

Uniformed Services University of the Health Sciences

F. Edward Hébert School of Medicine

Officer Equity, Fairness, and Recruiting Initiative

"In a time of widely held fears of a looming shortage of physicians and health care providers, this retention powerhouse (USUHS) is an increasingly valuable resource for the Military Health System and the Nation." Michael D. Maves, M.D., MBA, Executive Vice President and CEO, American Medical Association, May 6, 2005.

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Executive Summary

The Uniformed Services University of the Health Sciences (USUHS) F. Edward Hébert School of Medicine (SOM) was founded in 1972 by federal law in order to insure continuity of leadership for the military physician force following the termination of the draft. USUHS is widely acknowledged as the primary source of career medical officers for the U.S. Military. It is governed by Title 10 of the U.S. Code and is a sister program to the Health Professions Scholarship Program (HPSP).

The founding law of the school is unusual in that it specifies that USUHS SOM students will be commissioned and serve as Regular Officers on active duty in the grade of O-1, but not receive credit for time served at USUHS. This law creates a disparity between USUHS SOM students and all other military officers. USUHS SOM officers are specifically excluded from other Title 10 statutes and DOD policies that govern officer career progression. Because USUHS officer students are not treated uniformly as compared with other military post-graduate students, three significant discriminatory issues arise:

- 1) Prior commissioned officers are stripped of all earned rank, reduced to O-1 and not fairly compensated for their prior service (O-1 pay is capped after 3 years of service, while prior enlisted students are paid at the much higher O-1E pay rate).
- 2) O-1s in USUHS are not promoted to O-2 within 24 months, as is the policy of all Services.
- 3) Service at USUHS does not count for pay or retirement eligibility despite all students being on active duty and holding regular commissions in their respective Services.

As a consequence of this Vietnam era law, prior commissioned officers endeavoring to become physicians are forced to start over in a system that has no mechanism to deal with officers who have been demoted to the lowest rung of the commissioned ranks. This situation has resulted in considerable hardship for the officers' affected and continuous administrative problems for both the Services and USUHS.

In 2006, Congress significantly enhanced the benefits of the HPSP and direct physician accession programs in order to bolster lagging recruiting efforts for military physicians. Additionally, it created a new program modeled on a long standing program for military attorneys that authorizes each of the Services to send 25 active duty officers to civilian medical schools, while retaining their rank and benefits. These changes will have a dramatic negative impact on the ability of USUHS SOM to recruit the future leaders of military medicine if action is not taken to ensure that USUHS can continue to attract highly qualified applicants.

In order to rectify these problems, the student officers of USUHS SOM should be treated the same as all other military officers. The following recommendations are offered:

- 1) Prior commissioned officers retain previously earned rank upon enrollment at USUHS.
- 2) O-1s in USUHS promote to O-2 at the same rate as other O-1s throughout DOD.
- 3) Active duty service at USUHS is credited towards pay and retirement eligibility.

The benefits of these proposals are significant to medical readiness and come at a low cost to the government. DOD will attract a large body of experienced company grade and junior field grade officers to become military physicians who might otherwise depart military service. Also, USUHS SOM will be able to select students from a larger pool of applicants from both non-prior and prior service backgrounds. The overall benefit is higher quality and more experienced USUHS graduates, thus ensuring the next generation of military medical leadership and ultimately, quality medical care for all Service Members, Congress, the President, and their families. Most importantly, the officers of the USUHS SOM student body will be treated equitably and uniformly with all other United States military officers.

Table of Contents

Topic	Page/Tab
I. <u>Executive Summary</u>	p. 1
II. <u>Table of Contents & Acronyms</u>	p. 2-3
III. <u>Background</u>	p. 4-6
IV. <u>Points of Inequity and Unfairness</u>	p. 7-8
V. <u>Proposed Solution</u>	p. 9
VI. <u>Justification for the Proposed Solution</u>	p. 10-11
VII. <u>Benefits of the Proposed Solution</u>	p. 12
VII. <u>Rebuttals</u>	p. 13-14
IX. <u>Conclusion</u>	p. 15
X. <u>References</u>	p. 16
XI. <u>Appendices – Table of Contents</u>	p. 17
XII. <u>Appendices</u>	p. 18-68

Acronyms

AFBCMR – Air Force Board for Correction of Military Records

DOD – Deopartment Of Defense

DOPMA - Defense Officer Personnel Management Act – Passed in 1981, effective in 1982, overarching document that standardized military officer personnel management practices, it resulted in USUHS SOM students losing credit for time served at USUHS

HPSP – Health Professional Scholarship Program – military physician recruitment program that offers scholarships to students at civilian medical schools, a counterpart to USUHS SOM

NDAA – National Defense Authorization Act

MHS – Military Health System

OSD – Office of the Secretary of Defense

SECDEF – Secretary of Defense

SOM – School of Medicine

UCMJ – Uniformed Code of Military Justice

USPHS – United States Public Health Service

USUHS – Uniformed Services University of the Health Sciences – founded in 1972 as a source of physicians for the military after the termination of the draft, with a specific emphasis on developing the future senior leadership of the military medical corps

O-1 – 2nd Lieutenant in the Army and Air Force or an Ensign in the Navy and USPHS. Lowest rung of the commissioned officer ranks

O-1E – Same rank as above O-1, however a modified pay scale is applied to these individuals because they had at least 4 years of prior enlisted service. This scale persists until O-3E, and stops thereafter

O-2 – 1st Lieutenant in the Army and Air Force or a Lieutenant (junior grade) in the Navy and USPHS

O-3 - Captain in the Army and Air Force or a Lieutenant in the Navy and USPHS

O-4 – Major in the Army and Air Force or a Lieutenant Commander in the Navy and USPHS

O-5 – Lieutenant Colonel in the Army and Air Force or a Commander in the Navy and USPHS

O-6 – Colonel in the Army and Air Force or a Captain in the Navy and USPHS

Background

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES (USUHS):

The USUHS F. Edward Hébert School of Medicine (SOM) and the F. Edward Hébert Health Professions Scholarship Program were created by the Uniformed Services Health Professions Revitalization Act of 1972, Public Law 92-426, in order provide physicians for the Armed Forces following the end of conscription. USUHS was established under the provisions of Title 10, Chapter 104 of the U.S. Code and graduated its first class of medical officers in 1980. It is the premier institution for the training of military physicians and is widely respected in both medical and military circles. It is the only medical school that prepares its alumni to respond to the medical requirements of weapons of mass destruction (WMDs) and natural disasters.

“The need for USUHS as a guaranteed and proven source for the right physician leaders will be even more important as DOD fights future wars. Because of their selection and subsequent training, USUHS graduates seek assignment to operational units in large numbers...USUHS mission, location and assets are vital to the Military Health System’s mission. It (USUHS) directly affects our ability to train and retain a core cadre of career military health and operational leaders.” The Honorable William Winkenwerder, Jr. M.D., Assistant Secretary of Defense for Health Affairs, April 18, 2005

HOW USUHS IS DIFFERENT:

The F. Edward Hébert School of Medicine has a year-round, four-year curriculum. This curriculum is approximately 700 hours longer than those found at other U.S. medical schools. These extra hours focus on epidemiology, health promotion, disease prevention, tropical medicine, leadership and field exercises, and other subjects that relate to the unique requirements of career-oriented military physicians and medical readiness. Of the 3,912 physician alumni, over 75 percent continue to serve on active duty with the U.S. Army, Navy, Air Force and U.S. Public Health Service (1, 3). The joint service environment at USUHS provides a solid foundation for its graduates to function in joint military operations. The USUHS SOM alumni retention rates are second to none.

USUHS SOM STUDENTS:

The U.S. Code that established USUHS also establishes the criteria for student status, selection and obligations.

“...selection procedures prescribed by the Secretary of Defense shall emphasize the basic requirement that students demonstrate sincere motivation and dedication to a career in the uniformed services...” (Title 10, § 2114)

“... They shall be appointed as regular officers in the grade of second lieutenant or ensign and shall serve on active duty in that grade....” (Title 10, § 2114)

Medical students at USUHS SOM are ineligible for promotion and serve as O-1s for their entire 4 years at USUHS. This is highly unusual in the U.S. military, where it is the policy to promote O-1 grade officers to O-2 after 18-24 months of service in the grade of O-1. Despite the fact that students are Regular Commissioned Officers serving on active duty, with all the rights and responsibilities as such, time spent at USUHS SOM, under current DOD regulations, does not count for length of service for pay or retirement eligibility purposes.

Applicants with prior service, particularly prior commissioned officers, are highly regarded because of their experience and their demonstrated commitment and aptitude for career military service. Additionally, the leadership and mentoring provided by students with prior military service significantly improves the quality of the military training provided at USUHS. These benefits are not easily quantified, but they are critical to the USUHS mission of training military medical officers.

Despite the desire to have experienced officers apply, they and their dependents are forced to undergo considerable personal sacrifice in order to attend USUHS. They must resign their commission and reenter the military as O-1s. Upon graduation, they receive only half credit for prior commissioned service towards promotion eligibility.

“Modern military operations require physicians and surgeons to be deployed forward on the battlefield in order to return combat soldiers to duty as quickly as possible and minimize the loss of life and limb among the seriously wounded. This new kind of battlefield requires a new type of medical officer – a professional military medical officer who is trained to be an integral part of the forward combat team as it maneuvers over large distances to engage the enemy.” - The Honorable Lawrence C. Mohr, M.D., F.A.C.P., F.C.C.P., USU board of Regents, Former White House Physician, April 12, 2005

HEALTH PROFESSIONS SCHOLARSHIP PROGRAM (HPSP):

In contrast to USUHS, HPSP students are commissioned as O-1s in the Reserve component and attend civilian medical schools. The scholarship pays for their tuition and books and also provides a personal stipend. In return, students serve as O-1s on active duty for training for 6 weeks each summer and owe from 2-4 years of active duty service upon graduation. However, recent events and trends, including the war in Iraq, have contributed to a lack of qualified applicants for the HPSP scholarships, “...currently less than one applicant per HPSP slot.” *The Honorable William Winkenwerder, Jr. M.D., Assistant Secretary of Defense for Health Affairs, April 18, 2005*

INCREASED BENEFITS FOR OTHER ACCESSION PROGRAMS:

To correct this trend, Congress authorized a massive increase in benefits to the direct physician accession program and HPSP in the 2007 National Defense Authorization Act (NDAA). Direct accession bonuses of up to \$400,000 were authorized for qualified physicians and medical school loan repayment benefits tripled to \$60,000 per year. The maximum authorized HPSP stipend was doubled to \$30,000 per year. This amount is more than the base pay of an O-1 with less than two years of service; the pay rate for non-prior service USUHS students. The HPSP contract, however, has a much shorter active duty service obligation. Thus, HPSP graduates are eligible to collect retention bonuses at least 3 years before their USUHS peers. As of 2006, these retention bonuses can add up to \$42,000 for 3 years of additional service.

Also in the 2007 NDAA, Congress created a program that allows the Service Secretaries to send up to 25 active duty commissioned officers per year to civilian medical schools. Officers selected for this program would remain on active duty at their present rank and receive full credit for time served while in medical school for pay, promotion and retirement eligibility. This is a new program and it is uncertain how the Service Secretaries will implement it. However, this program is modeled on the Funded Law Education Program, FLEP, Title 10 § 2004 that has been in existence for over three decades. FLEP has allowed numerous military officers to attend civilian law schools and earn a Juris Doctorate (J.D.) while on active duty, maintaining their earned rank, and receiving credit for time served.

BENEFITS OF USUHS GRADUATES:

In terms of sheer numbers of new physicians, the USUHS contribution to military healthcare may seem small in comparison to HPSP. However, numerous sources cite the vast benefits of USUHS trained medical officers (1, 3, 5). USUHS graduates remain on active duty an average of 9.2 years after completion of specialty training, while the average length of service for HPSP graduates is approximately 3 years after completion of specialty training. According to the Center for Naval Analysis, it would require approximately 900 additional HPSP graduates each year to replace a USUHS graduating class of 165. As reported by The Honorable William Winkenwerder, Jr., USUHS graduates represent 13% of new medical officer accessions each year, 23% of all military medical officers and 33% of medical officers in the ranks

of O-5 and O-6 whereas only 5% of HPSP accessions remain on active duty after their initial commitment is complete.

*“In a time of widely held fears of a looming shortage of physicians and health care providers, this retention powerhouse (USUHS) is an increasingly valuable resource for the Military Health System and the Nation.”
Michael D. Maves, M.D., MBA, Executive Vice President and CEO, American Medical Association, May 6, 2005.*

Points of Inequity and Unfairness

The specific mandates of Title 10, § 2114 result in inequitable treatment of officers at USUHS when compared to their peers in all other areas of the U.S. military. The net result of this policy is a significant deterrent for the recruitment of prior service commissioned officers, some of the most highly sought after USUHS applicants. Additionally, increased benefits to other physician accession programs have seriously eroded the appeal of USUHS to potential military physicians, threatening the ability of USUHS to attract large pools of qualified applicants from all backgrounds.

The issue of inequitable treatment of officers is manifested in three specific instances. The first issue is that officers are retained at the rank of O-1 for all four years at USUHS. This is in stark contrast to the policies of all military services which promote O-1s to O-2 after 18-24 months of service, depending on the Service. For example, Secretary of the Navy Instruction 1412.6L, 9 DEC 05 states *“It is the Department of the Navy Policy to promote officers in the grade of ensign to the grade of lieutenant (junior grade) and officers in the grade of second lieutenant in the Marine Corps, to the grade of first lieutenant as soon as qualified, but not earlier than the date of completion of 24 months of service in grade.”* Service policy is superseded for USUHS students by the requirements of Title 10, § 2114, which stipulates that USUHS students will serve as O-1s.

The second instance of inequitable treatment is that time served at USUHS does not count for purposes of pay or retirement eligibility. Per Appendix I, USUHS students are on active duty and regular officers. However, Title 10, § 2114 also states that time at USUHS is credited according to Title 10, § 2126. This paragraph is part of the chapter defining the HPSP program. Thus, time spent at USUHS is equated to and treated identically to time spent as a HPSP student. HPSP students do not receive credit for pay or retirement eligibility purposes for their time in civilian medical schools. However, there is a considerable difference between the responsibilities of a student at a civilian medical school and one at USUHS. The students at USUHS wear uniforms, serve in a military unit with military responsibilities and are subject to the UCMJ at all times. USUHS students do not receive a summer break; instead, their non-classroom weeks are spent in military field exercises and military externships.

Upon graduation, non-prior service USUHS physicians are promoted to O-3 and paid as an O-3 with less than 2 years of service, despite the fact that they have been on active duty continuously for the past 4 years. The only credit that students receive for time served at USUHS is that upon retirement a credit of 4 additional years of service is applied for the purpose of calculating pension benefits.

The third instance of inequitable treatment involves the requirement for prior service officers to effectively forfeit all of their earned rank in order to enter USUHS. There is no precedent for the demotion of officers who have served honorably and been chosen for one of the most selective education programs in all of DOD. In fact, there is not even a precedent for demoting officers who served dishonorably as evidenced by the fact that a General Court Martial Board does not have the authority to demote officers, even for criminal conduct.

This treatment of prior service officers creates undue hardship on the officers and their dependents and can only be described as inequitable and illogical. Appendix X includes calculations illustrating the significant financial hardship assumed by a “typical officer” enrolling in USUHS. The financial cost of forfeited salary and benefits over 4 years for an O-3 with 7 years of service who enrolls at USUHS is over \$97,000 (in 2006 dollars). For some more senior officers, it can easily top \$100,000. Furthermore, upon graduation, the financial reward for these officers is that they return to the salary level they previously earned prior to entering USUHS. Their contemporaries who did not attend USUHS are now making over \$14,000 per year more (shown in Appendix X). The 4-year hiatus in career progression follows all prior service officers for the rest of their military career. Upon graduation and promotion back to O-3, prior

service officers are significantly behind their original year group in both years of service and promotions. This time lost cannot be made up. This financial hardship is too much for many officers to endure, particularly those with families. As a result, many qualified and motivated officers who desire to be military medical officers simply cannot afford to do so. Thus, all of their combat, operational and leadership experience are then lost to the civilian world.

Additionally, there is no established mechanism for the demotion of officers. Officers must resign their commissions and separate from the Service and then be recommissioned as O-1s. This “jerry-rigging” of the defense financial system results in substantial pay problems for individuals. These problems often take months to resolve and require considerable administrative efforts by both the individual and the Service. For example, the class of 2010 has been at USUHS for over 5 months at the time of this writing and many of the Army students with prior commissioned service are still not being paid properly. These financial and administrative difficulties persist with each class, despite the fact that USUHS first enrolled medical students over 30 years ago.

Finally, since officers are rapidly promoted from O-1, the basic pay for an O-1 is capped after 3 years of service. In contrast, USUHS students with over 4 years of prior enlisted service are paid according to the O-1E pay scale. This scale was set up to recognize enlisted service prior to commissioning. Prior commissioned service does not count for eligibility towards O-1E. Thus, there is no mechanism to recognize the prior commissioned service of officers in the grade of O-1 despite the additional responsibilities commensurate with being a commissioned officer in the U.S. military. The difference in pay between two USUHS students with identical amounts of prior service, one commissioned and one enlisted, is as much as \$13,000 per year.

Equally important is the issue of ensuring a large pool of qualified non-prior service applicants. In light of the ongoing war on terror and the increasing appeal of other military physician accession programs, USUHS’ challenge to recruit qualified applicants is greatly increased. The 2007 NDAA substantially increased the benefits of the HPSP program and direct accession programs while also authorizing the Service Secretaries to implement new programs that allow commissioned officers to attend civilian medical schools while maintaining their rank. The maximum authorized monthly stipend for HPSP students was doubled to \$30,000 per year. This amount is more than the base pay of an O-1 with less than 2 years service. Additionally, HPSP stipends, while subject to federal income taxes, are not subject to FICA taxes, unlike the base pay of USUHS students.

These large benefit increases drastically reduce the appeal of a USUHS military medical education versus a HPSP funded civilian education. Considering that USUHS is located in an area with one of the highest costs of living in the country, the financial incentive for perspective medical students to enroll in USUHS is even further diminished. Fewer qualified students will likely choose USUHS, with its 700 hours of additional instruction, summer time field exercises, and structured military environment.

A very important issue presented itself as this paper was being drafted. A USUHS student, who was a relatively senior officer in his prior service, suffered an injury while at USUHS. After seeking medical treatment, the student was informed that his injury could potentially end his career. Fortunately, the student recovered. However, this situation presents an unlikely but very disturbing prospect of a prior service officer becoming sick or injured while at USUHS and being medically retired as an O-1, despite the years that they invested serving their country prior to attending USUHS.

Proposed Solution

In order to achieve the fundamental goals of making service at USUHS the same as service anywhere else in the DOD and ensuring a large qualified applicant pool for USUHS in the future, Title 10 of the U.S. Code must be amended to:

- 1) Modify the statutory requirement that all medical students at USUHS be commissioned in the grade of O-1, thereby allowing prior service officers to maintain their previously earned rank.
- 2) Remove the statutory prohibitions against promoting students enrolled in USUHS, thereby allowing O-1s at USUHS the chance to advance in accordance with policies of their parent Services.
- 3) Remove statutory prohibitions against using time served at USUHS for pay and retirement eligibility, thereby appropriately recognizing the active duty service of USUHS students.

While the actual wording of any change to the U.S. Code is beyond the scope of this document, the following suggestions are offered.

*** Title 10, § 2114:

The sentence annotated as (1) should be modified to achieve goals 1 and 3.

The sentence annotated as (2) should be deleted to achieve goal 2.

*“ ... (b) Medical students shall be commissioned officers of a uniformed service as determined under regulations prescribed by the Secretary of Defense after consulting with the Secretary of Health and Human Services. **(1) They shall be appointed as regular officers in the grade of second lieutenant or ensign and shall serve on active duty in that grade.** Upon graduation they shall be required to serve on active duty unless they are covered by section 2115 of this title. Medical students who graduate shall be required, except as provided in section 2115 of this title, to serve thereafter on active duty under such regulations as the Secretary of Defense or the Secretary of Health and Human Services, as appropriate, may prescribe for not less than seven years, unless sooner released. Upon completion of, or release from, the active-duty service obligation, a member of the program who served on active-duty for less than 10 years shall serve in the Ready Reserve for the period specified in the following table:*

...Table not included....

(2) The service credit exclusions specified in section 2126 of this title shall apply to students covered by this section.”

*** Title 10, § 641:

Sentence (5) should be deleted to achieve goals 2 and 3.

“(5) Students at the Uniformed University of the Health Sciences.”

The intent of the requested modifications to the prescribed sections of Title 10 is to remove the unfair statutory restrictions, thereby leading to USUHS SOM student officers being treated uniformly with all other active duty officers in DOD, in accordance with individual Service regulations.

Justification for the Proposed Solution

The precedents in the Department of Defense for the recommendations proposed in this paper are both substantial and numerous. Currently, there are over 2,000 officers on active duty throughout DOD whose primary duty is to attend graduate school full time. These include personnel at the Naval Postgraduate School, the Air Force Institute of Technology, the Funded Legal Education Program and numerous smaller programs involving prestigious civilian universities such as MIT and Georgetown. This number does not include those officers attending USUHS SOM. However, it does also include over 100 active duty officers pursuing graduate degrees in nursing, public health or other specialties at USUHS. All of these officers maintain their rank and collect full credit for time served while pursuing their advanced degrees.

The Funded Legal Education Program was authorized in the mid-1970s. It allows commissioned officers to attend law school, funded by DOD, while on active duty and collecting full pay and credit for time served without any forfeiture of rank.

The officers in graduate school at USUHS are able to maintain their rank and collect full credit for time served because the status of these students is left to the discretion of the Secretary of Defense under separate provisions of Title 10, § 2114. The students in the USUHS graduate schools are therefore not subject to the same inequitable restrictions on rank and credit for time served as the USUHS medical students.

Also of note is a recently implemented Army Policy aimed at improving the retention of O-3 and O-4 level officers. It offers some new 2nd Lieutenants the option of guaranteed graduate school at a later date in their career in exchange for an additional 3 years of active duty service obligation. According to the Congressional Research Service (6), the Army currently selects approximately 400 officers per year to attend graduate school programs. As a result of this new policy, the Army anticipates sending over 1100 officers per year to graduate school full time by the year 2010. As with other graduate education programs, these officers maintain their rank and receive full credit for time served while obtaining their degree. Additionally, upon graduation, these officers are guaranteed a three year assignment to a developmental billet related to their field of study. Thus, they are out of their community for up to five years.

All of these programs demonstrate DOD's emphasis on diverse types of postgraduate education for its officers. These programs establish a standard that military officers are to be rewarded, not punished, for pursuing higher education, whether at military or civilian institutions. The USUHS medical school stands out as the one striking exception to this standard because of statutory reasons beyond the control of DOD.

Finally, there is one particular instance that dramatically illustrates the inequities described in this paper. In 1998, the Air Force Board for Correction of Military Records reviewed a request from a former student at USUHS who was academically disenrolled after 3 years and subsequently became an Air Force intelligence officer, included as Appendix VIII. The former USUHS student's request involved changing his effective date of rank for O-2. The Air Force Board sought and received an opinion on the officer's claim from the Judge Advocate's office in the Air Force Personnel Center.

The Judge Advocate's office cited the "peculiar nature" of service as a student at USUHS as an important factor in their opinion. The opinion concluded that students at USUHS are statutorily prohibited from being promoted by Title 10, § 2114 and statutorily prohibited from receiving credit for time served at USUHS towards pay and retirement eligibility by Title 10, § 2126. However, the opinion also concluded that time at USUHS is not prohibited from being used toward promotion eligibility. The Air Force

deemed that officer's three years of service at USUHS counted towards eligibility for promotion and that the officer was eligible for promotion the day after disenrolling from USUHS. The officer's date of rank for O-2 was subsequently backdated to the day after he disenrolled from USUHS.

There are several other items discussed by the Air Force in this case that are interesting and useful for reinforcing the main points of this paper. In his request, the Air Force officer cited the case of three Navy ensigns in his USUHS class who were academically disenrolled from USUHS shortly after him. Pursuant to SECNAVINST 1421.4D, included as Appendix XII, these students were awarded O-2, backdated to their two year anniversary of entry into the Navy and also received backpay, even though they were still students of USUHS on that date. SECNAVINST 1421.4D specifically stated that Naval officers not on the active duty list, USUHS students specifically included, were to be promoted in the same manner as Naval officers on the active duty list. The Air Force Board also specifically noted that, "...although US code explicitly states that officers on the active duty list are to be promoted, it does not explicitly say that officers not on the active duty list can not be promoted." The Air Force Board also wrote that regarding SECNAVINST 1421.4D "paraphrased, it states that not considering time spent at USUHS for pay and promotion is inconsistent with the mission requirements of the USN." SECNAVINST 1421.4D was in effect from 21 SEP 1988 until superseded by SECNAVINST 1412.6L on 9 DEC 05. Unfortunately, the authors of this paper could not locate Navy records of the case involving the three ensigns.

These cases establish the precedent that time spent at USUHS is valid for eligibility towards promotion, but USUHS students cannot be promoted because of statutory prohibitions in Title 10. This has resulted in the odd situation where officers with at least 2 years at USUHS who are disenrolled for academic failures, are promoted to O-2, effective the day after they disenroll from USUHS if they remain in the military in another capacity.

Benefits of the Proposed Solution

The benefits of implementing the proposed recommendations of this paper are significant for both the officers studying at USUHS and the Military Health System as a whole. For USUHS students, the proposed changes ensure a financial incentive for accepting the additional duties, responsibilities and obligations of a military medical education. DOD directly benefits from these changes by making USUHS significantly more attractive to all potential applicants and thereby ensuring a large pool of qualified applicants from which to select the future leaders of military medicine. USUHS alumni are by far the most cost effective source of physicians for the military when taking into account the average length of service of an USUHS, HPSP, or direct accession physician, as cited by the Center for Naval Analysis. The single greatest benefit to DOD is the retention of officers with prior commissioned service. These officers have significant combat, operational and leadership experience that is invaluable to DOD and they are uniquely qualified to serve as the next generation of military medical officers and leaders. The hard earned experience and wisdom of these individuals cannot be purchased from the civilian medical sector at any price.

The specific benefits of these proposed changes include the following:

- Increased recruitment and retention of experienced officers for the Military Health System by alleviating the financial hardship and lengthy career delays associated with attending USUHS.
- Increased size and quality of prior enlisted and non-prior service applicant pools by recognizing their hard work in the first two years of school and assumption of additional responsibilities as a third year medical student with a promotion to O-2 on the same schedule as their peers in other military career fields.
- Increased retention of non-prior service USUHS graduates in crucial operational specialties to the 20-year retirement point. By crediting these personnel with 4 years of service towards retirement while at USUHS, it means they will have a minimum of 14 years of active duty service before being eligible to separate vs. 10 years under the current structure. Physicians with 10 years remaining until retirement are more likely to separate for the much higher paying civilian sector than those with only 6 years remaining.
- Flexibility for the Services to manage their officer students at USUHS in accordance with the Services' policies for the medical community as a whole rather than as a separate entity with different rules.
- Correction of a fundamentally unfair law that punishes prior service officers for choosing to pursue professional education in the medical field vs. in the legal field or other specialties, by placing a USUHS medical education on par with other military post graduate education programs.
- Increased overall interest in becoming a physician in the Military Health System.

Appendix IX calculations show that the short term cost to the government of implementing these recommendations is approximately \$6 million per year. This number is relatively modest when compared to the estimates of approximately \$88 million in additional benefits authorized for HPSP in 2007 alone (Appendix XIV) in the 2007 NDAA.

Rebuttals

There are some arguments that could be raised against implementing the proposed recommendations. This paper would not be complete without addressing the most significant concerns. These include: 1) the rank differences in the training environment that would result from allowing prior service officers to maintain their rank, 2) implications for community management, officer development and officer end strengths, and 3) the original intent of the legislation establishing USUHS.

The authors patently reject the most commonly cited point that having O-3/O-4s in the same training environment as O-1s is detrimental. The military is replete with examples of rank differences in training environments with no detrimental effects. The authors can cite specific personal examples of this situation. In Ranger school, officers and enlisted train side by side with little differentiation between the two. In Naval Nuclear Power School, O-6 aviators preparing for command of nuclear powered aircraft carriers train side by side with O-1s. There is an immense intangible benefit to having experienced officers working in close contact with other students who have little or no prior military experience.

Others have pointed out that having students outranking some of their instructors during their clerkship rotations (during their third and fourth year) will hamper training. Again, the authors dismiss this point as invalid. It is routine in military training environments for students to outrank instructors. Enlisted service members frequently instruct officers; in fact, it is a common occurrence at USUHS today. In the existing system, some senior students are promoted to O-4 at graduation based on their amount of prior commissioned service. These officers then outrank most of the resident physicians that they work under during their internship. Also, it is common for nurses to outrank the physicians that they work with. In these situations, medical knowledge is the most important determinant of authority.

Concerns have also been voiced that by having some students at the same rank as physicians, there will be role confusion among hospital staff and patients. This concern is greatly overstated. In many settings within a hospital, uniforms and rank are not even worn. Medical students on rotation wear shorter lab coats than physicians. However, there are few other distinctions in hospitals between the various the medical professions. Frequently, there is no distinction whatsoever made between physicians, nurses and other officers. The distinctions that are made at some hospitals are local policies. The general lack of visual distinction between various professionals indicates that there are few problems associated with role confusion and certainly none so significant that it justifies such a draconian measure as requiring officers to surrender their hard earned rank. Certainly, a simpler solution could easily be found to distinguish students from doctors if the need arose. Finally, it is an insult to the professionalism of prior service medical students to insinuate that they would ever allow themselves to be confused with practicing physicians.

There have also been concerns expressed about potential abuses of power by more high-ranking students. These incidents are no more likely to occur at USUHS than at any other command in the military. In the unlikely event of any type of conflict, the other high-ranking students could certainly be counted on to intervene in order to protect the learning environment and maintain the good order and discipline of the class. Again, this argument is an affront to prior service officers by questioning their professionalism.

Regarding the second point about community management and officer development, this is a complicated issue worthy of considerable thought. Promotions for O-3 and O-4 while at USUHS or shortly after graduation should certainly be looked at closely. It is essential to ensure that the best interests of both the Services and the individuals are met. It has been argued that it is necessary to restart USUHS students at O-1 in order to ensure they are competitive for selection to O-4 and O-5 boards by the

time they are board eligible. The argument that officers must be demoted to ensure they will be promoted defies common sense.

There are also issues regarding authorized end-strength numbers for each Service. Under DOPMA, company grade officers (pay grades O-1 through O-3) are all counted together. Thus, there are no end strength issues regarding O-3s or below. DOPMA end strength restrictions first take effect at the O-4 pay grade. The Army and the Air Force Students at USUHS are in the Medical Service Corps, which is subject to DOPMA size and rank restrictions. The Navy students are in the Medical Corps, which is exempted from DOPMA restrictions.

Since these issues are complicated, the best solution is to allow the medical branch management experts in each Service to manage their forces as they deem best for all concerned. So long as prior service officers are not required to forfeit rank, there are many reasonable methods for ensuring proper career progression. These could include freezing or resetting the time in grade calculators while at USUHS, thereby preventing O-3s and above from being promoted while at USUHS, and ensuring that promotion boards are properly briefed as to how these officers should be evaluated for promotion. There is ample precedent for such a policy. For example, USUHS graduates are awarded O-3 upon graduation. Prior service officers are credited 50% of their total commissioned time towards promotion to O-4. Thus, there are typically a few officers in each class that graduate from USUHS as O-4s.

The final discussion involves the original intent of the legislation that requires medical students to be O-1s and for their service to not be creditable for pay or retirement eligibility. The original intent of the legislation is not well documented, however, it is worth considering the circumstances surrounding the passage of the law establishing USUHS. The law is now almost 35 years old. At the time it was adopted, the military was just transitioning to an all-volunteer force, American Forces were still in Vietnam and the perspectives of society were somewhat different than they are today. In both civilian and military circles, the opportunities for and the emphasis on graduate education were much less than they are today. Finally, the policy of commissioning physicians as O-3s was a relatively new practice. Prior to 1967, new doctors were commissioned as O-2s and promoted to O-3 after completing their internship. In light of these considerations, it is not implausible to reason that the requirement for all medical students serve as O-1s has resulted in unintended negative consequences for today's military.

With regards to the service credit aspects of the law, it is most certainly having unintended negative consequences. When the law was passed in 1972, USUHS and HPSP graduates received credit for pay purposes for their time in medical school. Passage of DOPMA in 1981, took away the credit for pay purposes. DOPMA took effect in 1982 and the USUHS class of 1987 was the first to not receive credit for time at USUHS, as evidenced by Appendix XI. In fact, the negative effect of DOPMA on compensation for medical professionals was cited as an argument against it. Thus when the law creating USUHS was written, it is reasonable to assume that the authors intended for USUHS students to receive full credit for the time served at USUHS.

Conclusion

In summary, officers at USUHS are treated differently than all other officers of the United States Military. This situation is unfair and a detriment to the officers, USUHS, and the Military Health System. A change to Title 10 of U.S. Federal Code is imperative to achieve equitable treatment for officers at USUHS and to attract highly qualified applicants to USUHS from both military and non-military backgrounds. USUHS and DOD benefit greatly from this change. USUHS is ensured a large and competitive pool of qualified applicants from which to select the future leaders of the Military Health System. DOD retains an increased number of tested and proven officers with operational experience that can not be purchased from the civilian sector at any price. Finally, dedicated officers that desire to care for those in harm's way no longer have to subject themselves and their families to the hardship imposed by drastic reductions in pay and benefits.

“ USUHS graduates have demonstrated a commitment to serving their country in numbers and to a degree that is unrealistic to expect from their civilian counterparts”, Jordan J. Cohen, M.D. President of the American Association of Medical Colleges, April 27, 2005

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APPENDICES

TABLE OF CONTENTS

Appendix #	Background	Topic	Pg. #
1) APPENDIX I	TITLE 10, § 2114	Students: selection; status; obligation.	p. 18-19
2) APPENDIX II	TITLE 10, § 2126	Members of the program: service credit.	p. 20
3) APPENDIX III	TITLE 10, § 2112	Establishment of USUHS.	p. 21
4) APPENDIX IV	TITLE 37, § 205	Computation: service creditable.	p. 22-23
5) APPENDIX V	TITLE 10, § 620	Active Duty Lists.	p. 24
6) APPENDIX VI	TITLE 10, § 641	Applicability of Chapter.	p. 25
7) APPENDIX VII	TITLE 10, § 2004	Detail of commissioned officers as students at law schools.	p. 26
8) APPENDIX VIII	Case# 96-01097	AFBCMR Case of USUHS years counting for service	p. 27-42
9) APPENDIX IX	Author's	Calculations of total cost to the government by the proposed changes	p. 43-44
10) APPENDIX X	Author's	Cost for a prior commissioned officer to attend USUHS	p. 45
11) APPENDIX XI	Case #AR20040006796	USUHS SOM/DOPMA 1987 Grievance	p. 46-49
12) APPENDIX XII	SECNAVIST 1421.4D	Promotion of officers to grade O-2 (21 SEP 88)	p. 50-53
13) APPENDIX XIII	SECNAVIST 1412.6L	Promotion of officers to grade O-2 (9 DEC 05)	p. 54-63
14) APPENDIX XIV	CBO Estimate	Excerpt from Congressional Budget Office Cost Estimate for 2007 NDAA, June 9, 2006	p. 64
15) APPENDIX XV	MILITARY PAY SCALE	2006 Military Basic Pay Rates	p. 65
16) APPENDIX XVI	NDAA Sec. 536-538	Sections of 2007 NDAA authorizing detail of commissioned officers to civilian medical schools and increased HPSP benefits	p. 66-67

APPENDIX I

TITLE 10, § 2114

§ 2114. Students: selection; status; obligation.

(a) Medical students at the University shall be selected under procedures prescribed by the Secretary of Defense. In so prescribing, the Secretary shall consider the recommendations of the Board. However, selection procedures prescribed by the Secretary of Defense shall emphasize the basic requirement that students demonstrate sincere motivation and dedication to a career in the uniformed services (as defined in section 1072 (1) of this title).

(b) Medical students shall be commissioned officers of a uniformed service as determined under regulations prescribed by the Secretary of Defense after consulting with the Secretary of Health and Human Services. **They shall be appointed as regular officers in the grade of second lieutenant or ensign and shall serve on active duty in that grade.** Upon graduation they shall be required to serve on active duty unless they are covered by section 2115 of this title. Medical students who graduate shall be required, except as provided in section 2115 of this title, to serve thereafter on active duty under such regulations as the Secretary of Defense or the Secretary of Health and Human Services, as appropriate, may prescribe for not less than seven years, unless sooner released. Upon completion of, or release from, the active-duty service obligation, a member of the program who served on active-duty for less than 10 years shall serve in the Ready Reserve for the period specified in the following table:

Period of Service	Ready Reserve on Active Duty	Obligation	Less than 8 years	6 years	8 years or more, but less than 9	4 years	9 years or more, but less than 10	2 years
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The service credit exclusions specified in section 2126 of this title shall apply to students covered by this section.

(c) A period of time spent in military intern or residency training shall not be creditable in satisfying a commissioned service obligation imposed by this section.

(d) A medical student who, under regulations prescribed by the Secretary of Defense, is dropped from the program for deficiency in conduct or studies, or for other reasons, may be required to perform active duty in an appropriate military capacity in accordance with the active duty obligation imposed by this section. In no case shall any such student be required to serve on active duty for any period in excess of a period equal to the period he participated in the program, except that in no case may any such student be required to serve on active duty less than one year.

(e)

(1) The Secretary of Defense may enter into agreements with foreign military medical schools for reciprocal education programs under which students at the University receive specialized military medical instruction at the foreign military medical school and military medical personnel of the country of such medical school receive specialized military medical instruction at the University. Any such agreement may be made on a reimbursable basis or a non-reimbursable basis.

(2) Not more than 40 persons at any one time may receive instruction at the University under this subsection. Attendance of such persons at the University may not result in a decrease in the number of students enrolled in the University. Subsection (b) does not apply to students receiving instruction under this subsection.

(3) The Dean of the University, with the approval of the Secretary of Defense, shall determine the countries from which persons may be selected to receive instruction under this subsection and the number of persons that may be selected from each country. The Dean may establish qualifications and methods of selection and shall select those persons who will be permitted to receive instruction at the

University. The qualifications established shall be comparable to those required of United States citizens.

(4) Each foreign country from which a student is permitted to receive instruction at the University under this subsection shall reimburse the United States for the cost of providing such instruction, unless such reimbursement is waived by the Secretary of Defense. The Secretary of Defense shall prescribe the rates for reimbursement under this paragraph.

(5) Except as the Dean determines, a person receiving instruction at the University under this subsection is subject to the same regulations governing attendance, discipline, discharge, and dismissal as a student enrolled in the University. The Secretary may prescribe regulations with respect to access to classified information by a person receiving instruction under this subsection that differ from the regulations that apply to a student enrolled in the University.

(f) In this section, the term “commissioned service obligation” means, with respect to an officer who is a graduate of the University, the period beginning on the date of the appointment of the officer in a regular component after graduation and ending on the tenth anniversary of that appointment.

(g) The Secretary of Defense shall establish such selection procedures, service obligations, and other requirements as the Secretary considers appropriate for graduate students (other than medical students) in a postdoctoral, postgraduate, or technological institute established pursuant to section 2113 (h) of this title.

(h) A graduate of the University who is relieved of the graduate’s active-duty service obligation under subsection (b) before the completion of that active-duty service obligation may be given, with or without the consent of the graduate, an alternative obligation in the same manner as provided in subparagraphs (A) and (B) of paragraph (1) of section 2123 (e) of this title or paragraph (2) of such section for members of the Armed Forces Health Professions Scholarship and Financial Assistance program.

APPENDIX II

TITLE 10 § 2126

§ 2126. Members of the program: service credit.

(a) Service Not Creditable.— Except as provided in subsection (b), service performed while a member of the program shall not be counted—

(1) in determining eligibility for retirement other than by reason of a physical disability incurred while on active duty as a member of the program; or

(2) in computing years of service creditable under section 205 of title 37.

(b) Service Creditable for Certain Purposes.—

(1) The Secretary concerned may authorize service performed by a member of the program in pursuit of a course of study under this subchapter to be counted in accordance with this subsection if the member—

(A) completes the course of study;

(B) completes the active duty obligation imposed under section 2123 (a) of this title; and

(C) possesses a specialty designated by the Secretary concerned as critically needed in wartime.

(2) Service credited under paragraph (1) counts only for the award of retirement points for computation of years of service under section 12732 of this title and for computation of retired pay under section 12733 of this title.

(3) The number of points credited to a member under paragraph (1) for a year of participation in a course of study is 50. The points shall be credited to the member for one of the years of that participation at the end of each year after the completion of the course of study that the member serves in the Selected Reserve and is credited under section 12732 (a)(2) of this title with at least 50 points. The points credited for the participation shall be recorded in the member's records as having been earned in the year of the participation in the course of study.

(4) Service may not be counted under paragraph (1) for more than four years of participation in a course of study as a member of the program.

(5) A member of the Selected Reserve may be considered to be in an active status while pursuing a course of study under this subchapter only for purposes of sections 12732 (a) and 12733 (3) of this title.

(6) A member is not entitled to any retroactive award of, or increase in, pay or allowances under title 37 by reason of an award of service credit under paragraph (1).

APPENDIX III

TITLE 10 § 2112

§ 2112. Establishment of USUHS.

(a) There is hereby authorized to be established within 25 miles of the District of Columbia a Uniformed Services University of the Health Sciences (hereinafter in this chapter referred to as the “University”), at a site or sites to be selected by the Secretary of Defense, with authority to grant appropriate advanced degrees. It shall be so organized as to graduate not less than 100 medical students annually.

(b) Except as provided in subsection (a), the numbers of persons to be graduated from the University shall be prescribed by the Secretary of Defense. In so prescribing the number of persons to be graduated from the University, the Secretary of Defense shall institute actions necessary to ensure the maximum number of first-year enrollments in the University consistent with the academic capacity of the University and the needs of the uniformed services for medical personnel.

(c) The development of the University may be by such phases as the Secretary of Defense may prescribe subject to the requirements of subsection (a).

APPENDIX IV

TITLE 37 § 205

§ 205. Computation: service creditable.

(a) Subject to subsections (b) and (c), for the purpose of computing the basic pay of a member of a uniformed service, his years of service are computed by adding—

(1) all periods of active service as an officer, Army field clerk, flight officer, aviation midshipman, or enlisted member of a uniformed service;

(2) all periods during which he was enlisted or held an appointment as an officer, Army field clerk, or flight officer of—

(A) a regular component of a uniformed service;

(B) the Regular Army Reserve;

(C) the Organized Militia before July 1, 1916;

(D) the National Guard;

(E) the National Guard Reserve;

(F) a reserve component of a uniformed service;

(G) the Naval Militia;

(H) the National Naval Volunteers;

(I) the Naval Reserve Force;

(J) the Army without specification of component;

(K) the Air Force without specification of component;

(L) the Marine Corps Reserve Force;

(M) the Philippine Scouts; or

(N) the Philippine Constabulary;

(3) for a commissioned officer in service on June 30, 1922, all service that was then counted in computing longevity pay and all service as a contract surgeon serving full time;

(4) all periods during which he held an appointment as a nurse, reserve nurse, or commissioned officer in the Army Nurse Corps as it existed at any time before April 16, 1947, the Navy Nurse Corps as it existed at any time before April 16, 1947, or the Public Health Service, or a reserve component of any of them;

(5) all periods during which he was a deck officer or junior engineer in the National Oceanic and Atmospheric Administration;

(6) all periods that, under law in effect on January 10, 1962, were authorized to be credited in computing basic pay; and

(7) all periods while—

(A) on a temporary disability retired list, honorary retired list, or a retired list of a uniformed service;

(B) entitled to retired pay, retirement pay, or retainer pay, from a uniformed service or the Department of Veterans Affairs, as a member of the Fleet Reserve or the Fleet Marine Corps Reserve; or

(C) a member of the Honorary Reserve of the Officers' Reserve Corps or the Organized Reserve Corps.

Except for any period of active service described in clause (1) and except as provided by subsections (b), (c), and (d) of section 1402 and subsections (b), (c), and (d) of section 1402a of title 10, a period of service described in clauses (2) through (7) that is performed while on a retired list, in a retired status, or in the Fleet Reserve or Fleet Marine Corps Reserve, may not be included to increase retired pay, retirement pay, or retainer pay. For the purpose of clause (5), periods during which a member was a deck officer or junior engineer in the National Oceanic and Atmospheric Administration includes periods during which a member was a deck officer or junior engineer in the Environmental Science Services Administration or the Coast and Geodetic Survey.

(b) A period of time may not be counted more than once under subsection (a).

(c) The periods of service authorized to be counted under subsection (a) shall, under regulations prescribed by the Secretary concerned, include service performed by a member of a uniformed service before he became 18 years of age.

(d) Notwithstanding subsection (a), a commissioned officer may not count in computing basic pay a period of service after October 13, 1964, that the officer performed concurrently as a member of the Senior Reserve Officers' Training Corps, except for service that the officer performed on or after August 1, 1979, other than for training as an enlisted member of the Selected Reserve may be so counted.

(e)

(1) Notwithstanding subsection (a), a period of service described in paragraph (2) of a member who enlists in a reserve component may not be counted under this section.

(2) Paragraph (1) applies to the following service:

(A) Service performed while a member of a reserve component under an enlistment under section 12103 (b) or 12103 (d) of title 10 before the member begins service on active duty under such section (including a period of active duty for training) unless the member performs inactive-duty training before beginning service on active duty or active duty for training;

(B) Service performed while a member of a reserve component under an enlistment under section 513 of title 10 (other than a period of active duty to which the member is ordered under chapter 1209 of title 10 or another provision of law).

(f) Notwithstanding subsection (a), the periods of service of a commissioned officer appointed under section 12203 of title 10 after receiving financial assistance under section 16401 of such title that are counted under this section may not include a period of service after January 1, 2000, that the officer performed concurrently as an enlisted member of the Marine Corps Platoon Leaders Class program and the Marine Corps Reserve, except that service after that date that the officer performed before commissioning (concurrently with the period of service as a member of the Marine Corps Platoon Leaders Class program) as an enlisted member on active duty or as a member of the Selected Reserve may be so counted.

APPENDIX V

TITLE 10 § 620

§ 620. Active Duty Lists.

- (a) The Secretary of the military department concerned shall maintain a single list of all officers (other than officers described in section 641 of this title) who are on active duty for each armed force under his jurisdiction (other than the Coast Guard when it is operating as a service in the Navy).
- (b) Officers shall be carried on the active-duty list of the armed force of which they are members in the order of seniority of the grade in which they are serving on active duty. Officers serving in the same grade shall be carried in the order of their rank in that grade.
- (c) An officer whose position on the active-duty list results from service under a temporary appointment or in a grade held by reason of assignment to a position has, when that appointment or assignment ends, the grade and position on the active-duty list that he would have held if he had not received that appointment or assignment.
- (d) Under regulations prescribed by the Secretary of the military department concerned, a reserve officer who is ordered to active duty (whether voluntarily or involuntarily) during a war or national emergency and who would otherwise be placed on the active-duty list may be excluded from that list as determined by the Secretary concerned. Exclusion of an officer from the active-duty list as the result of action by the Secretary concerned under the preceding sentence shall expire not later than 24 months after the date on which the officer enters active duty under an order to active duty covered by that sentence.

APPENDIX VI

TITLE 10 § 641

§ 641. Applicability of Chapter.

Officers in the following categories are not subject to this chapter (other than section 640 and, in the case of warrant officers, section 628):

(1) Reserve officers—

(A) on active duty authorized under section 115 (a)(1)(B) or 115 (b)(1) of this title, or excluded from counting for active duty end strengths under section 115 (i) of this title;

(B) on active duty under section 3038, 5143, 5144, 8038, 10211, 10301 through 10305, 10502, 10505, 10506 (a), 10506 (b), 10507, or 12402 of this title or section 708 of title 32; or

(C) on full-time National Guard duty.

(2) The director of admissions, dean, and permanent professors at the United States Military Academy and the registrar, dean, and permanent professors at the United States Air Force Academy.

(3) Warrant officers.

(4) Retired officers on active duty.

(5) Students at the Uniformed Services University of the Health Sciences.

APPENDIX VII

TITLE 10 § 2004

§ 2004. Detail of commissioned officers as students at law schools.

(a) The Secretary of each military department may, under regulations prescribed by the Secretary of Defense, detail commissioned officers of the armed forces as students at accredited law schools, located in the United States, for a period of training leading to the degree of bachelor of laws or juris doctor. No more than twenty-five officers from each military department may commence such training in any single fiscal year.

(b) To be eligible for detail under subsection (a), an officer must be a citizen of the United States and must—

(1) have served on active duty for a period of not less than two years nor more than six years and be in the pay grade O-3 or below as of the time the training is to begin; and

(2) sign an agreement that unless sooner separated he will—

(A) complete the educational course of legal training;

(B) accept transfer or detail as a judge advocate or law specialist within the department concerned when his legal training is completed; and

(C) agree to serve on active duty following completion or other termination of training for a period of two years for each year or part thereof of his legal training under subsection (a).

(c) Officers detailed for legal training under subsection (a) shall be selected on a competitive basis by the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense. Any service obligation incurred by an officer under an agreement entered into under subsection (b) shall be in addition to any service obligation incurred by any such officer under any other provision of law or agreement.

(d) Expenses incident to the detail of officers under this section shall be paid from any funds appropriated for the military department concerned.

(e) An officer who, under regulations prescribed by the Secretary of Defense, is dropped from the program of legal training authorized by subsection (a) for deficiency in conduct or studies, or for other reasons, may be required to perform active duty in an appropriate military capacity in accordance with the active duty obligation imposed by regulations issued by the Secretary of Defense, except that in no case shall any such member be required to serve on active duty for any period in excess of one year for each year or part thereof he participated in the program.

(f) No agreement detailing any officer of the armed forces to an accredited law school may be entered into during any period that the President is authorized by law to induct persons into the armed forces involuntarily. Nothing in this subsection shall affect any agreement entered into during any period when the President is not authorized by law to so induct persons into the armed forces.

APPENDIX VIII

AIR FORCE BOARD FOR CORRECTOIN OF MILITARY RECORDS CASE #96-01097.

Credit awarded for USUHS SOM years.



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

Office of the Assistant Secretary

MAY 04 1998

AFBCMR 96-01097

MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the Air Force Board for Correction of Military Records and under the authority of Section 1552, Title 10, United States Code (70A Stat 116), it is directed that:

The pertinent military records of the Department of the Air Force relating to [REDACTED] [REDACTED] be corrected to show that he was promoted to the grade of first lieutenant, with an effective date and a date of rank of 7 Jun 95.

It is further directed that he be considered for promotion to the grade of captain by a Special Selection Board (SSB) for the CY96D Central Captain Board, which convened on 9 Sep 96.

EBERG
Director
Air Force Review Boards Agency

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 96-01097

COUNSEL: NONE

HEARING DESIRED: NO MAY 04 1998

APPLICANT REQUESTS THAT:

By amendment, he be retroactively promoted to the grade of first lieutenant (O-2), effective 7 Jun 95; and that he be given Special Selection Board consideration for promotion to the grade of captain (O-3).

APPLICANT CONTENDS THAT:

Title 10 of the United States Code (10 USC) as it applies to Uniformed Services University of Health Sciences (USUHS) service credit is unjust and is unjustly applied between the different services.

In support of his appeal, the applicant provided a personal statement, supportive statements, and other documents associated with the matter under review.

Applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS:

Applicant was appointed a second lieutenant, Reserve of the Air Force, Medical Service Corps (MSC), for the purposes of attending USUHS, on 27 Apr 92. On 6 Jun 95, the applicant was academically disenrolled from USUHS. On 1 Aug 95, the applicant was transferred from the MSC to the Line of the Air Force in the grade of second lieutenant effective and with a date of rank 7 Jun 95. He was promoted to the grade of first lieutenant on 7 Jun 97.

Information extracted from the Personnel Data System (PDS) indicates that the applicant is currently serving on active duty in the grade of first lieutenant. His Total Active Federal Military Service Date (TAFMSD) is 7 Jun 95.

AIR FORCE EVALUATION:

The GME Program Manager, AFPC/DPAME, reviewed this application and recommended denial. DPAME noted that the applicant signed his USUHS Military Service Obligation Contract on 27 Apr 92. According to DPAME, paragraph 10 of his contract states, "USUHS Reserve Officer will be subject to most of the same laws, regulations, and policies that apply to other Reserve officers on active duty, except that service performed while a member of the program is not counted:.." Paragraph 10c of his contract states, "In computing date of rank, promotion service date or total years service date. (Completion of M.D. degree will, however, result in award of appointment and entry credit according to DOD Directive 1320.7)" The applicant's disenrollment from USUHS does not affect the intent/contents of his USUHS contract. Contractually, both the Air Force and the individual still need to comply with contents of the contract. The rules--and in the applicant's case, knowledge of these rules--in effect at the time an individual signs his contract should be binding on both the Air Force and the individual. Since the applicant has signed his contract, in DPAME's view, his request has no merit.

A complete copy of the DPAME evaluation, with attachment, is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

In his initial response, dated 8 Jul 96, the applicant indicated that the Air Force interpretation of 10 USC and resultant action taken to "correct" his statement of service to effectively erase three years of his life spent on active duty as an officer, is unjust in light of the two situations described below.

The applicant stated that the first example was described on page three of his personal statement in his application. He feels it is necessary to re-emphasize it here as no one has addressed the issue thus far. In paragraph 10 of page three of his personal statement, there is an account of another Air Force officer who found herself in a very similar yet very different situation from his. At the date of this writing, the officer he is referring to is paid as an O-2 with over five years of service. He is paid as an O-1 with one year of service. She was commissioned in May of 1991, following a Reserve Officer Training Corps (ROTC) program. He was given a direct commission in Apr 92. She came on active duty for three months in the summer of 91, then went to law school on an educational delay for four years in an inactive reserve status. He came on active duty in Jul 92 to begin a post-commissioning officer training program, then reported to his medical officer training program, and has remained on uninterrupted active duty since that time. She failed (at least twice) to pass the Bar exam required for her to use her degree in the USAF. He academically failed to complete his medical officer

training program at USUHS after three years. She returned to active duty in Oct 95, and enrolled in the Intelligence Officer's Training Course at [REDACTED]. He enrolled in the same course in Dec 95. [REDACTED] as retroactively promoted to 0-2 as of the summer of 1995, and received several months of back pay. Although in the past five years she has been in uniform on active duty as an officer for less than one year, she got half of the time for promotion, and all of the time for her time in service. She did not serve, and she cannot use the education she received for the good of the USAF. He has been in uniform on active duty for four years. Though he also cannot use the education he received, he did serve, in several capacities, as a USAF officer. He and his superiors at [REDACTED] believe this comparison is unjust.

The applicant indicated that the second example is new information he has compiled since he submitted his original application to the AFBCMR. In 1989, the United States Navy (USN) decided that there was indeed an inequity in the way their policies interpreted 10 USC as it concerned USUHS students, and subsequently published SECNAV INSTRUCTION 1421.4D (copy attached). Within a couple of months of his disenrollment from USUHS, three USN officers, ensigns, were also academically disenrolled. After several discussions and subsequent research, these officers found the above instruction. This instruction, paraphrased, states that not considering time spent at USUHS for pay and promotion is inconsistent with mission requirements of the USN. Please note: although the US Code explicitly states that officers on the active duty list are to be promoted, it does not explicitly say that officers not on the active duty list cannot be promoted. With this in mind, 1421.4D states that officers not on the active duty list (including USUHS students) are to be promoted in the same manner as USN officers that are on the active duty list. Based on this argument and the attached copies of the above instruction, these three former classmates of his, the USN officers, were promoted to lieutenants, junior grade, on 30 May 96, retroactive to their original two year mark (20 May 1994, on the one example case attached). These officers have begun to receive back pay, and their promotion folders will go before the 0-3 board this summer (1996) as "above the zone-not previously considered." Again, he must ask, based upon the DOD's and each individual service's requirement to accurately, correctly, consistently, and fairly apply the US Code, is this example, when compared with his own, an injustice? Again, many individuals at several levels in the USAF and DOD have verbally stated to him that this is an injustice. The USN, while not the USAF, changed its policy for promotion and pay of former USUHS students while staying within the boundaries of the law. This action has set a precedent.

According to the applicant, there are only two valid reasons why an individual can request consideration from the board. One is for an error in their record. According to current Air Force policy, there is not an error in his record. The recommendation

from AFPC argues, in a few more words, that his request is not valid because there are no errors. At no time has he claimed an error was present. However, he does claim an unjust entry has been made, based on an unjust policy. That is the only other reason (number two) for making an application to the AFBCMR. Clearly in this case, policy has been followed closely. In this case, Air Force policy (interpretation of the US Code) should be changed as it concerns former USUHS students. His ability to serve his nation as a USAF officer cannot and should not, be directly compared to his academic ability to complete USUHS. Though he did not meet the qualifications necessary to be a medical corps officer, at no time did he fail in qualifications required to be a USAF officer. Many future officers will not have what it takes to successfully complete the USUHS curriculum. However, the USAF would be wise to consider these officers as assets to the mission, based on their experience and time in service. Though frustrating, he has not allowed this issue to negatively affect his future in the USAF. Immediately following USUHS, he put a large amount of effort into starting another program where he could effectively pay back his commitment, as well as continue a career in the USAF. In only a few short days, he will complete the Intelligence Operations Officer training course, and have a permanent change of station (PCS) to Kelly AFB, to begin an exciting assignment. He has performed at the top of his class, professionally and academically, for the entire time of this program. He looks forward to the opportunities before him as an Air Force officer. This entire request is simply a plea for equal benefits and equal consideration, both with fellow junior Air Force officers as well as with fellow USN officers whose military background (time and experience) is identical to his own.

In light of the above two examples, and the comparative lack of fairness shown to Air Force officers like himself, he would have to question the validity and logic of DPAME's statement that his request has no merit. As stated earlier, there has been no error; however, there is a disagreement on the interpretation of the law, US Code, between services.

Applicant's complete response and additional documentary evidence are at Exhibit E.

Applicant provided a subsequent response, dated 13 Dec 96, with additional documentary evidence, which are attached at Exhibit F.

ADDITIONAL AIR FORCE EVALUATION:

Pursuant to the Board's request, the Office of the Staff Judge Advocate, AFPC/JA, reviewed this application and provided an assessment of the appeal. In JA's view, the applicant's plea for "justice" in his case is articulate but pleonastic. According to

his understanding of the applicable statutes and his USUHS contract, he concedes that he is not eligible for the credit he seeks. Nevertheless, he claims such provisions amount to an injustice. Moreover, he cites what he believes to be examples of inequitable application of the statutes.

JA indicated that, to begin with, to the extent the application can be read to ask the AFBCMR to grant relief contrary to the express requirements of a statute or statutes, it is incapable of being granted. Obviously, the Board cannot change a statute, nor can it ignore statutory law. Consequently, the critical issue here is what the law provides insofar as credit for USUHS student time is concerned. But first, they will examine the applicant's alleged examples of inequitable application of the law.

The applicant refers to two other officers, who he claims were given favorable service credit unlike himself. One is an Air Force officer who twice failed to pass the bar exam after attending law school in an ROTC educational delay program, and attended intelligence school with the applicant. He complains that this officer received credit for time in grade and service and is senior in rank to him, yet only has nine months of active duty time. The other, a Navy officer and former USUHS classmate of the applicant, allegedly after failing out of USUHS as an Ensign in the Navy, was given a promotion to LTJG (0-2) on 30 May 96, with a date of rank retroactive to 20 May 1994. Further, according to the applicant, this Naval officer was promoted to Lieutenant (0-3) on 30 Oct 96. The applicant claims that his and the Naval officer's circumstances are almost identical, but that while he is in pay grade 0-1 with under two years of creditable service, the other officer is an 0-3 with over four years of creditable service. The applicant decries how two officers with the same appointment criteria to the military service, who were both academically disenrolled from USUHS at approximately the same time, can end up with two totally different results.

According to JA, no discussion of the applicant's example of the lieutenant who failed to qualify as a judge advocate is necessary. The applicant and this lieutenant entered the Air Force under different programs, with different statutory and regulatory rules and guidelines. Comparing her case to the applicant's is clearly a case of comparing apples and oranges. More closely aligned to the applicant's situation is the example of the Naval USUHS student who was ostensibly retroactively promoted. While illustrative, because the Air Force and the Navy labor under the same statutory constraints, the decision by the Navy is not dispositive or controlling in this case. JA indicated that they simply do not know the complete basis for the Navy's relief, nor the extent of such relief. Therefore, they do not know whether the Navy complied with the applicable statutes. Suffice to say that the law--not the anecdotal cases cited by the applicant--must form the basis for the Board's decision.

After reviewing the applicable statutes, JA stated that they agree with the applicant's assessment that they do not permit him pay date credit for his USUHS time, but JA disagrees that they preclude date of rank credit. In other words, JA believes he is entitled to credit for his USUHS time for determining his date of rank and promotion eligibility.

The primary statutory provision is 10 U.S.C. § 2114(b), which provides in relevant part the following:

Notwithstanding any other provision of law, [USUHS students] shall serve on active duty in pay grade O-1 with full pay and allowances of that grade...The service credit exclusions specified in section 2126 of [Title 10] shall apply to students covered by this section.

According to JA, Section 2126 provides that USUHS students (as well as Health Professions Scholarship Program (HPSP) students) are not entitled to count the medical student time for basic pay or retirement eligibility purposes. The basic pay exclusion, obviously, precludes the applicant from obtaining this portion of his requested relief.

However, the section 2126 exclusions do not preclude use of the USUHS time for date of rank and promotion eligibility purposes. The key phrase in section 2114 (b) is "[n]otwithstanding any other provision of law, [USUHS] students serve on active duty...." Active duty time counts for determining appointment grade and date of rank/promotion eligibility.

An important factor in fashioning a remedy for this case is the peculiar nature of the active duty service of USUHS students. They are not on the active duty list (ADL) and, consequently, are not eligible for promotion. They serve their entire USUHS student time in the pay grade of O-1. Therefore, the applicant could not have been promoted until he was disenrolled from USUHS on 6 June 1995. On 7 June 1995, he was on the ADL as an O-1 with almost three years of active commissioned service.

According to JA, there are two ways to handle the crediting and promotion eligibility of the applicant. One is to treat him as an O-1 with almost three years of time-in-grade on 7 June 1995 and promote him to O-2 on such date. This would have the effect of giving him two years of service credit for promotion for his nearly three years of USUHS time. The other is to promote him to O-2 effective 7 June 1995 (the first time he was statutorily eligible because before such time he was not on the ADL), but with a date of rank of mid-1994 (24 months after beginning active duty). In this second case, he would not be eligible for back pay for the almost one year of backdated O-2 grade because he was not then eligible for such rank and pay, but he would gain the benefit of his third year of active duty time in USUHS and would be an O-2 with almost one year in grade. Consequently, he would

be eligible for consideration for promotion to 0-3 approximately one year earlier (in 1996).

JA recommended the first remedy set forth above because it has a better basis in law. It would give promotion credit for USUHS time, while recognizing the statutory ineligibility of the applicant to be promoted during the time he spent in USUHS. Because he was transferred to the line, in lieu of being given a new appointment, there is no authority for awarding pre-appointment credit for active service, which would be the effect of remedy two. In other words, the only way to award credit and obtain an earlier date of rank than an officer would otherwise be entitled to is to do so upon the officer's original appointment--either by awarding constructive service credit or pre-appointment reserve active status and active service credit."

JA briefly addressed the provision in the USUHS contract the applicant signed that excludes USUHS active duty service time "[i]n computing date of rank, promotion service date or total years service date." In the case of officers who successfully complete the program and are appointed into the medical corps as regular Air Force officers, this provision has had no adverse effect. The Air Force has awarded such officers four years of constructive service credit upon appointment into the medical corps, and by statute, an officer cannot receive double credit for any period of time. Parenthetically, JA noted that the statute and a soon to-be-released DOD Instruction require USUHS time to be credited first as day-for-day active service credit and then, to the extent students complete USUHS earlier than four years, any time short of 48 months to be credited as constructive service credit. To the extent the contract would exclude this time from consideration for officers who do not complete the program and are transferred to another competitive category, JA disagreed, because this interpretation of the contract is inconsistent with statutory and regulatory guidance.

Based on the foregoing, JA recommended that the Board deny the request for pay date credit for the applicant's USUHS time, but that it approve a portion of his request for promotion credit for such time--namely, effective upon the day following his disenrollment from USUHS, 7 June 1995, the applicant should be promoted to the grade of 0-2. Consequently, he should be awarded special selection board (SSB) consideration for promotion to 0-3 at the two-year point from such date.

A complete copy of the JA evaluation is at Exhibit G.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION:

Applicant indicated that he concurred with the recommendation made in AFPC/JA's advisory opinion. He requests that the board

award him a retroactive promotion to 0-2 (with zero/less than two years for pay) effective 7 June 1995, and SSB consideration for retroactive promotion to 0-3 (with two years for pay) effective 7 June 1997, with compensation for difference in pay during this period. This request is in full accordance with statutory and regulatory guidance, as interpreted by HQ AFPC/JA. After one year and eight months of pursuing a correction of his record, he believes that this is a very fair and just resolution to the issues he has presented.

Applicant's complete response is at Exhibit I.

~~THE BOARD CONCLUDES THAT:~~

1. The applicant has exhausted all remedies provided by existing law or regulations.
 2. The application was timely filed.
 3. Sufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. Having carefully reviewed this application, we agree with the recommendation of AFPC/JA and adopt the rationale expressed as the basis for our decision that the applicant has been the victim of an error or an injustice. Accordingly, we recommend that the applicant's records be corrected to reflect that he was promoted to the grade of first lieutenant effective and with a date of rank of 7 Jun 95, and, that he be considered for promotion to the grade of captain by an SSB for the first board when he would have met the eligibility criteria, the CY96D Captain Board.
-

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that he was promoted to the grade of first lieutenant, with an effective date and a date of rank of 7 Jun 95.

It is further recommended that he be considered for promotion to the grade of captain by a Special Selection Board (SSB) for the CY96D Central Captain Board, which convened on 9 Sep 96.

The following members of the Board considered this application in Executive Session on 26 Feb 98, under the provisions of AFI 36-2603:

Ms. Martha Maust, Panel Chair
Mr. William E. Edwards, Member
Mr. Richard A. Peterson, Member

All members voted to correct the records, as recommended. The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 19 Jan 96, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Letter, AFPC/DPAME, dated 20 May 96, w/atch.
Exhibit D. Letter, SAF/MIBR, dated 17 Jun 96.
Exhibit E. Letter, applicant, dated 8 Jul 96, w/atchs.
Exhibit F. Letter, applicant, dated 13 Dec 96, w/atchs.
Exhibit G. Letter, AFPC/JA, dated 6 Aug 97.
Exhibit H. Letter, SAF/MIBR, dated 18 Aug 97.
Exhibit I. Letter, applicant, dated 6 Sep 97.


MARTHA MAUST
Panel Chair



DEPARTMENT OF THE AIR FORCE
 HEADQUARTERS AIR FORCE MILITARY PERSONNEL CENTER
 RANDOLPH AIR FORCE BASE TEXAS

20 May 1996

MEMORANDUM FOR HQ AFPC/DPAMF2
 HQ AFPC/DPMDOO
 HQ AFPC/AFPC/JA
 AFBCMR

FROM: HQ AFPC/DPAME
 550 C Street West Ste 27
 Randolph AFB TX 78150-4729

SUBJECT: Application for Correction of Military Records [REDACTED]

A thorough review of [REDACTED] request for correction of military records has been conducted. [REDACTED] request is based on his contention that he receive promotion credit for time spent in medical school (USUHS). His request should be denied for the following reasons:

a. He signed his Uniformed Services University of the Health Sciences (USUHS) Military Service Obligation Contract 27 April 1992, Paragraph 10 of his contract states, "USUHS Reserve Officer will be subject to most of the same laws, regulations, and policies that apply to other Reserve officers on active duty, except that service performed while a member of the program is not counted..." Paragraph 10e of his contract states, "In computing date of rank, promotion service date or total years service date. (Completion of M.D. degree will, however, result in award of appointment and entry credit according to DOD Directive 1320.7)" Atch 1

b. [REDACTED] disenrollment from USUHS does not affect the intent/contents of his USUHS contract. Contractually both the Air Force and the individual still need to comply with contents of the contract.

c. He states in paragraph 1 of his letter, dated 19 Jan 96, to the Board of Correction of Air Force Records, "I ask for the time I've spent on AD to be credited toward my promotion eligibility/time in rank and time in service Based on this, I respectfully request immediate promotion to the rank of First Lieutenant." Based on [REDACTED] contract signed 27 April 1992/public law, promotion credit cannot be granted.

d. The rules--and in [REDACTED] case, knowledge of these rules--in effect at the time an individual signs his contract should be binding on both the Air Force and the individual. Since [REDACTED] signed his contract, his request has no merit.

e. If you have any questions please feel free to contact me at DSN [REDACTED].

[REDACTED SIGNATURE]
 [REDACTED]
 GME Program Manager

9601097



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE PERSONNEL CENTER
RANDOLPH AIR FORCE BASE TEXAS



6 August 1997

MEMORANDUM FOR AFBCMR

FROM: HQ AFPC/JA (Lt Col Posey, Capt Whitney)
550 C Street West Suite 44
Randolph AFB TX 78150-4746

SUBJECT: Application for Correction of **i** **R** [REDACTED]

REQUESTED ACTION AND SUMMARY OF OPINION: The applicant, who is an active duty second lieutenant, paygrade O-1,¹ requests that time which he spent as a medical student in the Uniformed Services University of Health Sciences (USUHS) be credited to him as time in grade for promotion and pay purposes. He also requests his immediate promotion to first lieutenant, paygrade O-2.

BASIS FOR REQUEST: The applicant bases his requests for relief on the contention that Title 10 of the United States Code as it applies to USUHS service credit is unjust and is unjustly applied between the different services.

RELEVANT FACTS: What follows is a chronology of the applicant's case:

1. On 27 April 1992, the applicant was commissioned a second lieutenant in the United States Air Force Reserve, Medical Service Corps, for purposes of attending the USUHS in [REDACTED]
2. He entered active duty on 16 July 1992 as a medical student and has remained on continuous active duty since then.
3. He was academically disenrolled from USUHS on 6 June 1995.
4. On 1 August 1995, the applicant was transferred from the Medical Service Corps to the Line of the Air Force as a 2Lt with an effective date of rank of 7 June 1995.³

¹ As of 7 Jun 97, the applicant was promoted to the permanent grade of 1Lt. See Special Order 895, dated 7 Jun 97.

² The authority cited for his appointment was 10 U.S.C. § 593 and AFR 36-15.

³ Per Department of the Air Force, Special Order JB2-0127, dated 1 Aug 95.

9601097

Shortly after his disenrollment, the applicant entered the Intelligence Officer's Fundamentals Course at ██████████, from which he has graduated and is currently assigned to duty at ██████████. During his tenure at Intelligence School, the applicant filed this application. Since the original filing of his request, the applicant has been promoted to 1Lt in his regular cycle based on his 7 June 1995 date of rank.

DISCUSSION: The applicant's request for relief was timely filed within the three-year statute of limitations specified in 10 U.S.C. § 1552(b).

The applicant's plea for "justice" in his case is articulate but pleonastic. According to his understanding of the applicable statutes and his USUHS contract, he concedes that he is not eligible for the credit he seeks. Nevertheless, he claims such provisions amount to an injustice. Moreover, he cites what he believes to be examples of inequitable application of the statutes.

We note, to begin with, that to the extent the application can be read to ask the AFBCMR to grant relief contrary to the express requirements of a statute or statutes, it is incapable of being granted. Obviously, the Board cannot change a statute, nor can it ignore statutory law. Consequently, the critical issue here is what the law provides insofar as credit for USUHS student time is concerned. But first, we will examine the applicant's alleged examples of inequitable application of the law.

The applicant refers to two other officers, who he claims were given favorable service credit unlike himself. One is an Air Force officer who twice failed to pass the bar exam after attending law school in an ROTC educational delay program, and attended intelligence school with the applicant. He complains that this officer received credit for time in grade and service and is senior in rank to him, yet only has nine months of active duty time. The other, a Navy officer and former USUHS classmate of the applicant, allegedly after failing out of USUHS as an Ensign in the Navy, was given a promotion to LTJG (0-2) on 30 May 96, with a date of rank retroactive to 20 May 1994.⁴ Further, according to the applicant, this Naval officer was promoted to Lieutenant (0-3) on 30 Oct 96. The applicant claims that his and the Naval officer's circumstances are almost identical, but that while he is in pay grade 0-1 with under two years of creditable service, the other officer is an 0-3 with over four years of creditable service. The applicant decries how two officers with the same appointment criteria to the military service: who were both academically disenrolled from USUHS at approximately the same time, can end up with two totally different results.

No discussion of the applicant's example of the lieutenant who failed to qualify as a judge advocate is necessary. The applicant and this lieutenant entered the Air Force under different programs, with different statutory and regulatory rules and guidelines. Comparing her case to the applicant's is clearly a case of comparing apples and oranges. More closely aligned to the applicant's situation is the example of the Naval USUHS student who was ostensibly

⁴ See last page of Tab 3 in the applicant's package.

⁵ Both were apparently appointed to USUHS in 1992; the applicant in the Air Force, the other in the Navy.

9601097

retroactively promoted.⁶ While illustrative, because the Air Force and the Navy labor under the same statutory constraints, the decision by the Navy is not dispositive or controlling in this case. We simply do not know the complete basis for the Navy's relief, nor the extent of such relief. Therefore, we do not know whether the Navy complied with the applicable statutes. Suffice to say that the law—not the anecdotal cases cited by the applicant—must form the basis for the Board's decision.

After reviewing the applicable statutes, we agree with the applicant's assessment that they do not permit him pay date credit for his USUHS time, but we disagree that they preclude date of rank credit. In other words, we believe he is entitled to credit for his USUHS time for determining his date of rank and promotion eligibility.

The primary statutory provision is 10 U.S.C. § 2114(b), which provides in relevant part the following:

Notwithstanding any other provision of law, [USUHS students] shall serve on active duty in pay grade O-1 with full pay and allowances of that grade. ... The service credit exclusions specified in section 2126 of [Title 10] shall apply to students covered by this section.

Section 2126 provides that USUHS students (as well as Health Professions Scholarship Program (HPSP) students) are not entitled to count the medical student time for basic pay or retirement eligibility purposes. The basic pay exclusion, obviously, precludes the applicant from obtaining this portion of his requested relief.

However, the section 2126 exclusions do not preclude use of the USUHS time for date of rank and promotion eligibility purposes. The key phrase in section 2114(b) is "[n]otwithstanding any other provision of law, [USUHS] students serve on active duty" Active duty time counts for determining appointment grade⁷ and date of rank/promotion eligibility.*

An important factor in fashioning a remedy for this case is the peculiar nature of the active duty service of USUHS students. They are not on the active duty list (ADL)⁸ and, consequently, are not eligible for promotion. They serve their entire USUHS student time in the pay grade of O-1. Therefore, the applicant could not have been promoted until he was disenrolled from USUHS on 6 June 1995. On 7 June 1995, he was on the ADL as an O-1 with almost three years of active commissioned service.

⁶ Although it should be noted that, apparently, the Naval student's promotion came after some sort of appeal two years later.

⁷ 10 U.S.C. § 12207(a) (reserve officers) (at time of applicant's original appointment and his transfer to the line of the AF, the applicable statute was 10 U.S.C. § 8353, now rescinded).

⁸ *Id.* at § 619.

⁹ *Id.* at §§ 101(b)(13) and 641(5). The ADL is defined in § 101(b)(13) and excludes active duty officers described in § 641 of the same title. Section 641(5) excludes USUHS students from Chapter 36 (promotion and retirement) consideration under Title 10.

There are two ways to handle the crediting and promotion eligibility of the applicant. One is to treat him as an O-1 with almost three years of time in grade on 7 June 1995 and promote him to O-2 on such date. This would have the effect of giving him two years of service credit for promotion for his nearly three years of USUHS time. The other is to promote him to O-2 effective 7 June 1995 (the first time he was statutorily eligible because before such time he was not on the ADL), but with a date of rank of mid-1994 (24 months after beginning active duty). In this second case, he would not be eligible for back pay for the almost one year of back dated O-2 grade because he was not then eligible for such rank and pay, but he would gain the benefit of his third year of active duty time in USUHS and would be an O-2 with almost one year in grade. Consequently, he would be eligible for consideration for promotion to O-3 approximately one year earlier (in 1996).¹⁰

We recommend the first remedy set forth above because it has a better basis in law. It would give promotion credit for USUHS time, while recognizing the statutory ineligibility of the applicant to be promoted during the time he spent in USUHS. Because he was transferred to the line, in lieu of being given a new appointment, there is no authority for awarding pre-appointment credit for active service, which would be the effect of remedy two. In other words, the only way to award credit and obtain an earlier date of rank than an officer would otherwise be entitled to is to do so upon the officer's original appointment-either by awarding constructive service credit or pre-appointment reserve active status and active service credit.¹¹

Before concluding, we briefly address the provision in the USUHS contract the applicant signed that excludes USUHS active duty service time "[i]n computing date of rank, promotion service date or total years service date."¹² In the case of officers who successfully complete the program and are appointed into the medical corps as regular Air Force officers, this provision has had no adverse effect. The Air Force has awarded such officers four years of constructive service credit upon appointment into the medical corps,¹³ and by statute, an officer cannot receive double credit for any period of time. Parenthetically, we note that the statute and a soon-

¹⁰ The promotion eligibility criteria for officers is established by 10 U.S.C. § 619 and promulgated in AFI 36-2501, Attachment 2, which specifically states:

A2.1. Eligibility for Promotion to First Lieutenant. Second lieutenants on the ADL are eligible for promotion as soon as they have 24-months time-in-grade computed from their date of rank as a second lieutenant.

A2.2. Eligibility for Promotion to Captain. Promote first lieutenants on the ADL selected for promotion to captain after completing 24-months time-in-grade computed from their date of rank as a first lieutenant, or upon the Assistant SECDEF (Force Management and Personnel) approval of the captain selection board report, whichever is later....

¹¹ 10 U.S.C. § 12207.

¹² Paragraph of the applicant's contract reads, in pertinent part, "[S]ervice performed while on active duty as a member of the program is not counted:

- a. In determining eligibility for retirement, other than by reason of physical disability incurred while on active duty as a member of the program, and
- b. In computing years of service creditable for basic pay; and
- c. In computing date of rank, promotion service date or total years service date. (Completion of M.D. degree will, however, result in award of appointment and entry credit according to DOD Directive 1320.7)

¹³ See 10 U.S.C. § 533

9601097

to-be-released DoD Instruction require USUHS time to be credited first as day-for-day active service credit and then, to the extent students complete USUHS earlier than four years, any time short of 48 months to be credited as constructive service credit.¹⁴ To the extent the contract would exclude this time from consideration for officers who do not complete the program and are transferred to another competitive category, we disagree, because this interpretation of the contract is inconsistent with statutory and regulatory guidance.

RECOMMENDATION: Based on the foregoing, we recommend the Board deny the request for pay date credit for the applicant's USUHS time, but that it approve a portion of his request for promotion credit for such time—namely, effective upon the day following his disenrollment from USUHS, 7 June 1995, the applicant should be promoted to the grade of 0-2. Consequently, he should be awarded an SSB for consideration for promotion to 0-3 at the two-year point from such date.



Senior Attorney Advisor



¹⁴ See Id. at § 533(d)(1).

9601097

APPENDIX IX

Estimated Cost of Implementing of All Recommendations

Assumptions:

Class Size 170 students, Total of 680 USUHS SOM Students at any given time

25 students per class with prior commissioned service

All prior service officers are calculated as O-3s with 6 years of service at matriculation

Pay raises for prior service officers exceeding 8 or more of service not included

Prior enlisted service pay scales (O-1E) not included

All BAH is without dependents

Basic Pay and BAH calculations were completed using 2006 tables below

O-1 w/less than 2 yrs of service \$2416.20/mo X 12 months = \$28,994

O-1 w/over 3 yrs of service \$3039.60/mo X 12 months = \$36,475

O-2 w/over 2 yrs of service \$3170.10/mo X 12 months = \$38,041

O-2 w/over 3 yrs of service \$3651.00/mo X 12 months = \$43,812

O-3 w/over 6 yrs of service \$4503.00/mo X 12 months = \$54,036

O-1 BAH without dependents for Zip Code 20184 = \$1524/mo X 12 months = \$18,288

O-2 BAH without dependents for Zip Code 20184 = \$1673/mo X 12 months = \$20,076

O-3 BAH without dependents for Zip Code 20184 = \$1929/mo X 12 months = \$23,148

Current Cost of Basic pay and BAH to USUHS SOM Students:

All students w/o prior service are paid as O-1s w/under 2 years of service.

All prior service students are paid as O-1s w/over 3 years of service.

145 Students/class without prior service paid as O-1 w/under 2 yrs (\$47,282/yr) X 4 classes

$$145 \times \$47,282 \times 4 = \$27,423,792$$

25 Students/class with prior service paid as O-1 w/over 3 yrs (\$54,763/yr) X 4 classes

$$25 \times \$54,763 \times 4 = \$5,476,320$$

Total Current Basic pay and BAH Approximately \$27.42M + 5.48M = **\$32.90M**

Estimated Cost of Basic pay and BAH to USUHS SOM Students after recommendations are adopted:

1st and 2nd year students w/o prior service are paid as O-1s w/ under 2 years of service.

3rd year students w/o prior service are paid as O-2s w/over 2 years of service.

4th year students w/o prior service are paid as O-2s w/over 3 years of service.

Prior service officers are paid as O-3s w/over 6 years of service.

145 Students/class without prior service paid as O-1 w/under 2 yrs (\$47,282/yr) X 2 classes

$$145 \times \$47,282 \times 2 = \$13,711,896$$

145 Students without prior service paid as O-2 w/over 2 yrs (\$58,117/yr) X 1 class

$$145 \times \$58,117 = \$8,426,994$$

145 Students without prior service paid as O-2 w/over 3 yrs (\$63,888/yr) X 1 class

$$145 \times \$63,888 = \$9,263,760$$

25 Students/class with prior service paid as O-3 w/over 6yrs (\$77,184/yr) X 4 classes

$$25 \times \$77,184 \times 4 = \$7,718,400$$

Total Current Basic pay and BAH Approximately \$13.71M + \$8.43M + \$9.26M + \$7.72 = **\$39.12M**

Total estimated additional cost to the government \$39.12M - \$32.90M = \$6.22M

APPENDIX X

Total Cost to a Prior Service Officer to attend USUHS

Assumptions:

- Officer is an O-3 with 7 years of service prior to entering USUHS
- Officer remains in career field and is promoted to O-4 at the 10-year point
- All BAH is without dependents
- All BAH calculated using the BAH rates for USUHS
- Basic Pay and BAH calculations were calculated using 2006 tables
- Career field special pays and retention bonuses were not taken into account

Total Basic Pay and BAH while attending USUHS for 4 years:

Basic Pay and BAH for an O-1 w/over 3 yrs of service (\$54,763/yr) X 4 yrs \$231,052

Total Basic Pay and BAH earned over the next 4 years by an O-3 w/7 yrs:

Basic Pay and BAH for an O-3 w/over 6 yrs of service (\$77,184/yr) X 1yr	\$77,184
Basic Pay and BAH for an O-3 w/over 8 yrs of service (\$79,894/yr) X 2 yrs	\$159,788
Basic Pay and BAH for an O-4 w/over 10 yrs of service (\$91,298/yr) X 1 yr	<u>\$91,298</u>
Total Basic Pay and BAH	\$328,270

Basic Pay and BAH lost while attending USUHS \$328,270 - \$231,052 \$97,218

Difference in Basic Pay and Rank after graduation:

The 4 year hiatus in career progression follows all prior service officers for the rest of their military career. Upon graduation and promotion back to O-3, prior service officers are significantly behind their original year group in both years of service and promotions. This time lost can not be made up.

O-4 with 11 yrs of service, eligible for O-5 in 5 years, making	\$91,298/yr
O-3 with 7 years of service, eligible for O-4 in 3 years, making	<u>\$77,184/yr*</u>
Difference in salary following graduation	\$14,114/yr

* This is the same amount in 2006 dollars that the officer was making prior to entering USUHS 4 years earlier.

Financial Benefits of HPSP over USUHS as a result of earlier eligibility for retention bonuses:

A USUHS graduate has a 7-year active duty obligation while HPSP has a maximum of 4 year active duty obligation. Thus, HPSP physicians are eligible to begin receiving Multi Year Special Pay (MSP) Retention Bonuses 3 years earlier than USUHS physicians.

MSP \$6000-\$14000/yr, depending on specialty	
\$6000-\$14000/yr X 3 yrs (HPSP – USUHS difference)	\$18,000 - \$42,000

APPENDIX XI.

USUHS SOM/DOPMA 1981-1987 GRIEVANCE CASE.

RECORD OF PROCEEDINGS

IN THE CASE OF:

BOARD DATE: 20 December 2005

DOCKET NUMBER: AR20040006796

I certify that hereinafter is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in the case of the above-named individual.

Mr. Carl W. S. Chun
Ms. Joyce A. Wright

Director
Analyst

The following members, a quorum, were present:

Mr. James Hise
Mr. Ronald E. Blakely
Ms. Jeanette R. McCants

Chairperson
Member
Member

The Board considered the following evidence:

Exhibit A - Application for correction of military records.

Exhibit B - Military Personnel Records (including advisory opinion, if any).

THE APPLICANT'S REQUEST, STATEMENT, AND EVIDENCE:

1. The applicant requests reconsideration of his previous request for 4 years constructive service credit for longevity pay and retirement purposes for his attendance at the Uniformed Services University of the Health Sciences (USUHS), Class of 1987, from August 1983 to May 1987.

2. The applicant states that the Defense Officer Personnel Management Act (DOPMA), which became law on 15 September 1981, repealed the 4 years of constructive credit under Title 37, United States (US) Code (USC), Section 205a(7) and (8) for medical officers attending USUHS, but preserved credit for officers who were enrolled in USUHS on 14 September 1981. He interviewed at USUHS initially in late 1981 or early 1982 (when applying for the Class of 1986) but was not accepted. He was briefed, at that time, that the 4 years at USUHS would count for pay and retirement purposes upon graduation. He was later briefed again in January 1983, at Letterman Army Medical Center, by a school representative from USUHS. During the briefing, there was no information provided that there had been a change in credit for pay or retirement purposes for attendance at USUHS relating to the passage of DOPMA.

3. He states that the School of Medicine Bulletin, USUHS, provided a briefing that specifically stated that "longevity credit for pay purposes accrues for students for time spent in school" Constructive credit for time at USUHS was granted to the entire class of 1986 because they had not been briefed of the changes prior to matriculation. Most or all members of the class of 1987 were similarly misinformed, and when they attempted to appeal their decision they were denied. He recently discovered that many members of the class of 1987 individually appealed this decision and were granted credit for the 4 years at USUHS by the Board of Corrections of Military Records (BMCR). He goes on to state that he entered USUHS in 1983 believing that the 4 years of medical school would count for longevity purposes, as he and many of his classmate were informed otherwise until their first year of medical school was already underway. He has been informed that several of his former classmates were granted constructive credit by the BCMR. He is now requesting that he be granted the same relief, in equity and fairness, and that his records be corrected with back pay and allowances.

4. The applicant provides copies of three memorandums, an extract of the School of Medical Bulletin for period 1983-1984, two former cases granting relief by the Board, and a copy of a memorandum from a U.S. Senator.

CONSIDERATION OF EVIDENCE:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AC90-10735A on 13 February 1991.

2. The Board concluded that the facts clearly established that the applicant became a USUHS student in August 1983, and as a matter of law, was not entitled to service credit under Title 37, USC, Section 205(a)(6), which was repealed by the DOPMA effective 14 September 1981. There was insufficient material evidence to support his contention that he was misled regarding service credit to be awarded upon completion of USUHS.

3. The applicant's military records show that he was commissioned on 16 May 1987 and entered active duty as a captain (CPT/O-3) in the Medical Corps in area of concentration (61G). He was member of the USUHS Class of 1987. He was promoted to colonel (COL/O-6) on 16 May 2005 and is currently serving on AD.

4. The applicant provides a copy of memorandum from the Director of Admissions/Registrar of the Medical School, dated 18 April 1985. The memorandum admitting that segments of the Class of 1987 which he did not personally brief could have been misled on the issue of constructive service credit; and a copy of the pertinent pages of the Bulletin of The School of Medicine, USUHS 1983-1984 which states, "Longevity credit for pay purposes accrues for students for time spent in school, but students cannot receive longevity pay increases during that time. Length of prior service, however, does count in determining the amount of base pay in grade O-1."

5. The applicant provides a copy of memorandum from the Dean of the Medical School to the Air Force Board for Correction of Military Records, dated 26 December 1985. The memorandum admitted that the USUHS, School of Medicine Bulletin did not include revisions

concerning constructive service credit which were mandated by DOPMA. It also indicated that certain briefing officials did not clarify the issue for prospective students.

6. The applicant provides a copy of another memorandum from the Dean of Medical School, dated 5 December 1986 to the Board for Correction of Naval Records (BCNR). It reiterated his belief that applicants from the class of 1987 who either were not informed, or misinformed, about constructive service credit be given constructive service credit for attendance at USUHS.

7. The applicant provides a copy of a letter from the USUHS, General Counsel, dated 29 September 1998 to the Secretary of Defense. The letter stated that USUHS admitted that they may have misinformed students of the Class of 1987 concerning the issue of constructive service credit.

8. The applicant provides a copy of a letter from a United States Senator, dated 16 October 1998. The Senator stated that several of his military constituents had raised serious concerns about how the Department of Defense (DOD) and the BMCR had handled the inquiries between members of the USUHS Class of 1987 with regards to pre-DOPMA service credits. He stated that some credit was awarded to some members of the class while others had not been afforded such credit. After a review the facts of the cases, he was inclined to agree with the position of his constituents and that satisfactory resolution of this issue was critical to the retention of these vital uniformed medical personnel. He concurred with the USUHS General Counsel on the USUHS official position on this matter and concurred that all members of the affected USUHS class be treated equally and awarded pre-DOPMA constructive credit for longevity pay purposes.

DISCUSSION AND CONCLUSIONS:

1. The applicant was previously denied a request for constructive service credit for his attendance at the USUHS.

2. The applicant was briefed that the 4 years at USUHS would count for pay and retirement purposes for graduation. He was briefed in January 1983 by a school representative and was provided no information that there had been a change in credit for pay or retirement purposes for attendance at USUHS relating to the passing of DOPMA.

3. The Dean of Admissions/Registrar admitted that he did not personally brief every prospective student and that those staff who conducted briefings on his behalf provided inaccurate or incomplete information concerning the effects upon entitlements (pay purposes at the time of graduation and retirement) due to the DOPMA legislation. Pertinent records reflect that the applicant was briefed by a staff member and not the Dean of Admission/Registrar at the Letterman Army Medical Center (LAMC), San Francisco, California on 27 January 1983.

4. The briefing for prospective USUHS students which the applicant attended may not have addressed the issue of constructive service credit and the applicant was provided a copy of the official Bulletin of the Medical School which emphatically stated that students accrued constructive service credit for attendance at the USUHS.

5. The applicant was misinformed about the issue of constructive service credit and used that misinformation to make a career decision about which medical school program to accept. Only

after he had made his irrevocable decision to attend the USUHS, did he discover that he would not receive constructive service credit. It would, therefore, be unjust and inequitable to deny the applicant the relief requested.

BOARD VOTE:

<u> JH </u>	<u> RB </u>	<u> JM </u>	GRANT FULL RELIEF
<u> </u>	<u> </u>	<u> </u>	GRANT PARTIAL RELIEF
<u> </u>	<u> </u>	<u> </u>	GRANT FORMAL HEARING
<u> </u>	<u> </u>	<u> </u>	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined that the evidence presented was sufficient to warrant amendment of the ABCMR’s decision in Docket Number AC90-10735A, dated 13 February 1991. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected:

- a. by showing that he was enrolled in the Uniformed Services University of the Health Sciences on 15 August 1983; and
- b. by showing that he was awarded constructive service credit for longevity pay purposes only while attending the Uniformed Services University of the Health Sciences at Bethesda, Maryland, from 15 August 1983 to 16 May 1987.

James Hise
CHAIRPERSON

APPENDIX XII

SECNAVIST 1421.4D Promotion of Navy and Marine Corps officers to grade O-2 (Effective September 21, 1988 superseded by SECNAVINST 1412.6L December 9, 2005)

DEPARTMENT OF THE NAVY Office of the Secretary Washington, DC 20350-1000		SECNAVINST 1421.4D OP-130R2 21 September 1988
SECNAV INSTRUCTION 1421.4D		
From: Secretary of the Navy To: All Ships and Stations	Corps Reserve second lieutenants may be promoted under regulations prescribed by the Secretary of the Navy whenever ensigns and second lieutenants on the active duty list are being promoted with less than 3 years of service in grade. Regulations issued under section 5910 must provide for equality of opportunity for consideration for promotion among officers of the Naval Reserve and among officers of the Marine Corps Reserve.	
Subj: PROMOTION OF OFFICERS TO THE PERMANENT GRADE OF LIEUTENANT JUNIOR GRADE IN THE NAVAL RESERVE AND TO THE GRADE OF FIRST LIEUTENANT IN THE MARINE CORPS RESERVE		
Ref: (a) Title 10, United States Code (NOTAL) (b) SECNAVINST 1412.6J (c) SECNAVINST 1920.6A (d) MCO P1900.16C (NOTAL) (e) SECNAVINST 1427.1B (f) MCO P1400.31 (NOTAL) (g) MILPERSMAN 2220150		
<p>1. Purpose. To prescribe procedures for promotions to the permanent grade of lieutenant junior grade in the Naval Reserve and first lieutenant in the Marine Corps Reserve pursuant to reference (a), and for the removal from an active status or discharge of officers who are not qualified to be promoted to these grades. This is a complete revision and should be reviewed in its entirety.</p> <p>2. Cancellation. SECNAVINST 1421.4C</p> <p>3. Applicability. This instruction applies to Reserve ensigns and Marine Corps second lieutenants who are not on the active duty list and are not subject to reference (b). Included are Naval Reserve Officers assigned to the Training and Administration of the Reserve (TAR) program, Marine Corps Reserve officers on active duty in full time support of the Reserve Establishment, Reserve officers on active duty for special work (ADSW), officers on active duty for training (ACDUTRA), officers in the Uniformed Services of the University Health Sciences (USUHS) program, and Reserve officers serving on inactive duty.</p> <p>4. Background. Section 5908 of reference (a) states that Naval Reserve ensigns and Marine</p>	<p>5. Policy</p> <p>a. Department of the Navy policy is to promote ensigns and second lieutenants as soon as qualified after completing 24 months of service in grade. Frocking is not authorized to the grade of lieutenant junior grade or first lieutenant.</p> <p>b. The continued military service of Reserve officers not on the active duty list who are not qualified for such promotion is inconsistent with the mission requirements of the Department of the Navy, and such officers shall be discharged. Those unqualified for promotion after 24 months of service shall be given an opportunity to overcome their deficiencies. Those who do not qualify for promotion to O-2 or who refuse to accept an appointment to O-2 shall be processed for separation under references (c) and (d).</p> <p>6. Promotion Appointment Authority</p> <p>a. Consistent with the time-in-grade requirements specified for active duty list promotions, the Secretary of the Navy appoints to the grade of lieutenant junior grade or first lieutenant, each qualified officer, not on the active duty list of the Naval or Marine Corps Reserve, serving under an appointment in the grade of ensign or second lieutenant upon completion of 24 months of service in grade. Officers so appointed will be assigned a running mate, precedence number, and competitive category as prescribed in reference (e).</p>	

SECNAVINST 1421.4D
21 September 1988

b. Officers so appointed rank from their date of appointment to lieutenant junior grade or first lieutenant. Pay and allowances are effective and accrue from this same date. The officers so appointed are considered as having accepted the appointment unless they expressly decline the appointment or the appointment is delayed under this instruction.

c. An example of computing eligibility for promotion under this authority is illustrated in the case of an ensign/second lieutenant whose date of rank is 2 October 1985. Such officer will complete 24 months in grade on 1 October 1987 and will be eligible for promotion the following day, 2 October 1987.

7. Qualification for Promotion. Commanding officers will determine whether an officer under his or her command is qualified to serve in the grade of lieutenant junior grade or first lieutenant and must delay the promotion of those unqualified for service in the higher pay grade. Unqualified officers will not be promoted. Qualifications for promotion include:

a. Physical Qualifications. These standards are established by the Chief of Naval Operations and the Commandant of the Marine Corps in consultation with the Surgeon General of the Navy. Individuals must meet physical standards for active duty as specified by Commander, Naval Medical Command (references (f) and (g)).

b. Mental, Moral, and Professional Qualifications. The commanding officer will determine whether the officer is mentally, morally, and professionally qualified for promotion based upon the officer's overall professional performance, skills, abilities, and personal traits. Failure to completely qualify in a professional specialty field or satisfactorily conduct a task should not alone be considered grounds for delay of promotion.

c. Age-in-Grade Restrictions. Restrictions for age in grade are found in reference (c).

8. Delay of Promotion. The promotion of an officer to O-2 may be delayed under the following guidelines:

a. Delay for Administrative or Legal Reasons. The commanding officer may delay promotion when:

(1) Sworn charges against the officer have been received from an officer exercising general court-martial jurisdiction over the officer and such charges have not been disposed of.

(2) An investigation is being conducted to determine whether disciplinary action should be brought against the officer.

(3) A board of officers or board of inquiry has been ordered to convene under reference (c) to determine whether that officer should be separated for cause due to misconduct, moral or professional dereliction, substandard performance, or because retention is not in the best interest of national security.

(4) A criminal proceeding in a federal or state court is pending against the officer.

b. If, after a promotion has been delayed under paragraph 8a, no disciplinary action is taken against the officer, the charges against the officer are withdrawn or dismissed, the officer is not ordered administratively separated under reference (c), or the officer is acquitted of the charges against him or her then, unless action has been taken to delay the appointment under paragraph 8c, the officer will be promoted with the same date of rank, effective date for pay and allowances in the higher grade, and relative precedence position as if no delay had occurred.

c. Delay for Physical, Mental, Moral, or Professional Reasons. The commanding officer may delay promotion when there is cause to believe that the officer is mentally, physically, morally, or professionally unqualified to perform the duties of the higher grade. The officer will be given the opportunity to improve in order to become qualified to perform the duties of the next higher grade. If the officer is later found qualified for promotion, the officer shall upon promotion, have the same date of rank, effective date for pay and allowances, and relative precedence position as if no delay had occurred.

SECNAVINST 1421.4D
21 September 1988

d. Written Notice. The promotion of an officer may not be delayed under this instruction unless the officer has been given written notice of the reason for the delay except where impracticable due to lack of time before the intended date of the appointment. In such case, written notice will be given as soon as practicable. An officer whose promotion has been delayed shall be given an opportunity to submit a written statement to Commander, Naval Military Personnel Command (NMPC-82) or the Commandant of the Marine Corps (CMC) (Code MM) via the commanding officer. The commanding officer may comment further on the officer's statement. An officer who declines the right to make a formal statement shall so state in writing. Correspondence under this instruction will be forwarded with the report required in paragraph 10d to NMPC-82, copy to NMPC-93 and Commander, Naval Reserve Personnel Center (NRPC) (Code 40), or CMC (Code MM), as appropriate.

e. Review by the Commander, Naval Military Personnel Command (NMPC) or Commandant of the Marine Corps (CMC). The Commander, Naval Military Personnel Command or the Commandant of the Marine Corps (Code MM) will determine whether the officer is unqualified for promotion and approve or disapprove the delay of a promotion. If the delay is terminated by NMPC or CMC (Code MM) or the commanding officer later determines that the officer is qualified for promotion and obtains approval from NMPC or CMC (Code MM) to rescind the delay, the officer shall be promoted with the same date of rank, effective date for pay and allowances, and relative precedence position as if no delay had occurred.

f. Maximum Period of Delay. An officer whose promotion is delayed will not be removed from an active status for at least six months after the date on which the original promotion would have occurred unless retention is inconsistent with good order and discipline. If NMPC or CMC determines that the officer is still unqualified for promotion after the six-month period prescribed, the officer shall be removed from an active status or discharged following the guidelines for unqualified officers in reference (c).

9. Failure to Accept Appointment to O-2. If an officer declines appointment, he or she will so state by endorsement on NAVPERS 1421/7, or by letter or administrative action form for Marine Corps, and the offer of appointment will terminate. The commanding officer shall forward the original of the officer's declination to NMPC-93 or CMC (Code MM). An officer who fails to accept an appointment to the grade O-2 shall be processed for an Honorable discharge under, and subject to, the limitations of reference (c).

10. Action

a. Navy. Commanding officers shall promote qualified officers in writing using NAVPERS 1421/7, citing this instruction and section 5908 of reference (a). The appointee will accept or decline the appointment by written endorsement. After receipt of the NAVPERS 1421/7 by NMPC-93, commissions will be forwarded to the officer. To speed receipt of the commission, commands should include a self-addressed OP-NAV 5216/148 (DON mailing label) with the original NAVPERS 1421/7.

b. Marine Corps. The CMC will authorize commanding officers by message to promote qualified second lieutenants. Certificates of promotion will be mailed by Headquarters, Marine Corps as soon as practicable.

c. Temporary Additional Duty (TAD). The commanding officer of the temporary duty activity may promote that officer with the written concurrence of the parent commanding officer. To avoid delay, parent commanding officers may concur in advance.

d. Report of Delay of an Appointment. Commanding officers must report any delay of an appointment by letter to NMPC-82, or CMC (Code JAS). The report will include the date and reason the officer was found not qualified and a recommendation for disposition.

11. Report and Forms

a. The report required by this instruction is exempt from reports control by SECNAVINST 5214.2A.

SECNAVINST 1421.4D
21 September 1988

b. NAVPERS 1421/7 (REV. 2-82), S/N 0106-LF-014-2138, and OPNAV 5216/148 (DON mailing label), S/N 0107-LF-778-8130 may be obtained through normal supply channels per NAVSUP P2002.

KENNETH P. BERGQUIST
Assistant Secretary of the Navy
(Manpower and Reserve Affairs)

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APPENDIX XIII

SECNAVIST 1412.6L Promotion of Navy and Marine Corps officers to grade O-2

Effective December 9, 2005

SECNAVINST 1412.6L
N132F/PERS-49
9 Dec 05

SECNAV INSTRUCTION 1412.6L

From: Secretary of the Navy

Subj: PROMOTION OF OFFICERS TO THE GRADE OF LIEUTENANT
(JUNIOR GRADE) IN THE NAVY AND TO THE GRADE OF FIRST
LIEUTENANT IN THE MARINE CORPS

Ref: (a) 10 U.S.C.
(b) DODD 1320.10 of 9 Jul 96
(c) SECNAVINST 1920.6B
(d) DODI 1320.4 of 14 Mar 95
(e) SECNAVINST 1427.1C
(f) MCO P1400.31B
(g) MILPERSMAN 1420-030

1. Purpose. To prescribe regulations and procedures for effecting permanent and temporary promotions to the grade of lieutenant (junior grade) in the Navy and for effecting permanent promotion to the grade of first lieutenant in the Marine Corps. This instruction is a complete revision and should be reviewed in its entirety.

2. Cancellation. SECNAVINST 1412.6K and SECNAVINST 1421.4D.

3. Applicability

a. Pursuant to references (a) through (c), the provisions of this instruction are applicable to all ensigns on the Active Duty List (ADL) and Reserve Active Status List (RASL) of the Navy and all second lieutenants on the ADL and RASL of the Marine Corps.

b. Discharge of these officers when not qualified for promotion to the grade of lieutenant (junior grade) or first lieutenant is prescribed in reference (c).

4. Background. Under reference (a), the Secretary of the Navy (SECNAV) is authorized to prescribe regulations governing promotions of ensigns in the Navy to the grade of lieutenant (junior grade) and second lieutenants in the Marine Corps to the grade of first lieutenant.

SECNAVINST 1412.6L
9 Dec 05

5. Policy

a. It is the Department of the Navy (DON) policy to promote officers in the grade of ensign to the grade of lieutenant (junior grade) and officers in the grade of second lieutenant in the Marine Corps, to the grade of first lieutenant as soon as qualified, but not earlier than the date of completion of 24 months service in grade. Service in grade is computed from the officer's date of rank as an ensign or second lieutenant. Frocking is not authorized for officers being promoted to the grade of lieutenant (junior grade) or first lieutenant.

b. The continued military service of officers not qualified for promotion is inconsistent with mission requirements of DON and with the productivity and efficiency of the officer corps. Therefore, such officers shall be discharged. Officers found unqualified for promotion shall be afforded a reasonable opportunity to overcome their deficiencies.

c. Officers not qualified for promotion shall be separated per reference (c).

6. Appointment and Procedures

a. The President, or designee, shall appoint each officer of the Regular Navy or Navy Reserve, or Regular Marine Corps or Marine Corps Reserve, on the ADL or RASL serving under a permanent appointment in the grade of ensign or second lieutenant to the grade of lieutenant (junior grade) or first lieutenant pursuant to reference (a), sections 624 and 12203. Actions to appoint these officers shall be submitted pursuant to the guidance in reference (d). The Chief of Naval Operations (CNO) and the Commandant of the Marine Corps (CMC) shall establish procedures to review and recommend appropriate action on all cases involving adverse information or alleged adverse information. Those officers who have engaged in misconduct that casts substantial doubt on their fitness for promotion shall be excluded from the appointment scroll. Officers excluded from the scroll may be forwarded for promotion consideration after being given the opportunity to comment.

b. Pursuant to reference (a), section 5596, each limited duty officer (LDO) of the Regular Navy on the ADL serving under a temporary appointment in the grade of ensign shall be appointed to

SECNAVINST 1412.6L
9 Dec 05

the grade of lieutenant (junior grade) upon completion of 24 months of service in grade. Pursuant to reference (a), section 12203, Reserve LDOs on the RASL will be appointed to the grade of lieutenant (junior grade) upon completion of 24 months of service in grade.

c. Officers so appointed have a date of rank beginning from their date of appointment to lieutenant (junior grade) or first lieutenant. Pay and allowances are effective on and accrue from this same date. The officers appointed are considered as having accepted the appointment unless the appointment is expressly declined or the appointment is delayed under the provisions of this instruction. Reserve officers so appointed will be assigned a running mate, precedence number and competitive category as prescribed in reference (e).

d. An example of computing eligibility for promotion under this authority is illustrated in the case of an ensign whose date of rank is 2 October 2003. Such officer will complete 24 months in grade on 1 October 2005 and will be eligible for promotion the following day, 2 October 2005.

7. Qualification for Promotion. Officers approved for appointment by the Secretary of Defense (SECDEF) to the grade of lieutenant (junior grade) or first lieutenant are subject to each appointee's qualifications for promotion. Commanding officers (COs) are authorized to make the initial determination as to the basic qualifications of officers under their command to serve in the grade of lieutenant (junior grade) or first lieutenant. The decision to delay an appointment should be given due consideration to the officer's potential for future service in the higher pay grade. The qualifications for promotion include the following:

a. Physical Qualifications. Physical qualifications for promotion shall be established by the CNO and the CMC in consultation with the Surgeon General of the Navy. Governing regulations are contained in references (f) and (g).

b. Mental, Moral, and Professional Qualifications. The CO shall determine whether the officer is mentally, morally, and professionally qualified for permanent or temporary promotion, as applicable.

(1) An officer's overall professional performance, skills,

SECNAVINST 1412.6L
9 Dec 05

abilities, and personal traits, in aggregate, should be weighed in making that determination.

(2) Failure to completely qualify in a professional specialty field or satisfactorily conduct a given task should not alone be considered grounds for delay of promotion.

8. Promotion Delay. The promotion of an officer under this instruction to the grade of lieutenant (junior grade) or first lieutenant may be delayed under the following guidelines:

a. Delay for Administrative or Legal Reasons. An officer's promotion can be delayed if:

(1) Sworn charges against the officer have been received by an officer exercising general courts-martial jurisdiction over the officer and such charges have not been disposed of;

(2) An investigation is being conducted to determine whether disciplinary action of any kind should be brought against the officer;

(3) A board of inquiry (BOI) has been convened under reference (c) to determine if officers should be required to show cause for retention due to misconduct, moral, or professional dereliction, substandard performance, or because their retention is not in the best interest of national security; or

(4) A criminal proceeding in a Federal or State court is pending against the officer.

If no disciplinary action is taken against the officer, if the charges against the officer are withdrawn or dismissed, if the officer is not ordered removed from active duty by SECNAV under reference (c), or if the officer is acquitted, as the case may be, then, unless action has been taken to delay the appointment under paragraph 8b, the officer shall be promoted with the same date of rank, same effective date for pay and allowances of the grade to which promoted, and the same position on the ADL or RASL as the officer would have had if no delay had intervened.

b. Delay for Physical, Mental, Moral, or Professional Reasons. An officer's promotion may be delayed in any case when there is cause to believe the officer is mentally, physically,

SECNAVINST 1412.6L

9 Dec 05

morally, or professionally unqualified to perform duties of that grade. If the officer is subsequently found qualified for promotion to such grade, the officer shall, upon such promotion, have the same date of rank, same effective date for pay and allowances in the higher grade to which appointed, and the same seniority position as if no delay had occurred, unless the Chief of Naval Operations (Manpower, Personnel, Training and Education) (CNO (N1/NT)) or CMC determines the officer was unqualified for promotion for any part of the delay. If CNO (N1/NT) or CMC makes such a determination, they can adjust the officer's date of rank, effective date of pay and allowances, and position on the ADL or RASL.

c. Written Notice. Promotion of officers may not be delayed under the provisions of this instruction unless the officers have been given written notice of the grounds for the delay. Where it is impracticable to give such written notice before the effective date of the appointment, written notice shall be given as soon as practicable. Officers whose promotions have been delayed shall be afforded an opportunity to make a written statement to Commander, Navy Personnel Command (COMNAVPERSCOM) or CMC via their CO. The CO may make further comment on the officer's statement if desired. If the officers do not desire to make a statement, they shall so state in writing. Correspondence initiated under this instruction will be forwarded with the report required in paragraph 10e to NAVPERSCOM (PERS-483), copy to NAVPERSCOM (PERS-4802), or CMC (MMPR), as appropriate.

d. Review of Promotion Delay Recommendations. A promotion delay initiated by a CO is reviewed by COMNAVPERSCOM or CMC. COMNAVPERSCOM or CMC will make a final determination regarding the CO's initial finding that the officer is unqualified for promotion and approve/disapprove the delay of promotion. If the delay is:

(1) Terminated by COMNAVPERSCOM or CMC.

(2) The CO later determines the officer is qualified for promotion and obtains approval from COMNAVPERSCOM or CMC to rescind the delay, the officer shall be promoted with the same date of rank, the same effective date for pay and allowances in the higher grade to which appointed, and the same seniority position as if no delay had occurred, unless CNO (N1/NT) or CMC determines the officer was unqualified for promotion for any part of the delay. If CNO (N1/NT) or CMC makes such a determination,

SECNAVINST 1412.6L

9 Dec 05

they can adjust the officer's date of rank, effective date of pay and allowances, and position on the ADL or RASL.

e. Period of Delay Prior to Retention or Discharge

(1) An officer whose promotion is delayed shall not be discharged or released for a minimum of 6 months after the date on which the original promotion would have occurred, unless retention is inconsistent with good order and discipline. If COMNAVPERSCOM or CMC determines the officer is still unqualified for promotion at the completion of the 6-month period prescribed, the officer may be discharged by SECNAV.

(2) As prescribed by reference (b), officers (other than LDOs serving under a temporary appointment) who are unqualified for promotion to the grade of lieutenant (junior grade) or first lieutenant at the end of the 6-month period described in paragraph 8e(1) may be retained on active duty by COMNAVPERSCOM or CMC, acting for SECNAV, when it is determined to be in the best interests of the service. However, such officers shall be discharged not later than the end of the 18-month period beginning on the date on which the officers are first found unqualified for promotion by their CO unless that officer has been promoted.

(3) LDOs in the Navy who are serving in the grade of ensign under a temporary appointment and are found not qualified for promotion to the grade of lieutenant (junior grade) after any applicable period of delay shall have such appointment terminated. Upon termination of the temporary appointment, the members will revert to their permanent enlisted or warrant officer status.

9. Declination of Appointment. Should an officer eligible for promotion under provisions of this instruction decline appointment to lieutenant (junior grade) or first lieutenant, as appropriate, the appointment terminates and the officer shall be released from active duty. Officers who have not incurred a period of obligated active duty service for any of the reasons listed below shall be released from active duty immediately. Officers who have completed 6 years total service required by reference (a), section 651, shall be discharged. LDOs in the Navy serving in the grade of ensign under a temporary appointment shall have their appointment terminated and shall revert to their permanent enlisted or warrant officer status. Release from active duty shall occur upon the completion of any period of obligated active

SECNAVINST 1412.6L
9 Dec 05

duty service incurred as a result of:

a. Service prescribed in the officer program through which accessed and incurred by the officer in consideration for being tendered an initial appointment.

b. Service in a competitive category, designator, occupational field, military occupational specialty or other authorized officer classification in which COMNAVPERSCOM or CMC determines that significant personnel shortages result in necessity for retention.

c. Participation in fully funded education programs including Naval Academy, Naval Reserve Officer Training Corps, Armed Forces Health Professions Scholarships, Uniformed Services University of the Health Sciences, and equivalent funded education programs.

d. Participation in advanced education or technical training requiring additional obligated service, including postgraduate education, service school or college, law school, medical residency, flight training, naval flight officer training, and equivalent programs.

e. Official notification of orders, or executed orders when the officer has not served the required period of time at the new duty station, as prescribed by COMNAVPERSCOM or CMC.

f. Lateral transfer between competitive categories or designators.

g. Entrance into a program.

h. Receiving an incentive pay, continuation pay, or bonus.

10. Action

a. Navy. COs will effect the permanent or temporary promotion, as applicable, of qualified officers under their command by notification in writing using NAVPERS 1421/7 (Rev. 05-05), Delivery of Temporary/Permanent Appointment, citing this instruction and reference (a), section 624, for ADL line and staff corps officers, or reference (a), section 5596, for ADL LDOs. For all RASL officers, cite this instruction and reference (a), section 12203. The appointee shall indicate by endorsement

SECNAVINST 1412.6L

9 Dec 05

thereon that they accept or decline the appointment. Commands preparing NAVPERS 1421/7 must change the words "temporary appointment" to read "permanent appointment" in the case of line and staff corps officers (other than LDOs). Following receipt of NAVPERS 1421/7 by NAVPERSCOM (PERS-4802), commissions will be prepared and forwarded to officers as soon as possible.

b. Marine Corps. CMC will authorize COs by message to effect the promotion of qualified second lieutenants on the ADL or RASL when they are eligible for promotion to the grade of first lieutenant under this instruction. Certificates of promotion will be mailed by Headquarters Marine Corps as soon as practicable.

c. Declination of Appointments. Should an officer eligible for promotion under the provisions of this instruction elect to decline appointment, the officer shall so state by special endorsement, in which case such appointment terminates. The CO shall forward the original of the officer's declination to NAVPERSCOM (PERS-4802) or CMC (MMPR) for processing.

d. Temporary Additional Duty (TEMADD). Should officers be assigned away from their command temporarily, the CO of the TEMADD activity may effect the promotion of those officers with the concurrence of the parent CO. To avoid delay, parent COs may provide concurrence in advance.

e. Report of Delay of an Appointment. Any action taken by the CO to delay an appointment under this instruction shall be reported to NAVPERSCOM (PERS-483), copy to (PERS-4802), or by letter to CMC (MMPR), as appropriate. This report will include the circumstances, all correspondence pertinent to the decision to delay to include the officer's written statement in response as provided in paragraph 8c, the date the officer was first found not qualified, and any recommendations in the case. This report shall be made as soon as practicable, but no later than 15 days after the date on which the promotion would have occurred.

(1) The CO will advise NAVPERSCOM (PERS-483), copy to (PERS-4802), or CMC (MMPR), as appropriate, when an officer whose appointment has been delayed is later considered to be qualified for, and recommended for, promotion.

(2) If the officer remains unqualified or has not been promoted at the completion of the 6-month period described in

SECNAVINST 1412.6L
9 Dec 05

paragraph 8e, the CO will advise NAVPERSCOM (PERS-483) or the CMC (MMPR), as appropriate, and make recommendations with regard to promotion, continued delay of promotion, retention on active duty, or discharge.

(3) COs shall ensure compliance with administrative procedures outlined in paragraphs 8 and 9.

f. Recommendations and Administration. NAVPERSCOM or CMC (MM), as appropriate, shall:

(1) Provide recommendations for discharge to SECNAV concerning officers who have been found unqualified for promotion and are subject to discharge as provided in this instruction.

(2) Establish internal procedures for administering the appointment, promotion, delay of promotion, retention, or discharge of ensigns or second lieutenants as appropriate, per this instruction.

11. Posthumous Promotions. Section 1521 of reference (a), establishes provisions to issue posthumous commissions. The following criteria apply:

a. Commissioned Officers. Commissioned officers may be appointed, by the President (or designee), to the next higher grade if:

(1) The officer had been appointed to a commissioned grade but was not able to accept the appointment due to death in the line of duty.

(2) The officer was officially recommended for appointment or promotion to a commissioned grade and approved by SECNAV but was not able to accept the appointment due to death in the line of duty.

b. The officer's name shall be carried on the records of the Navy or Marine Corps as if the officer had served in the grade in which posthumously commissioned from the date CNO or CMC, as appropriate, recommends approval of the appointment to the date of death.

SECNAVINST 1412.6L
9 Dec 05

c. No beneficiary is entitled to any bonus, gratuity, pay, or allowances by virtue of a posthumous promotion.

12. Report and Form

a. Report symbol BUPERS 1412-1 has been assigned to the reporting requirements contained in paragraph 10e and is approved per SECNAVINST 5214.2B.

b. NAVPERS 1421/7 (Rev 05-05), Delivery of Temporary or Permanent Appointment, S/N 0106-LF-127-6300, may be obtained using requisitioning procedures contained in Navy Forms Online at <http://forms.daps.dla.mil>.

William A. Navas, JR.
Assistant Secretary of the Navy
(Manpower and Reserve Affairs)

Distribution:

Electronic only via Navy Directives Web site

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APPENDIX XIV

Excerpt from Congressional Research Service Report for Congress. *Army Officer Shortages* 7/5/2006

"...Health Professions Scholarship and Financial Assistance Programs. Section 564 would increase the stipends and grants paid to students enrolled in the Health Professions Scholarship and Financial Assistance Programs. The Health Professions Scholarship Program (HPSP) pays the tuition of students studying to become health professionals in return for an obligation to serve in the armed forces upon completion of their training. Along with tuition, students enrolled in the program receive a stipend to help defray living expenses while they are still attending school. **Under current law, the stipend is limited to about \$13,000 per year. Section 564 would increase the maximum stipend to \$30,000.** (Under both current law and the proposal the stipend is adjusted each year for inflation.) Because the services are having difficulty recruiting medical professionals, CBO believes DOD would increase the stipend to the maximum amount. Based on data from DOD, current plans are to enroll about 5,300 students in HPSP each year. This number also includes students in the Specialized Training Assistance Program, who are authorized by statute to receive the same stipend as those participating in HPSP. **Therefore, CBO estimates an increase in the maximum stipend would cost \$88 million in 2007 and \$466 million over the 2007-2011 period.**

In addition to the stipend, the Financial Assistance Program pays an annual grant of about \$28,000 to students who are engaged in specialized medical training. Section 564 would increase the maximum amount of this grant to \$45,000 per year. (Under both current law and the proposal the grant is adjusted each year for inflation.) According to data from DOD, current plans are to pay this grant to about 200 students each year. Assuming all of these students receive the maximum grant, the total cost to DOD would be \$3 million in 2007 and \$17 million over the 2007-2011 period. Including changes to both the stipend and the grant, CBO estimates the total cost of implementing section 564 would be \$91 million in 2007 and \$483 million over the 2007-2011 period.

Education Loan Repayment for Health Professionals. Section 563 would increase the amount of student loans DOD can repay on behalf of health professionals who enlist in the armed forces to a maximum of \$60,000 for each year of obligated service. Based on information from DOD, CBO estimates about 600 health professionals would enlist in the armed forces each year using this enhanced benefit. However, about 250 of these personnel would be nurses, who, on average, have smaller student loans than physicians or dentists, and for whom the current annual repayment ceiling is generally sufficient. Of the remaining 350 physicians and dentists, CBO estimates the average amount of medical school debt for this group is about \$131,000 per person, based on information from the Association of Medical Colleges and from DOD.

For fiscal year 2007, CBO estimates the maximum amount DOD can repay under current law will be about \$32,500 for each year of service. Since the average service obligation is three years, DOD will only be able to repay about \$100,000 of medical loans for each new member, which is \$31,000 less than the average incurred debt. Increasing the maximum repayment amount to \$60,000 for each year of service would allow DOD to repay the full amount of these medical school loans with the same years of obligated service. Thus, for a three-year enlistment, DOD would pay an extra \$10,000 per year on average to repay loans for each new doctor or dentist. CBO estimates the cost of this section would be \$4 million in 2007 and would increase each year as additional new enlistees take advantage of the higher loan repayment benefit so that the total cost would be \$49 million over the 2007-2011 period...."

APPENDIX XV

2006 Military Basic Pay Scale

Pay Grade	Cumulative Years of Service																									
	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26											
O-10 ²	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00											
O-9	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00											
O-8	8,271.00	8,541.90	8,721.60	8,772.00	8,996.10	9,371.10	9,458.10	9,814.20	9,916.20	10,222.80	10,666.20	11,075.40	11,348.70	11,348.70	11,348.70											
O-7	6,872.70	7,191.90	7,339.80	7,457.10	7,669.80	7,879.50	8,122.50	8,364.90	8,607.90	9,371.10	10,015.80	10,015.80	10,015.80	10,015.80	10,066.50											
O-6	5,094.00	5,596.20	5,963.40	5,963.40	5,985.90	6,242.70	6,276.60	6,276.60	6,633.30	7,263.90	7,634.10	8,004.00	8,214.60	8,427.60	8,841.30											
O-5	4,246.50	4,783.50	5,115.00	5,177.10	5,383.50	5,507.40	5,779.20	5,978.70	6,236.10	6,630.60	6,818.10	7,003.80	7,214.40	7,214.40	7,214.40											
O-4	3,663.90	4,241.40	4,524.30	4,587.60	4,850.10	5,131.80	5,482.20	5,755.80	5,945.40	6,054.30	6,117.60	6,117.60	6,117.60	6,117.60	6,117.60											
O-3	3,221.40	3,651.90	3,941.70	4,297.50	4,503.00	4,728.90	4,875.30	5,115.90	5,240.70	5,240.70	5,240.70	5,240.70	5,240.70	5,240.70	5,240.70											
O-2	2,783.10	3,170.10	3,651.00	3,774.30	3,852.00	3,852.00	3,852.00	3,852.00	3,852.00	3,852.00	3,852.00	3,852.00	3,852.00	3,852.00	3,852.00											
O-1	2,416.20	2,514.60	3,039.60	3,039.60	3,039.60	3,039.60	3,039.60	3,039.60	3,039.60	3,039.60	3,039.60	3,039.60	3,039.60	3,039.60	3,039.60											
O-3E ³	0.00	0.00	0.00	4,297.50	4,503.00	4,728.90	4,875.30	5,115.90	5,318.40	5,434.50	5,592.90	5,592.90	5,592.90	5,592.90	5,592.90											
O-2E ³	0.00	0.00	0.00	3,774.30	3,852.00	3,974.70	4,181.40	4,341.60	4,460.70	4,460.70	4,460.70	4,460.70	4,460.70	4,460.70	4,460.70											
O-1E ³	0.00	0.00	0.00	3,039.60	3,246.30	3,366.00	3,488.70	3,609.30	3,774.30	3,774.30	3,774.30	3,774.30	3,774.30	3,774.30	3,774.30											
W-5	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00											
W-4	3,328.80	3,581.10	3,684.00	3,785.10	3,959.40	4,131.30	4,305.90	4,475.70	4,651.50	4,927.20	5,103.60	5,276.10	5,454.90	5,631.00	5,811.00											
W-3	3,039.90	3,166.80	3,296.40	3,339.30	3,475.50	3,631.50	3,837.30	4,040.40	4,256.40	4,418.40	4,579.80	4,649.10	4,720.80	4,876.80	5,032.50											
W-2	2,673.90	2,826.60	2,960.40	3,057.30	3,140.70	3,369.60	3,544.50	3,674.40	3,801.30	3,888.30	3,961.50	4,100.70	4,239.00	4,379.10	4,379.10											
W-1	2,361.30	2,554.50	2,683.80	2,767.50	2,990.40	3,124.80	3,243.90	3,376.80	3,465.00	3,544.80	3,674.70	3,773.10	3,773.10	3,773.10	3,773.10											
E-6 ⁴	0.00	0.00	0.00	0.00	0.00	0.00	4,022.10	4,113.30	4,228.20	4,363.50	4,499.40	4,717.80	4,902.30	5,097.00	5,394.00											
E-8	0.00	0.00	0.00	0.00	0.00	3,292.50	3,438.30	3,528.30	3,636.30	3,753.30	3,964.50	4,071.60	4,253.70	4,354.80	4,603.50											
E-7	2,288.70	2,498.10	2,593.80	2,720.70	2,819.40	2,989.50	3,084.90	3,180.30	3,350.40	3,435.60	3,516.30	3,565.80	3,732.60	3,840.60	4,113.60											
E-6	1,979.70	2,178.00	2,274.30	2,367.60	2,465.10	2,685.00	2,770.50	2,865.30	2,948.70	2,978.10	2,998.50	2,998.50	2,998.50	2,998.50	2,998.50											
E-5	1,814.10	1,935.30	2,028.60	2,124.60	2,273.70	2,402.10	2,496.60	2,526.60	2,526.60	2,526.60	2,526.60	2,526.60	2,526.60	2,526.60	2,526.60											
E-4	1,662.90	1,748.10	1,842.60	1,935.90	2,018.40																					
E-3	1,501.20	1,595.70	1,692.00	1,692.00	1,692.00																					
E-2	1,427.40	1,427.40	1,427.40	1,427.40	1,427.40																					
E-1	1,273.50	1,273.50	1,273.50	1,273.50	1,273.50																					
E-1 -4 mos	1,178.10	0.00	0.00	0.00	0.00																					

NOTES:
 1 While serving as JCS/Vice JCS, CNO, CMC, Army/Air Force Chief of Staff, commander of a unified or specified combatant command, basic pay is \$15,615.90 (See note 2).
 2 Basic pay for an O-7 to O-10 is limited by Level III of the Executive Schedule which is \$12,666.60. Basic pay for O-6 and below is limited by Level V of the Executive Schedule which is \$11,758.20.
 3. Applicable to O-1 to O-3 with at least 4 years & 1 day of active duty or more than 1460 points as a warrant and/or enlisted member. See DoDFMR for more detailed explanation on who is eligible for this special basic pay rate.
 4. For the MCO of the Navy, CMSgt of the AF, Sergeant Major of the Army, Marine Corps or Senior Enlisted Advisor of the JCS, basic pay is \$6,499.50. CZTE for O-1 and above is based on this basic pay rate plus HFPIIDP which is \$225.00.

APPENDIX XVI

Sections 536-538 of 2007 NDAA authorizing detail of commissioned officers to civilian medical schools and increased HPSP benefits

SEC. 536. DETAIL OF COMMISSIONED OFFICERS AS STUDENTS AT MEDICAL SCHOOLS.

(a) In General- Chapter 101 of title 10, United States Code, is amended by inserting after section 2004 the following new section:

Sec. 2004a. Detail of commissioned officers as students at medical schools

(a) Detail Authorized- The Secretary of each military department may detail commissioned officers of the armed forces as students at accredited medical schools or schools of osteopathy located in the United States for a period of training leading to the degree of doctor of medicine. No more than 25 officers from each military department may commence such training in any single fiscal year.

(b) Eligibility for Detail- To be eligible for detail under subsection (a), an officer must be a citizen of the United States and must--

(1) have served on active duty for a period of not less than two years nor more than six years and be in the pay grade 0-3 or below as of the time the training is to begin; and

(2) sign an agreement that unless sooner separated the officer will--

(A) complete the educational course of medical training;

(B) accept transfer or detail as a medical officer within the military department concerned when the officer's training is completed; and

(C) agree to serve, following completion of the officer's training, on active duty (or on active duty and in the Selected Reserve) for a period as specified pursuant to subsection (c).

(c) Service Obligation- An agreement under subsection (c) shall provide that the officer shall serve on active duty for two years for each year or part thereof of the officer's medical training under subsection (a), except that the agreement may authorize the officer to serve a portion of the officer's service obligation on active duty and to complete the service obligation that remains upon separation from active duty in the Selected Reserve, in which case the officer shall serve three years in the Selected Reserve for each year or part thereof of the officer's medical training under subsection (a) for any service obligation that was not completed before separation from active duty.

(d) Selection of Officers for Detail- Officers detailed for medical training under subsection (a) shall be selected on a competitive basis by the Secretary of the military department concerned.

(e) Relation of Service Obligations to Other Service Obligations- Any service obligation incurred by an officer under an agreement entered into under subsection (b) shall be in addition to any service obligation incurred by the officer under any other provision of law or agreement.

(f) Expenses- Expenses incident to the detail of officers under this section shall be paid from any funds appropriated for the military department concerned.

(g) Failure to Complete Program- (1) An officer who is dropped from a program of medical training to which detailed under subsection (a) for deficiency in conduct or studies, or for other reasons, may be required to perform active duty in an appropriate military capacity in accordance with the active duty obligation imposed on the officer under regulations issued by the Secretary of Defense for purposes of this section.

(2) In no case shall an officer be required to serve on active duty under paragraph (1) for any period in excess of one year for each year or part thereof the officer participated in the program.

(h) Limitation on Details- No agreement detailing an officer of the armed forces to an accredited medical school or school of osteopathy may be entered into during any period in which the President is authorized by law to induct persons into the armed forces involuntarily. Nothing in

this subsection shall affect any agreement entered into during any period when the President is not authorized by law to so induct persons into the armed forces'.

(b) Clerical Amendment- The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2004 the following new item:

‘2004a. Detail of commissioned officers as students at medical schools.’.

SEC. 537. INCREASE IN MAXIMUM AMOUNT OF REPAYMENT UNDER EDUCATION LOAN REPAYMENT FOR OFFICERS IN SPECIFIED HEALTH PROFESSIONS.

(a) Increase in Maximum Amount- Section 2173(e)(2) of title 10, United States Code, is amended by striking ‘\$22,000’ and inserting ‘\$60,000’.

(b) Effective Date-

(1) IN GENERAL- The amendment made by subsection (a) shall take effect on October 1, 2006, and shall apply to agreements entered into or revised under section 2173 of title 10, United States Code, on or after that date.

(2) PROHIBITION ON ADJUSTMENT- The adjustment required by the second sentence of section 2173(e)(2) of title 10, United States Code, to be made on October 1, 2006, shall not be made.

SEC. 538. HEALTH PROFESSIONS SCHOLARSHIP AND FINANCIAL ASSISTANCE PROGRAM FOR ACTIVE SERVICE.

(a) Maximum Stipend Amount- Section 2121(d) of title 10, United States Code, is amended--

(1) by striking ‘at the rate of \$579 per month’ and inserting ‘at a monthly rate established by the Secretary of Defense, but not to exceed a total of \$30,000 per year’; and

(2) by striking ‘That rate’ and inserting ‘The maximum annual amount of the stipend’.

(b) Maximum Annual Grant- Section 2127(e) of such title is amended--

(1) by striking ‘\$15,000’ and inserting ‘in an amount not to exceed \$45,000’; and

(2) by striking ‘The amount’ and inserting ‘The maximum amount’.

(c) Report on Program- Not later than March 1, 2007, the Secretary of Defense shall submit to the Congress a report on the Health Professions Scholarship and Financial Assistance Program for Active Service under subchapter I of chapter 105 of title 10, United States Code. The report shall include the following:

(1) An assessment of the success of each military department in achieving its recruiting goals under the program during each of fiscal years 2000 through 2006.

(2) If any military department failed to achieve its recruiting goals under the program during any fiscal year covered by paragraph (1), an explanation of the failure of the military department to achieve such goal during such fiscal year.

(3) An assessment of the adequacy of the stipend authorized by section 2121(d) of title 10, United States Code, in meeting the objectives of the program.

(4) Such recommendations for legislative or administrative action as the Secretary considers appropriate to enhance the effectiveness of the program in meeting the annual recruiting goals of the military departments for medical personnel covered by the program.

(d) Effective Date-

(1) IN GENERAL- The amendments made by this section shall take effect on October 1, 2006.

(2) PROHIBITION ON ADJUSTMENTS- The adjustments required by the second sentence of subsection (d) of section 2121 of title 10, United States Code, and the second sentence of subsection (e) of section 2127 of such title to be made in 2007 shall not be made.