

MANUAL: Personnel  
Chapter Series CC--Commissioned Corps Personnel Manual  
Part 2--Commissioned Corps Personnel Administration

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Public Health Service

Chapter CC29--Officer's Relations, Services, and Benefits  
SubChapter CC29.3--Medical and Health Program  
Personnel INSTRUCTION 8--Policy on Alcohol and Other Drug Abuse

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Section A. Purpose and Scope

This INSTRUCTION sets forth the policy and procedures of the Public Health Service (PHS) for prevention, early identification, treatment, rehabilitation and disciplinary actions pertaining to officers who abuse alcohol and/or other drugs. This policy and attendant procedures are part of the PHS effort to maintain a physically fit and competent Commissioned Corps, and to consider the interests of PHS and individual officers on an equitable basis. Additional and related information can be found in INSTRUCTIONS in this manual on Standards of Conduct, Disciplinary Actions, Fitness for Duty, and Disability Retirement Evaluation and Determination.

Officers have and affirmative responsibility not to abuse alcohol and/or other drugs, and to undergo treatment if there is abuse. Program supervisors and co-workers play important roles in implementing this INSTRUCTION, especially with regard to the early identification of officers with suspected substance abuse problems. Officers with alcohol and/or other drug abuse problems can voluntarily undergo treatment at their own initiative, or they can be offered the opportunity of voluntarily accepting treatment recommended by their supervisor. Failure to voluntarily elect treatment can result in treatment being made mandatory by a Medical Review Board (MRB) as a condition of service. If treatment is refused or if there is a failure of treatment, the officer is subject to disciplinary action including involuntary separation or retirement

Section B. Authority

1. The authority to establish policy and procedures pertaining to PHS commissioned officers who abuse alcohol and/or other drugs has been delegated to the Surgeon General as part of the general authority to administer the PHS Commissioned Corps and is published at 53 Federal Register 5046-5947, February 19, 1988.
2. The following materials provide guidance and background for the policy and procedures established herein:
  - a. Executive Order 12584, September 15, 1987, "Drug-Free Federal Workplace."
  - b. Department of Defense (DoD) Instruction 1010.14 "Prevention, Early Identification and Treatment of Alcohol and Other Drug Impairment in DoD Health Care Providers," September 10, 1986.
  - c. The Employee Assistance Program Manual, published by the National Council on Alcoholism, 1982.

- d. Office of Marine Operations, National Oceanographic and Atmospheric Administration, Instruction 6001 "Control and Prevention of Alcoholism and Drug Abuse and Employee Assistance," February 13, 1987.
- e. Report to the Chairperson, dated July 18, 1988, from the Subcommittee on the Impaired Physician and Dentist in the Public Health Service, PHS Interagency Council on Quality Assurance and Risk Management.

#### Section C. Definitions

1. Alcohol and/or other Drug Abuse. (a) The use of an illicit substance; (b) the abuse/misuse of a prescribed medication; or (c) the misuse of legal, nonprescribed substances (e.g., over-the-counter medications or alcohol) to the extent that it adversely affects the user's performance, health, and/or behavior/conduct, or that it reflects discredit on the Commissioned Corps and PHS.
2. Failure of Treatment. When an impaired officer has participated in two substance abuse treatment programs, at least one of which was inpatient/residential treatment, and the officer continues to demonstrate a problem of substance abuse.
3. Impaired Officer. For the purpose of this INSTRUCTION, an officer with a substance abuse problem.
4. Substance Abuse. Alcohol and/or other drug abuse.

#### Section D. Background and Philosophy

The impairment of health professionals by substance abuse is of increasing concern to the public as well as to professional groups. PHS has an obligation to its officers and beneficiaries to have a clear and coherent policy on substance abuse prevention, early identification, effective treatment, management and rehabilitation of those who are impaired; to assure continued quality of patient care; and to retain highly qualified and competent health care professionals.

Substance abuse is considered to be a medical condition amenable to treatment. Hence, treatment alternatives to disciplinary action are an important part of the intervention and management process.

Denial reported as a common feature of the impaired health professional. The impaired individual refuses to acknowledge the problem, and family members,

patients, and colleagues often unwittingly collude in the denial by not insisting that the affected officer seek help. Confrontation is a difficult, but essential step in order to get the individual into a treatment program, following which a lifelong commitment to aftercare is typically required for a successful long-term outcome. It is also important to note the advisability of early intervention and treatment of substance abuse in preventing suicide among health professionals. Several studies indicate that favorable success rates can be achieved given early intervention and adequate treatment of health professionals who are impaired due to substance abuse.

#### Section E. Policy

1. Consistent with the President's Executive Order 12584 of September 15, 1987, entitled "Drug Free Federal Workplace," PHS is committed to preventing substance abuse and identifying and treating officers who are substance abusers. Training for PHS officers and supervisors about substance abuse is mandatory under the Department of Health and Human Services (DHHS) Drug-Free Workplace Plan (12/14/88). The training sessions include topics such as documenting problems, recognizing early symptoms, effective confrontation strategies, referring and managing the impaired employee, special stresses and vulnerabilities of PHS commissioned officers, the role of resistance and denial, and PHS policy regarding substance abuse.
2. It is the responsibility of all officers to be personally and collectively concerned with the well-being of their fellow officers, and to work toward assuring an alcohol and/or other drug-free work environment for the successful accomplishment of the PHS mission.
3. PHS strongly urges officers who believe they might have a substance abuse problem to request treatment before the problem progresses. PHS offers inpatient and outpatient care for substance abuse to its officers. Voluntary requests for assistance will be handled confidentially and in accordance with applicable provisions of Federal statutes and regulations. Officers may voluntarily go to Employee Counseling Services, to their supervisor, and/or may contact the Beneficiary Medical Program (BMP), Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, or the Medical Affairs Branch, (MAB), Division of Commissioned Personnel (DCP), Office of the Surgeon General. In addition, PHS strongly encourages impaired officers to seek help from such programs as Alcoholics Anonymous (AA) and Narcotics Anonymous (NA). PHS program supervisors will support a substance abuse treatment plan that is voluntarily undertaken by an officer during a performance improvement period or one which is prescribed by an MRB. The support will include approving sick leave and funding travel duties and from treatment facilities, as necessary, and changing duties or assignments if requested

by the MRB. PHS senior management recognizes the need to establish and maintain an environment where it is clear that substance abuse problems, which officers and their immediate supervisors may identify, are addressed in a helping, compassionate manner.

4. BMP can be used to coordinate, arrange and authorize voluntary treatment for impaired officers. BMP is the primary contact and may be reached by a toll free number: 1-800-368-2777 (in MD, AK, or HI call FTS 8-443-1943 or 1-301-443-1943 collect). BMP will assure confidentiality. An officer who is a substance abuser will receive the same careful consideration and assistance that is extended to officers having other illnesses or health problems. Use of sick leave is governed by INSTRUCTION 4, Subchapter CC29.1, "Sick Leave," of this manual. Normally, an officer who is voluntarily receiving treatment will not be subject to a fitness for duty examination on the basis of an underlying substance abuse problem alone. However, if treatment does not result in the control of the substance abuse problem and/or improvement in performance and behavior/conduct, or there are other nonsubstance abuse related medical concerns/problems involved, a fitness for duty examination is appropriate.
5. An impaired officer's retention on the job and/or promotional opportunity shall not be jeopardized in any way solely because of a voluntary request for counseling or referral assistance. However, the officer's performance, health and conduct will be considered when making these decisions.
6. If the disciplinary action is taken, cases of misconduct involving substance abuse (e.g., unauthorized consumption of alcohol while on duty) shall be based upon all the facts and circumstances for each case. Consideration shall be given to the judicious use of disciplinary action to channel the substance abuser into an effective treatment program.

7. An officer found unsuitable for duty due to substance abuse, is not entitled to separate or retire with medical disability benefits. In such cases, an officer may be voluntarily or involuntarily retired, involuntarily separated under INSTRUCTION 1, Subchapter CC43.7 of this manual, "Separation of Officers in the Regular and Reserve Corps Without Consent of the Officers Involved," or be made subject to other administrative action under INSTRUCTION 1, Subchapter CC46.4 of this manual, "Disciplinary Action."

Section F. Responsibilities/Procedures

1. General

- a. An officer is responsible for conforming to the standards of conduct and performance expected by PHS and the Agency to which he/she is assigned. PHS does not condone the excessive or inappropriate use of alcohol and/or other drugs. An officer is responsible for any adverse effects that alcohol and/or other drug usage has upon his/her performance of official duties, his/her behavior/conduct, or which results in discredit to the Commissioned Corps or PHS.
- b. When potentially harmful conduct by any officer is directed toward the person or property of others, the officer's supervisor shall take immediate action to restrain the offending officer and to initiate law enforcement and/or disciplinary action. In certain circumstances, it might be appropriate to place the officer in non-duty with pay status for a brief, defined period (normally two working days), and to order the officer to leave the work site and absent himself/herself from that and other PHS facilities. The facts must be reported immediately to the Adverse Actions Officer in DCP.
- c. When there is reason to believe that an officer is involved in criminal activity (e.g., selling or transporting drugs or stealing to support a chemical dependence), the officer's supervisor must report the facts immediately to the Adverse Actions Officer in DCP, the Inspector General's office, and/or local civil authorities, in accordance with Agency policies.

## 2. Voluntary Stage

a. All officers are strongly encouraged to take the initiative to obtain information about substance abuse programs and treatment options that are available under the DHHS Drug-Free Workplace Plan. All officers are expected to voluntarily seek plan for substance abuse for themselves. Some possible sources of assistance are the Employee Counseling Service Program, State Medical Society or other similar programs for impaired health professionals, Uniformed Services Medical Treatment Facilities, BMP, AA and NA. When an officer voluntarily seeks assistance from these sources, he/she is assured of total confidentiality; i.e., his/her supervisor will not be informed by these providers without the officer's consent that the officer has sought care. If an officer has been advised of performance or behavior/conduct deficiencies which the officer suspects or knows are related to substance abuse, the officer is responsible for seeking assistance to correct the problem.

### b. Supervisor

Supervisors are in a key position to recognize impaired officers. Performance, behavior/conduct and attendance deficiencies, regardless of their cause, necessitate prompt supervisory inquiry. If these deficiencies are due to substance abuse, tolerating them is not an act of kindness but rather is usually detrimental to the officer's health, since untreated substance abuse is chronic, usually progressive, and potentially fatal. Supervisors are not expected to diagnose the problem; a formal medical evaluation and determination are required. Supervisors, however, are required to attend educational and training programs on substance abuse under the DHHS Drug-Free Workplace Plan. These sessions cover the recognition and referral of impaired employees to appropriate authorities and assistance resources. Supervisors are responsible for documenting an officer's performance and behavior/conduct when they are not satisfactory.

c. Medical Affairs Branch (MAB) and Beneficiary Medical Program (BMP)

- (1) If an officer makes a voluntary request for substance abuse treatment either directly to MAB, or BMP, or through the supervisor, BMP staff will make arrangements for evaluation and treatment at a Federal facility. Private sector care will be funded by PHS only if preauthorized by BMP. Such authorization is granted only when appropriate Federal Care is not available. Requests for assistance will be handled confidentially in accordance with applicable Federal statutes and regulations. Supervisors will only be advised of the treatment on a need to know basis after discussion with the officer. Such information is protected under the Privacy Act and is to be treated confidentially. An officer voluntarily electing to undergo treatment for substance abuse on his/her own initiative shall be given the same considerations as an officer with any other medical condition (e.g., sick leave).
- (2) When a potential substance abuse problem has been referred to BMP or is otherwise uncovered, the case will be referred to MAB for action. Normally, if the officer has voluntarily elected treatment, MAB will simply monitor the case in cooperation with BMP and, as appropriate, with the program supervisor.

3. Supervisor Directed Stage

- a. When it appears that an officer's performance and behavior and/or conduct are not satisfactory and the problem might be related to substance abuse, the supervisor is responsible for the functions listed below. All functions, except the first, must be documented in writing.
  - (1) The supervisor must remain alert to the early manifestations of substance abuse that typically occur before performance problems appear, including erratic or problematic behavior/conduct, whether during work, at home or in the community, and observable intoxication, or accident proneness. Deterioration in work performance is often seen late in the course of these disorders when the prognosis has become much less favorable. Intervention in the course of these illnesses as early as possible is, therefore, both appropriate and required.
  - (2) The supervisor must inform the officer of unsatisfactory performance or unacceptable behavior/conduct, and document specific instances where an officer's performance or

behavior/conduct appear to be deteriorating. Supervisors are encouraged to use resources available through the DHHS Drug-Free Workplace Plan that explain how to deal with an impaired officer. Supervisors should urge officers whom they suspect have a substance abuse problem to seek help through these resources and others listed in this INSTRUCTION. In such instances, the need to know about an officer's treatment does not extend beyond the immediate supervisor and the officer. Agency management does not become involved in an officer's first referral for assistance by the supervisor.

- (3) Supervisor-initiated problem documentation and referral for assistance related to substance abuse will be based on changes in the officer's performance and/or behavior/conduct, as well as on reports to the supervisor from co-workers and others of inappropriate behavior/conduct. Reports to the immediate supervisor of problems an officer is having at home or in the community that are suspected to be substance abuse related may be reported directly by the supervisor to MAB for guidance and follow-up action.
  - (4) The supervisor must work with the officer to establish performance and/or behavior/conduct expectations, and a time frame within which improvement is expected. This may include modifying clinical privileges if the officer provides clinical care to patients as provided in paragraph 4.a., below. There should be a memorandum for the record, signed by the supervisor and the officer regarding this discussion. If the officer will not agree to this improvement period, this should also be documented by the supervisor. Generally, two or three months is sufficient time for an officer to show positive change such as better attendance and performance, and improved behavior and/or conduct. The supervisor must document performance and behavior/conduct observed during the improvement period. The supervisor is to maintain this documentation, along with other performance documents, for the purpose of considering the officer's performance rating.
- b. It is the duty of every officer who observes in a fellow officer, or other employee, performance or behavior/conduct problems during duty hours or on duty travel that are possibly caused by substance abuse, to advise the officer's supervisor of his/her observations. Such reports will be confidential to protect the identity of the reporting officer from the officer or other employee who has the performance or behavior/conduct problem.

#### 4. Medically Directed Stage

a. Supervisor

- (1) If the officer's performance and/or behavior/conduct do not improve during the agree-upon improvement period, and the supervisor continues to believe that substance abuse may be causing the problem, the supervisor shall contact MAB, provide the documentation of deficient performance and/or behavior/conduct, and recommend the officer undergo a fitness for duty examination based upon the belief that the deficiencies may be caused by substance abuse or other medical condition.

NOTE: IF THE APPARENT NATURE OF THE PERFORMANCE OR BEHAVIOR/CONDUCT PROBLEM IS SUCH THAT THE SUPERVISOR FEELS IMMEDIATE INTERVENTION IS NECESSARY FROM A MEDICAL OR A SAFETY AND WELFARE STANDPOINT FOR THE OFFICER OR FOR OTHERS, THE SUPERVISOR WILL IMMEDIATELY CONTACT MAB FOR CONSULTATION TO DETERMINE THE APPROPRIATE COURSE OF ACTION.

- (2) In cases where the officer carries responsibility for the clinical care of patients, the supervisor must, following careful evaluation, make a determination as to the potential harm to patients that continuation of the officer's clinical work would entail. If a determination is made that continuation would expose patients to potential harm as a result of deficient performance and/or behavior/conduct, the supervisor must confer with the appropriate credentials review body/privilege granting authority for the purpose of recommending a change in privileges that would be consistent with patients' welfare. If the situation is of such a nature that time does not allow for this, clinical privileges should be immediately restricted or suspended and the matter referred to the appropriate credentialing body/privilege granting authority, as well as immediate notification made to DCP of the action taken.
- (3) If MRB finds there is a substance abuse problem and treatment is directed by DCP, the supervisor must cooperate with the treating professionals in carrying out the treatment plan, including approving and funding travel to and from treatment facilities and granting sick leave, as well as changing duties or assignments on a temporary or permanent basis, as required by MRB.
- (4) If MRB finds that there is no medical condition, including substance abuse, causing the performance and/or conduct/behavior problem, and the officer is fit for duty, the

supervisor should proceed to initiate administrative action. Appropriate action includes such disciplinary action as a letter of reproof or reprimand, or a Board of Inquiry (INSTRUCTION 1, Subchapter CC46.4, "Disciplinary Action"); action to separate for marginal or substandard performance (INSTRUCTION 4, Subchapter CC23.7, "Involuntary Separation of Regular Corps Officers for Marginal and Substandard Performance," and INSTRUCTION 6, Subchapter CC23.7, "Involuntary Termination of Reserve Corps Officers" Commissions for Marginal or Substandard Performance," of this manual); or action to involuntarily retire (INSTRUCTION 3, Subchapter CC23.8, "Retirement of an Officer With 30 Years of Active Service," or INSTRUCTION 4, Subchapter CC23.8, "Involuntary Retirement After 20 Years of Service," of this manual). Cases involving a board action (i.e.; Boards of Inquiry, Separation or Retirement) will be evaluated individually by DCP in consultation with the program.

b. Medical Affairs Branch (MAB) and Beneficiary Medical Program (BMP)

- (1) When a potential substance abuse problem has been referred to BMP or is otherwise uncovered, the case will be referred to MAB for action. If the officer refuses treatment or the case is being referred by the program supervisor after an unsuccessful improvement period, or voluntary treatment has not produce satisfactory results, the Director, DCP, after consultation with MAB, will determine if the officer should have a fitness for duty evaluation. If there is sufficient documentation, the officer will be required to have a medical examination as directed by the Director, DCP.
- (2) The results of the examination will be submitted to an MRB to determine whether the officer is fit for duty. If the MRB finds that the officer has a substance abuse problem, it will find the officer temporarily unfit for duty and recommend that the officer enter a treatment program.
- (3) MAB, in cooperation with BMP, will arrange for appropriate treatment and will direct the officer to obtain such. If the officer fails to comply with the DCP directive, the case may be referred for disciplinary action or may be returned to MRB for a final decision that the officer is unsuitable for duty.
- (4) MAB is responsible for monitoring treatment and for obtaining discharge summaries and aftercare plans for an officer who has received treatment for substance abuse. MAB will monitor officer compliance with aftercare by reports it receives/requests from aftercare providers. Officers not complying with recommended aftercare plans will be subject to disciplinary action as provided in Section G, below.

c. Officer

- (1) An officer has the responsibility to accept treatment for substance abuse that has been directed by an MRB in consequence of a fitness for duty evaluation. Failure to do so may subject the officer to appropriate disciplinary action, or the finding that the officer is unsuitable for duty and a denial of possible disability benefits due to the officer's misconduct.
- (2) If an officer is receiving treatment as a result of a fitness for duty evaluation, the officer must provide MAB with official notification from the treatment provider that he/she is receiving care and with narrative summaries and progress

reports from the treatment provider as required and in accordance with the treatment regimen.

### Section G. Disciplinary Action

1. The disciplinary system can motivate an officer with a problem caused by substance abuse to overcome the problem by entering a treatment program. Officers with substance abuse problems will be separated from the service if they refuse adequate and appropriate treatment or fail to comply with treatment as stated above, or otherwise engage in behavior/conduct which justifies separation. Determinations will be made on a case-by-case basis. Officers in recovery, but still having difficulty performing their duties, can be offered leave at times of crisis as operational requirements allow.
2. Misconduct. Misconduct constitutes grounds for disciplinary action pursuant to INSTRUCTION 1, CC46.4, and INSTRUCTION 1, CC26.1, "Standard of Conduct," of this manual. Misconduct includes the unauthorized use of controlled substances or the consumption of alcohol while on duty such that the officer is impaired, being under the influence of such substances while on duty, or illegally possessing, transferring, or ingesting controlled substances at any time.
3. Medical Misconduct When a physical disability making the officer not fit for duty occurs as a proximate result of misconduct, the officer will be excluded from receiving disability benefits pursuant to INSTRUCTION 6, Subchapter CC23.8, (Fitness for Duty Evaluation and Determination). The following are examples of medical conditions caused by misconduct:
  - a. Any injury incurred as the proximate result of prior and specific voluntary intoxication is regarded to be the result of misconduct.
  - b. Inability to perform one's duty or to adhere to standards of conduct resulting from disease, which is directly attributable to a specific, prior, proximate, and related substance abuse, may be regarded as the result of misconduct.
4. Unsuitable for Duty. A Medical Review Board may find an officer unsuitable for duty if the officer abuses alcohol and/or other drugs, and treatment is refused or there is a failure of treatment, An officer found unsuitable for duty will be administratively separated or retired from the corps as provided in Section F,4,a,(4) above, and will be excluded from receiving disability benefits pursuant to CCMP, INSTRUCTION 6, Subchapter CC 23.8.

### Section H. Programs, Records, and Reports

1. Medical and counseling records of employees who seek assistance under this INSTRUCTION will be maintained in the strictest confidence in accordance with FPM 792-5, FPM Supplement 792-2, and "Confidentiality of Alcohol and Drug Abuse Patient Records" published by Health, Education and Welfare, July 1, 1976, in the Federal Register, Vol. 40, No. 127 (see section 5-8, a., "Confidentiality'). Such records are maintained within the provisions of the Privacy Act and confidentiality shall extend to any communication or information which would identify an employee as a present or former participant in a substance abuse program. DCP medical records and Employee Assistance Counseling records are available only on a need-to-know basis to individuals in the medical/counseling decision-making process.
2. When counseling efforts at the program level are unsuccessful, records which a supervisor has made of an officer's unsatisfactory performance and/or behavior/conduct and of the supervisor's efforts to bring about improvement in performance and/or behavior/conduct may be disclosed to MAB to the extent required to explain fully any recommended fitness for duty or disciplinary action requiring MRB action.
3. Aggregate statistical data, without personal identifiers, as to the extent of substance abuse counseling and progress made in rehabilitation efforts, will be maintained by MAB and BMP for the purposes of: (1) evaluating program effectiveness; and (2) making periodic statistical reports. For this purpose, BMP personnel are authorized and required to report MAB (1) all officers whom they have counseled or assisted to seek evaluation or treatment for suspected substance abuse; and (2) all officers for whom they have written documentation that they have received evaluation and/or treatment for substance abuse.

### Section I. Rights of Officers

1. Medical Examination and Treatment. An officer does not have the right to select the examining facility for a fitness for duty evaluation or the facility for DCP-directed treatment. This is the responsibility of MAB. Also, the decision to accept medical evaluations from non-uniformed services medical facilities is reserved to the Director, DCP, on the advice of MRB.
2. Right to Review Medical Information. An officer has the right to review the findings of medical examinations to be used in determining his/her fitness. It is the usual policy of uniformed services facilities to provide the officer with this opportunity at the conclusion of the medical examination.

3. Submitting Information to PHS/MRB. An officer undergoing a fitness for duty evaluation may submit any information, in writing, to an MRB which he/she believes will assist in making an equitable finding. However, the officer has no right to appear personally before an MRB and he/she shall not personally contact individual members of the board.
4. Appeal of PHS/MRB Findings. An officer undergoing a fitness for duty evaluation will be informed promptly, in writing, of the MRB's findings and the right to appeal. Any action by an MRB is appealable by the officer affected. The procedures and guidelines for appeal are detailed in INSTRUCTION 7, Subchapter CC23.8, "Appeals Board Incident to Disability Retirement or Separation," of this manual. The findings and recommendations of a formally processed fitness for duty evaluation are binding until such time as a significant change in medical condition and/or performance can be documented.
5. Board for Correction of PHS Records. An officer may make application to the Board for Correction of PHS Records, as provided in INSTRUCTION 1, Subchapter CC49.9, "Board for Correction of PHS Commissioned Corps Records," to change a PHS record resulting from

a fitness for duty determination by an MRB. The application must be made after all other administrative remedies have been exhausted (i.e., an appeal of MRB findings), and with evidence that the record is based upon a probable material error or injustice.

#### Section J. Privacy Act Provisions

Personnel records are subject to the Privacy Act of 1974. The applicable systems of records are 09-37-0002, "PHS Commissioned Corps General Personnel Records, HHS/OASH/OSG"; 09-37-0003, "PHS Medical Records, HHS/OASH/OSG"; 09-37-0005, "PHS Commissioned Corps Board Proceedings," HHS/OASH/OSG; and 09-37-0006, "PHS Commissioned Corps Grievance, Investigatory and Disciplinary Files, HHS/OASH/OSH."