



CCD 123.01
EFFECTIVE DATE: 7 September 2018

By Order of the Secretary of Health and Human Services:

Alex M. Azar II

SUBJECT: Involuntary Separation

1. PURPOSE: This Directive contains regulations governing the termination of the commission of an officer in the Commissioned Corps of the Public Health Service (Corps) without consent of the officer concerned.
2. APPLICABILITY: This Directive pertains only to commissioned officers in the Regular Corps with less than 20 years of creditable service for retirement eligibility purposes as defined in [42 U.S.C. §212\(d\)](#).
3. AUTHORITY:
 - 3-1. [42 U.S.C. §204](#), "Commissioned Corps and Ready Reserve Corps"
 - 3-2. [42 U.S.C. §211\(g\)](#), "Separation from service upon failure of promotion"
 - 3-3. [42 U.S.C. §211\(h\)](#), "Separation from service upon refusal to stand examination"
 - 3-4. [42 U.S.C. §211\(i\)](#), "Review of record; separation from service"
 - 3-5. [42 U.S.C. §216](#), "Regulations"
 - 3-6. [10 U.S.C. Chapter 61](#), "Retirement or Separation for Physical Disability"
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 is the second issuance of this Directive in the electronic Commissioned Corps Issuance System (eCCIS) and replaces Commissioned Corps Directive CCD123.01, "Involuntary Separation," dated 22 October 2015.
 - 5-1. Clarifies that the Directive applies only to Regular Corps officers.
 - 5-2. Specifies that, except for cases of marginal or unsatisfactory performance, an Involuntary Termination Board (ITB) is an administrative review board. Also adds an appeals process for an ITB's approved recommendation.

- 5-3. Specifies that an officer's records may be referred to an ITB for: refusal to undergo physical examination and/or furnish information; refusal to accept medical supervision; removal from the Temporary Disability Retirement List (TDRL) with no suitable assignment; removal from TDRL and does not meet a condition of service; failure to obtain a favorably adjudicated security/suitability investigation; licensure/certification non-compliance; force readiness non-compliance; uniform wear non-compliance; non-compliance with weight standards; or lack of a suitable assignment after completing a detail from a non-HHS agency.
- 5-4. Clarifies the potential consequences of an officer's failure to disclose a medical condition at the time of his/her appointment to the Corps.
- 5-5. Authorizes the termination of an officer's commission when he/she has 90 or more nonconsecutive calendar days of Absence Without Leave (AWOL).
- 5-6. Aligns the Subsections regarding failure of promotion with 42 U.S.C. §211.
- 5-7. Removes "For the Good of the Service" as an annotation to an officer's character of service.

6. POLICY:

6-1. Separation Boards

a. Except in the case of summary dismissals (i.e., probationary separations; absent without leave for 30 or more consecutive, or 90 or more non-consecutive, calendar days; or upon a guilty finding by a civil authority of one or more criminal offenses and sentenced to confinement for a period in excess of 30 days in a Federal or State penitentiary or correctional institution, with or without suspension or probation), separations through the 3-Year File Review process, separations through a Medical Review Board (MRB), separations due to failure of promotion, or cases involving the termination of an officer's commission by a Board of Inquiry (BOI) pursuant to Commissioned Corps Directive (CCD) 111.02, "Disciplinary Action," involuntary terminations will be reviewed by an Involuntary Termination Board (ITB).

b. An ITB is, unless otherwise noted, an administrative review board with no right to a hearing that is convened by the Surgeon General (SG). The ITB will be composed of at least three senior officers. If the reason for referral to the ITB is due to licensure/certification non-compliance, at least one of the board members will be of the same category as the officer under review.

(1) The ITB may recommend:

- (a) Retention, with or without reassignment elsewhere within the Department;
- (b) Reduction in Grade. Where the ITB 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;
- (c) Other disciplinary action; and/or
- (d) Termination of the officer's commission.

(2) Approval of ITB Recommendation.

- (a) The SG may approve the ITB's recommendations in whole or in part or may order another action that may not be of greater severity than that which has been recommended by the ITB.
- (b) The officer may appeal the SG's decision to the Assistant Secretary for Health (ASH) who will render the final Departmental decision. Such an appeal must be filed in writing within 20 calendar days of the date the officer receives written notification of the SG's decision.
- (c) If the officer's commission is terminated as a result of an ITB's recommendation, the termination will be characterized as "Honorable."

- 6-2. Termination of Officers' Commissions. The commission of an officer of the Regular Corps may be terminated without consent of the officer when such termination would be in the best interest of the Corps and/or any one of the following conditions is present:
- a. Probationary Period. Officers appointed to the Regular Corps will serve a probationary period consisting of the first 36 months of any tour of active duty. At any time during the 36 month probationary period the commission of any Corps officer on active duty may be summarily terminated without the opportunity to have his/her case considered by a board of officers for any lawful reason such as a lack of assignment after completing a departmental program or detail from another agency, lack of need or funding, disciplinary action, poor performance or other reasons specified by the ASH through policy. Except for an officer originally appointed to the Regular Corps in the Senior Assistant grade or above, the 36 month probationary period may be extended when an investigation has been initiated on an officer during the probationary period. In such cases, an extended probationary period will end within 90 days of completion of the investigation, but in no case shall it extend beyond four years.
 - b. 3-Year File Review. Upon completion of the probationary period, or first 36 months of service in the Regular Corps, the record of each officer originally appointed to the Regular Corps in the Senior Assistant grade or above may be reviewed in accordance with CCI 341.03, "Regular Corps Records Review." If warranted, the service records of officers will be referred to a 3-year File Review Board in lieu of an ITB. The board will be composed of three or more commissioned officers of the Regular Corps, the majority of whom, so far as practicable, will be of the same professional category as the officer whose record is under review. Based on a review of the officer's service records, the board will recommend either:
 - (1) The officer be retained in the Corps, with or without reassignment elsewhere within the Department, temporary grade reversion, and/or other disciplinary action, or
 - (2) The commission of the officer be terminated. If the commission of an officer is terminated under the provisions of this subsection, the officer's commission will be terminated on the date specified by the ASH and the officer will be paid 6 months of basic pay and allowances in accordance with 42 U.S.C. §211(i).

The review of the record by a 3-year File Review Board must be completed within four years of an officer's appointment to the Regular Corps.
 - c. Refusal to Undergo Physical Examination and/or Furnish Information. The commission of an active-duty officer may be terminated after review and recommendation from an ITB if the officer (a) refuses to undergo a physical or psychiatric examination as directed by a Medical Review Board (MRB), or (b) is being considered by Medical Affairs, Division of Commissioned Corps Personnel and Readiness (DCCPR), for a review by a MRB to determine the officer's fitness-for-duty and/or refuses to supply requested information or undergo examination in preparation for review by such board.
 - d. Refusal to Accept Medical Supervision. The commission of an active-duty officer who fails to comply with an official order issued by the Director, DCCPR, to

undergo medical evaluation or supervision may be terminated based on a recommendation from an ITB.

- (1) The same applies to a directed psychiatric evaluation with the exception that such examination requires a certification of need from a licensed psychiatrist, medical psychologist, or other mental health provider.
 - (2) A directive by DCCPR to undergo medical or psychiatric treatment, as opposed to evaluation, is not mandatory; however, failure to comply with treatment will be taken into account by either an administrative or medical board upon determination of appropriate disposition.
- e. **Physically Unfit to Perform Duties.** If a MRB finds that an active-duty officer has a physical disability which renders the officer physically unfit to perform the duties of his/her billet, office, rank, or category, and which is rated less than 30 percent, to include zero percent, the MRB will report its findings and recommendations to the SG. Such officer will be separated from active service, with severance pay in accordance with Federal law, regulation, and policy.
- f. **Removal from the Temporary Disability Retirement List (TDRL).** An officer who is found fit for return to full duty following a period on TDRL must meet the Corps' conditions of service in CCD 111.03, "Conditions of Service," and is also subject to any and all administrative actions, including involuntary termination, that were pending prior to placement on the TDRL. Additionally, if there is no assignment available that is commensurate with the officer's grade and category, or if the officer does not meet a condition of service, the officer's commission may be terminated after a review and recommendation by an ITB.
- g. **Pre-existing Physical Disability.** If, at any time after an officer's call-to-active duty (CAD), evidence becomes available that an officer has a medical condition which would have disqualified the officer for appointment had the existence of the condition been known to the Corps at the time of appointment, the evidence will be reported to the Director, DCCPR. The Director, DCCPR, will review the evidence and make a determination whether or not a material non-disclosure occurred. Material non-disclosure is defined as the withholding of significant and relevant information during the application process regarding one's medical history or condition, or failing to inform Medical Affairs, DCCPR, of a change in medical status following completion of the entry physical and his/her CAD. If the non-disclosure is considered to represent a significant risk or burden to the Government, then the withholding of information is deemed material and relevant. If the record contains evidence of material non-disclosure and:
- (1) If the non-disclosure is discovered within the timeframes outlined in Sections 6-2.a. or 6-2.b., the officer's commission may be terminated under the probationary or 3-Year File Review authorities, as applicable, in accordance with policies issued by the ASH;
 - (2) If the non-disclosure is discovered after the timeframes outlined in Sections 6-2.a. or 6-2.b. but prior to the anniversary of the officer's 8th year of service from the officer's CAD, the officer will be subject to disciplinary action and termination of his/her commission pursuant to CCD 111.02; or
 - (3) If the non-disclosure is discovered after the anniversary of the officer's 8th year of service from the officer's CAD and a MRB determines that the

medical condition is not disabling (i.e., a MRB finds the officer fit for duty), the officer may be subject to disciplinary action pursuant to CCD 111.02.

- h. **Medical Misconduct.** Cases of serious illness, injury or disability that a MRB determines are the result of the officers' intentional misconduct or willful neglect or incurred during a period of unauthorized leave will be referred to the appropriate authority for disciplinary action, including possible termination.
- i. **Absence Without Leave (AWOL).** The commission of an officer may be terminated if the officer is absent without leave for 30 consecutive calendar days or 90 or more nonconsecutive calendar days. The termination will be characterized as "dropped from the roll."
- j. **Security Requirements.** The provisions of Office of Personnel Management (OPM) Memorandum, "Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD-12," dated 31 July 2008 (hereinafter referred to as "OPM Memorandum"); 32 C.F.R. Part 161, "Identification (ID) Cards for Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals;" and Department of Defense Instruction (DoDI) 1000.13, "Identification (ID) Cards for Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals," are applicable to Corps officers; and, the SG, in accordance with the standards and procedures prescribed therein or adopted pursuant thereto, will:
 - (1) Cause investigations to be made of Corps officers and of candidates for commission in the Corps, in order to ensure that their appointments and their retention in office are clearly consistent with the interests of the national security.
 - (2) Suspend an officer from assigned duties, if necessary or advisable in the interests of the national security, while the security requirement is being appealed in accordance with the OPM Memorandum.
 - (3) Terminate an officer's commission upon a recommendation by an ITB that such termination is necessary or advisable in the interests of the national security. An ITB may not make a recommendation until the OPM Memorandum appeals process is finalized.

The Secretary retains the authority to suspend or separate any person on grounds of disloyalty or subversion; restore to duty any person who has been suspended on such grounds; or, reemploy any person who has been separated from any Federal position on such grounds. (See 215, 58 Stat. 690; 42 U.S.C. §216; E.O. 10497, dated 27 October 27 1953; OPM Memorandum; 32 C.F.R. Part 161; DoDI 1000.13).

- k. **Marginal or Substandard Performance.** An officer's service records may be referred to an ITB when evidence exists that the officer's performance is marginal or unsatisfactory. The ITB will, upon request of the officer or his/her representative, conduct a hearing in accordance with policies issued by the ASH.
- l. **Licensure/Certification Noncompliance.** The service records of an officer may be referred to an ITB when there is evidence that the officer has been disciplined by a State, National or other licensing/certifying authority, had a license revoked or suspended, or the officer is otherwise in non-compliance with the licensure/certification requirements established for Corps officers in his/her professional category or discipline.

- m. Failure of Promotion of a Junior Assistant Grade Officer. An officer who fails to be recommended for promotion to the permanent Assistant grade will have his/her commission terminated.
- n. Failure of Promotion of an Assistant Grade Officer. An officer who after having been twice examined for promotion fails to be promoted to the permanent Senior Assistant grade will have his/her commission terminated and paid 6 months of basic pay and allowances in accordance with 42 U.S.C. §211(g)(1).
- o. Failure of Promotion of a Senior Assistant Grade Officer.
 - (1) An officer who after having been twice examined for promotion and fails to be promoted to the permanent Full grade will have his/her commission terminated. A Regular Corps officer whose commission is terminated pursuant to this subsection will be paid 1 year of basic pay and allowances in accordance with 42 U.S.C. §211(g)(2).
 - (2) Subsection 6-2.o.(1) does not apply to failures of promotion when the ASH or his/her designee has restricted promotion to the permanent Full grade for a specific category. However, such an officer after having been twice examined for promotion and fails to be recommended may have his/her commission terminated in accordance with policy issued by the ASH.
- p. Failure of Promotion of a Full Grade Officer.
 - (1) An officer who after having been twice examined for promotion and fails to be promoted to the permanent Senior grade will be considered not in line for promotion and will, at such time thereafter, as the SG determines, be retired from the Corps with retired pay. See generally 42 U.S.C. §211(g)(3). Until the retirement is effected, the officer will serve at the permanent Full Grade.
 - (2) Subsection 6-2.p.(1) does not apply to failures of promotion when the ASH or his/her designee has restricted promotion to the permanent Senior grade for a specific category. However, in accordance with policy issued by the ASH, such an officer after having been twice examined for promotion and fails to be recommended may have his/her commission terminated or may be retained on active duty and retired upon reaching 20 years of creditable service towards retirement. If retained on active duty, the officer will serve at the permanent Full Grade until he/she is retired.
- q. Force Readiness Non-compliance. The service records of an officer may be referred to an ITB for failure to meet and/or maintain continuous compliance with the force readiness standards established by the ASH.
- r. Uniform Wear Non-compliance. The commission of an officer may be terminated after review by an ITB due to non-compliance with the Corps' uniform regulation (CCD 131.01, "Uniform Regulations") or refusal to wear the prescribed uniform of the day on a daily basis in the performance of official duties in accordance with policies and guidance established by the ASH or his/her designee.

- s. Weight Non-compliance. In accordance with policies issued by the ASH, the commission of an officer may be terminated after review by an ITB for non-compliance with the weight standards.
 - t. Substance use. In accordance with policies issued by the ASH, the commission of an officer may be terminated for substance use (see CCI 211.06, "Substance Use").
 - u. Lack of a Suitable Assignment. If after completing a detail from a non-HHS agency there is no assignment available that is commensurate with the officer's grade and category, the officer's commission may be terminated after a review and recommendation by an ITB.
- 6-3. Character of Service. An officer whose commission is involuntarily terminated in accordance with this Directive will have his/her discharge characterized as "Honorable."
7. RESPONSIBILITIES:
- 7-1. The ASH may promulgate additional policies and make delegations as necessary to implement this Directive, and may exercise any authority delegated to the SG, or his/her subordinate, at the discretion of the ASH.
 - 7-2. The SG is delegated the authority to terminate the commissions of officers under the conditions outlined in this Directive. This authority may not be re-delegated.
 - 7-3. 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.
8. HISTORICAL NOTES: This is the second issuance of this Directive within the eCCIS.
- 8-1. CCD 123.01, "Involuntary Separation," dated 22 October 2015.