

**Subject: Board for Correction of PHS Commissioned Corps Records**

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**PHS:**

**16-00-00 PURPOSE AND SCOPE**

This clarifies the policies concerning the Board for Correction of Public Health Service (PHS) Commissioned Corps Records (hereinafter referred to as the Board), contained in Part 4, Regulations, Commissioned Corps Personnel Manual (CCPM), Subchapter CC49.9, Personnel INSTRUCTION 1, September 8, 1981. This clarification describes more fully the procedures for establishing and administering the Board, for making applications to correct PHS Commissioned Corps records, for considering applications by the Board, and for settling claims or determining monetary benefits resulting from Board decisions. The Board may amend or waive any of the provisions of this manual chapter, however, as they apply to a particular case.

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**16-00-10 AUTHORITY**

The regulation amplified herein is issued under Section 221a(a)(12) of the PHS Act (Public Law 96-76, 1979, as amended) and 42 U.S.C. 213a(a)(12). This Section extends to the Commissioned Corps the provisions of 10 U.S.C. 1552 allowing the Secretary of the Department of Health and Human Services (DHHS), under procedures approved by him/her, and acting through a Board of civilian (non-uniformed, non-reserve) employees, to correct any record pertaining to the service of any current or former Commissioned Corps officer maintained by DHHS, when the Secretary considers such action necessary to correct an error or remove an

injustice. These authorities also authorize the Department to pay any amount due as a result of correcting a record.

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16-00-20 ESTABLISHMENT OF THE BOARD

- A. Establishment. The Board is established in the Office of the Assistant Secretary for Health, PHS in DHHS. The Secretary has delegated to the Assistant Secretary for Health (ASH) the authority to administer the Board. This authority has, in turn, been redelegated to the Director, Office of Management, hereinafter referred to as the "Approving Official". The Approving Official has designated the Director, Office of Organization and Management Systems, to be the Executive Director of the Board.
- B. Function. The function of the Board is to consider all applications properly before it for the purpose of determining the existence of an error or injustice and to make recommendations to the Approving Official.
- C. Jurisdiction. The Board has jurisdiction to review and determine all matters pertaining to the Commissioned Corps records of any current or former Commissioned Corps officer properly brought before it, consistent with existing law and regulation. The Board also has jurisdiction to correct other records if necessary to implement a Board decision.
- D. Board Members. The Approving Official appoints a panel of representative, qualified PHS civilian employees, GS-14 or higher, to serve as potential Board members. Members of this panel are designated to constitute a Board for each case requiring consideration and one such member is chosen to serve as the Chairperson. A Board quorum consists of at least three members.
- E. Executive Director. The Executive Director oversees the administrative operations of the Board and serves as a member of the Board in emergency situations. He/she serves under the supervision of the Approving Official. The Executive Director may appoint an Executive Secretary or other staff to assist with the operations of the Board. The responsibilities of the Executive Director include:
  - 1. Providing staff support to the Approving Official regarding the development and maintenance of a panel of senior Civil Service employees to serve as Board members on an as-needed basis;

2. Reviewing applications to determine whether to grant Board review;
3. Designating from the panel, established by the Approving Official, Board members, including a Chairperson, to consider applications and make recommendations to the Approving Official;
4. Assembling materials to be presented as documentation for Board review, obtaining additional information as the Board may require, preparing for Board hearings, and preparing case summaries, case digests, Records of Proceedings, as provided for in Section 16-00-50 and elsewhere in these procedures; and,
5. Maintaining historical records and preparing an annual report as provided in Section 16-00-90.

F. Chairperson. The Chairperson presides over Board meetings to review cases and over hearings. He/she:

1. Sets the agenda;
2. Determines whether or not to grant a hearing requested by an applicant;
3. Calls, chairs, recesses or adjourns, and calls additional meetings or sessions, as needed;
4. Directs consideration of documentation sent to the Board;
5. Formalizes requests of Board members for additional documentation;
6. Conducts voting on proposed Board recommendations; and,
7. Reviews and certifies to the Executive Director that the Board Findings, Conclusions and Recommendations are true and complete and ready to be sent to the Approving Official.

G. Executive Secretary. The Executive Secretary carries out functions prescribed for him/her by these procedures and such other duties as may be assigned to him/her by the Executive Director. He/she serves under the supervision of the Executive Director.

- H. Changes to this Issuance. The Approving Official or Board members, may request the Executive Director to initiate recommendations for changes in the procedures established herein that may be necessary for the proper functioning of the Board. All such changes shall be reviewed by the Office of the General Counsel (OGC), and must be approved by ASH.

PHS:

16-00-30 APPLICATION FOR CORRECTION

- A. Submission. An application to the Board must be submitted on Form PHS-6190, Application to the Board for Correction of Public Health Service Commissioned Corps Records, or on an exact facsimile thereof and sent to the address indicated on the form. The applicant has the responsibility to procure such evidence as he/she desires to present in support of his/her application. The application should be accompanied by copies of all briefs, official records, memoranda or other documents the applicant or his/her counsel desires to submit in support of the request. The applicant may provide or authorize submission of the results of any relevant grievance, EEO complaint or other administrative action or investigation, including medical reports, which support the application. Forms and explanatory matter for making application may be obtained from the:

Executive Secretary  
Board for Correction of PHS Commissioned  
Corps Records  
5600 Fishers Lane, Room 17-51  
Rockville, Maryland 20857  
Phone number: (301) 443-6268

- B. Applicant's Signature. The application must be signed by the person requesting removal of an alleged error or injustice. The application may, however, be submitted by a spouse, parent, heir, counsel or legal representative when the record in question or the alleged error or injustice involves a person who is incapable of making application for himself/herself or whose whereabouts is unknown or who is deceased. When the application is not signed by the person requesting corrective action, it must be accompanied by satisfactory evidence of: (1) the death, incapacity or unavailability of such person; and, (2) the relationship of the person making the application (whether a spouse, parent, heir, counsel or legal representative).
- C. Time Limits. The application must be filed within three years after discovery of the alleged error or injustice. An

application filed after that time may not be accepted by the Board unless the Board finds that it would be in the interest of justice to do so. Reasons why its acceptance would be in the interest of justice must be stated in the application.

- D. Other Remedies. Before the Board can consider an application, an applicant must have exhausted all pertinent administrative or other remedies afforded him/her by existing law or regulation as the Board may determine are practical and appropriately available to the applicant. Where applicable, these may include exhausting grievance remedies as provided in CCPM Subchapter CC26.1, INSTRUCTION 5 and EEO remedies in CCPM Subchapter CC26.1, INSTRUCTION 6 of the CCPM, and waiver of claims for overpayment of pay and allowances in CCPM, Subchapter CC22.7, INSTRUCTION 7. The applicant shall include information in this regard on his/her application.
- E. Access to Official Records. The applicant may have access to his/her official records or to any information pertaining to him/her in the custody of the Department, as provided for in 45 CFR Part 5b regarding the Privacy Act. The applicant may have access to other Department records as provided for in 45 CFR Part 5 implementing the Freedom of Information Act.

PHS:  
16-00-40 CONSIDERATION OF APPLICATION

- A. Review of Application. The application and all documentation submitted are reviewed by the Executive Director to determine whether to grant or deny a Board review of the application or recommend to the Board disposition on its merits without a Board meeting. In making this determination, the Executive Director will ask the Division of Commissioned Personnel (DCP) whether the applicant has exhausted other administrative remedies and whether the corrective action sought will be taken by DCP. The Executive Director also may request that DCP furnish the Board with PHS records pertinent to the request of the applicant.

A Board review is granted if the documentation provided by the applicant and that by DCP demonstrate the existence of a probable error or injustice justifying action by the Board.

- B. Denial of Application. The Executive Director shall deny an application when:
1. All effective administrative remedies have not been exhausted, as determined from information provided by DCP;
  2. Insufficient relevant evidence has been presented to demonstrate the existence of a probable error or injustice;
  3. Effective relief cannot be granted by the Board;
  4. The Board does not have jurisdiction to determine the matter presented; or
  5. The application has not been filed within three years as prescribed in Section 16-00-30C and the interest of justice does not require its acceptance.

Denial of an application under this paragraph is without prejudice to further consideration if new, relevant evidence is submitted by the applicant or otherwise comes to the attention of the Board. When relief is denied under this Section, the applicant is advised of the reasons for the denial and of any right he/she may have to further proceedings.

- C. Appeal. The applicant may appeal the Executive Director's denial of an application to the Approving Official.
- D. Withdrawal. The Board may permit an applicant to withdraw his/her application without prejudice at any time before the Findings, Conclusions and Recommendations are acted on by the Approving Official.
- E. Other Proceedings Not Stayed. The application to the Board does not operate as a stay of any proceedings or administrative action being taken with respect to or affecting the person involved or of any matters the applicant may have requested the Board to consider.

PHS:  
16-00-50 CASE RECORD DEVELOPMENT

- A. The Case Record is developed by the Board staff in preparation for a Board review.

- B. The Executive Director provides DCP with a copy of each application submitted under Section 16-00-30 that has not been denied under Section 16-00-40B, together with any briefs, memoranda, copies of official records and other documentary evidence submitted or obtained by the Board concerning the application.
- C. DCP reviews the application and documentation and promptly informs the Executive Director whether: (1) all pertinent administrative remedies have been exhausted; and, (2) the problem cited can be resolved administratively.
- D. DCP shall, in general, serve as the focal point for collecting evidence from other PHS agencies related to an application.
- E. DCP forwards to the Executive Director an Advisory Opinion in writing on the application including evidence from any pertinent PHS agency file, procedure, etc. that tends to rebut or support the applicant's evidence and/or to clarify the actions and decisions of program administrators regarding issues presented by the applicant. The information and views furnished by DCP, which are not binding on the Board, are submitted to the Board along with all other written information and documentation submitted by the applicant.
- F. The Executive Director prepares a draft Case Summary that delineates the facts and issues in the case and the positions of both the applicant and DCP. In so doing, the Executive Director may request from the applicant or DCP additional information deemed necessary for consideration of the application by the Board. Where pertinent, the Case Summary includes a listing of prior cases decided on by the Board and any relevant precedents, as well as any relevant legal precedents, especially those resulting from decisions of the Comptroller General, which have been brought to the attention of the Board.
- G. A copy of the draft Case Summary and Advisory Opinion are sent to the applicant who may rebut, if he/she desires, any information, statements or views contained therein. Such rebuttal should be accompanied by clear and convincing evidence. In turn, a copy of the Case Summary also is sent to DCP for similar review and comment. Each party receives copies of the comments provided for further rebuttal until the Executive Director is satisfied that a full Case Record has been developed or after being advised by the applicant and by DCP that no additional documentary materials will be

submitted. All comments received are incorporated into the final Case Summary for submission to the Board.

- H. The Case Record contains the application, transcripts of any testimony, affidavits, papers, documents, briefs, advisory opinions, written arguments and any other documentation and evidence submitted by the applicant, the rebuttal or comments and documentation submitted by DCP in support of its position, and the Case Summary. At a later stage, the Record will also contain a transcript of the hearing, if one has been held, and the Findings, Conclusions and Recommendations of the Board and the determination of the Approving Official.
- I. The Executive Director or the Chairperson may request an advisory legal opinion or advice from OGC on any aspect of the case to clarify any legal or administrative precedents or issues. Additionally, DCP may advise the Board that it should seek a legal opinion on legal issues which should be resolved prior to, or as part of, the Board's review.
- J. The Case Record is sent to the Board for review.

PHS:  
16-00-60 HEARING

- A. General. The applicant may request permission to appear before the Board in person or by counsel or in person with counsel after the application and supporting documentation have been accepted under Section 16-00-40B.

After the Case Record has been developed, the Chairperson will determine whether or not to grant a hearing. A hearing will be granted if the Chairperson finds that the documentation indicates that a hearing would be likely to provide additional information material to the case not otherwise obtainable from the written record. In addition, a hearing may be granted or requested by the Board during its deliberations. In either case, the Chairperson will decide whether DCP should also be requested to provide evidence at a hearing.

- B. Denial of Hearing. If the Chairperson determines that a hearing that has been requested by an applicant is not warranted, the applicant or his counsel is notified in writing that a hearing has been denied and is advised of the reasons therefor.

- C. Appeal of Denial. The applicant may request the full Board to reconsider the denial by submitting within 30 days, after the date of notice, further documentary evidence to justify a hearing. If the Board denies a request for reconsideration, the applicant or his/her counsel is notified in writing of the denial and the reasons for that determination. The Board also sets forth its reasons for the denial in its final disposition of the application.
- D. Notice of Hearing. In each case in which a hearing is granted, the applicant or his/her counsel, and DCP, if requested to present evidence, are notified by the Executive Director in writing that a hearing has been granted and that a time and place for the hearing will be set. The date of the hearing may not be less than 30 days from the date that the written notice is mailed, except that an earlier date may be set when the applicant waives his/her right, in writing, to the 30-day notice and has actual notice of the time and place of the hearing.
- Upon receipt of notice of the hearing, the applicant notifies the Executive Director in writing at least 15 days prior to the date set for the hearing whether he/she will appear and furnishes to the Board the name of counsel, if represented by counsel, and the name of each witness he/she intends to call.
- E. Counsel. The term "counsel" includes members in good standing of any bar or any state, accredited representatives of veterans' organizations recognized by the Administrator of Veterans' Affairs under 38 U.S.C. 3402, and other persons, including PHS Commissioned Corps officers, who, in the opinion of the Chairperson, are considered to be competent and appropriate to represent the applicant. No staff assigned to the Office of the Surgeon General (OSG) may represent the applicant.
- F. Witnesses. The applicant is entitled to present witnesses in his/her behalf at a hearing before the Board. The applicant is responsible for notifying such witnesses and for ensuring their appearances at the time and place set for the hearing.
- G. Postponement of Hearing. New issues may not be raised by legal briefs, memoranda or other documentary evidence filed or submitted after the hearing date has been set or at the hearing, except for good cause shown. If new issues are raised after the hearing date has been set, upon good cause shown, the Chairperson may postpone the hearing for such

time as is necessary to allow sufficient time for review of additional materials. If a hearing is postponed, the Executive Director notifies the applicant or his/her counsel in writing of the postponement and of a place and time set for a new hearing.

- H. Nonappearance. An applicant who notifies the Board in writing that he/she does not desire to appear or to be represented by counsel at the appointed place and time set for the hearing, or who fails without good cause to appear in person or to be represented by counsel, is deemed to have waived his/her right to a hearing. Under such circumstances, the Board considers the application on the basis of the written material in the Case Record at that time.
- I. Conduct of Hearing. The Chairperson conducts the hearing so as to insure a full and fair presentation of all the evidence. The hearing is not an adversarial or a legal proceeding. It is not limited by legal rules of evidence; reasonable bounds of competency, relevancy and materiality are observed in receiving and considering evidence. All testimony is given under oath or affirmation; witnesses are subject to questioning by the Board. It is the applicant's responsibility to procure evidence in support of his/her case.
- J. Continuance. The hearing may be continued by the Board on its own motion. A request for continuance by or in behalf of the applicant may be granted by the Board if considered necessary to insure a full and fair presentation of the evidence.
- K. Report of Proceedings. The proceedings in the hearing are reported verbatim and are transcribed.
- L. Review of Proceedings. A copy of the proceedings, including the transcript of the hearing and all other documents incident to the hearing, is given to the applicant or his/her counsel, to the Board members and to DCP for review and comment prior to any deliberations by the Board in executive session.
- M. Expenses. No expenses of any nature whatsoever voluntarily incurred by the applicant or his/her counsel or his/her witnesses or by any other person in behalf of the applicant is paid by the Federal Government.