



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Assistant Secretary for Health
Office of Public Health and Science
Washington, D.C. 20201

May 14, 2004

TO: Active-Duty Commissioned Officers of the U.S. Public Health Service

FROM: Director, Office of Commissioned Corps Force Management

SUBJECT: Standards of Conduct

Federal personnel are expected to uphold the highest standards of ethical behavior, both in their official roles and in their personal conduct. Because many cases arise from officers' lack of knowledge about their ethical responsibilities, this memorandum reviews some of the important provisions of the Standards of Conduct that apply to personnel of the Executive Branch as well as the supplemental ethics regulations of the Department of Health and Human Services (HHS), and provides general instruction and guidance. However, since this memorandum cannot cover all situations, you must become familiar with other rules and their principles as they apply to your specific appointment, assignment, and personal situation.

As a commissioned officer of the U.S. Public Health Service (PHS), you are expected to abide by all applicable standards at all times. Indeed, it is critical to understand that even the appearance of infraction may cause you to be held accountable in the same manner as if there were an actual violation of the standards. These standards are expressed in a variety of statutory and regulatory forms. When there is a possibility that the Standards of Conduct have been violated, an investigation will be conducted, and disciplinary action will be taken, as appropriate.

To Whom Do These Standards Apply?

All PHS officers, whether retired, inactive, or on active duty (including those on leave without pay), are covered by specific standards of conduct. *This memorandum is directed to active-duty officers.*

As Federal personnel, you fall within the scope of the standards issued by the Office of Government Ethics (OGE) and the supplemental standards issued by HHS. See 5 CFR Parts 2634, 2635, and 5501 and also 45 CFR Parts 73 and 73a. PHS officers detailed to non-HHS, but Federal, organizations remain under OGE standards, PHS Commissioned Corps standards (which incorporate the HHS standards), and the standards of the Federal organization to which the officer is detailed.

The OGE regulations became effective February 3, 1993. While OGE's standards and the current HHS supplemental regulations supersede the prior HHS regulations covering the same subjects, the following HHS provisions which can be found in INSTRUCTION 1, Subchapter CC26.1, of the Commissioned Corps Personnel Manual (CCPM) continue in effect, some with slight changes in nomenclature but not in substance, until repealed or replaced:

§73.735-301	--	Courtesy and Consideration for Others
§73.735-302	--	Support of Departmental Programs
§73.735-303	--	Use of Government Funds
§73.735-304	--	Use of Government Property
§73.735-305	--	Conduct in Federal Buildings
§73.735-306	--	Sexual Harassment
§73.735-307	--	Use of Official Information
§73.735-508(e)	--	Government Decisions Outside Official Channels
§73.735-805	--	Advice and Guidance on Conflicts Matters
Subpart F	--	Political Activity (§§ 73.735-601 -- 73.735-603)
Subpart L	--	Disciplinary Action (§§ 73.735-1201)
Subpart M	--	Reporting Violations (§§ 73.735-1301 -- 73.735-1304)
Appendix A	--	List of Some Offenses for Which Disciplinary Action May be Taken

General Conduct

PHS officers are health professionals in public service. Beyond professional competence, your behavior must reflect the highest degree of integrity and impartiality. Simply avoiding improper conduct or avoiding the appearance of improper conduct is not, alone, a mark of public service. You must avoid any conflict of your private interests with public duties and responsibilities. You must not engage in any conduct prejudicial to the Government.

Compensation for Services Performed

PHS officers are **fully** compensated for meeting their responsibilities. You may not accept other compensation or benefits in exchange for actions you take or agree to take on behalf of the Government. The law provides for fines and imprisonment when these principles are violated.

Support of Federal Programs

PHS officers have a positive obligation to support Federal programs and contribute to their accomplishments, helping them function as efficiently and economically as possible. Within the context of your Government duties, you must support them as recognized public policy, be they expressed in law, Executive Order, or regulation.

Political Activities

While PHS officers are encouraged to vote and express their political views freely, Federal law restricts a range of political activities. For example, officers may not actively participate in "partisan" political management or in a partisan political campaign, whether Federal, State, or local. In this context, "partisan" means affiliation with a political organization whose candidate for the President received one or more electoral votes in the prior presidential election. Officers may not raise funds, sell tickets, distribute materials, solicit votes, or make a speech as part of the campaign for a candidate for public office in a partisan election. (These activities are also proscribed for independent candidates if there is any candidate representing a partisan political party.) In addition, officers may not assist in voter registration drives targeted to one party and may not work at the polls on behalf of partisan candidates or political parties acting as checkers, watchers, or in similar positions. Moreover, officers may not avoid these requirements by confining political activities to after-hours or on weekends, by using annual or other leave, or taking a leave of absence. However, officers may attend political rallies and fund-raising functions, and contribute to most political campaigns.

PHS commissioned officers are cautioned that while there were changes affecting political limitations on members of the civil service during 1994, these changes did not affect the political activities restrictions as they apply to members of the commissioned corps.

Commissioned corps officers may not make political contributions to any Federal officer who is the "employer or employing authority" of the contributor. This precludes making contributions to a re-election campaign of an incumbent President. This restriction does not apply to family members or to contributions made to national, State, or local committees of political parties, political action committees, or to other campaigns or organizations, subject to the limits enforced by the Federal Election Commission.

While you are not generally prohibited from wearing political badges, buttons, or stickers, Agencies/Operating Divisions (OPDIVs)/Programs may impose specific restrictions for those who meet with members of the public. However, when wearing the PHS uniform, you may not wear any such badge, button, or sticker.

Use of Government Property

PHS officers must use Government property, including supplies and telephones and other tangible interests, whether the property is owned or leased (such as rental cars), exclusively to advance public purposes. You have a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to you and other Federal employees. You must not use or allow the use of Government property of any kind for other than officially approved activities. In this context, you must interpret "Government property" broadly, including such things as computers, photocopiers, telephones, and facsimile devices, and related supplies and services.

Use of Government Funds

PHS officers must not use Government funds in an improper manner or take Government funds for personal use. In addition, PHS officers shall avoid wasteful actions or behavior in the performance of their assigned duties.

Conduct in Federal Buildings

PHS officers must not participate in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket while on Government owned or leased property or while on duty. In addition, PHS officers shall not solicit contributions, engage in commercial soliciting and vending, collect private debts, or display or distribute commercial advertisements. Nevertheless, PHS officers are allowed to participate in Federally sponsored fund-raising activities conducted pursuant to Executive Order 10927 or similar HHS-approved activities and may purchase a lottery ticket at an authorized State lottery outlet for a lottery authorized by State law and conducted by an agency of a State within that State.

PHS officers should also be aware that General Services Administration (GSA) regulations on "Conduct on Federal Property" apply to all property under the control of the GSA and they are also applicable to all buildings and space under the control of HHS. These regulations prohibit, inter alia, gambling, being intoxicated, and possession, distribution, or use of narcotic or dangerous drugs on the premises. See GSA regulations at 41CFR 101-20.3.

Financial Interests

PHS officers may have private financial interests, but these must not conflict with their Government duties and responsibilities. It follows that you must not engage in a financial transaction as a result of information obtained through your Government employment nor participate in an official capacity in any matter in which you, your spouse, or any minor child has a financial interest. (See section 208 of Title 18, United States Code (U.S.C.)) Exemption: American Indian or Alaska Native officers may participate officially in particular matters that affect tribal organizations in general. Such officers may not, however, participate in particular matters that affect the specific Indian allotment trust or claims fund in which they have rights by virtue of their status or which involve their own Indian tribe or village corporation as a specific party.

A Food and Drug Administration (FDA) officer (including a spouse and minor children of an FDA officer) may not hold a financial interest in any organization that is "significantly regulated" by FDA. Specific exceptions may apply. Please consult with your FDA ethics officer.

Representation of Tribal Organizations

A criminal statute, section 205 of Title 18, U.S.C., generally bans representational activities, whether or not for compensation, performed by any employee in claims against, or in other matters affecting the Government.

The HHS supplemental standards permit an officer detailed to an American Indian tribe or Alaska Native village to act as an agent or attorney for, or appear on behalf of, such tribe or Alaska Native village in connection with any matter pending before any department, agency, court, or commission, in which the United States is a party or has a direct and substantial interest. Before representing the tribe or village, the officer must advise in writing the head of the department, agency, court, or commission before which the individual appears, of any personal and substantial involvement the individual may have had as an employee of the United States in connection with the matter.

Acceptance of Gifts, Entertainment, and Favors — General

A gift includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or item of monetary value. A gift also includes services, training, transportation and travel, meals, and lodging from outside sources.

Officers must not solicit, induce, or coerce the offering of a gift and may not accept a non-solicited gift in return for being influenced, or appearing to be possibly influenced, in the performance of official duties.

Gifts may not be accepted from any person who or any entity that:

- a. Is seeking official action by the Agency/OPDIV/Program to which you are assigned;
- b. Does or seeks to do business with that Agency/OPDIV/Program;
- c. Conducts activities regulated by that Agency/OPDIV/Program; or
- d. Has interests that may be substantially affected by the officer's performance or non-performance of official duties.

If a majority of an organization's members are persons fitting into one or more of the above categories, gifts from the organization are likewise prohibited.

However, an officer may receive unsolicited gifts having an aggregate value of \$20 or less on any one occasion (limited to \$50 per calendar year from any one source), provided that the gift is not in return for being influenced in the performance of duties and that its acceptance does not create the appearance of being so influenced. Cash, gift certificates, bonds, stocks, and similar securities may not be accepted regardless of value.

Gift Exception: An officer may accept an unsolicited gift of native artwork or crafts from Federally recognized American Indian tribes or Alaska Native villages or regional or village corporations valued up to and including \$200 per source per calendar year. Such gifts may include art, jewelry, pottery, rugs, carvings, beadwork, and native dress.

Limitations: Notwithstanding the exception, an officer shall not accept any gift in return for being influenced in the performance of an official act or accept gifts from the same or different sources on a basis so frequent that a reasonable person would be led to believe the employee is using public office for private gain.

You may not accept any salary, "salary supplement," or other compensation for services as a PHS officer other than your pay as an officer.

You may, however, continue to participate in and receive benefits previously earned in connection with a welfare or benefit plan of a former employer, and receive Federal benefits to which you are entitled independent of your employment. You may also participate in any Federal program for which you qualify, such as certain professional training loan repayment programs.

If you hold additional non-Federal responsibilities, or are supported in other ways, such as non-Federal grants, stipends, or awards, these are "outside activities" and are discussed below.

Receipt of Meals, Favors of Nominal Value, and Travel Expenses

When attending a meeting or participating in an inspection tour on behalf of the Federal Government, PHS officers are permitted to accept food and refreshments of nominal value, if offered in the ordinary course of the event to all those participating on the same basis and if there is no reasonable opportunity to compensate the sponsor for this. You are permitted to accept unsolicited advertising or promotional materials, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value (see above discussion and the \$20 standard).

When attending meetings or providing advisory services on behalf of the Federal Government, PHS officers may accept travel and subsistence from outside sources; but only if approved in advance, in accordance with provisions of the Joint Federal Travel Regulations and this Department's issuances or the rules and regulations of the Department concerned.

Use of Information

PHS officers must use information received in the course of meeting their responsibilities solely to advance public purposes. You must not directly or indirectly make, or allow, use of official information that is not already available to the general public for the purpose of furthering private interests.

Outside Employment and Other Activity

As a commissioned officer, you are on duty 24 hours per day unless leave has been requested and granted. In this context, outside activities are a privilege, not a right.

With prior approval, PHS officers may engage in outside employment or other activity when this is compatible with the full and proper discharge of assigned duties and responsibilities. Your outside activities must not compromise your official functions in any way.

Supplemental standards prohibit certain activities. You cannot render consultative or professional services for compensation, to prepare, or assist in the preparation of, grant applications, contract proposals, program reports, or any other matters that are intended to be the subject of dealings with HHS. Additionally, you may not engage in compensated work on an HHS-funded grant contract, cooperative agreement, cooperative research and development agreement, or other similar project or arrangement authorized by statute.

Additionally, officers assigned to the FDA who are required to file either a public or a confidential financial disclosure statement may not engage in employment, whether or not for compensation, with a "significantly regulated organization." Further, such officers may not engage in self-employed business where the sale or promotion of FDA-regulated products is expected to constitute 10 percent or more of the annual gross sales or revenues. Please consult with your ethics officer for further limitations and/or exemptions.

Written approval is required before you may engage, with or without compensation, in the following outside employment or activities:

- a. Providing consultative or professional services, including service as an expert witness;
- b. Engaging in teaching, speaking, writing, or editing that relates to your official duties or that is undertaken as a result of an invitation from a prohibited source; and
- c. Providing services to a non-Federal entity as an officer, director, or board member, or as a member of a group, however denominated, that renders advice, counsel, or consultation.

Officers assigned to the FDA must obtain prior approval for any type of employment, with or without compensation, or for any self-employed business activity. This requirement is in addition to the general prior approval requirements applicable to specific types of activities described above.

Prior approval is not required for participation in a political, religious, social, fraternal, or recreational organization, unless the position requires the provision of professional services or the activity is performed for compensation.

While you are encouraged to engage in professional teaching, lecturing, writing, and publishing, it is critical, however, that all information on which the activity relies be in the public domain, and not be derived from, or dependent on, your Government employment. While these kinds of activities are encouraged, and other forms of professional activity are permitted, each requires prior approval. Moreover, limitations may be imposed by law, Executive Order, regulation, or the approving official.

In 1997, this Department was advised that the Department of Justice will no longer enforce the "honoraria ban," 5 U.S.C. app. § 501(b). As enacted, this statute had prohibited any Federal employee from receiving compensation for various outside activities such as writing an article, delivering a speech, or making an appearance. The statutory ban applied even if the subject matter of the activity was unrelated to the employee's official duties, e.g., freelance writing about a hobby or lecturing on matters of public concern.

In 1995, the Supreme Court decided that the ban could not be upheld and, in its decision, granted relief to those in the petitioning class, namely General Schedule employees at grade 15 or below. This created uncertainty on the applicability of the ban to employees in other pay systems. In 1997, the Department of Justice concluded that the Supreme Court's decision rendered the statute totally ineffective against all classes of Federal employees. However, officers are cautioned that receipt of compensation or other benefits for teaching, speaking, and writing that relates to official duties continues to be prohibited by the Standards of Ethical Conduct, 5 CFR § 2635.807. Moreover, any honorarium offered and accepted as a bribe or salary supplementation for official services is prohibited by the criminal code, sections 201 and 209 of Title 18, U.S.C.

Political appointees remain subject to additional restrictions, and Senate-confirmed Presidential appointees are subject to the total ban on outside earned income imposed by Executive Order 12674.

Conditions for Outside Activities

- a. **Prior Approval and Reporting.** A request for prior approval must be documented on form HHS-520, "Request for Approval of Outside Activity," and submitted to your supervisor a reasonable time in advance of the proposed activity. For activities involving teaching, speaking, writing, or editing, you must submit the proposed text of any disclaimer that is required by either the OGE standards or the Agency/OPDIV/Program instructions or manual issuances authorized by the Designated Agency/OPDIV/Program Ethics Official. If you are assigned to a non-HHS component, use the form which that Agency or Program issues for its employees to request approval for outside activities. A copy of all approved outside activities must be forwarded to the Office of Commissioned Corps Operations (OCCO) for inclusion in your official personnel folder. For information pertaining to the need for approval in advance, refer to INSTRUCTION 1, Subchapter CC26.1, of the CCPM or your Designated Agency/OPDIV/Program Ethics Official.
- b. **Conflicts with Federal Assignments.** You must ensure that the outside activity does not conflict with current responsibilities or with any past responsibilities that would have provided you with information not in the public domain. For example, information acquired from being a member of a group charged with technical evaluation of grant or contract proposals limits later "outside" employment while on active duty.
- c. **Use of Leave in Connection with Outside Activities.** PHS officers must request and may be granted leave to engage in outside activities. As with other requests for leave, the discretion to grant leave rests with the leave granting authority. You are not entitled to it. Within these and other limits, you may use station leave to participate in an outside activity for which you are NOT compensated. However, you must use annual leave to participate in an outside activity for which you are compensated if the outside activity takes place at a time that you would ordinarily be scheduled to be at your duty station, or en route to or from it. (See INSTRUCTION 1, Subchapter CC29.1, of the CCPM.)

- d. **No Other Federal Employment.** While active-duty PHS officers may receive permission to pursue outside professional activities, they may not be otherwise employed or compensated by the U.S. Government. Specifically, active-duty PHS officers, like members of the military services, are not entitled to receive any additional pay for performing services for another component of the Federal Government. Moreover, the Comptroller General has determined that active-duty PHS officers who receive public funds for which they are not otherwise entitled acquire no right to those funds and are liable to make restitution to the Federal Government.

Holding Office in Professional Societies

PHS officers may join professional societies and be elected or appointed to offices in them. Activity in professional associations is generally mutually desirable from the point of view of HHS, the association, and the officer. However, you must avoid any real or apparent conflict of interest in connection with such membership.

In addition, certain office-holding activities in professional associations require administrative approval in advance. (See §5501.106(d) of the Department's Standards of Conduct.)

Acceptance of Awards

PHS officers may accept an award for a meritorious public contribution or achievement given by a person who does not have interests that can be substantially affected by performance of your official duties, or an organization a majority of whose members do not have such interests. There are additional factors for awards with a value greater than \$200. However, if there is any indication that the award may improperly influence you in the performance of your duties or constitute any conflict of interest, you should seek advice from an ethics counselor. Moreover, you may not accept a gift, present, decoration, or other items from a foreign government except as authorized by the Foreign Gifts and Decorations Act. At present, no gift may be accepted from a foreign government unless it is worth no more than \$285. You must receive prior authorization from OCCO before accepting gifts, presents, decorations, or other items from a foreign government.

Personal Responsibilities

PHS officers must also meet a variety of personal obligations, whether on or off duty.

- a. **Abuse of Alcohol and Other Substances.** A PHS officer's conduct must not be affected by the use of alcohol or other substances not used under the supervision of the prescribing health care provider. If such a situation arises, the officer is expected to seek appropriate health care assistance. Requests for health care assistance will be handled confidentially. (See INSTRUCTION 8, Subchapter CC29.3, of the CCPM.)
- b. **Indebtedness.** PHS officers must meet their just personal financial obligations in a proper and timely manner, including those imposed by law such as child support. Failure to do so violates HHS policy, and may be cause for official disciplinary action or garnishment of earnings.
- c. **Sexual Harassment or Discrimination.** Sexual harassment in any form and other discriminatory behaviors are expressly prohibited.

Government Decisions Outside Official Channels

Whether or not an action is specifically prohibited by HHS Standards of Conduct or the standards issued by the OGE, PHS officers must avoid any action that might result in or create the appearance of making a decision outside official channels.

Other

There are other statutory provisions in the HHS Standards of Conduct governing the conduct of present and former employees relating to prohibited activities, e.g., sexual misconduct, bribery, graft, gambling on Government property, disloyalty, disclosure of classified material, or certain types of political participation. If you need a copy of these provisions, refer to INSTRUCTION 1, Subchapter CC26.1, of the CCPM, or consult with your ethics counselor or administrative officials at your duty station.

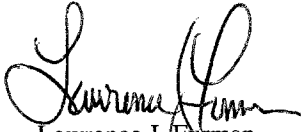
Disciplinary and Remedial Actions

PHS officers who violate the Standards of Conduct will be disciplined by their Agency/OPDIV/Program, OCCO, or the Surgeon General, as appropriate, in addition to any penalty prescribed by law. *Remedial action* to end real or apparent conflicts of interest may include changes in assignment, divestment of conflicting interest, or disqualification for particular assignment(s). This can further involve changes in pay and allowances that are associated with specific assignments and locations. Some types of *disciplinary action* that may be imposed include issuing a letter of reproof or letter of reprimand (INSTRUCTION 1, Subchapter CC46.4, of the CCPM). More severe infractions could result in termination during the probationary period, reduction in grade, or involuntary separation or retirement, possibly under less than honorable conditions (INSTRUCTIONS 1, 4, and 6, Subchapter CC23.7, of the CCPM; INSTRUCTIONS 3 and 4, Subchapter CC23.8, of the CCPM; and INSTRUCTION 1, Subchapter CC46.4, of the CCPM).

Conclusion

The principles discussed in this memorandum and the various standards it cites are of general applicability to both civil service employees and commissioned officers. As a PHS officer, you are receiving this information as required by this Department. If you need further clarification, or have questions about the appropriate course of conduct to be followed in a matter that may involve an actual or apparent conflict of interest, you should contact officials in the Agency/OPDIV/Program to which you are assigned. We will work with them to assist you in resolving any uncertainties. You may also contact ethics officials of this Department (or the non-HHS component to which you are assigned) for further information (see attachment). See 45 CFR § 73.735-805 (Advice and Guidance on Conflicts Matters).

Thank you for reviewing this material and for your continued service as a commissioned officer in the U.S. Public Health Service.


Lawrence J. Furman
CAPT, USPHS

Attachment

Attachment — Selected Deputy Ethics Counselors (or Points of Contact)

<u>Component:</u>	<u>Title:</u>	<u>Name:</u>	<u>Telephone Number:</u>
AHRQ	Ethics Advisor Agency for Healthcare Research and Quality	Mr. Bruce Immerman	301-427-1794
BOP	Ethics Officer, Associate General Counsel, Bureau of Prisons	Ms. Yvonne Hinkson	202-514-6165
CDC and ATSDR	Ethics Program Manager Centers for Disease Control and Prevention	Ms. Kay Thurman	404-498-2856
CMS	Ethics Program Administrator Centers for Medicare and Medicaid Services	Ms. Christine Barnett	410-786-5544
EPA	Senior Counsel for Ethics Environmental Protection Agency	Mr. Kenneth J. Wernick	202-564-1761
FDA	Chief, Ethics and Integrity Branch Food and Drug Administration	Ms. Jenny Slaughter	301-827-5518
HRSA <i>excluding</i> BOP and USCG	Ethics and Personnel Security Specialist Health Resources and Services Administration	Ms. Jennifer Jordan	301-443-6176
IHS	Director, Office of Program Integrity and Ethics Staff Indian Health Service	Ms. Jeanelle Raybon	301-443-4137
NIH	Director, NIH Ethics Office National Institutes of Health	Ms. Holli Beckerman Jaffe	301-594-9555
OPHS	Ethics Counselor Office of Public Health and Science	Ms. Olga Nelson	202-690-5205
OS	Ethics Office Office of the Secretary	Ms. Kimberly Pastora	202-690-8794
PSC	Ethics Contact Program Support Center	Mr. Dan Clutch	301-443-6268
SAMHSA, <i>including</i> St. Elizabeths	Ethics Program Manager Substance Abuse and Mental Health Services Administration	Mr. William Gualtieri	301-443-9859
USCG	PHS Commissioned Corps Liaison U.S. Coast Guard	CAPT Michael L. Adess	202-267-0805
USMS	Associate General Counsel United States Marshals Service	Mr. Robert Marcovici	202-307-9054