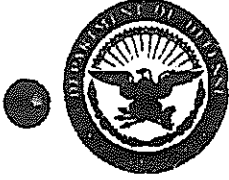


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SECRETARY OF THE ARMY
WASHINGTON

MAR 23 2009

Suspense: April 13, 2009

MEMORANDUM FOR Commander, U.S. Army Medical Command, 2050 Worth Road,
Suite 17, Fort Sam Houston, Texas 78234-6017

SUBJECT: Whistleblower Investigation—Munson Army Health Center (MAHC), Fort
Leavenworth, Kansas – (Office of Special Counsel File Number DI-08-3062)

Enclosed for your review and action is a February 20, 2009 letter from the Office of Special Counsel (OSC) (Enclosure 1), referring to me a whistleblower disclosure. I am required by Title 5, United States Code §1213(c) and (g) to investigate the whistleblower's allegations and submit to OSC a written report setting forth my findings.

As you will note, the referral letter advises of OSC's conclusion that information provided by Mr. Karl Gibson establishes a substantial likelihood that adequate industrial hygiene assessment and testing has not occurred at Fort Leavenworth, Kansas, in violation of law, rule, and regulation. As detailed in the referral letter, Mr. Gibson has alleged that since June 2007, Colonel (COL) [REDACTED], Chief, Department of Preventive Medicine, MAHC and Mr. Gibson's second-line supervisor, and Lieutenant Colonel (LTC) [REDACTED] Environmental Science Officer, Department of Preventive Medicine, MAHC and Mr. Gibson's first-line supervisor, have interfered deliberately with his ability to conduct an effective Industrial Hygiene Program at Fort Leavenworth. The OSC concluded that there is a substantial likelihood that the actions of COL [REDACTED] and LTC [REDACTED] constituted an abuse of authority and have created the potential for a substantial and specific danger to the public health and safety.

You are hereby directed to initiate an investigation into the numerous allegations referred to me by OSC. Your investigation will include an interview of the whistleblower, Mr. Gibson. Upon completion of your investigation, ensure that you initiate appropriate corrective action, if any, as warranted by the facts and prepare a draft report containing all of the information required by Title 5, United States Code, §1213(d) (Enclosure 2). Forward your draft, with all enclosures and exhibits, to the Office of the Army General Counsel (OGC) (Attention: Ms. [REDACTED]), as soon as possible, but not later than April 13, 2009. Your completed investigation must be attached as an exhibit to your draft report. Given the nature of the OSC process, we recommend that you establish the U.S. Army Medical Command Office of the Staff Judge Advocate as your primary point of contact with OGC.

I have delegated to the Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA (M&RA)) the authority to review and approve the Army's report and to submit it to OSC on my behalf. Upon receipt of the report, OSC will refer it to the

whistleblower for comment. The final report, together with OSC's analysis thereof, and the whistleblower's comments will be forwarded to the President of the United States and to the defense committees of jurisdiction in the Senate and in the House of Representatives.

In addition, the Army's final report will be made available for public review and inspection on the OSC web-site and in its reading room. Only classified information or other information, the release of which is prohibited from release by law or Executive order will be redacted from the final public copy. Accordingly, please structure your report to ensure that no restrictions or limitations are placed on its dissemination or on the disclosure of the information upon which it relies. Because your investigation and report on this matter will directly impact perceptions of the Army as an institution, it is imperative that the final report be prepared in a manner intended to facilitate public understanding of the allegations and Army's response to those allegations.

By statute, the Army has only sixty (60) days from receipt of the OSC referral to investigate the allegations referred and to submit the final report to OSC. Accordingly, I urge you to begin your investigation immediately and to apply the appropriate resources to its timely completion. As soon as it becomes apparent that you may require an extension of time to complete your investigation or to prepare the draft submission of the Army's final report to the OSC, please provide a written summary of the actions you have taken in the case to date, together with your justification for extension of the suspense to [REDACTED] in OGC. [REDACTED] will petition the OSC for an extension.

Also, be aware that I have charged my General Counsel to review in detail each draft report submitted in response to an OSC referral and to ensure that the draft meets the high standards mandated for submission to, and approval by, OSC, the President, and the Congress. Once you complete your draft report and forward it to OGC, that office will require time to review, staff, and finalize the report, and to secure the ASA(M&RA)'s approval and signature prior to forwarding the report to OSC.

I am counting on you to conduct a full and fair investigation and to draft the detailed report that OSC requires. Guidelines and instructions related to the conduct of your investigation and the content of your draft report are at Enclosure 3. Should you have any questions about this matter, please contact [REDACTED] immediately at [REDACTED] or by email at [REDACTED]@hqda.army.mil.


Pete Geren

Enclosures

CF: Inspector General of the Department of Defense (Mr. [REDACTED])
Department of the Army Inspector General (COL [REDACTED])
Chief Counsel, U.S. Army Corps of Engineers (Mr. [REDACTED])
Office of the Judge Advocate General, Labor and Employment Law Division (Ms. [REDACTED])
Executive Correspondence Control (Ms. [REDACTED])
U.S. Army Medical Command, Office of the Staff Judge Advocate (COL [REDACTED])



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

February 20, 2009

The Honorable Pete Geren
Secretary
U.S. Department of the Army
101 Army Pentagon
Washington, D.C. 20310-0101

Re: OSC File No. DI-08-3062

Dear Mr. Secretary:

Pursuant to my responsibilities as Special Counsel, I am referring to you a whistleblower disclosure alleging that U.S. Department of the Army officials in the Preventive Medicine section of the Munson Army Health Center (MAHC) at Ft. Leavenworth, Kansas are deliberately interfering with the effective operation of MAHC's Industrial Hygiene program. The whistleblower, Karl Gibson, has served as MAHC's Industrial Hygienist and Industrial Hygiene Program Manager for the past 19 years and has consented to the release of his name.

The U.S. Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. 5 U.S.C. §1213(a) and (b). As Special Counsel, if I find, on the basis of the information disclosed, that there is a substantial likelihood that one of these conditions exists, I am required to advise the appropriate agency head of my findings, and the agency head is required to conduct an investigation of the allegations and prepare a report. 5 U.S.C. §1213(c) and (g).

The Code of Federal Regulations mandates the "annual inspection of workplaces...by personnel who are qualified to recognize and evaluate hazards." 29 C.F.R. §1960. Army Regulation 40-5 requires the establishment of an Army Occupational Health Program in the area of industrial hygiene. Army Pamphlet 40-503 defines Industrial Hygiene as "the science and art devoted to the anticipation, recognition, evaluation, and control of those environmental factors and stresses associated with work and work operations that may cause sickness, impaired health and well being, significant discomfort and inefficiency among workers or among citizens of the community."

Mr. Gibson disclosed that, since June, 2007, his first line supervisor, Lt. Col. [REDACTED] Environmental Science Officer, Department of Preventive Medicine, MAHC, and his second line supervisor, Col. [REDACTED] Chief, Department of Preventive Medicine, MAHC, have actively interfered with his ability to effectively conduct the Industrial Hygiene program. According to Mr. Gibson, Lt. Col. [REDACTED] and Col. [REDACTED] redirected time and resources, issued conflicting and constantly changing directives and diminished Mr. Gibson's authority as Ft. Leavenworth's Industrial Hygienist. As a result,

TAB 1

The Honorable Pete Geren

Page 2

Mr. Gibson has been prevented from ensuring compliance with federal regulations and Army rules and regulations requiring the regular assessment and appropriate testing of Ft. Leavenworth buildings and facilities for industrial hygiene threats and hazards.

In June, 2007, Mr. Gibson was abruptly ordered by Lt. Col. [REDACTED] and Col. [REDACTED] to stop all industrial hygiene assessments, testing and surveying and given alternative responsibilities minimally related to industrial hygiene to occupy his time. In February, 2008, when he had completed all the alternative duties and had nothing left to do, Mr. Gibson was ordered by Lt. Col. [REDACTED] and Col. [REDACTED] to conduct industrial hygiene "walk-thrus" of 18 of Ft. Leavenworth's 295 buildings. These walk-thrus were extremely limited in scope and allowed Mr. Gibson to ask only seven questions of the occupants of each of the 18 buildings. Mr. Gibson was informed that if, after conducting a walk thru, he had reason to suspect the existence of an industrial hygiene issue, he could conduct an "assessment." An assessment could, according to Lt. Col. [REDACTED] and Col. [REDACTED] include limited "spot testing" for industrial hygiene threats but could not include time weighted measurements, which, according to Mr. Gibson, are an essential part of any properly conducted industrial hygiene program.

Mr. Gibson completed the walk-thrus of only 10 of the 18 buildings when, in August, 2008, the Army Corps of Engineers intervened and objected to Lt. Col. [REDACTED] and Col. [REDACTED] two step (walk-thru followed by assessment) approach. Corps of Engineer officials determined that the walk-thru alone was of minimal value and that the walk-thru and assessment steps should be combined and should include limited measurements of light, noise and, if indoor air quality issues have been raised by the occupants of a building, carbon monoxide, temperature, humidity and particulate testing.

For several months, Lt. Col. [REDACTED] and Col. [REDACTED] and the Army Corps of Engineers debated the merits of these differing approaches to industrial hygiene monitoring. Finally, in October, 2008, Mr. Gibson was informed that he could follow the Corps of Engineers' approach but that he was still prohibited from performing time weighted testing without receiving prior supervisory approval. Mr. Gibson maintains that testing without time weighted measurements renders an industrial hygiene program essentially useless. Absent this type of measurement, an industrial hygienist has no means of determining the cumulative affect a suspected toxin might have upon the occupants of a building over an extended period of time. Mr. Gibson further objects to this need for permission based on the fact that he is the only certified Industrial Hygienist at Ft. Leavenworth and the only individual adequately trained to make a determination as to whether testing is warranted. Finally, Mr. Gibson has little confidence that this approach will result in more thorough testing given that over the past year, Mr. Gibson was granted permission to conduct time weighted measurements on only one occasion. His nearly 40 other requests to conduct further testing were denied by Lt. Col. [REDACTED] and Col. [REDACTED] without explanation.

Based on the above, I have concluded that there is a substantial likelihood that the information Mr. Gibson has provided to OSC establishes that adequate industrial hygiene

The Honorable Pete Geren
Page 3

assessment and testing has not occurred at Ft. Leavenworth in violation of law, rule and/or regulation. I have further concluded that Lt. Col. [REDACTED] and Col. [REDACTED] actions constitute an abuse of authority and create the potential for a substantial and specific danger to the public health and safety. Accordingly, I am referring this information to you for an investigation of the whistleblower's allegations and a report of your findings within 60 days of your receipt of this letter. By law, the report must be reviewed and signed by you personally. Should you delegate your authority to review and sign the report to the Inspector General, or any other official, the delegation must be specifically stated and must include the authority to take the actions necessary under 5 U.S.C. §1213(d)(5). Without this information, the report may be found deficient. The requirements of the report are set forth at 5 U.S.C. §1213(c) and (d). A summary of §1213(d) is enclosed. As a matter of policy, OSC also requires that your investigators interview the whistleblower as part of the agency investigation whenever the whistleblower consents to the disclosure of his or her name.

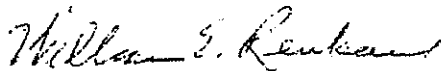
In the event it is not possible to report on the matter within the 60-day time limit under the statute, you may request in writing an extension of time not to exceed 60 days. Please be advised that an extension of time is normally not granted automatically, but only upon a showing of good cause. Accordingly, in the written request for an extension of time, please state specifically the reasons the additional time is needed. Any additional requests for an extension of time must be personally approved by me.

After making the determinations required by 5 U.S.C. §§1213(e)(2), copies of the report, along with any comments on the report from the person making the disclosure and any comments or recommendations by this office, will be sent to the President and the appropriate oversight committees in the Senate and House of Representatives, 5 U.S.C. §§ 1213(e)(3).

Unless classified or prohibited from release by law or by Executive order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs, a copy of the report and any comments will be placed in a public file in accordance with 5 U.S.C. §§1219(a).

Please refer to our file number in any correspondence on this matter. If you need further information, please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 254-3604. I am also available for any questions you may have.

Sincerely,



William E. Reukauf
Acting Special Counsel

Enclosure

Enclosure

Requirements of 5 U.S.C. § 1213(d)

Any report required under subsection (c) shall be reviewed and signed by the head of the agency¹ and shall include:

- (1) a summary of the information with respect to which the investigation was initiated;
- (2) a description of the conduct of the investigation;
- (3) a summary of any evidence obtained from the investigation;
- (4) a listing of any violation or apparent violation of law, rule or regulation; and
- (5) a description of any action taken or planned as a result of the investigation, such as:
 - (A) changes in agency rules, regulations or practices;
 - (B) the restoration of any aggrieved employee;
 - (C) disciplinary action against any employee; and
 - (D) referral to the Attorney General of any evidence of criminal violation.

In addition, we are interested in learning of any dollar savings, or projected savings, and any management initiatives that may result from this review.

¹ Should you decide to delegate authority to another official to review and sign the report, your delegation must be specifically stated.

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TOC: United States Code Service: Code, Const. Rules, Conventions & Public Laws > / / > SUBCHAPTER II. OFFICE OF SPECIAL COUNSEL > § 1213. Provisions relating to disclosures of violations of law, gross mismanagement, and certain other matters

Citation: 5 USc 1213

5 USCS § 1213

UNITED STATES CODE SERVICE
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*** CURRENT THROUGH PL 111-7, APPROVED 3/09/2009 ***

TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES
PART II. CIVIL SERVICE FUNCTIONS AND RESPONSIBILITIES
CHAPTER 12. MERIT SYSTEMS PROTECTION BOARD, OFFICE OF SPECIAL COUNSEL, AND EMPLOYEE RIGHT OF ACTION
SUBCHAPTER II. OFFICE OF SPECIAL COUNSEL

Go to the United States Code Service Archive Directory

5 USCS § 1213

§ 1213. Provisions relating to disclosures of violations of law, gross mismanagement, and certain other matters

(a) This section applies with respect to--

(1) any disclosure of information by an employee, former employee, or applicant for employment which the employee, former employee or applicant reasonably believes evidences--

(A) a violation of any law, rule, or regulation; or

(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

If such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; and

(2) any disclosure by an employee, former employee, or applicant for employment to the Special Counsel or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures of information which the employee, former employee, or applicant reasonably believes evidences--

(A) a violation of any law, rule, or regulation; or

(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(b) Whenever the Special Counsel receives information of a type described in subsection (a) of this section, the Special Counsel shall review such information and, within 15 days after receiving the information, determine whether there is a substantial likelihood that the information discloses a violation of any law, rule, or regulation, or gross mismanagement, gross waste of funds, abuse of

Practitioner's Toolbox

History

Interpretive Notes and Decisions

History: Ancillary Laws and Directives

Resources & Practice Tools

Related Statutes & Rules

Research Guide

Texts:

> Homeland Security Deskbook (Matthew Bender), ch 13, Disclosure, Confidentiality, and Privacy Issues § 13.05.

More...

TAB 2

authority, or substantial and specific danger to public health and safety.

(c) (1) Subject to paragraph (2), if the Special Counsel makes a positive determination under subsection (b) of this section, the Special Counsel shall promptly transmit the information with respect to which the determination was made to the appropriate agency head and require that the agency head--

(A) conduct an investigation with respect to the information and any related matters transmitted by the Special Counsel to the agency head; and

(B) submit a written report setting forth the findings of the agency head within 60 days after the date on which the information is transmitted to the agency head or within any longer period of time agreed to in writing by the Special Counsel.

(2) The Special Counsel may require an agency head to conduct an investigation and submit a written report under paragraph (1) only if the information was transmitted to the Special Counsel by--

(A) an employee, former employee, or applicant for employment in the agency which the information concerns; or

(B) an employee who obtained the information in connection with the performance of the employee's duties and responsibilities.

(d) Any report required under subsection (c) shall be reviewed and signed by the head of the agency and shall include--

(1) a summary of the information with respect to which the investigation was initiated;

(2) a description of the conduct of the investigation;

(3) a summary of any evidence obtained from the investigation;

(4) a listing of any violation or apparent violation of any law, rule, or regulation; and

(5) a description of any action taken or planned as a result of the investigation, such as--

(A) changes in agency rules, regulations, or practices;

(B) the restoration of any aggrieved employee;

(C) disciplinary action against any employee; and

(D) referral to the Attorney General of any evidence of a criminal violation.

(e)

(1) Any such report shall be submitted to the Special Counsel, and the Special Counsel shall transmit a copy to the complainant, except as provided under subsection (f) of this section. The complainant may submit comments to the Special Counsel on the agency report within 15 days of having received a copy of the report.

(2) Upon receipt of any report of the head of an agency required under subsection (c) of this section, the Special Counsel shall review the report and determine whether--

(A) the findings of the head of the agency appear reasonable; and

(B) the report of the agency under subsection (c)(1) of this section contains the information required under subsection (d) of this section.

(3) The Special Counsel shall transmit any agency report received pursuant to subsection (c) of this section, any comments provided by the complainant pursuant to subsection (e)(1), and any appropriate comments or recommendations by the Special Counsel to the President and the congressional committees with jurisdiction over the agency which the disclosure involves.

(4) Whenever the Special Counsel does not receive the report of the agency within the time prescribed in subsection (c)(2) of this section, the Special Counsel shall transmit a copy of the information which was transmitted to the agency head to the President and the congressional committees with jurisdiction over the agency which the disclosure involves together with a statement noting the failure of the head of the agency to file the required report.

(f) In any case in which evidence of a criminal violation obtained by an agency in an investigation under subsection (c) of this section is referred to the Attorney General--

(1) the report shall not be transmitted to the complainant; and

(2) the agency shall notify the Office of Personnel Management and the Office of Management and Budget of the referral.

(g) (1) If the Special Counsel receives information of a type described in subsection (a) from an individual other than an individual described in subparagraph (A) or (B) of subsection (c)(2), the Special Counsel may transmit the information to the head of the agency which the information concerns. The head of such agency shall, within a reasonable time after the information is transmitted, inform the Special Counsel in writing of what action has been or is being taken and when such action shall be completed. The Special Counsel shall inform the individual of the report of the agency head.

(2) If the Special Counsel receives information of a type described in subsection (a) from an individual described in subparagraph (A) or (B) of subsection (c)(2), but does not make a positive determination under subsection (b), the Special Counsel may transmit the information to the head of the agency which the information concerns, except that the information may not be transmitted to the head of the agency without the consent of the individual. The head of such agency shall, within a reasonable time after the information is transmitted, inform the Special Counsel in writing of what action has been or is being taken and when such action will be completed. The Special Counsel shall inform the individual of the report of the agency head.

(3) If the Special Counsel does not transmit the information to the head of the agency under paragraph (2), the Special Counsel shall inform the individual of--

- (A) the reasons why the disclosure may not be further acted on under this chapter; and
- (B) other offices available for receiving disclosures, should the individual wish to pursue the matter further.

(h) The identity of any individual who makes a disclosure described in subsection (a) may not be disclosed by the Special Counsel without such individual's consent unless the Special Counsel determines that the disclosure of the individual's identity is necessary because of an imminent danger to public health or safety or imminent violation of any criminal law.

(i) Except as specifically authorized under this section, the provisions of this section shall not be considered to authorize disclosure of any information by any agency or any person which is--

- (1) specifically prohibited from disclosure by any other provision of law; or
- (2) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

(j) With respect to any disclosure of information described in subsection (a) which involves foreign intelligence or counterintelligence information, if the disclosure is specifically prohibited by law or by Executive order, the Special Counsel shall transmit such information to the National Security Advisor, the Permanent Select Committee on Intelligence of the House of Representatives, and the Select Committee on Intelligence of the Senate.

History:

(Added April 10, 1989, P.L. 101-12, § 3(a)(13), 103 Stat. 21.)

(As amended Oct. 19, 1996, P.L. 104-316, Title I, § 103(a), 110 Stat. 3828; Nov. 27, 2002, P.L. 107-304, § 3, 116 Stat. 2364.)

History; Ancillary Laws and Directives:

1. Effective date of section

2. Amendments

1. Effective date of section:

This section became effective 90 days after enactment, as provided by § 11 of Act April 10, 1989, P.L. 101-12, which appears as 5 USCS § 1201 note.

**SUPPLEMENTAL INSTRUCTIONS FOR THE APPOINTING AUTHORITY
RELATED TO THE INVESTIGATION OF OSC-REFERRED ALLEGATIONS AND THE
PREPARATION OF A DRAFT OSC REPORT**

1. Conducting Your Investigation and Preparing the Draft OSC Report.

a. OSC-referred allegations should be investigated under the provisions of AR 15-6. Should you wish to elect a different investigative methodology, or if you believe the allegations reflect evidence of a crime, please contact Ms. Cassandra Johnson, Office of the Army General Counsel (OGC), 703.695.0562 immediately.

b. Please coordinate with Ms. Johnson prior to finalizing the memorandum of appointment for the designated investigating officer. It is imperative that the appointment memorandum direct investigation of each of the allegations detailed in the OSC referral memorandum and any collateral documents submitted by OSC. The appointment memorandum should identify a legal advisor for the investigating officer, and if subject matter experts are required to provide technical assistance to the investigating officer, they also should be identified in the appointment memorandum.

c. As with any investigation conducted pursuant to AR 15-6, the investigating officer must gather all relevant facts, and based upon those facts, make appropriate findings and recommendations set forth in, and fully justified by, a completed and approved Report of Investigation (ROI). When interviewing witnesses, the investigating officer should capture testimony in a signed sworn statement whenever possible. If that is not possible, the investigating officer should prepare a detailed memorandum for record to be included in the ROI. All follow up questions should be pursued. If pre-planned questions that require a "yes" or "no" answer are provided to a witness, the investigating officer must ensure that the resulting testimony or statement is full and complete and that any collateral issues raised by the witness's answers are explored and addressed, as appropriate. Copies of all materials relevant to the investigation, as well as any documentary evidence collected, must be attached to the ROI as exhibits. If you approve findings and recommendations that logically require follow-on action, you should timely initiate and fully document those corrective, disciplinary, or other actions you may deem appropriate.

d. If any additional allegations not specified in the OSC referral come to your attention, either in your review of the OSC-referred materials or in the context of your AR 15-6 investigation, you must investigate those allegations, take appropriate corrective, disciplinary, or other action, if any, and discuss them in both the AR 15-6 ROI and in the draft OSC report you forward to HQDA for submission to OSC. Please contact Ms. Johnson as soon as any ancillary issue is identified for guidance on how to best to address the matter.

e. By statute, the Army has only sixty (60) days from receipt of the OSC referral to investigate the allegations referred and to submit the final report to OSC. As soon as it becomes apparent that you may require an extension of time to complete your investigation or to prepare the draft submission of the Army's final report to the OSC, please provide a written summary of the actions you have taken in the case to date, together with your justification for extension of the suspense to Ms. Johnson who will petition the OSC for an extension. The grant of an extension from OSC is never guaranteed, so we strongly recommend that you begin your investigation immediately and employ the appropriate resources to ensure its timely completion.

f. Ms. Johnson is available to consult with the investigating officer or legal advisor at any time during the conduct of the investigation. Weekly teleconferences between Ms. Johnson, the

TAB 3

investigating officer, and the legal advisor are an effective way to ensure a timely, quality investigation. A draft of the AR 15-6 ROI should be submitted to Ms. Johnson for review prior to your approval of the investigation.

g. The potential use of your AR 15-6 report to support disciplinary actions against individuals based on documented misconduct, if any, should also be considered in the conduct of your AR 15-6 investigation and the preparation of the AR 15-6 ROI.

h. Be aware that the AR 15-6 ROI and the draft OSC report are two SEPARATE AND DISTINCT REPORTS. You are ultimately responsible for completing and submitting both reports. The AR 15-6 investigation must be conducted, completed, and documented in a ROI as set forth in AR 15-6. The OSC report is usually more comprehensive than an AR 15-6 ROI because an OSC report must include all of the information set forth at Title 5, United States Code § 1213(d). An example of a satisfactory OSC report is attached, next under. The complete AR 15-6 ROI must be attached as an exhibit to your OSC report. Other exhibits not a part of the AR 15-6 ROI may be attached to your draft OSC report, as appropriate.

i. In conducting your investigation of the OSC-referred allegations, please ensure that the methods and processes you use are compatible with engaging in a fair and open "dialogue" with OSC and that there are no restrictions or limitations placed on the use or disclosure of the information gathered, included in, or relied upon to support, the draft OSC report.

2. Forwarding the Completed Report to HQDA.

a. Should you encounter any difficulty with your AR 15-6 investigation, the preparation of your AR 15-6 ROI, or preparation of the draft OSC report, please contact Ms. Johnson immediately to ensure that she is advised of the issue and to seek assistance in its resolution.

b. Forward two hard copies of the complete draft OSC report, to include all exhibits and attachments, and any back-up and supporting documents, to Ms. Johnson by the suspense date. Your AR 15-6 ROI must be attached as an exhibit to your draft OSC report. Because both your AR 15-6 ROI and the draft OSC report will be further reproduced at HQDA, please ensure that any text or page/tab reference is affixed or placed so that it will not be "cut off" in the copying process.

c. In addition to the mailing mentioned above, provide Ms. Johnson with an electronic copy of your draft OSC report in a word document via email at cassandra.johnson@hqda.army.mil. This electronic copy of the draft OSC report should include an electronic version of the table of contents or index to the tabs/attachments accompanying the draft OSC report. This table of contents or index should identify the type of document listed (e.g., email, memorandum, photograph, etc), and the author, subject, and date of each document. It is not necessary to forward electronically the actual exhibits, attachments, or other back-up or supporting documents. Forwarding an electronic version of your draft OSC report will facilitate OGC's review of your draft, approval of the draft by the ASA(M&RA), and finalization and submission of the final OSC report on behalf of the Secretary of the Army.

d. An example of a satisfactory OSC report is attached, next under. The draft OSC report you submit must be patterned on this sample in format, approach, content, and level of detail. Only Ms. Johnson may authorize deviation from the sample. If you follow this sample in compiling your draft OSC report for forwarding to OGC, you can be guaranteed that your draft will comply with Title 5, United States Code, § 1213(d).

G

Army Regulation 40-1

MEDICAL SERVICES

**COMPOSITION,
MISSION, AND
FUNCTIONS OF
THE ARMY
MEDICAL
DEPARTMENT**

Headquarters
Department of the Army
Washington, DC
1 July 1983

Unclassified

SUMMARY of CHANGE

AR 40-1

COMPOSITION, MISSION, AND FUNCTIONS OF THE ARMY MEDICAL DEPARTMENT

Effective 1 August 1983

MEDICAL SERVICES

COMPOSITION, MISSION, AND FUNCTIONS OF THE ARMY MEDICAL DEPARTMENT

By Order of the Secretary of the Army:

JOHN A. WICKHAM, JR.
General, United States Army
Chief of Staff

Official:

ROBERT M. JOYCE
Major General, United States Army
The Adjutant General

History. This revision provides for the designation of The Assistant Surgeon General for Veterinary Services as Executive Agent for all DOD Veterinary Services; sets the policy pertaining to contract surgeons, to include justification for employment, duties, qualifications, full-time or part-time status, compensation and leave, contract negotiations, and contracts; sets the policy pertaining to off-duty employment of Army Medical Department (AMEDD) officers;

makes changes in processing procedures for applications for employment as social workers and psychologists; updates the composition of, and duties of, officers in all AMEDD Corps; makes changes in AMEDD warrant officer descriptions, to reflect Food Inspection Technicians (military occupational specialty 051A); and adds an appendix of required reference publications.

Summary. Not applicable.

Applicability. This regulation applies to—

- The Active Army and Army National Guard (ARNG).
- The US Army Reserve (USAR) when called to active duty.

Proponent and exception authority. Not applicable

Impact on New Manning System. This regulation does not contain information that affects the New Manning System.

Army management control process. Not applicable.

Supplementation. Supplementation of the

is regulation is prohibited unless prior approval is obtained from HQDA (DASG-HCD), WASH DC 20310.

Interim changes. Interim changes to this regulation are not official unless they are authenticated by The Adjutant General. Users will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

Suggested improvements. The proponent agency of this regulation is the Office of The Surgeon General. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to HQDA (DASG-HCD), WASH DC 20310.

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Contents (Listed by paragraph and page number)

Chapter 1

INTRODUCTION, page 1

Purpose • 1-1, page 1

Applicability • 1-2, page 1

References • 1-3, page 1

Explanation of abbreviations • 1-4, page 1

Concept • 1-5, page 1

Responsibilities • 1-6, page 1

Policy • 1-7, page 1

Remunerative professional civilian employment • 1-8, page 2

Command positions • 1-9, page 2

Utilization of AMEDD officers • 1-10, page 3

Chapter 2

CORPS OF THE ARMY MEDICAL DEPARTMENT, page 3

Section I

MEDICAL CORPS, page 3

Composition • 2-1, page 3

Duties of MC officers • 2-2, page 3

Utilization of MC officers • 2-3, page 3

Applicability of Federal and State licensing laws • 2-4, page 3

Section II

DENTAL CORPS, page 3

Composition • 2-5, page 3

Duties of DC officers • 2-6, page 3

Utilization of DC officers • 2-7, page 4

Dental organizations • 2-8, page 4

Application of narcotic and licensing laws to DC officers • 2-9, page 4

Section III

VETERINARY CORPS, page 4

Composition • 2-10, page 4

Duties of VC officers • 2-11, page 4

Utilization of VC officers • 2-12, page 4

Title of VC officers • 2-13, page 4

Section IV

MEDICAL SERVICE CORPS, page 4

Composition • 2-14, page 4

Duties of MSC officers • 2-15, page 5

Utilization of MSC officers • 2-16, page 5

*This regulation supersedes AR 40-1, 5 May 1976.

Contents—Continued

Section V

ARMY NURSE CORPS, page 5

Composition. • 2-17, page 5

Duties of ANC officers. • 2-18, page 5

Utilization of ANC officers. • 2-19, page 5

Section VI

ARMY MEDICAL SPECIALIST CORPS, page 5

Composition. • 2-20, page 5

Duties of AMSC officers. • 2-21, page 6

Utilization of AMSC officers. • 2-22, page 6

Chapter 3

ARMY MEDICAL DEPARTMENT WARRANT OFFICERS,

page 6

Physician assistant, military. • 3-1, page 6

Biomedical equipment repair technician. • 3-2, page 6

Food inspection technician. • 3-3, page 6

Chapter 4

ARMY MEDICAL DEPARTMENT CIVILIAN PERSONNEL,

page 7

Civilian employees. • 4-1, page 7

Contract surgeons. • 4-2, page 7

Professional consultants. • 4-3, page 8

Administrative procedures for professional consultants. • 4-4,
page 8

Appendixes

A. References, page 10

B. SUGGESTED STATEMENT OF WORK FOR FULL-TIME
CONTRACT SURGEON CONTRACT (DUTIES TO BE
PERFORMED AT A GOVERNMENT FACILITY,
page 10

C. SUGGESTED STATEMENT OF WORK FOR PART-TIME
CONTRACT SURGEON CONTRACT DUTIES TO BE
PERFORMED AT A GOVERNMENT FACILITY,
page 11

D. SUGGESTED STATEMENT OF WORK FOR PART-TIME
CONTRACT SURGEON CONTRACT DUTIES TO BE
PERFORMED OUTSIDE GOVERNMENT FURNISHED
FACILITY, page 12

E. PROCESSING PROCEDURES FOR APPLICATIONS FOR
EMPLOYMENT AS SOCIAL WORKERS AND
PSYCHOLOGISTS, page 12

F. SUGGESTED REQUEST FOR OFF-DUTY
REMUNERATIVE PROFESSIONAL CIVILIAN
EMPLOYMENT, page 12

Glossary

Chapter 1 INTRODUCTION

1-1. Purpose

This regulation—

- a. Prescribes the composition, mission, and functions of the Army Medical Department (AMEDD).
- b. Provides general information regarding the AMEDD, each AMEDD Corp, and civilian personnel employed by the department.

1-2. Applicability.

This regulation applies to—

- a. The Active Army and Army National Guard (ARNG).
- b. The US Army Reserve (USAR) when called to active duty.

1-3. References.

Required publications are listed in appendix A.

1-4. Explanation of abbreviations.

Abbreviations used in this regulation are explained in the glossary.

1-5. Concept.

a. The AMEDD encompasses those Army special branches that are under the supervision and management of The Surgeon General. Specifically, these special branches are the Medical Corps (MC), Dental Corps (DC), Veterinary Corps (VC), Medical Service Corps (MSC), Army Nurse Corps (ANC), and Army Medical Specialist Corps (AMSC).

b. The mission of the AMEDD is to—

- (1) Maintain the health of members of the Army.
- (2) Conserve the Army's fighting strength.
- (3) Prepare for health support to members of the Army in time of war, international conflict, or natural disaster.
- (4) Provide health care for eligible personnel in peacetime, concurrently with (3) above.

c. Accomplishment of this mission requires the following:

- (1) Development and execution of coordinated plans and programs to provide the best possible health service in war and peace to eligible personnel, within available resources.
- (2) Establishment of health standards.
- (3) Selection of medically fit personnel; disposition of the medically unfit.
- (4) Application of effective means of preventative and curative health services.
- (5) Execution of the approved medical research, development, test, and evaluation (RDTE) program.
- (6) Application of effective means of health education and management.

d. The AMEDD will provide health services for members of the Army and other agencies and organizations under AR 10-5. Each AMEDD component contributes to accomplishing the mission and functions of the AMEDD in its particular sphere of responsibility.

1-6. Responsibilities.

Responsibilities within the AMEDD are outlined below.

a. *The Surgeon General (TSG).* TSG is a general officer of the MC who has—

(1) Overall responsibilities for development, policy direction, organization, and management of an integrated Army-wide health services system.

(2) Direct access to the Secretary of the Army and the Chief of Staff, US Army (CSA) on all health and medical matters; these matters include the utilization of AMEDD professional personnel. (See AR 10-5.)

b. *Deputy Surgeon General.* The Deputy Surgeon General is a general officer of the MC who will—

- (1) Perform duties prescribed by TSG.
- (2) Serve as acting TSG in TSG's absence.

c. *Assistant Surgeon General for Dental Services.* The Assistant Surgeon General for Dental Services, a general officer of the DC, will make recommendations to TSG and through TSG to CSA on all

matters concerning dentistry and the dental health of members of the Army. All dental functions of the Army are under the direction of the Assistant Surgeon General for Dental Services.

d. *Assistant Surgeon General for Veterinary Services.* The Assistant Surgeon General for veterinary services, a general officer of the VC, will—

(1) Serve as the Executive Agent for all veterinary services within the Department of Defense (DOD).

(2) Advise, represent, and act for, as directed, TSG on all aspects of DOD veterinary functions.

e. *Officers commissioned in the MC, DC, VC, MSC, ANC, and AMSC.* Officers commissioned in these special branches of the AMEDD will carry out the duties outlined in chapter 2.

f. *Warrant officers of the AMEDD.* Warrant officers assigned to AMEDD specialties will carry out the duties outlined in chapter 3.

g. *Enlisted personnel assigned to the AMEDD.* Enlisted personnel assigned to AMEDD specialties will perform medically related technical and administrative functions prescribed in AR 611-201.

h. *Civilian personnel.* Civilian personnel assigned to the AMEDD will perform the duties shown in chapter 4. These civilian personnel include the following: Physicians, dentists, veterinarians, nurses, specialists in science allied to the practice of medicine, medical support and service personnel, contract surgeons, and professional consultants.

i. *Fee-basis physicians.* Fee-base physicians will perform duties set forth in AR 601-270.

1-7. Policy.

a. An AMEDD member may not be assigned to perform professional duties unless qualified to perform those duties. Assignments that involve professional expertise as recognized in the civilian sector must be filled by members of the AMEDD with equal, or similar, qualifications; however, emergency situations could cause exceptions. Qualifications may be met by education, training, or experience in a particular profession.

b. AMEDD members (including contract surgeons and other civilian employees) while on duty will not recommend to anyone authorized to receive health service in a Uniformed Services medical treatment facility (MTF) or at Army expense that this person receive health services from the member when off duty; this prohibition will include civilians associated in practice with the member. An exception would be that such health service would be provided without cost to the patient, the Government, or any other person or firm.

(1) Active members of the Army will not accept payment or other compensation for providing health services at any time or place to anyone authorized to receive health services in a Uniformed Services MTF, under AR 40-121 and AR 40-3 or at Army expense. Payment or other compensation will exclude military pay and allowances, and whether received directly or indirectly. Health services will include examination or consultation.

(2) AMEDD personnel who are active duty members or civilian employees are prohibited by Federal law from receiving additional US Government compensation of any nature, whether received directly or indirectly, for health services rendered to any person. Active duty members or civilian employees are defined in section 2105, title 5 United States Code; the Federal law cited above is section 5536, title 5, United States Code. Compensation of any nature also cited above will be other than ordinary pay and allowances.

c. The furnishing of testimony or production of records in civil courts by members of the AMEDD will be governed by AR 27-40 and guidance published in related technical bulletins.

(1) Testimony before civilian tribunals can involve State, Federal, or foreign courts, and many different situations. A member of the AMEDD in a nonduty status can appear in court on personal business not connected with the member's profession or official duties; usually, no official clearance will be required for this situation and appearance normally will be in civilian clothing. In cases where litigation is of interest to the United States, appearances and other

matters related to the litigation will be reported to The Judge Advocate General of the Army. A member of the AMEDD receiving an informal request or formal subpoena to give evidence or produce documents immediately will consult with the judge advocate or legal adviser of the member's command or agency.

(2) A member of the AMEDD whose official duties lead to appearance in court as a witness, or to furnishing testimony by deposition in litigation to which the Government is not a party, will not accept payment or compensation other than pay and allowance. Travel and subsistence expenses may be collected if the testimony is limited to matters observed in the performance of official duties. If the member's appearance in court is unrelated to his/her performance of official duties, and if he/she testifies as an expert on behalf of a State or the District of Columbia, or for a private individual, corporation, or agency (for example, other than the US Government) on matters outside the scope of his duties, he/she may accept pay as an expert witness. Further guidance may be obtained from the local Judge Advocate. However, all appearances by military personnel and civilian employees as expert witnesses require prior approval of TJAG under AR 27-40.

(3) No member of the AMEDD is authorized to give testimony against the Government except in the performance of official duty or under AR 27-40.

(4) If a member needs to take time off during normal duty hours because of something connected with his/her off-duty employment, duty or leave status is covered by AR 27-40.

d. No active duty member or civilian employee of the AMEDD, including contract surgeons, will accept appointments as, or act in the capacity of, a State or local official if contrary to Federal law or if included within the restrictions of AR 600-20. Before accepting appointment as, or acting in the capacity of, a State or local official, the advice of the local Judge Advocate will be sought. (See AR 600-50 for restrictions on other outside employment.)

1-8. Remunerative professional civilian employment.

a. A commissioned or warrant officer of the AMEDD on active duty will not engage in civilian employment without command approval. This will include the furnishing of testimony for remuneration. Active duty officers are in a 24-hour, 7-day duty status; their military duties at all times will take precedence on their time, talents, and attention. Subject to the limitations set forth in this regulation, members will not be restrained from employment during their normal off-duty hours. Permission for remunerative civilian professional employment will be withdrawn at any time by the commander when such employment is inconsistent with this regulation. In a case where such permission is withdrawn, the affected officer may submit to the commander a written statement containing views or information pertinent to the situation.

b. Before authorizing engagement in remunerative civilian professional employment, commanders will consider the following conditions of each case regarding the civilian community and the officer involved:

(1) The officer's primary military duty will not be impaired by civilian employment. Requests for civilian employment that exceed 16 hours a week usually will be denied. Commanders can grant exceptions if circumstances clearly show that the additional hours will not adversely affect military duties. Because of potential conflict with military obligations, AMEDD officers will not assume primary responsibility for the care of critically ill or injured persons on a continuing basis nor engage in private (solo) practice. Officer trainees (in graduate training programs) are prohibited from remunerative professional employment.

(2) The officer will not request, or be granted administrative absence for the primary purpose of engaging in civilian employment. However, ordinary leave may be granted to provide testimony in connection with authorized off-duty employment (para 1-7c), providing such absence does not adversely affect military duties.

(3) Civilian employment will not involve expense to the Federal Government nor involve use of military medical equipment or supplies.

(4) Individuals will advise employers that they will be subject to respond to alerts or emergencies that—

(a) May arise during non-duty hours.

(b) Could possibly delay the individual in reporting for civilian employment.

(c) Could require the individual to leave his or her civilian employment without warning.

(5) Civilian employment will be conducted entirely during non-duty hours and outside the Army MTF. Military personnel may not be employed by AMEDD officers in civilian employment.

(6) Except as indicated in (7) below, a demonstrated need must exist because of the relative lack of civilian physicians, veterinarians, nurses, or other professional personnel to serve the local community. A letter from the local professional society (or other responsible community agency) expressing no objection to such employment will be a required attachment to the request. This letter also must certify to the need and to the fact that such service is not available from any reasonable civilian source.

(7) AMEDD officers may engage in charitable civilian employment when voluntarily performed for, or for the benefit of, institutionalized persons and recognized nonprofit, charitable organizations; examples are the Boy Scouts and community clinics. (A letter to the benefiting institution or nonprofit organization should clearly state that the officer is performing charitable work as a private citizen and that the Government assumes no responsibility for the officer's actions.)

(8) Medical, nursing, dental, or veterinary officers prescribing drugs in civilian employment are subject to all the requirements of the Federal narcotic law. This will include Drug Enforcement Agency (DEA) registration and payment of taxes that are imposed upon other physicians, nurses, dentists, or veterinarians conducting private practice.

c. The responsibility for meeting local licensing requirements is a personal matter for officers who wish to engage in civilian employment. Similarly, malpractice insurance is a personal responsibility of the individual requesting permission to engage in civilian employment. The Army will not be responsible for officers' acts while they are engaged in off-duty employment.

d. Officers will submit written requests when they wish to engage in off-duty employment. The request will describe the position to be filled and the terms of employment; it will state that requester fully understands the provisions of this paragraph concerning off-duty employment; see appendix F. Commanders will approve or disapprove the request in writing and return a copy to the requester within 10 days. Approved requests will be reviewed at least annually by the commanders concerned.

e. Provided the provisions cited in b through d above are met (and authorized absence during normal duty hours does not adversely affect military duties) AMEDD officers—

(1) May, in isolated cases, provide remunerative advice or services to civilian practitioners in the diagnosis or treatment of patients not entitled to medical, dental, or veterinary care under AR 40-3. Employment must be authorized by their commanders; officers must be certified by an American Specialty Board or recognized by TSG as having achieved an equivalent level of professional ability.

(2) Will perform procedures necessary to save life or prevent undue suffering at any time in an emergency.

(3) May engage in teaching, lecturing, and writing as provided in AR 600-50.

1-9. Command positions.

a. The provisions of AR 600-20 apply in the designation or assumption of command; exceptions are shown in the modifications outlined below.

(1) *Health clinics.* Administrative directions of small outpatient health clinics may be vested in any qualified health care professional officer; this will be done without regard to the officer's basic health care profession. These clinics will be integral parts of the US Army Medical Center (MEDCEN) or medical department activity (MEDDAC) organization. In implementing this policy, due consideration will be given to the availability of qualified officers and the

size and mission of these outpatient facilities. In certain Army health clinics, the senior position is designated as commander. These commanders will provide for disciplinary control over personnel assigned to these clinics. The clinic will remain as an organizational element of the MEDCEN or MEDDAC to which assigned; the parent organization will be responsible for administrative control over personnel and financial resources. Professional direction of health clinics will come from the MEDCEN or MEDDAC commander, or an MC officer designated for this purpose.

(2) *Dental clinic.* Professional direction of dental clinics will come from the Director of Dental Services (DDS) or dental activity (DENTAC) commander.

b. MEDCENS, MEDDACs, community hospitals, and specific Army health clinics designated by HQDA(DASG-ZA) will be commanded by an MC officer qualified to assume command under AR 600-20. The MC officer will command, even though an officer of another branch may be the senior regularly assigned officer present.

c. DENTACs and dental units and detachments will be commanded by a DC officer qualified to assume command under AR 600-20. The DC officer will command, even though an officer of another branch may be the senior regularly assigned officer present.

d. When tables of organization and equipment (TOE) units normally commanded by MC, DC, or VC officers are in a training status, they will be commanded by the senior AMEDD officer qualified to assume command under AR 600-200, unless otherwise directed by HQDA.

1-10. Utilization of AMEDD officers.

a. AMEDD officers' duty time will be devoted, to the maximum extent possible, to actions and procedures for which they are specifically trained. They normally will be utilized in their primary occupational specialties.

b. Commanders of AMEDD units will establish local utilization policies for assigned members of their commands. These policies will include performance of additional duties. Policies will be based on—

- (1) Workload.
- (2) Assigned level of personnel.
- (3) General situation of the command.
- (4) Utilization guidance provided in subsequent chapters in this regulation for each AMEDD Corps and for AMEDD warrant officers.

Chapter 2 CORPS OF THE ARMY MEDICAL DEPARTMENT

Section 1 MEDICAL CORPS

2-1. Composition.

The Medical Corps (MC) consists exclusively of commissioned officers who are qualified doctors of medicine or doctors of osteopathy.

2-2. Duties of MC officers.

a. *Professional.* Professional duties are those directly related to—

- (1) Evaluation of medical fitness for duty of members and potential members of the Armed Forces.
- (2) Analysis of the medical and physical condition of patients.
- (3) Practice of preventive and therapeutic medicine.
- (4) Development and adoption of medical principles required for the—

- (a) Prevention of disease and disability.
- (b) Treatment of patients.
- (5) Solution, through research and development (R&D), of medical professional problems in the—

- (a) Prevention of disease and injury.
- (b) Treatment and reconditioning of patients.

b. *Staff.*

(1) The senior MC officer present for duty with a headquarters (other than medical) will be officially titled—

- (a) The "surgeon" of the field command.
- (b) The "chief surgeon" of the oversea major Army command (MACOM).

(c) The "director of health services (DHS)" at the installation level.

These titles indicate the medical officer's staff position rather than qualifications.

(2) Duties of this individuals are advisory or technical: advisory as staff officers; technical in the supervision of all medical units of the command. These individuals—

(a) Advise the commander and members of the staff on all medical matters pertaining to the command.

(b) Take part in all planning activities dealing with military operations.

(c) Exercise complete technical control within a command over medical units in the maintenance of health, and in the care of the sick and wounded. This care will include those means of evacuation that are organic to the AMEDD.

(3) Except for direct coordination of professional and technical matters, coordination with staff counterparts at higher and subordinate headquarters is through command channels.

(4) When medical and nonmedical TOE units are stationed at installations where a DHS is authorized and assigned, the designated DHS, if other than the MEDDAC or MEDCEN commander, may retain the position, on approval of the installation commander (see AR 10-43), even though a senior MC officer is on duty with the TOE units.

(5) By mutual agreement between commanders, the appropriate medical staff officer may, as an additional duty, serve as the staff surgeon to other commands which do not have medical staff officers assigned.

(6) Specific duties of a medical staff officer are explained in AR 10-6 and AR 611-101.

2-3. Utilization of MC officers.

a. MC officers' duty time will be devoted, to the maximum extent possible, to actions and procedures for which they are specially trained. A minimum of time will be given to those duties that can be adequately performed under their direction by other AMEDD personnel

b. Except when regulations provide otherwise, such officers will not be—

- (1) Detailed as members of—
 - (a) Courts-martial.
 - (b) Nonprofessional boards or committees.
- (2) Assigned to other duties in which medical training is not essential.

To preclude requiring the personal appearance of MC officers as witnesses to present testimony, every effort consistent with due process of law will be made to use reports, depositions, or affidavits submitted by MC officers in connection with courts-martial and boards or committees.

2-4. Applicability of Federal and State licensing laws.

When duties are performed by MC officers under valid orders issued by lawful Federal authority, such officers are—

- a. "Exempt officials," as explained by the DEA.
- b. Not required to register and pay the Federal narcotics tax.

Section II DENTAL CORPS

2-5. Composition.

The Dental Corps (DC) consists exclusively of commissioned officers who are qualified doctors of dental surgery or dental medicine.

2-6. Duties of DC officers.

a. *Professional.* Professional duties will be those directly related to the science of dentistry as practiced by the dental profession.

Army Regulation 10-87

Organization and Functions

**Army
Commands,
Army Service
Component
Commands, and
Direct Reporting
Units**

Headquarters
Department of the Army
Washington, DC
4 September 2007

UNCLASSIFIED

h. NETCOM/9th SC(A) is dependent on other Army organizations and agencies for appropriate support and services per prescribed regulations and policies and maintains the following relationships:

(1) NETCOM/9th SC(A) coordinates requirements, doctrine, design changes, capabilities, modernization, and proposed missions and functions for theater-level signal forces.

(2) NETCOM/9th SC(A) coordinates the management of enterprise-level collaborative intelligence support and predictive analysis to NetOps and its IA component with primary focus on emerging threats.

(3) NETCOM/9th SC(A) collaborates with pertinent commands, the USARC, the materiel developer and responsible program manager for doctrine, fielding, integration, installation, new equipment training team, and sustainment of signal specific systems.

(4) NETCOM/9th SC(A), in conjunction with the USARC and ARNG, develops theater-level signal unit force design updates for TRADOC, influences modernization with HQDA, and coordinates military occupational specialty restructure initiatives with Human Resources Command and TRADOC. Relationships concerning Service responsibilities for RC units are regulated by MOUs.

(5) NETCOM/9th SC(A) advises and assists the USARC and ARNG in developing IDT and AT programs for RC signal units and personnel.

(6) NETCOM/9th SC(A) collaborates with the U.S. Army Corps of Engineers (USACE) on requirements for information and telecommunications in all facilities serviced by outside the CONUS DOIMs.

(7) NETCOM/9th SC(A) coordinates with INSCOM as required for the defense of the LWN.

(8) NETCOM/9th SC(A) for multicomponent SC(T) exercises a shared ADCON relationship with the ASCC and USARC. NETCOM/9th SC(A) exercises ADCON over forward stationed Active Army theater-level signal forces to include the Active Army element of the SC(T) and technical authority over all aspects of the LWN. NETCOM/9th SC(A) exercises C4/IT and NetOps enterprise control over all Army theater signal forces.

Chapter 15

U.S. Army Medical Command

15-1. Mission

MEDCOM provides medical, dental, and veterinary capabilities to the Army and designated DOD activities; operates fixed facilities; conducts medical research, materiel development, testing and evaluation; executes medical materiel acquisition programs as assigned by the Army Acquisition Executive; manages Army medical materiel; educates and trains personnel; and develops medical concepts, doctrine, and systems to support Army health care delivery.

15-2. Functions

a. MEDCOM is designated as a DRU by the SA and reports directly to The Surgeon General (TSG) of the Army.

b. MEDCOM is responsible for the planning and execution of DRU responsibilities by exercising specified ADCON of organic, assigned and attached Army forces.

c. MEDCOM advises supported commanders without adequate organic medical, dental, and veterinary capability for health services and health issues.

d. MEDCOM provides medical and dental care worldwide; coordinates Army health services for Army, civilian, and Federal health care resources in a given health service area; and conducts health care education, training and studies.

e. MEDCOM provides veterinary services for the Army and DOD.

f. MEDCOM manages and conducts activities concerning biomedical research and technology; regulatory compliance and quality; and medical advanced technology. Provides regulatory oversight of all Army research involving human subjects.

g. MEDCOM provides Armywide expertise and services in disease prevention and control; clinical and field preventive medicine, environmental and occupational health, health promotion and wellness, hearing conservation, epidemiology and disease surveillance, toxicology, and related laboratory sciences.

h. MEDCOM provides medical logistics, acquisition services, and materiel research, development, test, and evaluation to Army units and DOD components. Develops logistics policy for management, distribution, and storage of medical materiel and for medical equipment maintenance. Delivers Class VIII support for military health care operations.

i. MEDCOM is the proponent for, and implements, the Medical Professional Filler System.

j. MEDCOM trains the medical force, develops medical doctrine and future concepts; conducts combat developments; develops training devices, simulations, and publications; and manages medical force structure.

k. MEDCOM conducts life cycle management for Army medical information systems.

l. MEDCOM, in coordination with IMCOM, provides base operations support and installation management for MEDCOM and tenant activities at MEDCOM installations. MEDCOM, in coordination with TRICARE Management

Activity and USACE, manages acquisition of Army medical facilities funded by military construction (MILCON), Defense.

15-3. Command and staff relationships

a. TSG is dual hatted as the Commander, MEDCOM and is supervised by the CSA.

b. The Commander, MEDCOM is responsible to the SA for execution of assigned responsibilities contained in 10 USC 3013(b). The Commander, MEDCOM exercises ADCON authority and responsibility on behalf of the SA and in this regard is primarily responsible for the administration and support of Army forces worldwide for certain ADCON functions.

c. The Commander, MEDCOM is authorized to communicate and coordinate directly with ACOM, ASCC, or other DRU commanders; HQDA; other DOD headquarters and agencies; and other Government departments, as required, on matters of mutual interest subject to procedures established by CSA.

d. Commander, MEDCOM directs all Active Army health services activities involved in providing direct health care support within the prescribed geographical limits of responsibility; designates missions and levels of care to be provided by subordinate military treatment facilities; and determines manpower staffing standards and levels of staffing.

e. MEDCOM is dependent on other Army organizations and agencies for appropriate support and services per prescribed regulations and policies and maintains the following relationships:

(1) Coordinates with TRADOC on medical combat development functions and doctrinal concepts and systems for health services support to the Army in the field.

(2) Supervises and evaluates the performance of Army Medical Department RC units when training with MEDCOM activities.

(3) Administers the individual medical training programs for RC personnel performing Advanced Individual Training at MEDCOM activities.

(4) Provides doctrinal support for training and evaluation of both Active Army and RC medical units and individuals throughout the Army.

(5) Coordinates with TRICARE Management Activity to ensure integrated, standardized health care delivery.

(6) Coordinates with Defense Logistics Agency to develop and execute policies and procedures for medical logistics organizations pertaining to Theater Lead Agents for medical materiel.

f. For command relationships—

(1) Command relationships for operational Service forces are established by the SECDEF and applicable CCDRs.

(2) Pursuant to the direction of the SA, certain authorities and responsibilities for ADCON of Army forces assigned to a combatant command are shared by the Commander, MEDCOM; ACOMs; the ASCC of the combatant command; and other DRUs. Subject to applicable law, regulation, and policy, the allocation of authorities and responsibilities pertinent to the exercise of shared ADCON will be documented in appropriate agreements/understandings between the commanders of MEDCOM, ACOMs, the ASCC, and other DRUs as appropriate.

Chapter 16

U.S. Army Intelligence and Security Command

16-1. Mission

a. INSCOM synchronizes the operations of all INSCOM units to produce intelligence in support of the Army, combatant commands, and the National intelligence community. INSCOM responds to taskings from national and departmental authorities for Signal intelligence (SIGINT), human intelligence (HUMINT), counterintelligence (CI), imagery intelligence, measurement and signature intelligence (MASINT), technical intelligence (TI), electronic warfare (EW), and information operations (IO).

b. INSCOM provides Title 50 USC National Intelligence Program support to combatant commands and Army organizations.

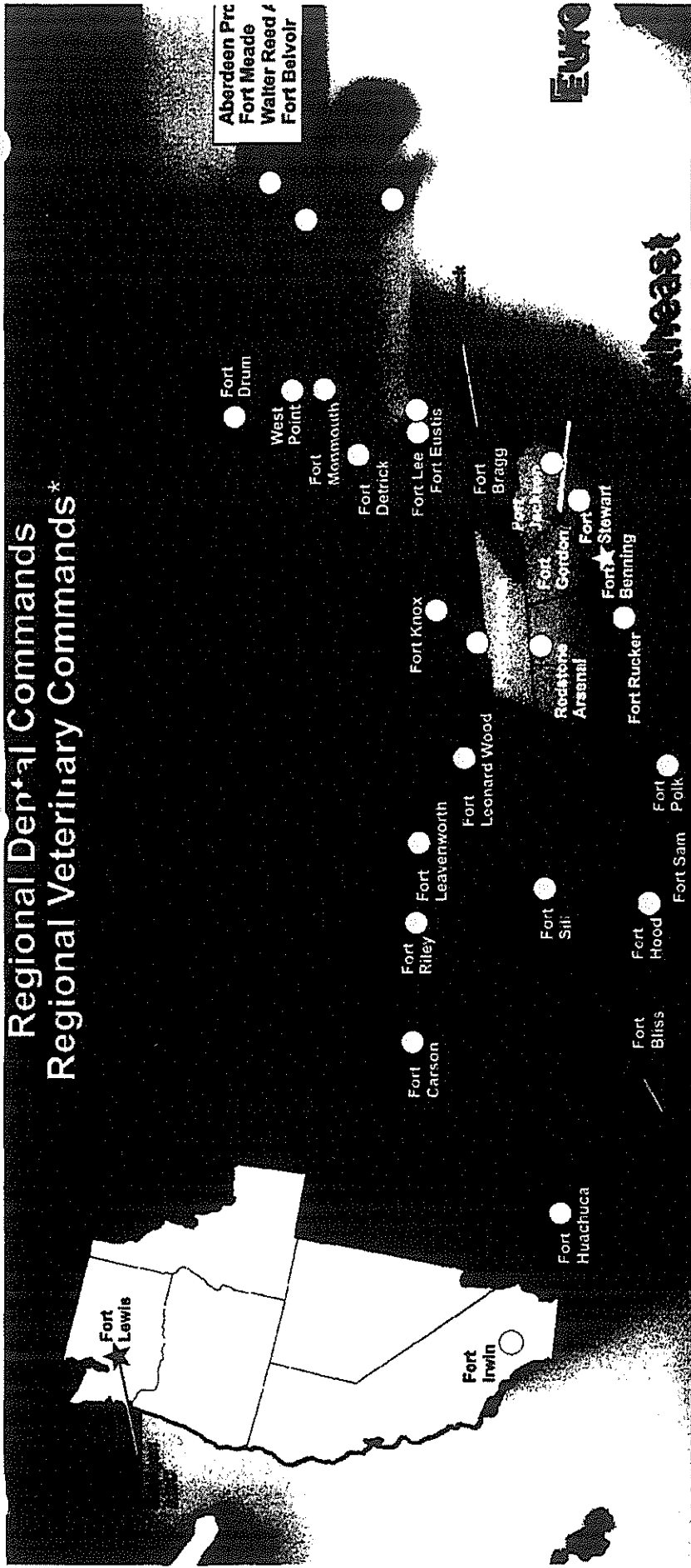
16-2. Functions

a. INSCOM is designated by the SA as a DRU and reports directly to the Deputy Chief of Staff, G-2 (DCS, G-2).

b. INSCOM is responsible for the planning and execution of DRU responsibilities by exercising command and control of organic, assigned and attached Army forces.

c. INSCOM serves as the principal Army advisor to the Director, National Security Agency/Chief, Central Security Service for the United States Signals Intelligence Directive System and maintains liaison with national agencies for SIGINT operations. INSCOM supports the National SIGINT Special Activities Office program and DOD and DA SIGINT programs; performs worldwide SIGINT operations; advises and assists other Army organizations on SIGINT

Regional Dental Commands Regional Veterinary Commands*



Regional Dental Commands
 Fort Sam Houston, TX
 Regional and Preventive Medicine
 (RPM) Fort Sam Houston, TX
 Materiel Command (MRMC), Fort Detrick, MD
 TCOM, Fort Sam Houston, TX

Regional Veterinary Commands
 (Great Plains RMC)
 (Southeast RMC)
 (Europe RMC)
 (Western RMC)

Installations
 Fort Detrick, MD
 Walter Reed AMC, Washington, DC

Medical Department Activities (MDA)

Collocated Dental Activities (CDA)
 Alaska (Fort Wainwright)
 Fort Belvoir, VA
 Fort Benning, GA
 Fort Campbell, KY
 Fort Carson, CO
 Fort Drum, NY
 Fort Eustis, VA
 Heidelberg, Germany
 Fort Hood, TX
 Fort Huachuca, AZ
 Fort Irwin, CA

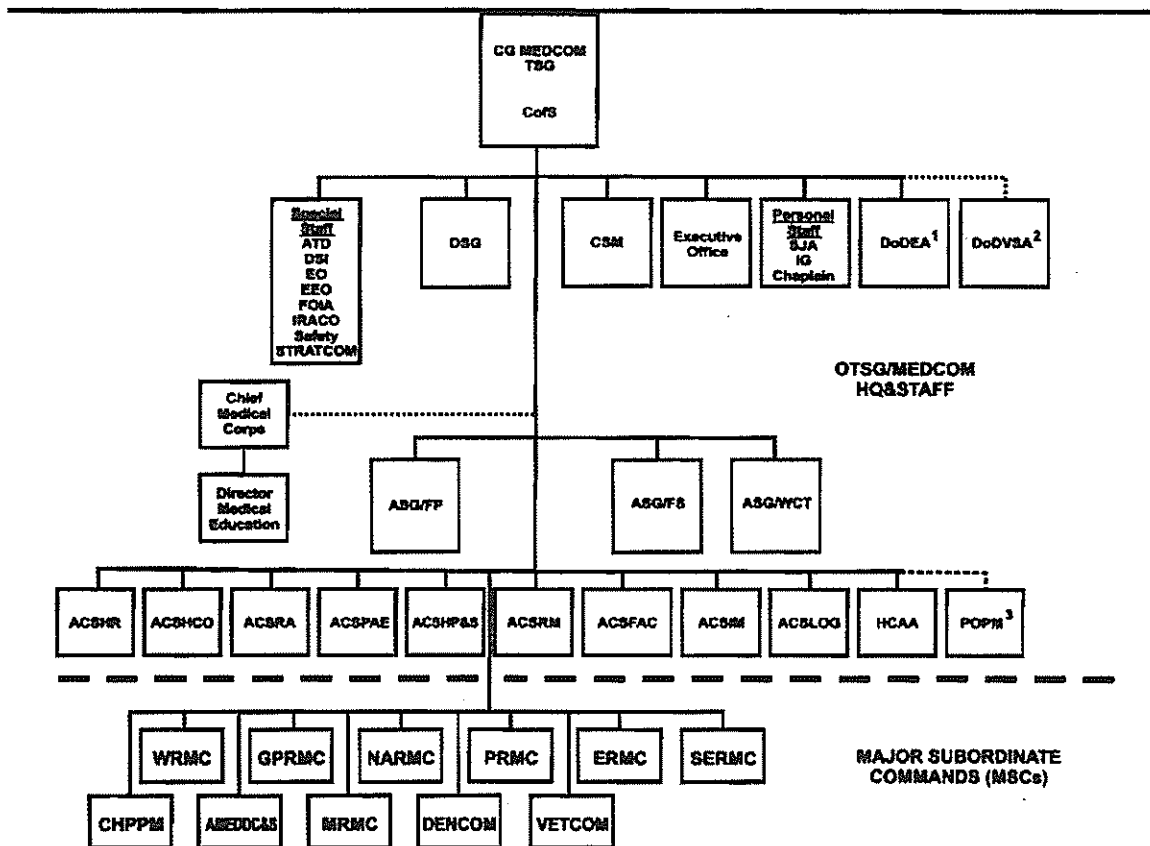
Medical Department Activities (MDA)
 Fort Leavenworth, KS
 Fort Lee, VA
 Fort Leonard Wood, MO
 Fort Meade, MD
 Fort Monmouth, NJ
 Fort Polk, LA
 Redstone Arsenal, AL
 Fort Riley, KS
 Fort Rucker, AL
 Fort Sill, OK
 Fort Stewart, GA

EWI

West

East

1-13. **Organizational chart.** The MEDCOM organizational structure, to include the OTSG/HQ MEDCOM Staff and MEDCOM MSCs, is depicted at figure 1-1.



Notes:

1. EA organizations or activities that TSG is responsible for are described in Chapter 14 of the OTSG Reg 10-32/MEDCOM Reg 10-2.
2. Director, DoDVSA works directly for ASG, Veterinary Services/Chief Veterinary Corps
3. POPM works directly for the Functional Proponent for Preventive Medicine (FPPM)

The following positions also exist but are not reflected on the above organization chart: DSG - Mobilization, Readiness and Reserve Affairs; DSG - Army National Guard; ASG - Force Management, Mobilization and Reserve Affairs; ASG - Mobilization, Readiness and National Guard Affairs.

Figure 1-1. OTSG/HQ MEDCOM AND MSCs organizational structure

H

[REDACTED] Ms CIV USA OGC

From: [REDACTED] Ms CIV USA OGC
Sent: Monday, March 23, 2009 12:54 PM
To: [REDACTED] OIG DoD; [REDACTED] Nugent, Diane M SES CIV
USA OTJAG; [REDACTED] Ms CIV USA HQDA ECC; [REDACTED] COL MIL USA
MEDCOM OTSG; [REDACTED] GNET.army.mil
Cc: [REDACTED] Ms CIV USA OGC
Subject: Whistleblower Investigation_3_23_2009_12_44_23.pdf (UNCLASSIFIED)
Attachments: Whistleblower Investigation_3_23_2009_12_44_23.pdf

Classification: UNCLASSIFIED
Caveats: NONE

All - The attached memo and tabs are being sent to you by Ms. Cassandra Johnson.

[REDACTED]
Executive Assistant to the
General Counsel and Principal Deputy
[REDACTED]

Classification: UNCLASSIFIED
Caveats: NONE



SECRETARY OF THE ARMY
WASHINGTON

MAR 23 2009

Suspense: April 13, 2009

MEMORANDUM FOR Commander, U.S. Army Medical Command, 2050 Worth Road,
Suite 17, Fort Sam Houston, Texas 78234-6017

SUBJECT: Whistleblower Investigation—Munson Army Health Center (MAHC), Fort
Leavenworth, Kansas – (Office of Special Counsel File Number DI-08-3062)

Enclosed for your review and action is a February 20, 2009 letter from the Office of Special Counsel (OSC) (Enclosure 1), referring to me a whistleblower disclosure. I am required by Title 5, United States Code §1213(c) and (g) to investigate the whistleblower's allegations and submit to OSC a written report setting forth my findings.

As you will note, the referral letter advises of OSC's conclusion that information provided by Mr. Karl Gibson establishes a substantial likelihood that adequate industrial hygiene assessment and testing has not occurred at Fort Leavenworth, Kansas, in violation of law, rule, and regulation. As detailed in the referral letter, Mr. Gibson has alleged that since June 2007, Colonel (COL) [REDACTED], Chief, Department of Preventive Medicine, MAHC and Mr. Gibson's second-line supervisor, and Lieutenant Colonel (LTC) [REDACTED], Environmental Science Officer, Department of Preventive Medicine, MAHC and Mr. Gibson's first-line supervisor, have interfered deliberately with his ability to conduct an effective Industrial Hygiene Program at Fort Leavenworth. The OSC concluded that there is a substantial likelihood that the actions of COL [REDACTED] and LTC [REDACTED] constituted an abuse of authority and have created the potential for a substantial and specific danger to the public health and safety.

You are hereby directed to initiate an investigation into the numerous allegations referred to me by OSC. Your investigation will include an interview of the whistleblower, Mr. Gibson. Upon completion of your investigation, ensure that you initiate appropriate corrective action, if any, as warranted by the facts and prepare a draft report containing all of the information required by Title 5, United States Code, §1213(d) (Enclosure 2). Forward your draft, with all enclosures and exhibits, to the Office of the Army General Counsel (OGC) (Attention: Ms. [REDACTED]), as soon as possible, but not later than April 13, 2009. Your completed investigation must be attached as an exhibit to your draft report. Given the nature of the OSC process, we recommend that you establish the U.S. Army Medical Command Office of the Staff Judge Advocate as your primary point of contact with OGC.

I have delegated to the Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA (M&RA)) the authority to review and approve the Army's report and to submit it to OSC on my behalf. Upon receipt of the report, OSC will refer it to the

whistleblower for comment. The final report, together with OSC's analysis thereof, and the whistleblower's comments will be forwarded to the President of the United States and to the defense committees of jurisdiction in the Senate and in the House of Representatives.

In addition, the Army's final report will be made available for public review and inspection on the OSC web-site and in its reading room. Only classified information or other information, the release of which is prohibited from release by law or Executive order will be redacted from the final public copy. Accordingly, please structure your report to ensure that no restrictions or limitations are placed on its dissemination or on the disclosure of the information upon which it relies. Because your investigation and report on this matter will directly impact perceptions of the Army as an institution, it is imperative that the final report be prepared in a manner intended to facilitate public understanding of the allegations and Army's response to those allegations.

By statute, the Army has only sixty (60) days from receipt of the OSC referral to investigate the allegations referred and to submit the final report to OSC. Accordingly, I urge you to begin your investigation immediately and to apply the appropriate resources to its timely completion. As soon as it becomes apparent that you may require an extension of time to complete your investigation or to prepare the draft submission of the Army's final report to the OSC, please provide a written summary of the actions you have taken in the case to date, together with your justification for extension of the suspense to [REDACTED] in OGC. [REDACTED] will petition the OSC for an extension.

Also, be aware that I have charged my General Counsel to review in detail each draft report submitted in response to an OSC referral and to ensure that the draft meets the high standards mandated for submission to, and approval by, OSC, the President, and the Congress. Once you complete your draft report and forward it to OGC, that office will require time to review, staff, and finalize the report, and to secure the ASA(M&RA)'s approval and signature prior to forwarding the report to OSC.

I am counting on you to conduct a full and fair investigation and to draft the detailed report that OSC requires. Guidelines and instructions related to the conduct of your investigation and the content of your draft report are at Enclosure 3. Should you have any questions about this matter, please contact Ms. Johnson immediately at [REDACTED] or by email at [REDACTED]@hqda.army.mil.


Pete Geren

Enclosures

CF: Inspector General of the Department of Defense (Mr. [REDACTED])
Department of the Army Inspector General (COL [REDACTED])
Chief Counsel, U.S. Army Corps of Engineers (Mr. [REDACTED])
Office of the Judge Advocate General, Labor and Employment Law Division (Ms. [REDACTED])
Executive Correspondence Control (Ms. [REDACTED])
U.S. Army Medical Command, Office of the Staff Judge Advocate (COL [REDACTED])



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

February 20, 2009

The Honorable Pete Geren
Secretary
U.S. Department of the Army
101 Army Pentagon
Washington, D.C. 20310-0101

Re: OSC File No. DI-08-3062

Dear Mr. Secretary:

Pursuant to my responsibilities as Special Counsel, I am referring to you a whistleblower disclosure alleging that U.S. Department of the Army officials in the Preventive Medicine section of the Munson Army Health Center (MAHC) at Ft. Leavenworth, Kansas are deliberately interfering with the effective operation of MAHC's Industrial Hygiene program. The whistleblower, Karl Gibson, has served as MAHC's Industrial Hygienist and Industrial Hygiene Program Manager for the past 19 years and has consented to the release of his name.

The U.S. Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. 5 U.S.C. §1213(a) and (b). As Special Counsel, if I find, on the basis of the information disclosed, that there is a substantial likelihood that one of these conditions exists, I am required to advise the appropriate agency head of my findings, and the agency head is required to conduct an investigation of the allegations and prepare a report. 5 U.S.C. §1213(c) and (g).

The Code of Federal Regulations mandates the "annual inspection of workplaces... by personnel who are qualified to recognize and evaluate hazards." 29 C.F.R. §1960. Army Regulation 40-5 requires the establishment of an Army Occupational Health Program in the area of industrial hygiene. Army Pamphlet 40-503 defines Industrial Hygiene as "the science and art devoted to the anticipation, recognition, evaluation, and control of those environmental factors and stresses associated with work and work operations that may cause sickness, impaired health and well being, significant discomfort and inefficiency among workers or among citizens of the community."

Mr. Gibson disclosed that, since June, 2007, his first line supervisor, Lt. Col. [REDACTED] Environmental Science Officer, Department of Preventive Medicine, MAHC, and his second line supervisor, Col. [REDACTED] Chief, Department of Preventive Medicine, MAHC, have actively interfered with his ability to effectively conduct the Industrial Hygiene program. According to Mr. Gibson, Lt. [REDACTED] and Col. [REDACTED] redirected time and resources, issued conflicting and constantly changing directives and diminished Mr. Gibson's authority as Ft. Leavenworth's Industrial Hygienist. As a result,

TAB 1

Mr. Gibson has been prevented from ensuring compliance with federal regulations and Army rules and regulations requiring the regular assessment and appropriate testing of Ft. Leavenworth buildings and facilities for industrial hygiene threats and hazards.

In June, 2007, Mr. Gibson was abruptly ordered by Lt. Col. [REDACTED] and Col. [REDACTED] to stop all industrial hygiene assessments, testing and surveying and given alternative responsibilities minimally related to industrial hygiene to occupy his time. In February, 2008, when he had completed all the alternative duties and had nothing left to do, Mr. Gibson was ordered by Lt. Col. [REDACTED] and Col. [REDACTED] to conduct industrial hygiene "walk-thrus" of 18 of Ft. Leavenworth's 295 buildings. These walk-thrus were extremely limited in scope and allowed Mr. Gibson to ask only seven questions of the occupants of each of the 18 buildings. Mr. Gibson was informed that if, after conducting a walk thru, he had reason to suspect the existence of an industrial hygiene issue, he could conduct an "assessment." An assessment could, according to Lt. Col. [REDACTED] and Col. [REDACTED] include limited "spot testing" for industrial hygiene threats but could not include time weighted measurements, which, according to Mr. Gibson, are an essential part of any properly conducted industrial hygiene program.

Mr. Gibson completed the walk-thrus of only 10 of the 18 buildings when, in August, 2008, the Army Corps of Engineers intervened and objected to Lt. Col. [REDACTED] and Col. [REDACTED] two step (walk-thru followed by assessment) approach. Corps of Engineer officials determined that the walk-thru alone was of minimal value and that the walk-thru and assessment steps should be combined and should include limited measurements of light, noise and, if indoor air quality issues have been raised by the occupants of a building, carbon monoxide, temperature, humidity and particulate testing.

For several months, Lt. Col. [REDACTED] and Col. [REDACTED] and the Army Corps of Engineers debated the merits of these differing approaches to industrial hygiene monitoring. Finally, in October, 2008, Mr. Gibson was informed that he could follow the Corps of Engineers' approach but that he was still prohibited from performing time weighted testing without receiving prior supervisory approval. Mr. Gibson maintains that testing without time weighted measurements renders an industrial hygiene program essentially useless. Absent this type of measurement, an industrial hygienist has no means of determining the cumulative affect a suspected toxin might have upon the occupants of a building over an extended period of time. Mr. Gibson further objects to this need for permission based on the fact that he is the only certified Industrial Hygienist at Ft. Leavenworth and the only individual adequately trained to make a determination as to whether testing is warranted. Finally, Mr. Gibson has little confidence that this approach will result in more thorough testing given that over the past year, Mr. Gibson was granted permission to conduct time weighted measurements on only one occasion. His nearly 40 other requests to conduct further testing were denied by Lt. Col. [REDACTED] and Col. [REDACTED] without explanation.

Based on the above, I have concluded that there is a substantial likelihood that the information Mr. Gibson has provided to OSC establishes that adequate industrial hygiene

I



DEPARTMENT OF THE ARMY
GREAT PLAINS REGIONAL MEDICAL COMMAND
FORT SAM HOUSTON, TEXAS 78234-6200

REPLY TO
ATTENTION OF:

MCGP-JA

22 April 2009

MEMORANDUM FOR COL [REDACTED] United States Army Center for Health
Promotion and Preventive Medicine, 5158 Blackhawk Road, Aberdeen Proving Ground, MD
21010-5403

SUBJECT: Appointment of Investigating Officer – Whistleblower Investigation

1. You are hereby appointed an investigating officer pursuant to Army Regulation (AR) 15-6, *Procedures for Investigating Officers and Boards of Officers*, 2 October 2006, to conduct an informal investigation into allegations by Mr. Karl Gibson of improprieties by Colonel (COL) [REDACTED] and Lieutenant Colonel (LTC) [REDACTED] Munson Army Health Center (MAHC), Fort Leavenworth, Kansas.

2. Specifically, you are directed to investigate the following and determine:

a. Whether or not since June 2007, COL [REDACTED] Chief, Department of Preventive Medicine, MAHC and Mr Gibson's second-line supervisor, and LTC [REDACTED] Environmental Science Officer, Department of Preventive Medicine, MAHC and Mr. Gibson's first-line supervisor, have actively interfered with Mr. Gibson's ability to conduct an effective Industrial Hygiene Program at Fort Leavenworth. At minimum, you should investigate and determine as follows:

(1) Have LTC [REDACTED] and COL [REDACTED] redirected time and resources, issued conflicting and constantly changing directives to Mr. Gibson, thereby diminishing Mr. Gibson's authority as Ft. Leavenworth's Industrial Hygienist?

(2) Has Mr. Gibson otherwise been prevented by LTC [REDACTED] and COL [REDACTED] from ensuring compliance with federal regulations and Army rules and regulations requiring the regular assessment and appropriate testing of Ft. Leavenworth buildings and facilities for industrial hygiene threats and hazards?

b. Whether or not the actions of COL [REDACTED] and LTC [REDACTED] constituted an abuse of authority. At a minimum you should investigate and determine as follows:

(1) Did, in June, 2007, LTC [REDACTED] and COL [REDACTED] abruptly order Mr. Gibson to stop all industrial hygiene assessments, testing and surveying and give Mr. Gibson alternative responsibilities minimally related to industrial hygiene? If so, did this constitute an abuse of authority by LTC [REDACTED] or COL [REDACTED]?

(2) Did, in, February 2008, LTC [REDACTED] and COL [REDACTED] order Mr. Gibson to conduct industrial hygiene "walk-thrus" of 18 of Ft. Leavenworth's 295 buildings? If so, did this constitute an abuse of authority by LTC [REDACTED] or COL [REDACTED]?

MCGP-JA

SUBJECT: Appointment of Investigating Officer – Whistleblower Investigation

(3) Were these "walk-thrus" (as described in item b2), above), unreasonably limited in scope by LTC [REDACTED] and COL [REDACTED] by restricting Mr. Gibson to ask only seven questions of the occupants of each of the 18 buildings? If so, did this constitute an abuse of authority by LTC [REDACTED] or COL [REDACTED]?

(4) If, after conducting a walk-thru, Mr. Gibson had reason to suspect the existence of an industrial hygiene issue was he authorized to conduct an assessment of the building, but was that assessment unreasonably limited in scope by LTC [REDACTED] and COL [REDACTED] by restricting Mr. Gibson to "spot testing" for industrial hygiene threats but prohibiting time weighted measurements? If so, did this constitute an abuse of authority by LTC [REDACTED] or COL [REDACTED]?

(5) Are time weighted measurements an essential part of any properly conducted industrial hygiene program?

(6) Did, in October, 2008, LTC [REDACTED] and COL [REDACTED] permit Mr. Gibson to follow the Corps of Engineers' approach to inspecting buildings but still prohibit him from performing time weighted testing without first receiving prior supervisory approval? If so, did this constitute an abuse of authority by LTC [REDACTED] or COL [REDACTED]?

(7) Was it reasonable for LTC [REDACTED] and COL [REDACTED] to require Mr. Gibson, the only certified Industrial Hygienist at Ft. Leavenworth, to obtain permission from his supervisors before performing time weighted testing on buildings?

(8) During 2008 were LTC [REDACTED] and COL [REDACTED] arbitrary in denying 39 of Mr. Gibson's 40 requests to conduct time weighted measurements testing on buildings without an explanation?

c. Whether or not adequate industrial hygiene assessment and testing has not occurred at Fort Leavenworth, Kansas, in violation of law, rule, and regulation.

(1) Did, in August, 2008, the Army Corps of Engineers object to LTC [REDACTED] and COL [REDACTED] two step (walk-thru followed by assessment) approach?

(2) Did Corps of Engineer officials determine that the walk-thru alone was of minimal value and that the walk-thru and assessment steps should be combined?

(3) Did Corps of Engineer officials determine that assessments should include limited measurements of light, noise and, if indoor air quality issues had been raised by the occupants of a building, to conduct carbon monoxide, temperature, humidity and particulate testing?

d. Whether or not the actions of COL [REDACTED] and LTC [REDACTED] have created the potential for a substantial and specific danger to the public health and safety at Fort Leavenworth, Kansas.

(1) Does testing buildings without time weighted measurements render an industrial hygiene program essentially useless and constitute a danger to public health and safety?

MCGP-JA

SUBJECT: Appointment of Investigating Officer – Whistleblower Investigation

(2) Does an industrial hygienist have any means of determining the cumulative effect a suspected toxin might have upon the occupants of a building over an extended period of time without time weighted measurements?

3. In your investigation, you are not limited to the questions listed above. You will investigate any relevant related matters. If you are in doubt about the relevance of a matter, you will consult with your legal advisor and consult with me regarding these additional issues.

4. In conducting this investigation, use the informal procedures of AR 15-6, Chapter 4. Upon completing your investigation, make appropriate specific findings and recommendations. Reference your analysis and findings to the specific evidence upon which you rely. Recommend remedial measures, to include any corrective and personnel or disciplinary actions you deem appropriate, if any. You may also recommend any necessary management actions to preclude a recurrence of any founded misconduct or identified systemic problems. If certain evidence conflicts with other evidence, state what you believe and why.

5. Make two copies of your report of investigation (ROI). Provide an index and clearly tab the original ROI, to include your findings and recommendations on DA Form 1574, with appropriate enclosures and forward the entire package, to me, through the Office of the Staff Judge Advocate, US Army Medical Command, no later than 8 May 2009.

6. In compiling your report of investigation, consider carefully that information contained therein will be subject to public disclosure and release.

7. You should contact those witnesses you consider relevant during the course of your investigation. Your investigation must include an interview with Mr. Gibson. You are to thoroughly document all witness interviews in writing, preferably on DA Form 2823 (Sworn Statement), and have witnesses verify their statements when final. In addition, you must provide all persons interviewed with a Privacy Act statement before you solicit any information.

8. You will interview all witnesses in person, if practical. Caution all individuals that they must not discuss the subject matter of the investigation with anyone other than a properly detailed investigator. If, in the course of your investigation, you come to suspect that certain people may have committed criminal conduct, you must advise them of their rights under Article 31, UCMJ or the Fifth Amendment, U.S. Constitution, as appropriate. In such a case, waivers should be documented on DA Form 3881 (Rights Warning Procedure/Waiver Certificate).

9. During the course of your investigation, you may find it necessary to interview civilian employees. Generally speaking, civilian employees are required to cooperate with official investigations. There are some exceptions:

a. Civilian employees who are members of a bargaining unit have a right to union representation at any interview with management if they reasonably believe that the interview could result in a disciplinary action against them. You must observe appropriate union notice

MCGP-JA

SUBJECT: Appointment of Investigating Officer – Whistleblower Investigation

requirements prior to interviewing any bargaining unit employees. Should a bargaining unit employee seek to invoke this right, you have no obligation to arrange representation for the employee, only an obligation to permit the employee the opportunity to secure representation. Once you have scheduled any bargaining unit member employees for an interview, contact your legal advisor for guidance in notifying the appropriate union representative. The Civilian Personnel Advisory Center can tell you whether any particular employee you wish to interview is a member of the bargaining unit.

b. Civilian employees who reasonably believe that information they provide during an official investigation may be used against them in a criminal prosecution cannot be required to cooperate without a grant of immunity. Should any civilian employee you attempt to interview decline to cooperate for any reason, suspend the interview and seek guidance from your legal advisor on how to precede.

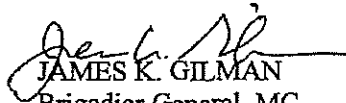
c. If the matter you are investigating involves a grievance, a personnel practice or policy or other conditions of employment, you may be required to notify the union of any interviews you have scheduled with bargaining unit employees and afford the union the opportunity to be present. Check with your legal advisor to determine if this rule applies in your case and how to proceed if it does.

d. You have no authority to compel the cooperation of contractor employees. If you find it necessary to interview contractor employees, you must contact the contracting officer's representative for the applicable contract to request cooperation.

10. If, in the course of your investigation, you suspect wrongdoing or neglect on the part of a person senior to you, inform me so that a new investigating office may be appointed. An investigating officer may not, absent military exigency, investigate someone senior to himself or herself.

11. This investigation takes priority over all normal duties, TDY, and leave. Your legal advisor during the course of your investigation will be Mr [REDACTED] at [REDACTED]. Consult him before you begin your investigation for further guidance and additional information about how you should proceed.

12. Timely completion of this investigation is essential. If you believe that you require additional time to complete your investigation, you must request an extension in writing through the MEDCOM Staff Judge Advocate stating the reason(s) for your request and an approximate completion date. I must personally approve any extension.


JAMES K. GILMAN
Brigadier General, MC
Commanding

J

Army Regulation 15-6

Boards, Commissions, and Committees

Procedures for Investigating Officers and Boards of Officers

Headquarters
Department of the Army
Washington, DC
2 October 2006

UNCLASSIFIED

SUMMARY of CHANGE

AR 15-6

Procedures for Investigating Officers and Boards of Officers

This rapid action revision, dated 2 October 2006--

- o Clarifies the distinction between levels of appointing authorities for hostile fire death investigations and friendly fire death investigations (para 2-1a(3)).
- o Permits the general court-martial convening authority to delegate appointing authority to the special court-martial convening authority in hostile fire death investigations (para 2-1a(3)).

This regulation, dated 30 September 1996--

- o Is a complete revision of the earlier regulation dated 24 August 1977.
- o Updates policies and procedures concerning the procedures for investigating officers and boards of officers.


Boards, Commissions, and Committees

Procedures for Investigating Officers and Boards of Officers

By Order of the Secretary of the Army:

PETER J. SCHOOMAKER
General, United States Army
Chief of Staff

Official:


JOYCE E. MORROW
Administrative Assistant to the
Secretary of the Army

History. This publication is a rapid action revision. The portions affected by this rapid action revision are listed in the summary of change.

Summary. This regulation establishes procedures for investigations and boards of officers not specifically authorized by any other directive.

Applicability. This regulation applies to the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve, unless otherwise stated. During mobilization,

chapters and policies contained in this regulation may be modified by the proponent.

Proponent and exception authority. The proponent of this regulation is The Judge Advocate General. The Judge Advocate General has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. The Judge Advocate General may delegate this approval authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field operating agency in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through higher headquarters to the policy proponent. Refer to AR 25-30 for specific guidance.

Army management control process. This regulation does not contain management control provisions.

Supplementation. Supplementation of

this regulation and establishment of command and local forms are prohibited without prior approval from HQDA (DAJA-AL), Washington, DC 20310-2212.

Suggested improvements. The proponent agency of this regulation is the Office of The Judge Advocate General. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to HQDA (DAJA-AL), Washington, DC 20310-2212.

Distribution. This publication is available in electronic media only and is intended for command level A for the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

Contents (Listed by paragraph and page number)

Chapter 1

Introduction, page 1

Purpose • 1-1, page 1

References • 1-2, page 1

Explanation of abbreviations and terms • 1-3, page 1

Responsibilities • 1-4, page 1

Types of investigations and boards • 1-5, page 1

Function of investigations and boards • 1-6, page 1

Interested persons • 1-7, page 2

Respondents • 1-8, page 2

Use of results of investigations in adverse administrative actions • 1-9, page 2

*This regulation supersedes AR 15-6 dated 30 September 1996.

Contents—Continued

Chapter 2

Responsibilities of the Appointing Authority, page 2

Appointment • 2-1, page 2

Administrative support • 2-2, page 6

Action of the appointing authority • 2-3, page 7

Chapter 3

General Guidance for Investigating Officers and Boards, page 8

Section I

Conduct of the Investigation, page 8

Preliminary responsibilities • 3-1, page 8

Oaths • 3-2, page 8

Challenges • 3-3, page 8

Counsel • 3-4, page 8

Decisions • 3-5, page 8

Presence of the public and recording of proceedings • 3-6, page 8

Rules of evidence and proof of facts • 3-7, page 13

Witnesses • 3-8, page 14

Communications with the appointing authority • 3-9, page 15

Section II

Findings and Recommendations, page 15

Findings • 3-10, page 15

Recommendations • 3-11, page 15

Deliberation • 3-12, page 16

Voting • 3-13, page 16

Section III

Report of Proceedings, page 16

Format • 3-14, page 16

Enclosures • 3-15, page 16

Exhibits • 3-16, page 16

Authentication • 3-17, page 17

Safeguarding a written report • 3-18, page 17

Submission • 3-19, page 17

Action of the appointing authority • 3-20, page 17

Chapter 4

Informal Investigations and Boards of Officers, page 17

Composition • 4-1, page 17

Procedure • 4-2, page 17

Interested persons • 4-3, page 17

Chapter 5

Formal Boards of Officers, page 18

Section I

General, page 18

Members • 5-1, page 18

Attendance of members • 5-2, page 19

Duties of recorder • 5-3, page 19

Section II

Respondents, page 20

Designation • 5-4, page 20

Contents—Continued

Notice • 5-5, *page 20*
Counsel • 5-6, *page 20*
Challenges for cause • 5-7, *page 21*
Presentation of evidence • 5-8, *page 21*
Argument • 5-9, *page 22*
After the hearing • 5-10, *page 22*

Appendixes

- A. References, *page 23*
- B. Guidance for Preparing Privacy Act Statements, *page 24*

Glossary

Index



Chapter 1 Introduction

1-1. Purpose

This regulation establishes procedures for investigations and boards of officers not specifically authorized by any other directive. This regulation or any part of it may be made applicable to investigations or boards that are authorized by another directive, but only by specific provision in that directive or in the memorandum of appointment. In case of a conflict between the provisions of this regulation, when made applicable, and the provisions of the specific directive authorizing the investigation or board, the latter will govern. Even when not specifically made applicable, this regulation may be used as a general guide for investigations or boards authorized by another directive, but in that case its provisions are not mandatory.

1-2. References

Required and related publications and prescribed and referenced forms are listed in appendix A.

1-3. Explanation of abbreviations and terms

Abbreviations and special terms used in this regulation are explained in the glossary.

1-4. Responsibilities

Responsibilities are listed in chapter 2.

1-5. Types of investigations and boards

a. General. An administrative fact-finding procedure under this regulation may be designated an investigation or a board of officers. The proceedings may be informal (chap 4) or formal (chap 5). Proceedings that involve a single investigating officer using informal procedures are designated investigations. Proceedings that involve more than one investigating officer using formal or informal procedures or a single investigating officer using formal procedures are designated a board of officers.

b. Selection of procedure.

(1) In determining whether to use informal or formal procedures, the appointing authority will consider these among other factors:

(a) Purpose of the inquiry.

(b) Seriousness of the subject matter.

(c) Complexity of issues involved.

(d) Need for documentation.

(e) Desirability of providing a comprehensive hearing for persons whose conduct or performance of duty is being investigated. (See paras 1-8, 4-3, and 5-4a.)

(2) Regardless of the purpose of the investigation, even if it is to inquire into the conduct or performance of a particular individual, formal procedures are not mandatory unless required by other applicable regulations or directed by higher authority.

(3) Unless formal procedures are expressly required, either by the directive authorizing the board or by the memorandum of appointment, all cases to which this regulation applies will use informal procedures.

(4) In determining which procedures to use, the appointing authority will seek the advice of the servicing judge advocate (JA).

(5) Before opening an investigation involving allegations against general officers or senior executive service civilians, the requirements of Army Regulation (AR) 20-1, subparagraph 8-3i(3) must be met.

c. Preliminary investigations. Even when formal procedures are contemplated, a preliminary informal investigation may be advisable to ascertain the magnitude of the problem, to identify and interview witnesses, and to summarize or record their statements. The formal board may then draw upon the results of the preliminary investigation.

d. Concurrent investigations. An administrative fact finding procedure under this regulation, whether designated as an investigation or a board of officers, may be conducted before, concurrently with, or after an investigation into the same or related matters by another command or agency, consistent with subparagraph b(5) above. Appointing authorities, investigating officers, and boards of officers will ensure that procedures under this regulation do not hinder or interfere with a concurrent investigation directed by higher headquarters, a counterintelligence investigation or an investigation being conducted by a criminal investigative. In cases of concurrent or subsequent investigations, coordination with the other command or agency will be made to avoid duplication of investigative effort, where possible.

1-6. Function of investigations and boards

The primary function of any investigation or board of officers is to ascertain facts and to report them to the appointing authority. It is the duty of the investigating officer or board to ascertain and consider the evidence on all sides of each

issue, thoroughly and impartially, and to make findings and recommendations that are warranted by the facts and that comply with the instructions of the appointing authority.

1-7. Interested persons

Appointing authorities have a right to use investigations and boards to obtain information necessary or useful in carrying out their official responsibilities. The fact that an individual may have an interest in the matter under investigation or that the information may reflect adversely on that individual does not require that the proceedings constitute a hearing for that individual.

1-8. Respondents

In formal investigations the appointing authority may designate one or more persons as respondents in the investigation. Such a designation has significant procedural implications. (See chap 5, sec II, in general, and para 5-4a, in particular.) Respondents may not be designated in informal investigations.

1-9. Use of results of investigations in adverse administrative actions

a. This regulation does not require that an investigation be conducted before adverse administrative action, such as relief for cause, can be taken against an individual. However, if an investigation is conducted using the procedures of this regulation, the information obtained, including findings and recommendations, may be used in any administrative action against an individual, whether or not that individual was designated a respondent, and whether formal or informal procedures were used, subject to the limitations of *b* and *c* below.

b. The Office of Personnel Management and Army Regulations establish rules for adverse actions against Army civilian personnel and establish the procedural safeguards. In every case involving contemplated formal disciplinary action against civilian employees, the servicing civilian personnel office and labor counselor will be consulted before the employee is notified of the contemplated adverse action.

c. Except as provided in *d* below, when adverse administrative action is contemplated against an individual (other than a civilian employee, see *b* above), including an individual designated as a respondent, based upon information obtained as a result of an investigation or board conducted pursuant to this regulation, the appropriate military authority must observe the following minimum safeguards before taking final action against the individual:

(1) Notify the person in writing of the proposed adverse action and provide a copy, if not previously provided, of that part of the findings and recommendations of the investigation or board and the supporting evidence on which the proposed adverse action is based.

(2) Give the person a reasonable opportunity to reply in writing and to submit relevant rebuttal material.

(3) Review and evaluate the person's response.

d. There is no requirement to refer the investigation to the individual if the adverse action contemplated is prescribed in regulations or other directives that provide procedural safeguards, such as notice to the individual and opportunity to respond. For example, there is no requirement to refer an investigation conducted under this regulation to a soldier prior to giving the soldier an adverse evaluation report based upon the investigation because the regulations governing evaluation reports provide the necessary procedural safeguards.

e. When the investigation or board is conducted pursuant to this regulation but the contemplated administrative action is prescribed by a different regulation or directive with more stringent procedural safeguards than those in *c* above, the more stringent safeguards must be observed.

Chapter 2 Responsibilities of the Appointing Authority

2-1. Appointment

a. Authority to appoint. The following people may appoint investigations or boards to inquire into matters within their areas of responsibility.

(1) Except as noted in subparagraph 2-1a(3) below, the following individuals may appoint a formal investigation or board (chap 5) after consultation with the servicing judge advocate (JA) or legal advisor (LA):

(a) Any general court-martial (GCM) or special court-martial convening authority, including those who exercise that authority for administrative purposes only.

(b) Any general officer.

(c) Any commander or principal staff officer in the grade of colonel or above at the installation, activity, or unit level.

(d) Any State adjutant general.

(e) A Department of the Army civilian supervisor permanently assigned to a position graded as a general schedule

(GS)/general management, grade 14 or above and who is assigned as the head of an Army agency or activity or as a division or department chief.

(2) Except as noted in subparagraph 2-1a(3), the following individuals may appoint an informal investigation or board (chap 4):

- (a) Any officer authorized to appoint a formal board.
- (b) A commander at any level.
- (c) A principal staff officer or supervisor in the grade of major or above.

(3) Only a general court-martial convening authority may appoint a formal investigation or board (chap 5) or an informal investigation or board (chap 4) for incidents resulting in property damage of \$1,000,000 or more, the loss or destruction of an Army aircraft or missile, an injury and/or illness resulting in, or likely to result in, permanent total disability, the death of one or more persons, and the death of one or more persons by fratricide/friendly fire.

(a) For investigations of a death or deaths involving a deployed force(s), from what is believed to be hostile fire, the general court-martial convening authority may delegate, in writing, appointing/approval authority to a subordinate commander exercising special court-martial convening authority. This authority may not be further delegated.

(b) If evidence is discovered during a hostile fire investigation that indicates that the death(s) may have been the result of fratricide/friendly fire, the investigating officer will immediately suspend the investigation and inform the appointing authority and legal advisor. At this time the general court-martial convening authority will appoint a new investigation into the fratricide/friendly fire incident. Any evidence from the hostile fire investigation may be provided to the investigating officer or board conducting the fratricide/friendly fire investigation.

(4) Appointing authorities who are general officers may delegate the selection of board members to members of their staffs.

(5) When more than one appointing authority has an interest in the matter requiring investigation, a single investigation or board will be conducted whenever practicable. In case of doubt or disagreement as to who will appoint the investigation or board, the first common superior of all organizations concerned will resolve the issue.

(6) Appointing authorities may request, through channels, that persons from outside their organizations serve on boards or conduct investigations under their jurisdictions.

b. Method of appointment. Informal investigations and boards may be appointed orally or in writing. Formal boards will be appointed in writing but, when necessary, may be appointed orally and later confirmed in writing. Any written appointment will be in the form of a memorandum of appointment. (See figs 2-1 through 2-5.) Whether oral or written, the appointment will specify clearly the purpose and scope of the investigation or board and the nature of the findings and recommendations required. If the appointment is made under a specific directive, that directive will be cited. If the procedures of this regulation are intended to apply, the appointment will cite this regulation and, in the case of a board, specify whether it is to be informal or formal. (Refer to chaps 4 and 5.) Any special instructions (for example, requirement for verbatim record or designation of respondents in formal investigations) will be included.

c. Who may be appointed. Investigating officers and board members shall be those persons who, in the opinion of the appointing authority, are best qualified for the duty by reason of their education, training, experience, length of service and temperament.

(1) Except as provided in paragraph 5-1e, only commissioned officers, warrant officers, or Department of the Army civilian employees permanently assigned to a position graded as a GS-13 or above will be appointed as investigating officers or voting members of boards.

(2) Recorders, legal advisors, and persons with special technical knowledge may be appointed to formal boards in a nonvoting capacity. (See para 5-1.)

(3) An investigating officer or voting member of a board will be senior to any person whose conduct or performance of duty may be investigated, or against whom adverse findings or recommendations that may be made, except when the appointing authority determines that it is impracticable because of military exigencies. Inconvenience in obtaining an investigating officer or the unavailability of senior persons within the appointing authority's organization would not normally be considered military exigencies.

(a) The investigating officer or board president will, subject to the approval of the appointing authority, determine the relative seniority of military and civilian personnel. Actual superior/subordinate relationships, relative duty requirements, and other sources may be used as guidance. Except where a material adverse effect on an individual's substantial rights results, the appointing authority's determination of seniority shall be final (see para 2-3c).

(b) An investigating officer or voting member of a board who, during the proceedings, discovers that the completion thereof requires examining the conduct or performance of duty of, or may result in findings or recommendations adverse to, a person senior to him or her will report this fact to the board president or the appointing authority. The appointing authority will then appoint another person, senior to the person affected, who will either replace the investigating officer or member, or conduct a separate inquiry into the matters pertaining to that person. Where necessary, the new investigating officer or board may be furnished any evidence properly considered by the previous investigating officer or board.

(c) If the appointing authority determines that military exigencies make these alternatives impracticable, the appointing authority may direct the investigating officer or member to continue. In formal proceedings, this direction will be

written and will be an enclosure to the report of proceedings. If the appointing authority does not become aware of the problem until the results of the investigation are presented for review and action, the case will be returned for new or supplemental investigation only where specific prejudice is found to exist.

(4) Specific regulations may require that investigating officers or board members be military officers, be professionally certified, or possess an appropriate security clearance.

(Appropriate letterhead)

OFFICE SYMBOL DATE

MEMORANDUM FOR: *(President)*

SUBJECT: Appointment of Board of Officers

1. A board of officers is hereby appointed pursuant to AR 735-5 and AR 15-6 to investigate the circumstances connected with the loss, damage, or destruction of the property listed on reports of survey referred to the board and to determine responsibility for the loss, damage, or destruction of such property.

2. The following members are appointed to the board:

MAJ Robert A. Jones, HHC, 3d Bn, 1st Inf Bde, 20th Inf Div, Ft Blank, WD 88888 Member (President)

CPT Paul R. Wisniewski, Co A, 2d Bn, 3d Inf Bde, 20th Inf Div, Ft Blank, WD 88888 Member

CPT David B. Braun, Co C, 1st Bn, 3d Inf Bde, 20th Inf Div, Ft Blank, WD 88888 Member

CPT John C. Solomon, HHC, 2d S & T Bn, DISCOM 20th Inf Div, Ft Blank, WD 88888 Alternate member (see AR 15-6, para 5-2c)

1LT Steven T. Jefferson, Co B, 2d Bn, 2d Inf Bde, 20th Inf Div, Ft Blank, WD 88888 Recorder (without vote)

3. The board will meet at the call of the President. It will use the procedures set forth in AR 735-5 and AR 15-6 applicable to formal boards with respondents. Respondents will be referred to the board by separate correspondence.

4. Reports of proceedings will be summarized (the findings and recommendations will be verbatim) and submitted to this headquarters, ATTN: ABCD-AG-PA. Reports will be submitted within 3 working days of the conclusion of each case. The Adjutant General's office will furnish necessary administrative support for the board. Legal advice will be obtained, as needed, from the Staff Judge Advocate's office.

5. The board will serve until further notice.

(Authority Line)

(Signature block)

CF: *(Provide copy to board personnel)*

Figure 2-1. Sample memorandum for appointment of a standing board of officers using formal procedures

(Appropriate letterhead)

OFFICE SYMBOL DATE

MEMORANDUM FOR: *(President of standing board)*

SUBJECT: Referral of Respondent

1. Reference memorandum, this headquarters, dated *(day-month-year)*, subject: Appointment of Board of Officers.
2. *(Enter rank, name, SSN, and unit)* is hereby designated a respondent before the board appointed by the referenced memorandum. The board will consider whether *(enter name of respondent)* should be held pecuniarily liable for the loss, damage, or destruction of the property listed on the attached report of survey. The correspondence and supporting documentation recommending referral to a board of officers are enclosed.
3. *(Enter rank, name, branch, and unit)* is designated counsel for *(enter name of respondent)*.
4. For the consideration of this case only, *(enter rank, name, and unit)* is designated a voting member of the board, vice *(enter rank, name, and unit)*.

(Authority line)

Encl

(Signature block)

CF: *(Provide copy to board personnel, counsel, and respondent)*

Figure 2-2. Sample memorandum for referral of a respondent to a standing board

(Appropriate letterhead)

OFFICE SYMBOL DATE

MEMORANDUM FOR: *(Officer concerned)*

SUBJECT: Appointment as a Board of Officers to Investigate Alleged Corruption and Mismanagement

1. You are hereby appointed a board of officers, pursuant to AR 15-6, to investigate allegations of *(enter subject matter to be investigated, such as corruption and mismanagement in the office of the Fort Blank Provost Marshal)*. The scope of your investigation will include *(mention specific matters to be investigated, such as whether military police personnel are properly processing traffic tickets, whether supervisory personnel are receiving money or other personal favors from subordinate personnel in return for tolerating the improper processing of traffic tickets, and so forth)*. Enclosed herewith is a report of proceedings of an earlier informal investigation into alleged improper processing of traffic tickets that was discontinued when it appeared that supervisory personnel may have been involved.
2. As the board, you will use formal procedures under AR 15-6. *(Enter duty positions, ranks, and names)* are designated respondents. Additional respondents may be designated based on your recommendations during the course of the investigation. Counsel for each respondent, if requested, will be designated by subsequent correspondence.
3. *(Enter rank, name, branch, and unit)* will serve as legal advisor to you, the board. *(Enter rank, name, duty position, and unit)*, with the concurrence of *(his)(her)* commander, will serve as an advisory member of the board. The office of the adjutant general, this headquarters, will provide necessary administrative support. The Fort Blank Resident Office, Criminal Investigation Division Command (CIDC), will provide technical support, including preserving physical evidence, if needed.
4. Prepare the report of proceedings on DA Form 1574 and submit it to me within 60 days.

(Signature of appointing authority)

CF: *(Provide copy to all parties concerned)*

Figure 2-3. Sample memorandum for appointment of a single officer as a board of officers, with legal advisor and advisory member, using formal procedures

(Appropriate letterhead)

OFFICE SYMBOL DATE

MEMORANDUM FOR: (Officer concerned)

SUBJECT: Appointment of Investigating Officer

1. You are hereby appointed an investigating officer pursuant to AR 15-6 and AR 210-7, paragraph 4-3, to conduct an informal investigation into complaints that sales representatives of the Fly-By-Night Sales Company have been conducting door-to-door solicitation in the River Bend family housing area in violation of AR 210-7. Details pertaining to the reported violations are in the enclosed file prepared by the Commercial Solicitation Branch, Office of the Adjutant General, this headquarters (Encl).

2. In your investigation, all witness statements will be sworn. From the evidence, you will make findings whether the Fly-By-Night Sales Company has violated AR 210-7 and recommend whether to initiate a show cause hearing pursuant to AR 210-7, paragraph 4-5, and whether to temporarily suspend the company's or individual agents' solicitation privileges pending completion of the show cause hearing.

3. Submit your findings and recommendations in four copies on DA Form 1574 to this headquarters. ATTN: ABCD-AG, within 7 days.

(Authority line)

Encl

(Signature block)

Figure 2-4. Sample memorandum for appointment of an investigating officer under AR 15-6 and other directives

(Appropriate letterhead)

OFFICE SYMBOL DATE

MEMORANDUM FOR: (Officer concerned)

SUBJECT: Appointment as Investigating Officer

1. You are hereby appointed an investigating officer pursuant to AR 15-6 and AR 380-5, paragraph 11-8, to investigate the circumstances surrounding the discovery of a CONFIDENTIAL document in a trash can in the office of the 3d Battalion S-3 on 31 August 1987. A preliminary inquiry into the incident proved inconclusive (see enclosed report).

2. In your investigation, use informal procedures under AR 15-6. You will make findings as to whether security compromise has occurred, who was responsible for any security violation, and whether existing security procedures are adequate.

3. This incident has no known suspects at this time. If in the course of your investigation you come to suspect that certain people may be responsible for the security violation, you must advise them of their rights under the UCMJ, Article 31, or the Fifth Amendment, as appropriate. In addition, you must provide them a Privacy Act statement before you solicit any (further) personal information. You may obtain assistance with these legal matters from the office of the Staff Judge Advocate.

4. Submit your findings and recommendations on DA Form 1574 to the Brigade S-2 within 10 days.

(Authority line)

(Signature block)

Figure 2-5. Sample memorandum for appointment of an investigating officer in a case with potential Privacy Act implications

2-2. Administrative support

The appointing authority will arrange necessary facilities, clerical assistance, and other administrative support for investigating officers and boards of officers. If not required by another directive, a verbatim transcript of the proceedings may be authorized only by The Judge Advocate General (TJAG) or the GCM convening authority in his or her sole discretion. However, before authorization, the GCM convening authority will consult the staff judge advocate (SJA). A contract reporter may be employed only for a formal board and only if authorized by the specific directive under which the board is appointed. A contract reporter will not be employed if a military or Department of the Army

(DA) civilian employee reporter is reasonably available. The servicing JA will determine the availability of a military or DA civilian employee reporter.

2-3. Action of the appointing authority

a. Basis of decision. Unless otherwise provided by another directive, the appointing authority is neither bound nor limited by the findings or recommendations of an investigation or board. Therefore, the appointing authority may take action less favorable than that recommended with regard to a respondent or other individual, unless the specific directive under which the investigation or board is appointed provides otherwise. The appointing authority may consider any relevant information in making a decision to take adverse action against an individual, even information that was not considered at the investigation or board (see para 1-9c and d). In all investigations involving fratricide/friendly fire incidents (see AR 385-40), the appointing authority, after taking action on the investigation, will forward a copy of the completed investigation to the next higher Army headquarters for review.

b. Legal review. Other directives that authorize investigations or boards may require the appointing authority to refer the report of proceedings to the servicing JA for legal review. The appointing authority will also seek legal review of all cases involving serious or complex matters, such as where the incident being investigated has resulted in death or serious bodily injury, or where the findings and recommendations may result in adverse administrative action (see para 1-9), or will be relied upon in actions by higher headquarters. The JA's review will determine--

- (1) Whether the proceedings comply with legal requirements.
- (2) What effects any errors would have.
- (3) Whether sufficient evidence supports the findings of the investigation or board or those substituted or added by the appointing authority (see para 3-10b).
- (4) Whether the recommendations are consistent with the findings.

c. Effect of errors. Generally, procedural errors or irregularities in an investigation or board do not invalidate the proceeding or any action based on it.

(1) *Harmless errors.* Harmless errors are defects in the procedures or proceedings that do not have a material adverse effect on an individual's substantial rights. If the appointing authority notes a harmless error, he or she may still take final action on the investigation.

(2) *Appointing errors.* Where an investigation is convened or directed by an official without the authority to do so (see para 2-1a), the proceedings are a nullity, unless an official with the authority to appoint such an investigation or board subsequently ratifies the appointment. Where a formal board is convened by an official authorized to convene an informal investigation or board but not authorized to convene formal investigations, any action not requiring a formal investigation may be taken, consistent with paragraph 1-9 and this paragraph.

(3) *Substantial errors.*

(a) Substantial errors are those that have a material adverse effect on an individual's substantial rights. Examples are the failure to meet requirements as to composition of the board or denial of a respondent's right to counsel.

(b) When such errors can be corrected without substantial prejudice to the individual concerned, the appointing authority may return the case to the same investigating officer or board for corrective action. Individuals or respondents who are affected by such a return will be notified of the error, of the proposed correction, and of their rights to comment on both.

(c) If the error cannot be corrected, or cannot be corrected without substantial prejudice to the individual concerned, the appointing authority may not use the affected part of that investigation or board as the basis for adverse action against that person. However, evidence considered by the investigation or board may be used in connection with any action under the Uniform Code of Military Justice (UCMJ), civilian personnel regulations, AR 600-37, or any other directive that contains its own procedural safeguards.

(d) In case of an error that cannot be corrected otherwise, the appointing authority may set aside all findings and recommendations and refer the entire case to a new investigating officer or board composed entirely of new voting members. Alternatively, the appointing authority may take action on findings and recommendations not affected by the error, set aside the affected findings and recommendations, and refer the affected portion of the case to a new investigating officer or board. In either case, the new investigating officer or board may be furnished any evidence properly considered by the previous one. The new investigating officer or board may also consider additional evidence. If the directive under which a board is appointed provides that the appointing authority may not take less favorable action than the board recommends, the appointing authority's action is limited by the original recommendations even though the case subsequently is referred to a new board which recommends less favorable action.

(4) *Failure to object.* No error is substantial within the meaning of this paragraph if there is a failure to object or otherwise bring the error to the attention of the legal advisor or the president of the board at the appropriate point in the proceedings. Accordingly, errors described in (3) above may be treated as harmless if the respondent fails to point them out.

Chapter 3 General Guidance for Investigating Officers and Boards

Section I Conduct of the Investigation

3-1. Preliminary responsibilities

Before beginning an informal investigation, an investigating officer shall review all written materials provided by the appointing authority and consult with the servicing staff or command judge advocate to obtain appropriate legal guidance.

3-2. Oaths

a. Requirement. Unless required by the specific directive under which appointed, investigating officers or board members need not be sworn. Reporters, interpreters, and witnesses appearing before a formal board will be sworn. Witnesses in an informal investigation or board may be sworn at the discretion of the investigating officer or president. The memorandum of appointment may require the swearing of witnesses or board members.

b. Administering oaths. An investigating officer, recorder (or assistant recorder), or board member is authorized to administer oaths in the performance of such duties, under UCMJ, Art. 136 (for military personnel administering oaths) and Section 303, Title 5, United States Code (5 USC 303) (for civilian personnel administering oaths) (see fig 3-1 for the format for oaths).

3-3. Challenges

Neither an investigating officer nor any member of a board is subject to challenge, except in a formal board as provided in paragraph 5-7. However, any person who is aware of facts indicating a lack of impartiality or other qualification on the part of an investigating officer or board member will present the facts to the appointing authority.

3-4. Counsel

Only a respondent is entitled to be represented by counsel (see para 5-6). Other interested parties may obtain counsel, at no expense to the Government, who may attend but not participate in proceedings of the investigation or board which are open to the public. The proceedings will not be unduly interrupted to allow the person to consult with counsel. When a civilian employee is a member of an appropriate bargaining unit, the exclusive representative of the unit has the right to be present whenever the employee is a respondent or witness during the proceedings if requested by the employee and if the employee reasonably believes that the inquiry could lead to disciplinary action against him or her (see para 3-8).

3-5. Decisions

A board composed of more than one member arrives at findings and recommendations as provided in section II of this chapter. A formal board decides challenges by a respondent as provided in paragraph 5-7. The investigating officer or president decides administrative matters, such as time of sessions, uniform, and recess. The legal advisor or, if none, the investigating officer or president decides evidentiary and procedural matters, such as motions, acceptance of evidence, and continuances. The legal advisor's decisions are final. Unless a voting member objects to the president's decision on an evidentiary or procedural matter at the time of the decision, it too is final. If there is such an objection, a vote will be taken in closed session, and the president's decision may be reversed by a majority vote of the voting members present.

3-6. Presence of the public and recording of proceedings

a. The public. Proceedings of an investigation or board are normally open to the public only if there is a respondent. However, if a question arises, the determination will be made based on the circumstances of the case. It may be appropriate to open proceedings to the public, even when there is no respondent, if the subject matter is of substantial public interest. It may be appropriate to exclude the public from at least some of the proceedings even though there is a respondent, if the subject matter is classified, inflammatory, or otherwise exceptionally sensitive. In any case, the appointing authority may specify whether the proceedings will be open or closed. If the appointing authority does not specify, the investigating officer or the president of the board decides. If there is a respondent, the servicing JA or the legal advisor, if any, will be consulted before deciding to exclude the public from any portion of the proceedings. Any proceedings that are open to the public will also be open to representatives of the news media.

b. Recording. Neither the public nor the news media will record, photograph, broadcast, or televise the board proceedings. A respondent may record proceedings only with the prior approval of the appointing authority.

Preliminary Matters

PRES: This hearing will come to order. This board of officers has been called to determine _____

When RESP is without counsel: _____

PRES: _____, you may, if you desire, obtain civilian counsel at no expense to the Government for this hearing. If you do not obtain civilian counsel, you are entitled to be represented by a military counsel designated by the appointing authority. Do you have counsel?

RESP: No (Yes).

If RESP has counsel, the RCDR should identify that counsel at this point for the record. If RESP does not have counsel, the PRES should ask this question:

PRES: Do you desire to have military counsel?

RESP: Yes (No).

If RESP answers "yes," the PRES should adjourn the hearing and ask the appointing authority to appoint counsel for RESP (see para 5-6b). If counsel is supplied, the RCDR should identify that counsel for the record when the board reconvenes.

A reporter and an interpreter, if used, should be sworn.

RCDR: The reporter will be sworn.

RCDR: Do you swear (or affirm) that you will faithfully perform the duties of reporter to this board, (so help you God)?

REPORTER: I do.

RCDR: The interpreter will be sworn.

RCDR: Do you swear (or affirm) that you will faithfully perform the duties of interpreter in the case now in hearing, (so help you God)?

INTERPRETER: I do.

RCDR: The board is appointed by Memorandum of Appointment, Headquarters, _____, dated _____. Have all members of the board read the memorandum of appointment? (If not, the memorandum of appointment is read aloud by RCDR or silently by any member who has not read it.)

When RESP has been designated by a separate memorandum of appointment, the same procedure applies to that memorandum of appointment.

RCDR: May the memorandum of appointment be attached to these proceedings as Enclosure I?

PRES: The memorandum of appointment will be attached as requested.

RCDR: The following members of the board are present:

The following members are absent:

RCDR should account for all personnel of the board, including RESP and COUNSEL, if any, as present or absent at each session. RCDR should state the reason for any absence, if known, and whether the absence was authorized by the appointing authority.

PRES: _____, you may challenge any member of the board (or the legal advisor) for lack of impartiality. Do you desire to make a challenge?

Figure 3-1. Suggested procedure for board of officers with respondents
