



CCI 382.03
EFFECTIVE DATE: 20 July 2020

By Order of the Assistant Secretary for Health:

ADM Brett P. Girior, MD, MPH

SUBJECT: Involuntary Termination of Commission

1. **PURPOSE:** This Instruction states the policies and procedures under which an officer in the Commissioned Corps of the U.S. Public Health Service (Corps) who is not retirement-eligible, may have his/her commission involuntarily terminated.
2. **APPLICABILITY:** This Instruction applies to all Corps Officers with less than 20 years of creditable service for retirement eligibility purposes as defined in 42 U.S.C. §212(d), except it does not apply to the following:
 - 2-1. Officers within the probationary period that consists of the first 36 months, or up to 48 months if the probationary period has been extended, of any appointment or call to active duty; and
 - 2-2. Regular Corps officers originally appointed at the permanent Senior Assistant (LT/O-3) grade or above whose commission is involuntarily terminated pursuant to a 3-year file review (see CCI 341.02, "Regular Corps Records Review").
3. **AUTHORITY:**
 - 3-1. 42 U.S.C. §206, "Assignment of officers"
 - 3-2. Commissioned Corps Directive (CCD) [123.01](#), "Involuntary Separation"
 - 3-3. [CCD 111.02](#), "Disciplinary Actions"
 - 3-4. [CCD 111.03](#), "Conditions of Service"
4. **PROPONENT:** The proponent of this Instruction is the Assistant Secretary for Health (ASH). The responsibility for ensuring the day-to-day management of the Corps belongs to the Surgeon General (SG).
5. **SUMMARY OF REVISIONS AND UPDATES:** This is the first issuance of this Instruction within the electronic Commissioned Corps Issuance System (eCCIS) and replaces Commissioned Corps

Personnel Manual (CCPM) CC23.7.4, "Involuntary Termination of Regular Corps Officers for Marginal or Substandard Performance," dated 25 September 1998. This revision:

- 5-1. Adds failure to meet the conditions of service as defined in CCD 111.03, "Conditions of Service," as a cause for an officer's involuntary separation.
- 5-2. Specifies that, except for cases of marginal or substandard performance, an Involuntary Termination Board (ITB) is an administrative review board. Also adds an appeals process for an ITB's approved recommendation.
- 5-3. Adds summary dismissals for 30 or more consecutive or 90 or more nonconsecutive calendar days of Absence Without Leave (AWOL) as a reason for an officer's involuntary separation.
- 5-4. Directs that the Director, Commissioned Corps Headquarters (CCHQ) shall place an officer into AWOL status due to the officer's detention or arrest by Federal, State, Tribal, or local civilian authorities. It also authorizes the Director, CCHQ, to excuse such absences as unavoidable.
- 5-5. Adds a sentence 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, as a reason for an officer's involuntary separation.
- 5-6. Specifies that an officer's records may be referred to an ITB for: marginal or substandard performance; 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 or failure to meet a condition of service; medical unsuitability; 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; substance use; lack of a suitable assignment after completing a detail from a non-HHS agency; or a promotion non-recommend or failure.
- 5-7. Clarifies the process for separating an officer for disloyalty or subversion.

6. POLICY: All Corps officers have a continuing responsibility to adhere to Corps regulations and policies and to effectively perform their assigned duties. An officer who fails to meet and maintain the standards may have his/her commission involuntarily terminated as set forth in this Instruction.

6-1. Summary Dismissals.

- a. Absence Without Leave (AWOL). The SG may terminate a Corps officer's commission, who is AWOL for 30 consecutive calendar days or 90 or more nonconsecutive calendar days at any time during the officer's career.
- (1) An officer who is absent from duty due to detention or arrest by Federal, State, Tribal, or local civilian authorities or by an Armed Force shall be placed into an AWOL status by the Director, Commissioned Corps Headquarters (CCHQ), if not excused as unavoidable by the Director, CCHQ.
 - (2) An officer whose commission is terminated under the circumstances outlined in this Subsection will have his/her service characterized as "dropped from the roll."
- b. Sentenced to Confinement. The SG may summarily terminate a Corps officer's commission, upon a finding by a civil or Armed Forces authority that the officer is guilty of one or more criminal offenses and the officer is sentenced to confinement for a period in excess of 30 days with or without suspension or probation.

6-2. Initiation of Action.

- a. The SG or Director, CCHQ, may refer an officer's records to an ITB when such action is warranted. In such cases, CCHQ may seek input from the officer's Commissioned Corps Liaison, supervisor, and other appropriate individuals.
- b. A supervisor or an official in the officer's administrative chain may recommend referral of an officer's records to an ITB (see Section 8). After reviewing the recommendation and the officer's records, the Director, CCHQ, will:
- (1) Convene an ITB if warranted;
 - (2) Request additional documentation from the OPDIV/STAFFDIV/non-HHS organization; or
 - (3) Deny the request.

6-3. Reasons for Referral to an Involuntary Termination Board (ITB). An officer's records may be referred to an ITB by the Director, CCHQ, under the following conditions:

- a. Marginal or Unsatisfactory Performance. An officer's records may be referred to an ITB if the Director, CCHQ, determines that the officer's overall record warrants such a referral based the receipt of a "Marginal" or "Unsatisfactory" Annual COER for 2 or more years, which may be non-consecutive; a record of marginal performance over multiple reviews as indicated by COERs or other documentation; or a progressive downward trend in overall performance resulting in an unacceptable record of performance. In making his/her decision to refer of an officer's records to an ITB, the Director, CCHQ, will consider the actions taken by the supervisor/program to assist the officer in improving his/her performance.

- b. Refusal to Undergo Physical Examination and/or Furnish Information. An officer may have his/her records referred to an ITB if the officer:
- (1) Fails to supply information within the timeframe specified by Medical Affairs, CCHQ, when the officer is being considered for a review by a Medical Review Board (MRB) or Medical Appeals Board to determine the officer's fitness for duty;
 - (2) Fails to undergo an examination that is requested by Medical Affairs in preparation for review by a MRB or Medical Appeals Board within the timeframe specified by Medical Affairs; or
 - (3) Fails to comply with a directive by a MRB or Medical Appeals Board to undergo a physical or psychiatric examination within the timeframe specified by the MRB/Medical Appeals Board and/or fails to furnish the results of the examination within the specified timeframe.
- c. Refusal to Accept Medical Supervision.
- (1) An officer may have his/her records referred to an ITB if the officer fails to comply with a directive by the SG or Director, CCHQ, to undergo a medical evaluation or supervision, which includes a directed psychiatric evaluation provided that the need of such examination is certified by a licensed psychiatrist, medical psychologist, or other mental health provider.
 - (2) A directive to undergo medical or psychiatric treatment, as opposed to evaluation, is not mandatory; however, failure to comply with such treatment will be taken into account by an ITB upon determination of appropriate disposition.
- d. Removal from the Temporary Disability Retirement List (TDRL).
- (1) An officer who is found fit for return to full duty following a period on TDRL may have his/her records referred to an ITB if the officer requests a return to active duty and the officer:
 - (a) Does not meet a condition of service (see CCD 111.03, "Conditions of Service," and corresponding policies);
 - (b) Is unable to secure an assignment within 90 days of being found fit for return to full duty that is commensurate with the officer's grade and category; or
 - (c) Was referred, or in the process of being referred, to an ITB prior to placement on TDRL.
 - (2) An ITB may be convened, the recommendation approved, and the officer's commission terminated without the officer's placement into an active duty status.
 - (3) In the case of no suitable assignment, the officer's records may be referred to the ITB prior to the expiration of the 90 days; however, the effective date of the termination of a commission may not be earlier than 90 days from the fit for duty determination and if the officer secures a suitable assignment prior to the 90 days, his/her commission may not be terminated.

- e. **Unsuitability.** An officer's records may be referred to an ITB if the SG approves a fit for full duty finding by a MRB or Medical Appeals Board and, based on documented allegations, reports, or other circumstances that are unrelated to an impairment or disability, the SG has reason to believe the officer is unsuitable for continued service. The officer's records may also be referred to an ITB if the SG deems the officer to be unsuitable in accordance with [CCI 393.01](#), "Medical Review Board." The records reviewed by the ITB may include a statement from the Chief, Medical Affairs, that the officer has been found fit for duty by the SG.
- f. **Security Requirements.** An officer's records may be referred to an ITB if the officer fails to retain continual eligibility for a security clearance that is required by either the Corps or the Operating/Staff Division (OPDIV/STAFFDIV) or non-Department of Health and Human Services (HHS or Department) organization to which the officer is assigned (the minimum required by the Corps is a Defense Security Service Tier 3 (Secret) security clearance (see CCD 111.03, "Conditions of Service," and [CCI 231.04](#), "Background Investigation Requirement")). An officer may not be referred to an ITB in the following circumstances:
 - (1) While the security requirement is being appealed in accordance with the Office of Personnel Management (OPM) Memorandum, "Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD-12," dated 31 July 2008. However, the officer may be placed in a Non-Duty With Pay (NDWP) status by the Director, CCHQ, if necessary or advisable in the interests of the national security.
 - (2) If the failure to remain eligible for a security clearance is based on any of the conditions outlined in [18 U.S.C. Chapter 115](#). Such officer's records shall be referred to the HHS Secretary upon a criminal conviction by a civil or military court or after a review by a Board of Inquiry (BOI) for the Secretary's decision on whether the officer's commission will be terminated.
- g. **Licensure/Certification Noncompliance.** An officer's records 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 the officer's professional category or discipline. (See [CCI 251.01](#), "Professional Licensure and Certification.")
- h. **Force Readiness Non-compliance.** An officer's records may be referred to an ITB for failure to meet and/or maintain compliance with the force readiness standards for 3 or more consecutive monthly checks or 5 or more monthly checks in a 24 month period (See [CCI 241.01](#), "Readiness and Duty Requirements.").
- i. **Uniform Wear Non-compliance.** An officer's records may be referred to an ITB if he/she is disciplined for non-compliance with the uniform regulations and policies or is disciplined for refusal to wear the prescribed uniform of the day on a daily basis in the performance of official duties (See [CCD 131.01](#), "Uniform Regulations;" [CCI 411.01](#), "Required Wear of the Uniform;" [CCI 412.01](#), "Uniforms and Appearance;" [CCI 413.01](#), "Special Uniform Situations;" [CCI 421.01](#), "Uniforms for Male Officers;" and [CCI 421.02](#), "Uniforms for Female Officers.").
- j. **Weight Non-compliance.** An officer's records may be referred to an ITB for failure to meet and/or maintain compliance with the weight standards provided the

Medical Affairs Branch or an MRB has determined that the failure is not the direct result of an underlying medical condition. Additionally, an officer's records may be referred to an ITB for failure to comply with guidance issued by the SG (e.g., failure to submit and/or follow a Documented Plan). (See CCI 241.01, "Readiness and Duty Requirements" and Personnel Operations Memorandum (POM) [821.66](#), "Retention Weight Standards.")

- k. **Substance Use.** An officer's records may be referred to an ITB for substance use, provided the officer is not in Safe Harbor (see [CCI 211.06](#), "Substance Use"). The records reviewed by the ITB may include any relevant medical records as determined by the Chief, Medical Affairs, which may include a summary of relevant medical information provided by Medical Affairs. Medical Affairs will redact from the medical documents information that is not relevant to the substance use issue. Reasons for referral to the ITB include, but are not limited to:
- (1) The use of illicit drugs; unlawful use of controlled drugs; the non-medical abuse of prescription medications; abusing alcohol; huffing (i.e., the practice of purposefully inhaling chemical vapors to reach and achieve a euphoric mental and/or physical state); or use of other substances such as synthetic cannabis or Tetrahydrocannabinol (THC) also known as Spice, K2, or Bath Salts;
 - (2) Unauthorized use or consumption of such substances while on duty or being under the influence of such substances while on duty;
 - (3) Failure to seek Safe Harbor as outlined in CCI 211.06;
 - (4) Removal from, without eligibility to re-enter, Safe Harbor;
 - (5) Relapse following a second course of treatment for the same substance(s) (e.g., any substances within a drug class or its derivatives/metabolites), failure to follow treatment recommendations after reporting a relapse, or failure to complete required treatment; or
 - (6) A positive result from a random or directed drug and/or alcohol test that indicates use of such substances.
- l. **Promotion Failure.** [CCI 331.01](#), "Permanent Grade Promotions," outlines the circumstances under which the Director, CCHQ, may terminate an officer's commission due to a failure of promotion without further review by another board. However, an officer's records may be referred to an ITB if the officer:
- (1) Fails to be recommended for promotion by an Annual Temporary Promotion Board (ATPB) (see [CCI 332.01](#), "Temporary Promotions").
 - (2) Is reviewed by an ATPB and scored in the bottom decile for his/her category and grade for 3 consecutive years;
 - (3) Received a "not recommend" by an ATPB;
 - (4) Fails to be promoted to the permanent O-4, O-5, or O-6 grade because he/she has a score in the lowest decile, or is not recommended by an Annual Permanent Promotion Board (APPB), or is eliminated from the approval list (or any combination thereof) after having been examined for promotion to such grade three or more times (this provision does not apply to an officer who has 18 or more years of creditable service for retirement);

- (5) Was not notified by CCHQ of each occurrence of his/her failure of permanent promotion as required by CCI 331.01, "Permanent Grade Promotions."

Note: Policy regarding failure of permanent promotion is in CCI 331.01, "Permanent Grade Promotions."

- m. Lack of a Suitable Assignment. Upon completing, or upon a return to the Corps from, a detail assignment to a non-HHS organization, an officer who fails to secure an assignment that is commensurate with and appropriate for his/her grade and category (i.e., a suitable assignment) may have his/her records referred to an:

- (1) ITB provided that the officer has less than 18 years of creditable service for retirement. Such an officer must secure a suitable assignment within the timeframe specified in the respective Memorandum of Agreement/Understanding (MOA/MOU) after receiving notice of the termination of his/her detail assignment. The officer's records may be referred to the ITB prior to the expiration of the timeframe specified in the MOA/MOU; however, the effective date of the termination of a commission may not be earlier than the time allowed in the MOA/MOU and if the officer secures and transfers to a suitable assignment prior to the time allowed, his/her commission may not be terminated.

- (2) Involuntary Retirement Board (IRB) in accordance with [CCI 385.01](#), "Involuntary Retirement (20 Years)," if the officer has 18 or more years of creditable service for retirement. However, such an officer may have his/her records referred to an ITB for any of the reasons outlined in Section 6-3.(a) through (l), unless noted otherwise.

- 6-4. Involuntary Termination Board (ITB). The Director, CCHQ, will convene an ITB as necessary, which is, except as noted in Section 6-5, an administrative review proceeding at which the officer may not appear before the ITB.

- a. The ITB will consist of at least three Corps officers in the O-5/Commander pay grade or above. 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 whose record is being reviewed by the board. 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.

- b. The Director, CCHQ, will appoint the board members and designate one member as chairperson. An officer or any CCHQ staff member may be appointed as a special advisor to the board on procedural matters and to assist in the interpretation of Corps personnel policies and regulations.

- c. Notification of Officer. The Director, CCHQ, will notify the officer in advance that ITB proceedings are being initiated against him/her. The notice will:

- (1) Be provided at least 30 calendar days in advance of the date on which the board is scheduled.
- (2) Be sufficiently detailed, factual, and specific concerning the alleged act(s), omission(s), or circumstances which form the basis for the ITB.

- (3) Include a copy of all documentation to be considered by the board unless such documentation is available to the officer electronically.
 - (4) Summarize the officer's rights by including a copy of this Instruction as an attachment and referring to it in the text of the notice.
 - (5) Indicate the date, time, and place that the board is scheduled to convene.
 - (6) 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.
- d. The officer may enter into the record any pertinent facts for consideration by the board via electronic means with a verifiable delivery or other appropriate method. Except in cases when an ITB hearing is convened for marginal or substandard performance, documents submitted by the officer must be received in CCHQ no later than 7 calendar days prior to the date the ITB convenes.
- e. The ITB will review documentation provided by the Director, CCHQ, documentation from the OPDIV/STAFFDIV/non-HHS organization to which the officer is assigned, and documentation submitted by the officer.
- f. At any time before the ITB is convened, the officer may request voluntarily separation from the Corps.
- 6-5. ITB Hearing for Marginal or Substandard Performance. An officer who is referred to an ITB for marginal or substandard performance (see Section 6-2.a.) may request a hearing before the board. A request for a hearing must be received in CCHQ within 10 calendar days after the officer receives notification that ITB proceedings are being initiated against him/her. If the officer fails to request a hearing, the ITB will conduct an administrative review of the officer's records. If the officer requests a hearing, the following procedures shall apply:
- a. PHS Representative. The Director, CCHQ, will appoint an individual to prepare a statement of the charges and specifications against the officer and to act in the interest of the Government as the Public Health Service (PHS) Representative to present the case to the board. The PHS Representative will not be a board member and will be independent of the control of the board. He/she will investigate all the circumstances of the case. All PHS personnel and/or personnel of other OPDIV/STAFFDIV/non-HHS organizations are expected to cooperate fully with the PHS Representative by promptly providing any and all information within their knowledge to the PHS Representative upon his/her request. Such personnel will have the right to be furnished instructions, papers, or copies thereof necessary for guidance in furnishing information to the PHS Representative. The PHS Representative may consult with the Office of General Counsel (OGC) as necessary to obtain legal advice or guidance to carry out his/her duties.
 - b. Officer's Rights.
 - (1) Notice to the Officer. In addition to the information provided to the officer in the notification required in Section 6-4.c., the notice will include the names, grades, and categories of the appointed board members, and the name, grade, duty telephone number, and address of the PHS Representative. The officer may not contact or communicate with the board members prior to the date the ITB convenes.

- (2) Right to Submit Written Statements. An officer may, at any time before the board convenes or during the proceedings, submit to the board on his/her behalf or as directed by the board, any answer, deposition, sworn or unsworn statement, affidavit, or certificate of proposed stipulation.
- (3) The officer may appear before the ITB, with or without counsel. The term "counsel" includes members in good standing of any bar of any State, United States Territory, or the Commonwealth of Puerto Rico; or other persons who in the opinion of the Director, CCHQ, are considered to be competent to represent the officer in the board proceedings. Commissioned officers or other Federal employees may represent the officer if reasonably available.
 - (a) The officer may present witnesses on his/her behalf at hearings before the board. The officer will be responsible for notifying the witnesses and arranging for their appearance at the time and place set for the board proceeding. The officer shall provide the PHS Representative with a list of witnesses and a concise statement of their testimony no later than 10 working days prior to the date the ITB convenes.
 - (b) Within five working days of receipt of officer's witness list, the PHS Representative will provide the officer with the list of witnesses the PHS Representative intends to call.
 - (c) The officer or his/her representative has a right to cross-examine witnesses presented by the PHS Representative.
- (4) Failure to Invoke Rights. An officer's failure to invoke any of his/her rights will not be considered as a bar to the board proceedings, findings, opinions, or recommendations.
- (5) Travel Entitlements. If the hearing is not conducted via teleconference or video conference, CCHQ shall authorize necessary travel entitlements for an officer who requests a hearing. Travel for the officer's counsel and/or witnesses called by the officer are at the officer's, counsel, and/or witnesses' expense.

c. Limitations on Officer's Rights.

- (1) 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 Director, CCHQ. It shall lie entirely within the discretion of the Director, CCHQ, 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. Once the board is in session, requests for postponement will not be entertained but requests for continuances may be directed to the board chairperson who shall have the sole authority to rule upon them.
- (2) 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. An officer may request copies of personnel records pursuant to the Privacy Act, [CCI 211.02](#), "Rights and Responsibilities of PHS Commissioned Officers Under the Privacy Act of

1974.” The officer may also request documents pursuant to the Freedom of Information Act.

- (3) Challenges. The officer may not challenge a member of the ITB without stating the reason for the challenge. The officer, however, may submit, in writing, to the Director, CCHQ, for appropriate action, any relevant matter which, in the officer’s opinion, indicate that a particular member or members should not sit on his/her case. Such documentation must be received by the Director, CCHQ, no later than 10 working days before the date upon which the board is scheduled to convene.

d. Conduct of Hearing.

- (1) By Chairperson. The hearing will be conducted by the chairperson and will be subject to his/her rulings. The hearing will provide the officer, insofar as practicable, an opportunity to make a full and fair presentation of his/her case. The board will not be limited by formal rules of evidence but will maintain reasonable bounds of competency, relevancy, and materiality. Oral and written matter which would be inadmissible in a court of law will not necessarily be rejected. The chairperson 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 chairperson may consult with OGC as necessary to obtain legal advice or guidance to carry out his/her duties.
- (2) The hearing may be conducted in whole or in part via teleconference, via video conference, or in person.
- (3) Officer’s Presence or Representation.
 - (a) The board may proceed in the review and consideration of the officer’s case with the available documentation if the officer or his/her counsel, without good cause and timely notice to the Director, CCHQ, fails to appear at the time and place set for the proceedings.
 - (b) If the officer is present, with or without a counsel, the written record will be considered in conjunction with any additional evidence offered by either the subject officer or his/her counsel or the PHS Representative. The board shall first meet in a closed session to review the entire written record. The board shall then convene in an open session during which the order of presentation of additional evidence shall be as follows:
 - (i) Opening statement by PHS Representative;
 - (ii) Opening statement by subject officer or his/her counsel;
 - (iii) Presentation of any witnesses or additional evidence by the PHS Representative;
 - (iv) Presentation of any witnesses or other evidence offered by the subject officer or his/her counsel;
 - (v) A summation by the PHS Representative; and

- (vi) A summation by the subject officer or his/her counsel.
- (c) Each witness shall 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.
- (4) Testimony. All testimony before the board will be given under oath or affirmation.
- (5) Examination by Board. An officer may submit to examination by the board but is not required to do so. However, if an officer makes a written or oral statement to the board, he/she will be subject to such examination by the board and/or PHS Representative.
- (6) Transcript. To ensure an accurate record of the proceedings are maintained, the proceedings shall be transcribed (e.g., tape recording, stenographic recording). The board may also make or maintain a detailed transcript of other aspects of its proceedings. The report of the board, accompanied by all correspondence, exhibits, and material considered by the board, will be maintained with the transcript.
- (7) Burden of Persuasion. In all board proceedings conducted, the PHS Representative shall bear the burden of establishing by a preponderance of credible evidence that the subject officer's performance has been marginal or substandard (i.e., existence of performance issues is more probable than not).

6-6. Action by the ITB.

- a. Deliberations. Board deliberations and voting, whether the board is conducted as an administrative proceeding or as a hearing, will be conducted in closed sessions at which only board members and designated support personnel will be permitted to be present.
- b. Report of the Board. The report 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 board report will be forwarded to the Director, CCHQ, for submission to the SG for his/her decision regarding the board's recommendation(s). The report of the board will include the following:
 - (1) A summary of the officer's service and background;
 - (2) A summary of the circumstances which formed the basis for the convocation of the board;
 - (3) A summary of the position taken by the subject officer with respect to the circumstances which formed the basis for the convocation of the board; and

- (4) Findings and Recommendations of the Board. The board may recommend one or more of the following actions:
- (a) Retention, with or without reassignment elsewhere within the Department;
 - (b) Other disciplinary action. Where the ITB recommends issuing a Letter of Reprimand (LOR), a specific recommendation must also be made with regard to the period of time the LOR should be maintained in the officer's electronic Official Personnel Folder (eOPF). The ITB is not limited to a maximum period of time the LOR should be maintained in the officer's eOPF if the officer received a hearing before the ITB;
 - (c) Delay in Promotion Eligibility. The ITB may recommend an adjustment of the officer's promotion credit, seniority in grade, time in grade, and/or time in service credit;
 - (d) Reduction in the officer's temporary or permanent grade. Where the ITB recommends that the officer be reduced in grade or when an officer is referred to the ITB because of failure of promotion, a specific recommendation must also be made, as applicable, with regard to promotion credit, seniority in the grade to which reduced, time in grade, and/or time in service credit; and/or
 - (e) Involuntary Separation from the Corps.
 - (i) The board may recommend the termination of the officer's commission.
 - (ii) If the officer has 18 or more years of creditable service for retirement, the board may recommend the officer's retirement upon completing 20 years of creditable service for retirement.
 - (iii) If the board makes a recommendation to terminate the officer's commission, it will also make a recommendation regarding whether the annotation "for the good of the Service" should be added to the officer's characterization of service.
- c. Minority Report. Any member(s) not concurring with the majority will sign and submit a separate minority report(s), setting forth the extent of their concurrence and non-concurrence and the reasons therefore, and the variant findings, opinions, or recommendations, as appropriate. Each minority report submitted will be attached to the report of the board and will be considered by all authorities reviewing the report.
- d. Record of Proceedings. When the board has completed its deliberations, a record of proceedings will be prepared. The record will indicate whether a quorum was present and the name and vote of each member present. The record will include the report of the board, any minority report(s), the transcript if a hearing was conducted, a summary of the proceedings, and all other papers, documents, and materials necessary to reflect an accurate history of the proceedings. The record so prepared will be certified by the chairperson as being true and complete.

6-7. Action on ITB Recommendations.

- a. The SG may order further investigation by the board or 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.
 - (1) The approval of an LOR, delay in promotion eligibility, and/or reduction in the officer's temporary or permanent grade will be effective on the date of the SG's approval.
 - (2) The approval of the officer's involuntary termination of commission will be effective no earlier than 30 days after the officer is notified of the SG's decision.
 - (3) The approval of the officer's retirement will be effective on the first day of the month following completion of 20 years of creditable service for retirement.
- b. The Director, CCHQ, or his/her designee, will notify the officer of the SG's decision. Notification may be made via electronic means with a verifiable delivery or other appropriate method.
 - (1) A decision to terminate the officer's commission will be effective on the date determined by the Director, CCHQ.
 - (2) If the officer's commission is terminated as a result of an ITB's recommendation, the officer's service will be characterized as "Honorable." If recommended by the ITB and approved by the SG, the annotation "for the good of the Service" is added to the officer's characterization of service.
- c. Appeal of the SG's Decision.
 - (1) An officer may appeal the SG's decision to the ASH.
 - (2) An appeal must be filed in writing and received by the ASH within 10 calendar days of the date the officer receives written notification of the SG's decision.
 - (3) The ASH shall provide written notification to the officer of his/her decision. If no decision is rendered by the ASH within 10 calendar days of the appeal, the SG's decision becomes the final Departmental decision.
 - (a) If an LOR, delay in promotion eligibility, and/or reduction in the officer's grade is upheld, the effective date shall be the date of the SG's decision (see Section 6-7.a.).
 - (b) If the involuntary termination of the officer's commission is upheld, the effective date may be the date determined in Section 6-7.b. or a later date determined by the Director, CCHQ, which must be no later than 15 days of the ASH's decision.
 - (c) If the officer's involuntary retirement is upheld, the effective date may be the date determined in Section 6-7.a. or a later date

determined by the Director, CCHQ, which must be no later than 45 days of the ASH's decision.

- 6-8. Suspension from Duty. The officer may be placed in a NDWP status by his/her supervisor, program manager, or the Director, CCHQ, pending the outcome of any board proceedings. This may be particularly advisable when retention of the officer in a duty status could result in damage to Government property, could be detrimental to the interests of the Government, be injurious to the officer, other officers and employees, patients, or the general public.

7. RESPONSIBILITIES:

- 7-1. The SG may issue POMs, as necessary, through the eCCIS to implement this Instruction. The SG may, without further delegation, approve an ITB's recommendation.
- 7-2. The Director, CCHQ:
- a. May not further delegate the following authorities: place an officer into AWOL status due to detention or excuse such absences as unavoidable; convene an ITB; appoint ITB members and the PHS Representative; grant postponements; submit the ITB recommendations to the SG; and determine the effective date of the termination of an officer's commission.
 - b. Shall issue a Statement of Service or equivalent to officers separating from the Corps and shall include the appropriate separation information (e.g., type of separation, character of service, authority, reason for separation) on the statement of service. The Director, CCHQ, will also determine information related to the separation of an officer needed and/or required by the Defense Manpower Data Center; Department of Veterans Affairs; and/or any other Federal or State agency.
 - c. Shall issue guidance regarding what constitutes marginal and unsatisfactory performance.
- 7-3. Acting Officials may exercise the authorities of the SG in the absence or incapacity of the SG to make a decision under Section 7-1. The Acting Official must be the Deputy Surgeon General (DSG) or the Assistant Surgeon General (ASG) designated to serve as SG in accordance with 42 U.S.C. §206(d), provided the DSG and/or ASG have been appointed by the President with the advice and consent of the Senate.
- 7-3. Each officer is responsible for adhering to the guidelines established in this Instruction and any operational guidelines established by the SG; as well as observing and promptly obeying the lawful orders of all official superiors.
- a. It is the officer's responsibility to be familiar with the published policies that apply to all Corps officers and maintain an ongoing awareness of updates and changes to Corps policies.
 - b. An officer must maintain current and updated contact information (e.g., e-mail, phone, address) in CCHQ in order to facilitate the Corps' communication of information to the officer.
 - c. Officers are responsible for ensuring any document(s) or evidence is submitted for review by the ITB in a timely manner. Late submissions will not be reviewed by the ITB.

8. PROCEDURES:

- 8-1. Documentation. A recommendation by an OPDIV/STAFFDIV/non-HHS organization to convene an ITB should be logically arranged and indexed and include a statement of all pertinent facts such as:
- a. Statement of allegations, issues, and/or concerns regarding the officer, including specific dates, places, events, and persons involved, to the extent known or readily ascertainable, for each separate issue;
 - b. Description of standard of performance and other requirements;
 - c. Summary of all past and current discussions and counseling with the officer and his/her superiors concerning the officer's issues;
 - d. Statement regarding any action taken to place the officer in a suitable assignment, if such reassignment is applicable and/or appropriate;
 - e. Current evaluation by superiors of the officer's performance in his/her present assignment including whether the duties and responsibilities are in line with the grade held or experience of the officer; and
 - f. Copies of any memoranda for the record, Letters of Counseling, Letters of Reprimand, or any other documentation that demonstrates attempts of corrective action.
- 8-2. The recommendation by an OPDIV/STAFFDIV/non-HHS organization should be submitted through component administrative channels to the OPDIV/STAFFDIV/non-HHS organization head or designee and Commissioned Corps Liaison for transmittal to the Director, CCHQ. Such transmittals may be made via electronic means with a verifiable delivery or other appropriate method.

9. HISTORICAL NOTES: This is the first issuance of this Instruction within the eCCIS, replaces CCPM CC23.7.4, "Involuntary Termination of Regular Corps Officers for Marginal or Substandard Performance," dated 25 September 1998, and creates a standalone Instruction within the eCCIS.