

**U.S. DEPARTMENT OF HEALTH  
AND HUMAN SERVICES**

**COMMISSIONED CORPS DIRECTIVE**



**CCD 121.06**  
**EFFECTIVE DATE: 31 October 2013**

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**By Order of the Secretary of Health and Human Services:**

**Kathleen Sebelius**

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SUBJECT: Protected Communications

1. **PURPOSE:** This Directive prescribes regulations governing protected communications and prohibition of retaliatory personnel actions against officers of the Commissioned Corps of the U.S. Public Health Service (Corps).
2. **APPLICABILITY:** This Directive applies to:
  - 2-1. All Corps officers on active duty.
  - 2-2. All Department of Health and Human Services (HHS or Department) personnel who have administrative authority over Corps officers.
3. **AUTHORITY:**
  - 3-1. [42 USC 202](#), "Administration and Supervision of the Service"
  - 3-2. [42 USC 213a](#), "Rights, Benefits, Privileges and Immunities for Commissioned Officers or Beneficiaries; Exercise of Authority by Secretary or Designee"
  - 3-3. [42 USC 216](#), "Regulations"
  - 3-4. [10 USC 1034](#), as amended "Protected Communications; Prohibition of Retaliatory Personnel Actions"
  - 3-5. [5 USC Appendix 3](#), "Inspector General Act of 1978" as amended
  - 3-6. [Public Law 112-144](#), FDA Safety and Innovation Act, Section 1129
4. **PROPONENT:** The proponent of this Directive is the Secretary of Health and Human Services (HHS). The Assistant Secretary for Health (ASH) has responsibility for issuing policies to implement this Directive. The responsibility for assuring the day-to-day management of the Corps rests with the Surgeon General (SG).
5. **SUMMARY OF REVISIONS AND UPDATES:** This is the first issuance of this Directive within the Commissioned Corps Issuance System (CCIS). This Directive codifies the changes to 42 USC 213a(a)(18) and 42 USC 213a(b), as authorized by the FDA Safety and Innovation Act (PL112-144, Section 1129), dated 9 July 2012.

## 6. POLICY:

## 6-1. Definitions.

- a. Member of Congress (MC). An MC is a Senator or Representative, a member of the Senator's or Representative's staff or of a congressional committee; this includes any Delegate or Resident Commissioner to the Congress.
- b. Office of the Inspector General (OIG). The OIG is the investigative and law enforcement arm of HHS, and/or of any HHS OPDIV or STAFFDIV.
- c. Protected Communication.
  - (1) Any lawful communication to an MC or the OIG; or
  - (2) A lawful communication with a member of any Federal, State, local, HHS, OPDIV, STAFFDIV, or non-HHS organization audit, inspection, investigation, or law enforcement organization, or to any person or organization in the officer's chain of command, or to any person designated by regulations or other established administrative procedures of the entity to which the officer is assigned to receive such communications, whereby an officer alleges a violation of the law or regulation, a gross waste of funds or other resources, an abuse of authority, or a substantial and specific danger to public health, safety or threat of bodily harm or injury. Protected communication includes communication with the Comptroller General, as well as any court or grand jury. Communications to individuals other than members of Congress and the Inspector General is covered by this directive only when the disclosing officer reasonably believes the communication meets the statutory definition.
  - (3) Protected communications do not include communications that are:
    - a. Part of the officer's assigned normal job responsibilities,
    - b. Made only to the alleged wrongdoer concerning actions of the alleged wrongdoer, or
    - c. Made to a media related source. A media related source is a publication (print or electronic) or broadcast program that transmits feature stories and news to the public through various distribution channels, which includes but is not limited to, mass media outlets, newspaper, magazine, internet, television outlets, radio outlets and/or social media, networking or blog sites.
  - (4) Unlawful communication is not protected by statute or this directive.
- d. Reprisal. Taking or threatening to take, withholding or threatening to withhold a personnel action, for making or preparing to make a protected communication.

- e. Restriction. Preventing or attempting to prevent a Corps officer from making or preparing to make a protected communication.
  - f. Chain of Command. The succession of commanding officers or senior officials from a superior to a subordinate through which authority/command is exercised. This also includes the administrative chain of command from the ASH, the Surgeon General (SG), or his/her designee to the subordinate officer.
  - g. Prohibited Discrimination. Discrimination on the basis of color, national origin, race, religion, sex or other provisions in accordance with [CCD46.1.1](#) "Equal Opportunity".
  - h. Whistleblower. A whistleblower is a Corps officer who makes or prepares to make a protected communication.
  - i. Personnel Action. Any action taken that affects, or has the potential to affect, an officer's current position or career. Such actions include, but are not limited; to a promotion, a disciplinary or other corrective action, a transfer or reassignment, a performance evaluation, a decision on pay, benefits, awards, training and/or any other significant change in duties or responsibilities inconsistent with the officer's grade.
- 6-2. Freedom to make Protected Communication.
- a. No person shall restrict a Corps officer from making a protected communication.
  - b. No person shall subject a Corps officer to reprisal for making or preparing to make a protected communication.
- 6-3. The Department, OPDIVs and/or STAFFDIVs shall adhere to the provisions of this Directive. Officers detailed to non-HHS organizations will utilize the HHS OIG as the focal point for all alleged violations to protected communications protection.
- 6-4. Corrective Action.
- a. When, based on the results of an investigation by the OIG, it is determined that certain personnel actions were taken in violation of Section 6-2, the ASH, SG or OPDIV/STAFFDIV Head or their designees may rescind or modify those personnel actions within their authority, in whole or in part.
  - b. If, after exhausting all administrative remedies, the officer believes that an error or injustice remains in his/her records, the officer may make application with the Board for Correction of PHS Commissioned Corps Records (BCCCR). The BCCCR may accept the findings of the OIG or may initiate an independent review as part of the review process under rules generally applicable to the BCCCR.
  - c. When the results of an investigation indicate that an active duty officer violated Section 6-2, the ASH, SG or OPDIV/STAFFDIV Head or their designees shall initiate appropriate personnel and/or disciplinary action.
  - d. When the results of an investigation indicate that non-Corps HHS

