



CCI 393.02
EFFECTIVE DATE: 2 July 2020

By Order of the Assistant Secretary for Health:

ADM Brett P. Giroir, M.D.

SUBJECT: Medical Appeals Board

1. PURPOSE: This Instruction sets forth the policy by which an officer of the Commissioned Corps of the U.S. Public Health Service (Corps) may appeal the findings and recommendations of a Medical Review Board (MRB), with respect to disability retirement, disability separation, or retention.
2. APPLICABILITY: This Instruction applies to all members of the Regular Corps and the Ready Reserve Corps who appeal the findings and recommendations of a MRB.
3. AUTHORITY: Commissioned Corps Directive [\(CCD\) 128.01](#), "Medical Fitness for Duty"
4. PROPONENT: The proponent of this Instruction is the Assistant Secretary for Health (ASH). The Surgeon General (SG) is responsible for ensuring the day-to-day management of the Corps.
5. SUMMARY OF REVISIONS AND UPDATES: This is the second issuance of this Instruction in the electronic Commissioned Corps Issuance System (eCCIS) and replaces Commissioned Corps Instruction (CCI) 393.02, "Medical Appeals Board," dated 12 June 2019. This version:
 - 5-1. Extends applicability to the Ready Reserve Corps.

6. POLICY: The MRB process is described in [CCI 393.01](#), "Medical Review Board." For the purposes of this Instruction, medical disability, examination, and standards, etc., includes physical, dental, and mental health disabilities, examinations, and standards, etc.

6-1. General Rules Governing an Appeals Board.

- a. An officer who appeals the findings and recommendations of a MRB that he/she is unfit for duty is entitled to a reconsideration of the matter by an Appeals Board (hereinafter referred to as "Board") and a final adjudication by the SG.
- (1) An officer may, unless the SG prohibits it, appeal the findings if the officer requested the fitness evaluation and the MRB finds him/her fit for full duty.
 - (2) An officer may not appeal a finding that he/she is fit for full duty if the program official or Director, Commissioned Corps Headquarters (CCHQ or successor organization), requested the fitness evaluation.
- b. An appeal to the Board (as evidenced by timely receipt in Medical Affairs Branch (MAB), CCHQ, of the written, "complete statement of appeal" (see Section 6-2.c.)) shall have the effect of suspending the findings and recommendations of the MRB.
- (1) If a "statement of intent to appeal" the MRB report is not received, the MRB report shall be referred immediately to the SG for a final determination (see Section 6-2.a.).
 - (2) If a "statement of intent to appeal" the MRB report is received as required in Section 6-2.a., but a "complete statement of appeal" is not received within 30 calendar days of receipt of the MRB report, the MRB report shall be referred immediately to the SG for a final determination.
 - (3) If the MAB receives a written request from the officer retracting his/her statement of appeal no later than 10 calendar days before the Board is scheduled to meet, the MRB report shall again become operative and shall be referred immediately to the SG for a final determination.
- c. The officer making the appeal (hereinafter referred to as "appellant") must request an appeal in writing to the Chief, MAB. The "complete statement of appeal" must contain all matters, materials and facts to be considered by the Board. Issues not stated in the appeal will not be considered by the Board except upon motion by either the appellant or the Chief, MAB, and ruled on by the president of the Board.
- d. Once the "complete statement of appeal" has been received and a retraction as authorized in Section 6-1.b.(3) is not received, the findings and recommendations of the MRB are null and void, do not establish a minimum threshold, and are not binding on the Board. (However, the MRB report will be made available to the Board in advance of the hearing.) At this point, no retraction is permitted; the case must be reviewed by the Board and only its findings and recommendations will be considered. The Board's findings and recommendations may be equally, more, or less favorable to the appellant than those of the MRB.
- e. All matters regarding MRB actions which are being appealed shall be referred to the Chief, MAB. Direct contact between Board members, the appellant or his/her counsel and MRB members is deemed inappropriate.

- f. The Chief, MAB, or Liaison Officer (see CCI 393.01, "Medical Review Board," for the roles and responsibilities of the Liaison Officer), may discuss with the appellant, his/her counsel, or Board members, procedural matters relating to the hearing. However, the merits of the case may not be discussed with the above parties prior to the hearing.
- g. A Board shall consist of three or more senior officers who are licensed as medical (e.g., physician, nurse practitioner, nurse, dentist, therapist, physician assistant) or mental health (e.g., psychiatrist, clinical psychologist, social worker, psychiatric nurse practitioner, psychiatric nurse) providers. At least one member must be an officer in the Medical category. Officers assigned to the Immediate Office of the Surgeon General, Immediate Office of the Director, CCHQ, or MAB may not serve as members of a Board. For cases in which a behavioral health issue is considered to be one of the significant disabling conditions, at least two of the members shall be mental health providers (e.g., psychiatrist, clinical psychologist, licensed clinical social worker, psychiatric nurse practitioner, or psychiatric nurse).
- h. No person who participated in the care and treatment of the appellant shall be appointed to the Board. No person who signed the MRB report which the appellant is appealing shall be appointed to the Board.
- i. Except at the direction of the Board president, neither the Agency, MAB, nor the appellant, is required to provide new evidence for the Board prior to the hearing, but may do so if any new information obtained would assist the Board in reaching an equitable determination. Such new evidence must be provided to the appellant and/or to the Board at least 14 calendar days before the hearing. Any documentation submitted after that date until up to 3 working days before the Board date, will be considered at the discretion of the Board. Written evidence received 3 working days or less before the Board date, including new written evidence presented during the Board hearing, will not be considered. MAB is not responsible for arranging evaluations or for acquiring documents which the appellant desires for support of his/her appeal.
- j. MAB will prepare a detailed written summary of all pertinent information, including any new information, for presentation to the Board. Copies of all source documents including information provided prior to and after the MRB will be available to the Board members at the time of the hearing and during the Board's deliberations. Medical and other pertinent information considered by the MRB shall be incorporated into the Board record.
- k. The appellant and the Board members will be provided with copies of pertinent records.
 - (1) The Board members shall be provided reasonable time to review the records prior to the hearing date.
 - (2) The appellant may request in writing, additional records from the Chief, MAB.
- l. The Board may request and receive any pertinent material, facts, or expert technical advice which it believes will aid in achieving an equitable result. The Director, CCHQ, may appoint a PHS representative as a non-voting member to provide policy guidance to the Board, or request legal assistance from the Office of General Counsel (OGC).

- m. The appellant may utilize any desired counsel at his/her own expense to assist with the development and presentation of the appeal. There is no statutory authority which will permit the Corps to reimburse an appellant for any expenses incurred in the appeals process.
 - n. Strict rules of evidence will not apply to the proceedings. However, the hearing will be conducted in such a manner as to assure an equitable result.
 - o. Postponing and continuing hearings:
 - (1) If the appellant fails to appear before the Board on the date, time, and place specified, without prior notice to the Chief, MAB, the Board will proceed with the hearing and make a determination based on the case records at hand.
 - (2) In the event of a bona fide emergency, e.g., acute illness or injury to the appellant occurring before the hearing date, the hearing may be postponed to a later date by the Director, CCHQ.
 - (3) If an emergency as set forth in preceding subparagraph (2) occurs on the day of the hearing, the Board president shall make a determination whether to continue the hearing or postpone it to another date.
 - (4) If the counsel for the appellant, or important witnesses or other parties to the proceedings are not present at the hearing, the Board president may decide to either continue the proceedings or establish another date for the hearing.
 - (5) The Director, CCHQ, will be notified of all postponements by the Board president.
- 6-2. Responsibilities of the Appellant. Timely action is essential in order to provide expeditious resolution of the matter. Therefore, the appellant is required to:
- a. File a "statement of intent to appeal" addressed to Chief, MAB, within 7 calendar days of receipt of the report of the MRB;
 - b. Notify the Chief, MAB, of the name, address, and telephone number of any person who has been retained as counsel in the appeal using the appropriate form obtained from MAB;
 - c. File a "complete statement of appeal," which addresses all matters, materials, or facts at issue, within 30 calendar days of receipt of the MRB report;
 - d. Notify MAB of witnesses who may appear on his/her behalf and arrange for the witness to appear at the hearing at no expense to the government; and
 - e. If it supports the appeal, obtain necessary treatment and provide any additional relevant medical documentation related to his/her condition(s) to the Chief, MAB, no later than 14 calendar days prior to the Board meeting.
 - f. An officer who failed to file a timely appeal and who is found unfit for duty by the SG may submit an application to the Board for Correction of Commissioned Corps Records. (See [CCD 129.01](#), "Board for Correction")

- 6-3. Responsibilities of the Director, CCHQ. The Director, CCHQ, or designee shall appoint a Board consisting of at least three Corps officers (see Section 6-1.g.).
- a. One member shall be designated to serve as president of the Board.
 - b. One member shall be assigned, when necessary, to serve as recorder (See Section 6-6.c. and i.). A court reporter may also be procured by CCHQ to carry out the duties of the recorder.
 - c. No officer shall be excused from serving on this Board except upon presenting evidence to the Director, CCHQ, of illness or hardship.
- 6-4. Responsibilities of MAB, CCHQ. The Chief, MAB, shall:
- a. Provide the appellant with a copy of this Instruction upon receipt of a “statement of intent to appeal” (see Section 6-2.a.);
 - b. Provide the appellant and/or his/her counsel with copies of pertinent medical records within 7 calendar days of receipt of the statement of intent to appeal. Appellant is expected to keep copies of all records that the appellant sent to MAB;
 - c. Respond to written request(s) by the appellant for additional records;
 - d. No later than 21 calendar days after receipt of the “complete statement of appeal,” establish a time and place for the hearing and provide notification thereof to the Board members and the appellant. The Director, CCHQ, may, under extenuating circumstances, grant an exception to this deadline.
 - e. Distribute to the Board members copies of the MRB report, pertinent medical records which have been disclosed to the appellant, the appellant’s “complete statement of appeal” and all materials submitted by the appellant for consideration by the Board;
 - f. At the request of the members of the Board, arrange for witnesses to appear at the hearing, and provide additional information to the Board members. Any additional information received by MAB and provided to the Board concerning the case will also be provided to the appellant or his/her counsel; and
 - g. Review the recommendations of the Board before submission to the SG, to assure such recommendations conform with existing laws, regulations and policies.
- 6-5. Responsibilities of the Board Members.
- a. Members of the Board shall be prepared to appear on the day and time and at the site specified for the purpose of conducting the hearing.
 - b. Board members may request the following, when needed, from the Chief, MAB. (Request will be made no later than 5 working days prior to the hearing date.)
 - (1) Additional records;
 - (2) Clarification of records already furnished; or
 - (3) Participation in the hearing by any health care provider who participated in the physical examination upon which the MRB report was based, or by any person who has information pertinent to the case.

6-6. Hearing Board Procedures.

- a. The hearing may be conducted in whole or in part via teleconference, via video conference, or in person.
- b. The president shall convene the Board.
- c. All testimony before the board will be given under oath administered by the recorder.
- d. All correspondence between MAB (including the Chief, MAB), the appellant, and the Board members shall be made part of the record. The Chief, MAB, will determine whether correspondence between the Liaison Officer and the appellant should be included in the record based on the relevancy of the communication to the evaluation of the appellant's fitness for duty.
- e. The appellant or his/her counsel may make a statement regarding dissatisfaction with the MRB findings. Supporting evidence by written or oral statements from expert witnesses may also be presented to the Board.
- f. The Board may question the appellant, and/or witnesses, seeking more information and clarification.
- g. The Chief, MAB, or an official designee, shall be present at the hearing to make statements for purposes of clarifying the record, applicable statutes, Corps regulations and policies, and to respond to questions by the appellant, his/her counsel, or members of the Board.
- h. The president of the Board shall insure that the hearing is conducted in an orderly and efficient manner. The president of the Board may limit any statements to that material or information which the Board finds to be pertinent or helpful to an equitable resolution.
- i. A verbatim written transcript of the hearing shall be prepared when practicable. When this is not practicable, the recorder shall maintain a record of all sessions of the Board, including times of convening and adjourning, names of persons appearing before the Board, a resume of their statements, and a description of all documentary material introduced. In the event that no verbatim transcript is made, the appellant or his/her counsel, if any, shall be given an opportunity to review the record and to certify to its correctness. Such certification must be received by MAB no later than 7 calendar days from the date of receipt of the record.

6-7. Deliberations and Conclusions by the Board.

- a. After the hearing has adjourned, the Board members will:
 - (1) Consider the record and all information obtained during the hearing; and
 - (2) Based on the applicable provisions of Title 10, Chapter 61, U.S. Code, and the material and information presented to the Board, prepare a report to the SG, which will include a recommendation as to whether or not the appellant should be retained on active duty, retired for disability, or separated from the Service, and the reasons therefore; and, as appropriate, rate the disability in accordance with the Veterans Administration Schedule for Rating Disabilities (VASRD) (see CCI 393.01,

“Medical Review Board,” for recommendations available to the Board and use of the VASRD). As stated in Section 6-4.g., the Chief, MAB, will review the Board’s recommendations before submission to the SG.

b. The Chief, MAB, shall not participate in the Board’s deliberations.

6-8. Action by the SG. The SG shall make a determination on the case as he/she deems appropriate (CCD 128.01, “Medical Fitness for Duty”), based on the record including the findings and recommendations of the Board. The appellant will be notified by the Chief, MAB, of the determination made by the SG. The decision of the SG is final.

7. RESPONSIBILITIES:

7-1. The ASH is responsible for establishing policies related to disability retirement and separation.

7-2. The SG is responsible for ensuring the day-to-day management of the Corps and may issue a Personnel Operations Memorandum (POM), through the electronic Commissioned Corps Issuance System (eCCIS), to address specific compliance issues.

7-3. The Director, CCHQ, is responsible for providing oversight to the appeals process.

7-4. The Chief, MAB, CCHQ, is responsible for coordinating the administrative arrangements for the Board.

7-5. Board members are responsible for maintaining the confidentiality of the appellant’s records, the Board proceedings, and for notifying the Chief, MAB, of any potential conflicts of interest.

7-6. All officers are responsible for adhering to the guidelines and procedures listed in this Instruction.

8. HISTORICAL NOTES: This is the second issuance of this Instruction in the eCCIS.

8-1. CCI 393.02, “Medical Appeals Board,” dated 12 June 2019.

8-2. Commissioned Corps Personnel Manual (CCPM) CC23.8.7, “Medical Appeals Board Incident to Findings and Recommendations of the Commissioned Corps Medical Review Board,” dated 12 March 1996.