



CCD 111.02
EFFECTIVE DATE: 7 August 2023

By Order of the Secretary of Health and Human Services:

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SUBJECT: Disciplinary Action

1. PURPOSE: This Directive establishes the types of disciplinary action that may be taken against Public Health Service (PHS) officers of the U.S. Public Health Service (USPHS) Commissioned 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 members, whether on active duty, retired, or inactive duty in the Ready Reserve Corps and Regular Corps. Officers detailed for duty with other uniformed services shall also be subject to the laws and regulations of the service to which detailed. During the effective period of any Executive Order declaring the USPHS Commissioned Corps to be a military service and prescribing that the USPHS Commissioned 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"
 - 3-4. [Executive Order 11140](#), "Delegating certain functions of the President relating to the Public Health Service," dated 30 January 1964.
 - 3-5. [Department of Defense \(DoD\) Instruction 1336.01](#), "Certificate of Uniformed Service (DD Form 214/5 Series)"
4. PROPONENT: The proponent of this Directive is the Secretary of the Department of Health and Human Services (HHS).
5. SUMMARY OF REVISIONS AND UPDATES: This Directive replaces Commissioned Corps Directive (CCD) 111.02, "Disciplinary Action," dated 16 July 2020. This revision:

- 5-1. Adds DoDI 1336.01 as authority for the USPHS Commissioned Corps to issue the DD Form 214/5 Series.
- 5-2. Revises the language regarding the characterizations of service. See Section 6-5.
- 5-3. Adds “uncharacterized” as a type of entry level separation character of service for circumstances when an officer is separated from the USPHS Commissioned Corps with less than 180 days of service. See Section 6-5.
- 5-4. Clarifies the delegation of authorities for the Director, CCHQ, or designee, to issue a statement of service. See Section 7-2.
- 5-5. Updates the examples of misconduct in Appendix A to include acts that would be considered a violation of any punitive article of the Uniform Code of Military Justice (UCMJ).

6. POLICY: An officer must adhere to the requirements of conduct and performance established in statutes, regulations, and USPHS Commissioned Corps directives and instructions. In addition, an officer must adhere to job-related requirements established by the officer’s supervisor or program. Such requirements may take the form of direct orders, workplace policies, performance methods and objectives. An officer’s failure to meet these requirements can take many forms. As long as the requirement has been published, either verbally or in writing, and is job-related, the officer can be held accountable for failing to meet the requirement. Except in cases of summary dismissals and other reasons outlined in CCD 123.01, “Involuntary Separation,” the USPHS Commissioned Corps may separate an officer with termination of his/her commission after a review by a Board of Inquiry (BOI) in accordance with this Directive.

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 in the Appendix. 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 in the Appendix, 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. Additionally, for the purposes of this policy, misconduct includes any act that would be considered a violation of any punitive article of the UCMJ set forth in Subchapter X of Chapter 47 of Title 10 (UCMJ Articles 77-134). The Appendix contains a nonexclusive list of misconduct that does not meet requirements for all officers.

6-3. Types of Disciplinary Action.

a. Summary Actions. The Assistant Secretary for Health (ASH), the heads of Operating Divisions/Staff Divisions (OPDIV/STAFFDIV), non-HHS Organizations to which officers are detailed, the Surgeon General (SG), the Director, Commissioned Corps Headquarters (CCHQ), and individuals in an officers’ chain of command¹, or their designees, shall have the authority to take the following actions:

(1) Letter of Counseling (LOC). A formal warning intended to document actions and attempts to correct the officer’s behavior or conduct. A LOC shall be issued in writing but shall not become part of the officer’s Official Personnel Folder (eOPF).

(2) Letter of Reprimand (LOR). A LOR 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

¹ For the purposes of this Instruction, Chain of Command means the succession of commanding officers or senior officials from a superior to a subordinate through which authority/command is exercised (e.g., immediate supervisor/rater, reviewing official). This also includes within a deployment environment as well as the administrative chain of command from the Secretary, ASH, SG, Director, CCHQ, Corps Liaison, or designees of these individuals, to the subordinate officer.

guidance, the period of time a LOR is maintained in the officer's eOPF shall be no more than 4 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, CCHQ, or his/her successor.
- b. Request for Removal (RFR). This is the most severe tool available to the officer's OPDIV/STAFFDIV.
- (1) An RFR must be approved by the Head of the OPDIV/STAFFDIV, or an official delegated to act on behalf of the OPDIV/STAFFDIV Head.
 - (2) The RFR must specifically describe the nature of the failure to meet a requirement. All documentary evidence supporting the conclusion that removal is warranted shall be attached to the RFR. The OPDIV/STAFFDIV Head shall confirm that there is here is no suitable assignment available that is commensurate with the officer's grade and category. The OPDIV/STAFFDIV must provide a copy of the RFR to the officer so that the officer is aware that the agency is proposing the officer's removal.
 - (3) The OPDIV/STAFFDIV will submit the RFR to the Director, CCHQ, who will process it in accordance with policy issued by the ASH.
- c. 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 in the USPHS Commissioned Corps; whether the officer's service characterization should be other than "honorable;" and/or whether other disciplinary action is warranted.

6-4. Investigations.

- a. Appointment of Special Investigator. Where allegations of misconduct or marginal/unsatisfactory performance 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 PHS 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 advisement of rights to the officer are necessary (e.g., Kalkines, or some modification thereof) or if the allegations of misconduct constitute a possible violation of the United States criminal code (see Section 6-4.b.). 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, CCHQ, 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). When 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. The USPHS Commissioned Corps will not terminate an officer's commission because of misconduct without the opportunity to have his/her case considered by a board of officers, However, except when the appropriate characterization of service is recommended to be Under Other Than Honorable Conditions (UOTHC), the USPHS Commissioned Corps may terminate an officer's commission without consideration by a board in the following circumstances:
- 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 officer will be "dropped from the rolls" and the officer's service will be characterized as "uncharacterized."
 - 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 officer will be "dropped from the rolls" and the officer's service will be characterized as "uncharacterized;" 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, even if the sentence is suspended, 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 will be "dropped from the rolls" with a notation "for the good of the Service." and the officer's service will be characterized as "uncharacterized."

- (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.
- (3) The ASH, or his/her designee, may withhold execution of separation action pending the outcome of an appeal or until the deadline for appeal has passed.
- d. An officer who is detailed or assigned to or serving with the armed forces is convicted by a court-martial and receives a sentence including dismissal in accordance with the UCMJ.
 - (1) The officer will be dismissed from the USPHS Commissioned Corps and the officer's service will be characterized as "uncharacterized."
- e. An officer who is detailed or assigned to or serving with the armed forces is sentenced by a court-martial in accordance with the UCMJ to a period of confinement for more than 6 months, but the sentence does not include a dismissal. The officer will be terminated, and the officer's termination will be characterized as "under other than honorable conditions" (UOTHC). Note, the appropriate characterization of discharge for an officer under this circumstance will often be UOTHC, which requires consideration by a board of inquiry.
- f. An officer's commission is being terminated during the first three years (probationary period) of his/her current tour in the USPHS Commissioned Corps. The service characterization of an officer separated for one or more reasons during the officer's probationary period is normally Honorable, but Under Honorable Conditions discharge may be appropriate when the basis for discharge is attributable to intentional or willful disregard of standards, or when the officer's record otherwise contains derogatory information which makes Honorable discharge characterization inappropriate.

6-6. Board of Inquiry (BOI).

- a. A BOI will consist of at least three PHS 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 PHS officer or HHS employee as a special advisor to the Board to provide guidance on procedural matters and to assist in the interpretation of USPHS Commissioned Corps personnel policies and regulations.
- b. PHS Representative. The ASH shall assign at least one PHS officer as Public Health Service (PHS) representatives, 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 PHS Representative(s), working through the OSG, shall contact the Office of General Counsel (OGC) to determine if any advisement of rights 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 USPHS Commissioned 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 also will 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 fifteen (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 USPHS Commissioned 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. If he/she is unable to resolve such matters with the assistance of the Board's special advisor, he/she will 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 and/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. If 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. When the Board recommends termination of an officer's commission, it must make a further recommendation 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.
 - 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 when there has been a pattern of significant departure from the conduct expected of officers or when the misconduct was of such severity as to warrant any other characterization as obviously inappropriate.
 - IV. Characterization of service as "dismissed" is only appropriate when 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 180 days in a Military, Federal, Tribal, or State penitentiary or correctional institution, with or without suspension or probation.
- (iii) Reduction in Grade. When the Board recommends that the officer be reduced in grade, it must also make a specific recommendation with regard to promotion credit and seniority in the grade to which the officer is reduced, and if applicable, make a recommendation with regard to time in grade and time in service credit.
 - (iv) Eligibility for Awards. The Board can make 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, the Board can make a recommendation to retire the officer. A recommendation to retire the officer must include a recommendation that the officer's service be characterized as "honorable" with a notation "for the good of the 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, it will prepare a record of proceedings. 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) Unsubstantiated. 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 unsubstantiation 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 ASH take action 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 PHS 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, CCHQ, or designee, is responsible for issuing a statement of service to an officer separated under this or any other USPHS Commissioned Corps Directive or Instruction. The Director, CCHQ, or designee, will issue such statement of service in accordance with Department of Defense (DoD) Instruction (DoDI) 1336.01, "Certificate of Uniformed Service (DD Form 214/5 Series)," unless DoDI 1336.01 conflicts with any applicable USPHS Commissioned Corps Directives or Instructions, in which case the USPHS Commissioned Corps Directives and Instructions will be followed. Furthermore, the Director, CCHQ, or designee, shall include the appropriate separation information (e.g., type of separation, character of service, authority, reason for separation, reentry) 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 third issuance of this Directive within the electronic Commissioned Corps Issuance System (eCCIS).
 - 8-1. CCD 111.02, "Disciplinary Action," dated 16 July 2020.
 - 8-2. CCD 111.02, "Disciplinary Action," dated 18 June 2018.
 - 8-3. Commissioned Corps Personnel Manual (CCPM) CC46.4.1, "Disciplinary Action," dated 26 April 1983.

Appendix

Examples of Misconduct²

1. Any act that would be considered a violation of any punitive article of the UCMJ set forth in Subchapter X of Chapter 47 of Title 10 (UCMJ Articles 77-134).
2. Disobedience of the lawful orders of a commanding officer, senior officer or official.
3. Gross negligence (i.e., a conscious and voluntary disregard of the need to use reasonable care); negligence (i.e., failure to exercise the degree of care that someone of ordinary prudence would have exercised in the same circumstance); or carelessness: in obeying orders, in performance of official duties, or in adherence to USPHS Commissioned Corps policy or requirements.
4. Unauthorized use or consumption of controlled substances or alcohol while on duty or while in a deployed status, being under the influence of such substances or alcohol while on duty or while in a deployed status, or illegally possessing, transferring, or ingesting controlled substances at any time. This also applies to any intoxicating substances, illicit drugs, and/or illegal or inappropriate use of legally prescribed medications.
5. Engaging in any action or behavior of a dishonorable nature; that would impair morale or readiness; or of a nature to bring discredit upon the officer, the USPHS Commissioned Corps, or the Department.
6. Fraternalization/Unprofessional Relationships. Relationships are unprofessional, whether pursued on or off-duty, when they detract from the authority of superiors or result in, or reasonably create the appearance of, favoritism, misuse of office or position, or the abandonment of organizational goals for personal interests. Unprofessional relationships can exist between officers, between enlisted members, between officers and enlisted members, and between military personnel and civilian employees or contractor personnel. Fraternalization includes improper relationships between officer members and enlisted members while serving with other uniformed services. Fraternalization and unprofessional relationships affects the ability of the command to accomplish its mission due to its adverse impact on good order, discipline, authority, and/or morale. Relationships in the following circumstances is prohibited:
 - (a) Relationships between seniors and subordinates over whom they have authority.
 - (b) Relationships between PHS officers of the same or different grade, or between PHS officers and civilian employees that: cause or give the appearance of partiality or preferential treatment; involve or appear to involve the improper use of rank or position for personal gain; are, or are perceived to be, exploitative or coercive in nature; or have an adverse impact on good order, discipline, authority, and/or morale.
 - (c) During assignments or details to another uniformed service, PHS officers are required to follow the rules and policies of professional and unprofessional relationships of the service to which assigned. This includes any deployment or joint operational environment where other service members are present, whether the PHS officer is assigned to the other

² For the purposes of this Instruction, Chain of Command means the succession of commanding officers or senior officials from a superior to a subordinate through which authority/command is exercised (e.g., immediate supervisor/rater, reviewing official). This also includes within a deployment environment as well as the administrative chain of command from the Secretary, ASH, SG, Director, CCHQ, Corps Liaison, or designees of these individuals, to the subordinate officer.

service or not. During such assignments or deployments, in addition to the other service's policies and the prohibitions in Subsections 5.(a) and 5.(b), PHS officers are expressly prohibited from fraternizing with enlisted members.

7. Failure to discharge just debts or obligations in a timely manner.
8. Acts of insubordination or use of insulting or defamatory language or gestures disrespectful of, or displaying a contemptuous attitude towards, a commanding officer, senior officer or official, or other uniformed service member. This includes the use of insulting or defamatory language or gestures disrespectful of, or displaying a contemptuous attitude towards the President, the Vice President, Congress, the Secretary of HHS, or the Secretary of a non-HHS Department to which the officer is assigned.
9. Making any statement which falsely impugns the competency or personal character of a superior or another uniformed service officer.
10. Fraudulent use, waste, or abuse of public funds, trust, or property, or knowingly permitting such fraudulent use, waste, or abuse.
11. Submission of false official information or statement. This includes making a defective application for appointment to the USPHS Commissioned Corps by failing to disclose or by misstating any information requested during the application process.
12. Abusive treatment, at any time, of a uniformed service member, civilian employee, patient or program beneficiary, or of a member of the public.
13. Absence Without Leave (AWOL), which includes absence from an assigned duty station without authority or failure to report to and/or remain at the appointed place of duty at the time prescribed. This includes the failure to report to an assigned deployment location at the time prescribed and also applies to periods when going to, at, or returning from a deployment.
14. Sexual harassment that involves unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:
 - (a) Submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career;
 - (b) Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or
 - (c) 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 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.
15. With the exception of a protected communication, failure to follow the chain of command in seeking information or resolution of a problem.
16. Retaliation, reprisal, restriction, ostracism, and maltreatment against an officer or employee who files a grievance and/or redress complaint, equal opportunity and/or equal employment opportunity complaint, or any form of protected communication (see CCD 121.06, "Protected Communications").

17. Conviction of a felony or misdemeanor, to include criminal traffic offenses, with or without a sentence to confinement. Conviction includes those actions that do not result in an imposed or suspended final sentence to confinement and other actions short of conviction that are tantamount to a finding of guilt (e.g., successful probation in return for a clean record; deferred adjudication; and other forms of pretrial intervention). A criminal traffic offense is an offense, either a felony or a misdemeanor, in which the offender causes(ed) injury to a person or damage to property or creates a threat to cause injury to a person or damage to property (e.g., operating a motor vehicle under the influence of drugs and/or alcohol, reckless endangerment, vehicular manslaughter, etc.).
18. Failure to report a conviction (as defined above in Paragraph 17), indictment, arrest, detention, or receipt of a citation for a felony or misdemeanor, to include criminal traffic offenses, to the Director, CCHQ, and to the supervisor within 5 days of the conviction, indictment, arrest, detention, or receipt of a citation for a felony or misdemeanor. Minor traffic infractions resulting in a fine not more than \$500 are not required to be reported (e.g., excessive speed that do not result in a citation of reckless driving, parking tickets, failure to signal lane change, etc.).
19. Failure to report a pending or actual licensing and/or certification board action to the Director, CCHQ, and to the supervisor, within 5 days of the notification, action, or decision rendered by the licensing and/or certification board. This includes, but is not limited to, restriction, revocation, or suspension.
20. Failure to report any significant medical disease, illness, injury, physiologic, mental, or psychological condition or disorder to Medical Affairs, CCHQ, within 5 days of the diagnosis or injury. The notification requirement includes any and all hospitalizations, as well as any inpatient or outpatient substance abuse treatment or counseling. If completely incapacitated, notification must be made within 5 days of regaining physical or mental capability to do so. Officers are also required to provide Medical Affairs with all requested medical documents within the timeframe established in the request from Medical Affairs.
21. Failure or refusal to cooperate with an investigation, including any attempt(s) to delay or stall an investigation. This includes, but is not limited to, investigations by the Office of the Inspector General, civil authorities, related to the UCMJ proceeding, or any investigation conducted by the USPHS Commissioned Corps (including medical investigations) or the program to which assigned. Cooperation includes providing requested documents, testimony, information, etc., within the investigator's specified timeframe(s).
22. Commits perjury while under a lawful oath (including any form allowed by law to be substituted for an oath); gives any false testimony or material to the issue or matter of an inquiry; or subscribes any false statement or material to the issue or matter of an inquiry in any declaration, certificate, verification, or statement under penalty of perjury as permitted under 28 U.S.C. §1746.
23. Failure to report their personal, as well as any other officer's, misconduct or violation of standards to the Director, CCHQ, and to their supervisor within 5 days of becoming aware of the misconduct or violation of standards.
24. Soliciting or advising another or others to commit misconduct whether or not the offense solicited or advised is attempted or committed.
25. Feigning an illness, physical disablement, mental illness, or intentionally inflicting self-injury.
26. Participation in any riot or breach of the peace.
27. Violation of a civil or military court order.

28. Non-compliance with a Commissioned Corps Directive (CCD), Commissioned Instruction (CCI), Personnel Policy Memorandum (PPM), or Personnel Operations Memorandum (POM).
29. Inappropriate use and/or posts on social media which includes, but is not limited to, posting comments or pictures that: reveals personally identifiable information (PII) about a patient or recipient of services provided by the officer while acting in an official capacity; has the potential to affect the integrity or success or otherwise compromises or jeopardizes an agency or USPHS Commissioned Corps mission; is a violation of an agency or USPHS Commissioned Corps policy; shares or reveals specifics regarding a USPHS Commissioned Corps deployment (e.g., dates, locations, assignments, etc.) including but not limited to any pictures taken during a deployment; disobeys a lawful order (e.g., during a USPHS Commissioned Corps deployment) (see Paragraph 2 of this Appendix); that is an action or behavior related to Paragraph 5; is an act or display related to Paragraph 8; is a statement related to Paragraph 9; is treatment related to Paragraph 12; is harassment related to Paragraph 14; is retaliation or action related to Paragraph 16; that has the potential to interfere with or hinder an investigation related to Paragraph 21; solicits or advises others to commit misconduct related to Paragraph 22; or that encourages a riot or breach of the peace related to Paragraph 26. For the purposes of this Paragraph, social media includes websites, applications, and web-based tools that allow the creation and exchange of user generated content and where people or groups can engage in dialogue, interact, and create, organize, edit, comment on, combine, and/or share content. This Paragraph does not apply to posts on social media that the SG, or his/her designee, has approved.
30. Use of equipment issued by an OPDIV/STAFFDIV/non-HHS organization (e.g., computers, cell phones) for official deployment duties while on a USPHS Commissioned Corps deployment and then retaining the information, or failing to ensure that the deployment's commanding officer or designee has the information, upon completion of the officer's deployment.
31. Receipt or storage of official information or communication on personal equipment (e.g., computers, cell phones) when not authorized by the USPHS Commissioned Corps, OPDIV/STAFFDIV, or non-HHS organization to which assigned.