

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Chapter CC23--Staffing
Subchapter CC23.6--Separation
Personnel INSTRUCTION 4 -- Nonduty With Pay Status

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Section A. Purpose

This INSTRUCTION states the policies and related procedures regarding the placing of a United States Public Health Service (PHS) commissioned officer into nonduty with pay status for limited periods of time.

Section B. Authority

Section 215 of the PHS Act (42 U.S.C. 216) authorizes the President to prescribe regulations with respect to the discipline of the PHS Commissioned Corps. This authority has been delegated to the Secretary, Department of Health and Human Services (HHS) under Executive Order 11140, dated January 30, 1964.

1. The authority to place officers in nonduty with pay status is in the Secretarial regulations set forth in Section E.1.c. of the Commissioned Corps Personnel Manual, Subchapter CC46.4, INSTRUCTION 4, "Disciplinary Action."
2. The authority to administer the PHS Commissioned Corps is prescribed in Section 215 of the PHS Act (42 U.S.C. 216). The authority for the daily administration of the PHS Commissioned Corps has been delegated to the Director, Division of Commissioned Personnel (DCP), Human Resources Service, Program Support Center.
3. Authority to pay officers is specified in 37 U.S.C. 201 § et. seq.

Section C. Reasons for Suspension from Duty

1. A PHS commissioned officer may be placed into nonduty with pay status if it has been determined by his/her supervisor, program manager, or the Director, DCP, that it would be in the best interest of the Government to remove that officer from duty pending reassignment or disciplinary action.
2. A PHS commissioned officer may be placed into nonduty with pay status because of pending actions to discipline, separate or retire the officer. An officer must be removed immediately from a specific duty station due to security or suitability reasons pending reassignment to another appropriate site, and presence of allegations of sufficient severity to warrant removal from duty as a precautionary measure pending a full investigation of such allegations.
3. An officer may also be placed in nonduty with pay status after a determination is made that the officer should be separated from active duty for cause.

Section D. Procedures

1. A PHS commissioned officer may be placed into nonduty with pay status for a period not to exceed 60 calendar days. This will be accomplished initially with a letter or memorandum to the officer indicating the reason(s) why the officer is being placed in a nonduty with pay status and

indicating the start date and ending date (no more than 60 calendar days from the start date). Placements in nonduty with pay status pursuant to this INSTRUCTION must be reported immediately, i.e., within one workday to the Director, DCP, Surgeon General's Policy Advisory Council (SGPAC) Representative, and Commissioned Corps Liaison by the official placing the officer in nonduty with pay status.

2. The official placing an officer in nonduty with pay status shall notify the Director, DCP, SGPAC Representative, and Commissioned Corps Liaison of such action within 24 hours or one workday. The notice must include a statement regarding the feasibility and/or appropriateness of a temporary duty assignment during the period in question.

Copies of the letter or memorandum placing the officer into nonduty with pay status must be sent to the OPDIV or Program's Surgeon General's Policy Advisory Council (SGPAC) Representative and the OPDIV or Program's Commissioned Corps Liaison, as well as the Director, DCP. The notification to the Director, DCP, must include a copy of the letter or memorandum to the officer placing him/her in nonduty with pay status, and indicating the start date (of the nonduty with pay status) and the end date, which will be no later than 60 calendar days after the starting date. A copy of this notification must also be sent to the SGPAC Representative.

3. By close of business the next workday, the supervisor or program manager will initiate a form PHS-1662, "Request for Personnel Action - Commissioned Officer," indicating the start date and end date (no more than 60 calendar days from the start date). A photocopy of form PHS-1662 will be immediately faxed to the Office of the Director, DCP, with the original form PHS-1662 sent to the Director, DCP, through regular channels.
4. After review and approval by the Director, DCP, a personnel order will be issued placing the officer in nonduty with pay status, and indicating the initial start and end dates of the nonduty with pay status placement.
5. Within the 60-calendar day period, the OPDIV or Program will initiate and complete its full investigation of all allegations made against the officer, and the officer will either be cleared for return to duty or referred for appropriate disciplinary action.
 - a. If the officer is cleared for return to duty, the officer must be returned to duty on or before the nonduty with pay status end date.
 - b. If the officer is not cleared for return to duty, the OPDIV or Program will contact DCP to determine the appropriate disciplinary action to be taken pursuant to this manual.

OPDIV or Program managers must remain cognizant of the 60-calendar day nonduty with pay status limitation and plan for the officer's return to

duty status at his/her duty station based on the personnel order issued by DCP.

6. Requests for extensions beyond the initial 60 calendar days on nonduty with pay status, if recommended by the OPDIV or Program's SGPAC Representative and approved by the Director, DCP, will be announced as an amendment(s) to the initial personnel order which placed the officer in nonduty with pay status. Requests for extensions beyond the initial 60-calendar day period must be received in the Office of the Director, DCP, at least five workdays prior to the expiration of the current nonduty with pay period. Such requests must include a plan of action for either returning officers to duty or separating officers.

The OPDIV or Program's plan for the officer's return to duty must include the status of any ongoing investigation and/or any tentative resolutions being considered.

7. If no extension is requested by the OPDIV or the extension is not approved by the Director, DCP, that officer will return to his/her normal duty station at the end of the initial period in nonduty with pay status.
8. If it is anticipated that after a period in nonduty with pay status, a PHS commissioned officer will be returned to HHS from a detail based on a Memorandum of Agreement/Understanding, the program to which the officer is detailed, will immediately contact the Director, DCP.
9. The Director, DCP, may initiate action to place a PHS commissioned officer into nonduty with pay status when the officer has been formally referred for an involuntary separation action (see Section C.2., above).

Section E. Impact on Personnel and Payroll Elements

1. Officers placed into nonduty with pay status are relieved of their regular duties, although they remain on active duty in the PHS Commissioned Corps and continue to receive all normal pay and allowances.
2. The placement of an officer in nonduty with pay status will not have an effect on the active-duty obligation pursuant to:
 - a. The Senior Commissioned Officer Student Training and Extern Program (SRCOSTEP);
 - b. Uniformed Services University of the Health Sciences (USUHS); and/or
 - c. Any extramural long-term training program.
3. The placement of an officer in nonduty with pay status will have an effect

on the active-duty obligation pursuant to the National Health Service Corps (NHSC) scholarships and loan repayment programs. Time spent in a nonduty with pay status will not fulfill the requirements for the NHSC scholarships or loan repayment programs. Those programs require an officer to provide clinical services in an ambulatory care setting approved by the program.

Section F. Impact on Leave

1. If a PHS commissioned officer is directed to leave his/her duty station and is assigned to his/her residence, he/she shall remain in the vicinity of his/her local residence and shall be available for recall to his/her duty station at any time. During the period an officer is assigned to a nonduty with pay status, he/she must be available to receive telephone calls, mail, and/or messages delivered to his/her residence. Officers must report immediately any change in residence or telephone number, in writing, to their supervisor (or other point of contact as designated by program management) and to the Director, DCP:
 - a. Unless on approved leave, an officer must call his/her supervisor each workday during his/her normal tour of duty or as specified in nonduty with pay memorandum. If the officer fails to call, and the supervisor is unable to reach the officer by telephone, the officer will be placed in an Absence Without Leave (AWOL) status, unless the supervisor is willing to accept the officer's explanation of why he/she did not call.
 - b. Except when on approved leave, an officer will also be considered AWOL if he/she fails to respond to telephone messages, courier messages, or certified mail with 24 hours of delivery, or if the officer cannot be reached by telephone at his/her residence after three attempts within a 24-hour period.
2. During the period of placement into nonduty with pay status, an officer must contact his/her supervisor if:
 - a. The officer wishes to leave the vicinity (within a 50-mile radius) of his/her local residence, the officer must request and receive approval for station leave and/or annual leave, as applicable;
 - b. The officer becomes ill or injured, the officer must request and receive approval for sick leave; and
 - c. The officer wishes to visit his/her normal place of duty (i.e., Government office or the offices of superiors and/or coworkers in the same building or complex), the officer must request and receive permission for the visit.

Section G. Removal of Personnel Orders from Official
Personnel Folder

If after a full investigation of the allegation made against a PHS commissioned officer, it is determined that there was no validity to the allegations and the officer did not commit any misconduct, the officer, his/her supervisor, program management, the OPDIV or Program's SGPAC Representative may request the removal of the applicable request for placement into nonduty with pay status, i.e., the original form PHS-1662, extension request(s), and associated personnel order(s) from the officer's official personnel folder.

Such a request must be made to the Director, DCP, and must be accompanied by a copy of the results of the OPDIV or Program's investigation of the allegation(s), and must clearly indicate that the officer did not commit any misconduct.

Section H. Privacy Act Provisions

Personnel records are subject to the provisions of the Privacy Act of 1974. The applicable systems of records are 09-37-0002, "PHS Commissioned Corps Personnel Records," HHS/OASH/OSG.

Exhibit I

Sample Memorandum



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Memorandum

Date

From: Supervisor
Operating Division (OPDIV)

Subject: Nonduty With Pay Status

To: Officer

Pursuant to the Commissioned Corps Personnel Manual (CCPM), INSTRUCTION 4, Subchapter CC23.6, "Nonduty With Pay Status," you are hereby directed into a nonduty with pay status for a period not to exceed _____ days.

On [date], you [allegations of misconduct of substandard performance].

Based on this information, I have concluded that it would be in the best interest of the Service that you be relieved of your duties pending the outcome of an investigation and/or disciplinary action.

You are to immediately surrender to me your employee's identification badge(s), building pass, any key(s), and swipe cards, etc., which provide you entry into this OPDIV or any other [OPDIV] facility. While you are in a nonduty with pay status, you remain an active duty officer of the PHS Commissioned Corps assigned to this OPDIV. Accordingly, you must remain in and available to report back to duty with 4 hours notice.

You are hereby directed to telephone me or [name] at [time] every workday, at the telephone numbers listed below, and speak directly and personally to one of us so that we can discuss any changes in your work status. Should none of us be available, you are to contact the Employee Relations Specialist on [telephone number].

The OPDIV may call you to report to duty at any time during your normal work day. Therefore, you must remain available to the OPDIV, and must request leave for absences in a manner consistent with the above CCPM INSTRUCTION, when you are not available for work. If you fail to do so, and are unavailable when needed or called upon, you will be charged absence without leave (AWOL) for the period of unavailability.

You are further directed not to travel beyond a 50-mile radius of your home without receiving my or [name] approval. To facilitate our contacting you, you must immediately provide me or [name] with your current residence address and telephone number. You may also provide an e-mail address, beeper number or personal cellular phone number if you anticipate a need to contact you through such means.

Exhibit I (continued)

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Nonduty With Pay Status (Continued)

You may collect and remove any personal items from our office before you leave today. You may not, however, remove any Government documents, equipment or supplies. [Personal items not removed will be boxed and placed in storage.] Further, you are to refrain from performing any work or taking any actions of an official nature.

You will be escorted to your office for this purpose before being escorted out of the building.

[If the case involves possible threats to the safety and well-being of employees or government property, include the following.....].

Finally, during this period of nonduty with pay status, you are directed not to appear at any (OPDIV) facility for any reason without explicit and advance permission from me or [name]. If you wish to enter a building for any reason, you must call me on [telephone number] or to seek and secure permission in advance to enter the premises. If you try to enter any (OPDIV) building without securing the appropriate authorization, the guards will be instructed to have you removed from the premises.

Failure to comply with this or any other instruction will subject you to being placed in AWOL status and/or to disciplinary action based on your failure to follow orders.

The terms and conditions of this letter will remain in force until the _____ day period (noted in paragraph 1, above) lapses or until you are directed to return to duty.

Please call me if you have questions about these requirements. Also, please contact the Employee Relations Specialist if you have questions about the procedures or regulations applicable to these requirements.

John Doe
Supervisor

CC: Commissioned Corps Liaison
Director, Division of Commissioned Personnel

Received _____ Date _____
Officer's Signature