e. Failure to honorably discharge just debts in a timely manner;
   f. Acts of insubordination or use of insulting or defamatory language or gestures disrespectful of, or displaying a contemptuous attitude towards, official superiors or other officers;
   g. Making any public statement which falsely impugns the professional competency or personal character of a superior or another officer;
   h. Waste of public funds or property, or knowingly permitting such waste;
   i. Conviction of a felony or misdemeanor, to include criminal traffic offenses;
   j. Submission of false information in an application for appointment or in any other official document;
   k. Abusive treatment of subordinate officers, employees, patients or program beneficiaries, or of members of the public
   l. Absence from his/her assigned place of duty without authorized leave; or
   m. Sexual harassment that involves unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:

   (1) Submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, career;
(2) Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or

(3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive work environment. Abusive work environment harassment need not result in concrete psychological harm to the victim, but rather need only be so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the work environment as hostile or abusive.

6-3. Types of Disciplinary Action.

a. Summary Actions. The Assistant Secretary for Health (ASH), the heads of Operating Divisions/Staff Divisions, non-HHS Organizations to which officers are detailed, the Director Division of Commissioned Corps Personnel and Readiness (DCCPR), or their designees, shall have the authority to take the following actions:

(1) Letter of Counseling (LOC). A letter of counseling shall be issued in writing but shall not become part of the officer's Official Personnel Folder (eOPF).

(2) Letter of Reprimand (LOR). A letter of reprimand shall be issued in writing and shall be entered in the officer's eOPF for a period of time determined in policy issued by the ASH. However, until such time that the ASH issues policy guidance, the period of time a LOR is maintained in the officer’s eOPF shall be no more than 2 years from the date the reprimand is issued.

(3) Suspension from Duty. Where it is determined to be in the best interests of the Government, an officer may be removed from duty and placed in a non-duty pay status pending resolution of the matter. Instances where this may occur include but are not limited to: an allegation serious enough to warrant removal from duty pending a full investigation, or because of a pending formal involuntary separation action, disciplinary action, or medical fitness for duty evaluation. All suspensions from duty pursuant to this authority shall be immediately reported to the Director, DCCPR, or his/her successor.

b. Actions Requiring a Hearing. When an officer is charged by his/her superior, any responsible person, or persons involved in the matter concerning the grounds for disciplinary action under this Directive, the officer may be ordered to appear before a Board of Inquiry (BOI) when the ASH determines that the officer’s conduct should be reviewed for a recommendation regarding: the officer’s retention on active duty; whether the officer’s service should be characterized as other than “honorable;” and/or whether other disciplinary action is warranted.”

6-4. Investigations.

a. Appointment of Special Investigator. Where allegations of misconduct have been made but are not immediately verifiable, the officials enumerated in Section 6-3, may, subject to the limitations of Section 6-4.b.appoint and dispatch a Corps officer or HHS employee as a special investigator to conduct a full and thorough inquiry and prepare a formal written report which shall form the basis for determining whether disciplinary action is warranted.
(1) 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. Further, prior to interviewing an officer who is the subject of any allegation of misconduct, the special investigator, working through the OSG, shall contact the Office of General Counsel (OGC) to determine if any pre-interview warnings to the officer are necessary (e.g., Kalkines, or some modification thereof). Similarly, prior to interviewing witnesses, the special investigator, working through the OSG, should contact OGC regarding the notice of rights to witnesses.

(2) Upon completion of the written report(s), the Special Investigator shall provide a signed copy of the report(s) to the Director, DCCPR, for initial processing and consultation with the SG and final consideration by the ASH or designee.

b. Referral to the Office of the Inspector General (OIG). Where the allegations against an officer include possible violations of the United States criminal code, the matter will be immediately referred to OIG for investigation and no further independent investigation under Section 6-4.a., will be conducted prior to the express concurrence of an authorized representative of OIG.

6-5. Termination of Commission. An officer’s commission shall not be terminated because of misconduct without the opportunity to have his/her case considered by a board of officers except in the following situations:

a. An officer’s commission is being terminated because of absence without leave for 30 or more consecutive days, regardless of whether the officer is retirement eligible. The termination will be characterized as “dropped from the rolls.”

b. An officer’s commission is being terminated because of absence without leave for 90 or more nonconsecutive days:

   (1) If the officer is not retirement eligible, the termination will be characterized as “dropped from the rolls;” or

   (2) If the officer is retirement eligible, the ASH, or designee, will determine what if any, further disciplinary or administrative action is warranted, including referral to a retirement board.

c. An officer has been found guilty of one or more criminal offenses by a civil authority, tribal authority, or military tribunal or administrative board and has been sentenced to confinement for a period in excess of 30 days in a Military, Federal, Tribal, or State penitentiary or correctional institution, with or without suspension or probation.

   (1) The officer’s termination will be characterized as “honorable” with a notation “for the good of the Service.”
(2) An officer who is eligible for retirement may not have his/her commission terminated under this subsection unless he/she is incarcerated for 90 or more consecutive days and is deemed to be absent without leave.

d. An officer's commission is being terminated during the first three years (probationary period) of his/her current tour of active duty. The officer's termination will be characterized as "honorable." If the termination is due to the officer's misconduct or failure to adhere to the Corps' conditions of service (see CCD 111.03, "Conditions of Service") the SG may add the notation "for the good of the Service."

6-6. Board of Inquiry (BOI).

a. A BOI will consist of at least three Corps officers in the Senior (O-5) grade or above. The members, insofar as practicable, will be senior in grade to the officer being considered by the board. Three members present will constitute a quorum of the board. The ASH will appoint the board members and designate one member to serve as Presiding Officer. The ASH will convene the board as necessary and may appoint any Corps officer or HHS employee as special advisor to the board to provide guidance on procedural matters and to assist in the interpretation of Corps personnel policies and regulations.

b. PHS Representative. The ASH shall assign as Public Health Service (PHS) representatives at least one Corps officer, not liable to be summoned as witnesses. No PHS Representative shall be a member of the board.

(1) The PHS 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.

(2) The PHS Representative(s) shall investigate all the circumstances of the case and shall have the right to be furnished with such instructions and papers or copies thereof as may be necessary for his/her guidance. All personnel of HHS shall furnish such information within their knowledge or possession as may be requested by the PHS Representative(s) except that OIG retains the discretion to withhold any information or material pertaining to an ongoing criminal investigation where such investigation might be compromised by release or disclosure of such information or material. Prior to interviewing an officer who is the subject of any allegation of misconduct, the special investigator, working through the OSG, should contact the Office of General Counsel (OGC) to determine if any pre-interview warnings to the officer are necessary (e.g., Kalkines, or some modification thereof). Similarly, prior to interviewing witnesses, the special investigator, working through the OSG, should contact OGC regarding the notice of rights to witnesses.

(3) Where the allegations against an officer include possible violations of the United States criminal code, the matter will be referred to OIG in accordance with Section 6-4.b., and further proceedings pursuant to this Directive shall not be conducted without the prior express concurrence of an authorized representative of OIG.
(4) 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.

c. Officer’s Rights.

(1) Notice to Officer. An officer being considered for separation under this Directive shall be given at least 30 days advance written notice that such proceedings are being initiated against him/her. Such notice shall be sufficiently detailed, factual, and specific concerning each allegation against the officer and will also include a summary of the officer’s rights. The notice may effectively summarize the officer’s rights by including a copy of this Directive and referring to it in the text of the notice. The notice will also indicate the date, time, and place that the board is scheduled to convene as well as the name, grade, duty address, and duty telephone number of the PHS Representative(s). Such notice shall also indicate the names and grades of the officers appointed to serve as board members. The Notice and any amendments to the original notice shall be effected in a provable manner such as hand delivery, certified mail return receipt required, Federal Express, or via electronic means with a verifiable delivery.

(2) Personal Appearance Before a Board. An officer may appear in person, with or without counsel. The term “counsel” includes members in good standing of any bar of any State and such other persons who, in the opinion of the ASH, are considered to be competent to represent the officer in the board proceedings. The officer shall not be reimbursed for expenses in connection with the assistance of counsel.

(3) Written Statements. An officer may, at any time before the board convenes or during the proceedings, submit to the board any answer, deposition, sworn or unsworn statement, affidavit, certificate or proposed stipulation.

(4) Presentation of Witnesses. The officer may present witnesses before the board. The officer will be responsible for notifying his/her witnesses and arranging for their appearance at the time and place of the board proceedings.

(5) Challenges. An officer may not peremptorily challenge a member of the board. The officer may, however, submit in writing to the ASH, for appropriate action, any relevant matter which, in the officer’s opinion, indicates that a particular member or members should not sit on his/her
case. Such documentation must be received by the ASH no later than
teen (15) calendar days prior to the date upon which the board is
scheduled to convene.

(6) Records. The officer shall be furnished copies of any records which the
presiding officer considers relevant to the officer’s case at any time during
the board proceedings. The officer shall also be furnished a copy of the
board report.

(7) No Right to Discovery. The officer will have no right to discovery (such as
the taking of depositions, the serving of interrogatories, etc.) beyond what
may be informally arranged and mutually agreed to by the PHS
Representative and the subject officer or his/her counsel. It is the policy
of the Corps to encourage such informal cooperation to the extent
practicable and feasible. 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.

(8) Postponements and Continuances. The officer is not entitled as a matter
of right to any postponement of the board proceedings. The officer may,
however, submit a timely request for postponement for good cause shown
to the ASH. It shall lie entirely within the discretion of the ASH whether to
grant such a request for postponement. A failure to respond to a request
for postponement shall be deemed a denial of the request. It is the officer’s
responsibility to ensure that any request for postponement is received in a
timely manner. Once the board is in session, requests for postponement
will not be entertained but requests for continuances may be directed to
the presiding officer who shall have the sole authority to rule upon them.

(9) Failure to Invoke Rights. An officer’s failure to invoke any of these rights
shall not be considered as a bar to the board proceedings, findings,
opinion, or recommendations.
d. Conduct of the Hearing.

(1) By Presiding Officer. The hearing will be conducted subject to the procedural rulings of the Presiding Officer. The officer, insofar as practicable, will be provided an opportunity to make a full and fair presentation of his/her case. The board is not limited by the formal rules of evidence, but will maintain reasonable bounds of competency, relevancy, and materiality. Oral and written matters which would be inadmissible in a court of law will not necessarily be rejected. The Presiding Officer shall rule upon all questions pertaining to such matters as continuances, adjournments, recesses, acceptability of offered evidence, and the propriety of any argument, statement, or question of the PHS representative, the subject officer, or his/her counsel. The Presiding Officer will:

(a) Schedule and conduct any pre-hearing conferences requested by the officer and/or the PHS Representative and considered necessary by the Presiding Officer;

(b) 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;

(c) 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 6-6.c.(5));

(d) 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

(e) 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.

(2) Officer’s Presence or Representation.

(a) If the officer, after being properly notified, fails to appear at the time and place set for the proceedings, the board may consider the case in accordance with this Directive, despite the absence of the subject officer or his/her counsel.

(b) If the officer is present, with or without counsel, the record will be considered in conjunction with any additional evidence offered by the subject officer, his/her counsel or the PHS Representative.

(3) Order of Proceedings. The charges and specifications will be read and the subject officer will be permitted to respond to each separate charge and specification indicating whether it is admitted or denied. Any charge
or specification which is admitted shall be deemed to be proved. In the absence of any response to a particular charge or specification, it shall be deemed to be denied. The order of presentation of evidence shall then be as follows:

(a) Opening statement by the PHS representative;
(b) Opening statement by the subject officer or his/her counsel;
(c) Presentation of witnesses and other evidence by the PHS representative;
(d) Presentation of witnesses and other evidence by the subject officer or his/her counsel;
(e) Presentation of any rebuttal witnesses or other rebuttal evidence by the PHS representative;
(f) Presentation of any additional witnesses or other evidence offered in surrebuttal by the subject officer or his/her counsel;
(g) Summation by the PHS representative; and
(h) Summation by the subject officer or his/her counsel.

(4) Testimony. All testimony before the board will be given under oath or affirmation. Each witness will be subject to cross-examination and to redirect examination unless the right to conduct either is waived. Further examination will ordinarily be allowed only upon a showing of extraordinary circumstances which, in the opinion of the board, warrant such examination in the interests of justice. The board may itself conduct such examination of any witness as it deems appropriate. In the event that any party seeks to impeach the credibility of a witness other than through cross-examination that witness may be recalled for the purpose of rehabilitating his/her prior testimony.

(5) Examination by Board. An officer may submit to examination by the board but is not required to do so unless he/she has made a statement to the board, either orally or in writing.

(6) Transcript. To ensure an accurate record of the proceedings are maintained, the proceedings shall be transcribed (e.g., tape recording, stenographic recording).

(7) Burden of Proof. The PHS Representative shall bear the burden of proving the existence of misconduct by a preponderance of evidence. (i.e., existence of misconduct is more probable than not).

(8) Consultation with HHS 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.
e. Action by the Board.

(1) Deliberations. Board deliberations and voting will be conducted in closed session at which only board members and designated support personnel, such as stenographers, will be permitted to be present.

(2) Report of the Board. The report of the board will be signed by all board members concurring and the statements which are concurred in by a majority of the members will constitute the report of the board. The report of the board shall include the following:

(a) A summary of the individual officer’s service and background;

(b) A summary of the acts or omissions ascribed to the officer under consideration in the allegations, reports, or other circumstances prompting consideration of the case by the board;

(c) A summary of the position taken by the officer under consideration with respect to the allegations, reports, or other circumstances in question and the acts or omissions ascribed to the officer; and

(d) Findings and recommendations of the board. A separate finding must be made for each charge and specification indicating whether it is proved, not proved, or proved in part. Where the board finds that misconduct did in fact occur, it may recommend any of the following:

(i) Any of the actions specified in Section 6-3, above. A recommendation to issue a LOR will include a recommendation regarding the period of time the LOR should be maintained in the officer’s OPF.

(ii) Termination of Commission. Where the board recommends termination of an officer’s commission, a further recommendation must also be made regarding the character of the officer’s service according to the following guidelines:

I. Characterization as “honorable” is appropriate when the quality of the officer’s service generally has met the standards of acceptable conduct and performance. As such, it is normally inappropriate when the commission is being terminated for reasons of misconduct unless the officer’s prior overall record is so meritorious as to clearly render any other characterization inappropriate.

II. Characterization of service as “under honorable conditions” is appropriate where the service was honest and faithful but significant negative aspects of the officer’s conduct or duty performance outweigh positive aspects of the officer’s record.
III. Characterization of service as “under other than honorable conditions” is generally only appropriate where there has been a pattern of significant departure from the conduct expected of officers or where the misconduct was of such severity as to warrant any other characterization as obviously inappropriate.

(iii) Reduction in Grade. Where the board recommends that the officer be reduced in grade, a specific recommendation must also be made with regard to promotion credit and seniority in the grade to which reduced, and if applicable, a recommendation must be made with regard to time in grade and time in service credit.

(iv) Eligibility for Awards. A recommendation regarding a period of ineligibility to receive PHS honor or service awards, medals, ribbons, and badges.

(v) Retirement. If an officer has at least 19 years of creditable service towards retirement, a recommendation to retire the officer may be made. A recommendation to retire the officer must include a recommendation regarding the characterization of the officer’s service.

(3) Minority Report. Any board member(s) not concurring with the majority shall sign and submit a separate minority report(s), setting forth the extent of his/her (their) concurrence and nonconcurrence, the reasons, and the variant findings, opinions, or recommendations, as appropriate. Each minority report submitted shall be attached to the board report and shall be considered by the ASH in reviewing the report.

(4) Record of Proceedings. When the board has completed its deliberations, a record of proceedings shall be prepared. The record shall include the report of the board, minority report(s) if any, and any transcript, recording, or other summary of the proceedings. The record so prepared shall be certified by the Presiding Officer as being true and complete.

f. Action Upon Board Findings and Recommendations.

(1) Exoneration. Upon a board finding that the PHS representative has failed to sustain the burden of proof as to the existence of any culpable misconduct, a copy of the board report shall be provided to the officer or his/her counsel documenting such finding of exoneration and no further action shall be taken.

(2) Discipline. Upon a board finding that any of the charges of misconduct have been adequately substantiated, the record of the board proceedings shall be transmitted to the ASH. The ASH may then order further investigation by the board or may approve and adopt the board findings and either direct implementation of its recommendations in whole or in part or, upon the basis of such findings, may order punishment or grant clemency or other disposition not inconsistent with the provisions of this Directive. In no event shall the action taken be of greater severity than
that which has been recommended by the board. Upon adopting a board recommendation that the officer’s commission be terminated, the ASH may approve the characterization of service recommended by the board or one more favorable but shall not approve a characterization of service less favorable than that recommended by the board. The decision of the ASH shall be final.

6-7. Travel Expenses. The ASH may authorize necessary travel entitlements for any Corps officer or HHS employee requested to participate in any hearing or proceeding under this Directive.

7. RESPONSIBILITIES:

7-1. The ASH may promulgate additional policies and make delegations as necessary to implement this Directive.

7-2. The Director, DCCPR, or his/her designee, is responsible for issuing a statement of service to an officer separated under this Directive. The Director, DCCPR, or his/her designee shall include the appropriate separation information (e.g., type of separation, character of service, authority, reason for separation) on the statement of service.

7-3. All officers are responsible for adhering to the guidelines established in this Directive.

8. HISTORICAL NOTES: This is the first issuance of this Directive within the eCCIS and replaces CCPM CC46.4.1, dated 26 April 1983.