

**Change 157**  
**Manual of the Medical Department**  
**U.S. Navy**  
**NAVMED P-117**

**29 Mar 2016**

To: Holders of the Manual of the Medical Department

1. **This Change** Revises Chapter 1, Section III, article 1-22, Off-Duty Remunerative Professional Employment (Regulatory).
2. **Summary of Changes** This revision makes the following major changes:
  - a. MANMED Chapter 1-22 is a complete revision of the October 1994 edition and must be read in its entirety.
  - b. Requires action upon receipt by command leadership enterprise-wide and annually thereafter.
  - c. Updates Navy Medicine policy.
  - d. Implements a recommendation from Naval Audit Service Audit Report 2013-060 on Off-Duty Employment of medical treatment facility (MTF) personnel. Recommends Chief, Bureau of Medicine and Surgery (BUMED) provide oversight and “Implement a process to better increase off-duty employment program awareness and compliance,” through “an annual refresher training presentation about off-duty employment policy or other training program.”
  - e. Provides expanded and flexible methods for Navy Medicine commands that are geographically distant and in different time zones to achieve compliance.
  - f. Requires leadership of Navy Medicine commands to comply with the following policies:
    - (1) Establish an off-duty employment directive at Navy Medicine commands. Subordinate activities will follow the policy of the parent command.
    - (2) Establish internal controls for an annual review of health care provider compliance (military and civilian) with applicable off-duty employment policy and regulatory guidance.
    - (3) Increase staff awareness and compliance with MANMED article 1-22 and the policies contained in the local command off-duty employment directive. Ensure all military and civilian personnel at all levels of the Navy Medicine enterprise are familiarized with the policies and approval process for off-duty employment upon receipt of this change and annually thereafter.
    - (4) Ensure newly reporting health care providers are oriented in off-duty employment policies and the mandatory approval process.

(5) Disseminate and document annual refresher guidance using any forms of communication, distribution, orientation, handouts, Power Point slides or other training media, plan of the week, publicity during annual review or at other times, Web site link, annual training plan, e-mail, or other creative options suited to MTFs and special mission commands.

(4) Maintain record of personnel participating in off-duty employment sufficient to monitor and evaluate the functioning of the program during annual review, audit, or inspection.

g. Incorporates applicable off-duty employment policy from the cancelled SECNAVINST 5310.16A of 23 April 1992 (Off-Duty Employment by Department of the Navy Health Care Providers).

h. Revises paragraph headings and content.

i. Replaces reference to CHAMPUS with TRICARE.

j. Adds guidance for dental care providers that there are no prohibitions against DoD dentists providing care in their off-duty capacity to family members of active duty or Reserve Component personnel when those family members are enrolled in the TRICARE Dental Program (TDP) because TDP enrollees are not eligible for care in a military facility.

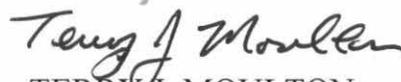
k. Replaces form NAVMED 1610/1 with the new form NAVMED 12610/1, Off-Duty Civilian Employment Request. Standard Subject Identification Code (SSIC) 12610, Hours of Duty, provides a 6-year retention for recordkeeping of hours worked in an off-duty employment status, in a civilian capacity, and in a civilian facility.

### 3. Action

a. Remove pages 1-15 through 1-18 and replace with like-numbered pages from this change.

b. Upon receipt of Change 157, leadership at all echelon levels will increase awareness of and compliance with off-duty employment policy by executing an initial enterprise-wide distribution of MANMED Chapter 1, article 1-22 and NAVMED 12610/1 to all military and civilian personnel and annually thereafter.

c. Record this Change 157 in the Record of Page Changes.

  
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## Section III General

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### **1-20**      **American National Red Cross**

(1) **General.** The American National Red Cross was reincorporated by the act of Congress of 5 January 1905 as amended (36 USC 1 et seq.) as the agency of the Government for the fulfillment of certain treaty obligations into which the United States entered when it became signatory to the treaty of the Red Cross, or the treaty of Geneva of 22 August 1864. The number of National Red Cross societies officially recognized by the International Red Cross Committee is 63, including the American National Red Cross. The International Red Cross Committee is entrusted with the maintenance of fundamental Red Cross principles, and its essential characteristic is its absolute neutrality under the Geneva Conventions. Under these conventions the national societies are recognized by their governments as auxiliaries to the medical departments of their fighting services. They are pledged to prepare themselves in peacetime for necessary wartime work.

(2) **Welfare Program.** Pursuant to the request of the Secretary of the Navy, the American National Red Cross, in times of peace, conducts a welfare program for members of the Navy and their dependents, including home service by

local chapters, and hospital and recreation services for patients in establishments under the command of BUMED. In times of war the Secretary of the Navy may request that these programs be expanded or new services appropriate to the functions of the American National Red Cross be provided.

(3) **Representatives.** American National Red Cross representatives assigned to naval establishments are considered to be members of the staff of the establishment for organizational purposes. The American National Red Cross will designate the representative who, acting under the commanding officer is responsible for coordinating all Red Cross Activities of the establishment.

(4) **Volunteer Aid.** In conformity with U.S. Navy Regulations, volunteer aid for Medical Department establishments must be accepted only through an agency of the American National Red Cross. The foregoing, however, does not prohibit individuals and representatives of other organizations from visiting Medical Department establishments or, when approved by the commanding officer, acceptance by patients of personal gifts or services tendered by individuals.

(5) **Requests for Services.** Requests for Red Cross services in new establishments, and matters relating to the functioning of Red Cross representatives within an establishment or affecting general policy which are not provided for in current instructions, must be referred to BUMED for appropriate action.

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**1-21****Geneva Conventions**

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(1) Officers of the Medical Department must familiarize themselves with the Geneva Conventions. The Conventions are contained in the Annex to Naval Warfare Information Publication 10-2, Law of Naval Warfare, which is available to all ships and stations.

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**1-22****Off-Duty Remunerative Professional Employment (Regulatory)**

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*(1) General Policy*

(a) Outside (Off-duty) remunerative professional civilian employment, including self-employment (hereto referred to as off-duty employment) of all health care providers, is subject to policies herein stated by the Chief, Bureau of Medicine and Surgery, and policies applicable by the Secretary of the Defense (DoD Manual 6025.13) and the Chief of Naval Personnel (MILPERSMAN article 5370-010). For purposes of this article, a health care provider is any military or Federal civilian health care professional who is eligible for, or who has been granted, clinical practice privileges to provide health care services in a military medical or dental treatment facility.

(b) All off-duty employment must be per DoD 5500.7-R, Joint Ethics Regulation (JER). To clarify questions of conduct and other ethical issues related to off-duty employment and compensation, personnel should consult the JER and their ethics counselor.

(c) Although the requirements of this article are directly applicable to active duty and Federal civilian health care providers, commanding officers may also apply these requirements to other non-privileged, non-licensed, or non-certified health care personnel who have received special training or education in a health related field, which may include administration, direct provision of patient care, or ancillary services (e.g., x-ray technicians, nursing assistants).

(d) The Bureau of Medicine and Surgery headquarters and every Navy Medicine command must have a written off-duty employment instruction.

Commanding officers are to increase awareness of and compliance with their local instruction and this MANMED article annually, or with greater frequency, through any forms of communication, orientation, distribution, or training that will ensure all personnel are familiar with requirements for requesting and being approved for off-duty employment.

(e) Newly reporting health care providers will be oriented in off-duty employment policies and the mandatory approval process.

(f) Health care providers will **not** engage in off-duty employment without first obtaining the written permission of the commanding officer.

(g) Health care providers engaging in off-duty employment will **not** solicit or accept a fee directly or indirectly for the care of a Service member, retired member, or dependent of such members of the uniformed services, who are entitled to medical or dental care by those services.

*(2) Guidelines*

(a) Commanding officers may authorize off-duty employment upon written request of Federal health care providers when such activities do not interfere with provision of health care services or mission accomplishment. Commanding officers should consider factors such as hours per week, work site proximity, travel time, potential training opportunities and skills maintenance that would benefit the Navy, and impact on civilian communities and providers when reviewing such requests.

(b) Permission to engage in off-duty employment must be documented in writing and may be withdrawn at any time by the commanding officer.

(c) Personnel enrolled in graduate training programs will not be authorized to engage in off-duty employment.

(d) If approved, employment will normally not exceed 16 hours per week and there must be at least 6 hours between the end of the off-duty employment and the start of military duties. Periods in excess of 16 hours per week can be authorized only if the commanding officer finds that special circumstances exist which indicate that no conflict with military or civilian duties will occur, notwithstanding the additional hours. Health care providers on leave may be exempt, by the commanding officer, or as

delegated, from the 16 hours per week, 6 hours between work periods, and 2-hour travel time restrictions.

(e) The site of off-duty employment must be located within 2 hours travel time, by land, of the site of military duties unless in a leave status or otherwise authorized by the commanding officer.

(f) A health care provider engaged in off-duty employment must not assume primary responsibility for the care of any critically ill person on a continuing basis as this will inevitably result in compromise of responsibilities to the patient or the primacy of military obligations. Military health care providers must be available to provide patient care to military beneficiaries at all times. Their military duty takes precedence. Similarly, civilian health care providers must be available to perform their Government duties during prescribed working hours.

(g) No health care provider will request or be granted administrative absence for the primary purpose of conducting off-duty employment.

(h) Off-duty employment will not be conducted on military premises, involve expense to the Federal government, or involve use of military equipment, personnel, or supplies.

(i) Off-duty employment must not interfere, or be in competition with local civilian practitioners in the health professions. Off-duty employment local impact must be assessed by the requesting practitioner's commanding officer. The commanding officer should consider items such as assessment statements from the employer, local medical or dental society, and practitioner when deciding level of impact.

(j) Health care providers are responsible for complying with all applicable licensing requirements to practice in the civilian community such as State licensure, Drug Enforcement Administration (DEA) certification, and medical malpractice coverage. The fee-waived DEA certification is not authorized for off-duty employment.

(k) There may be no self-referral from the military setting to their off-duty employment on the part of health care providers. Refer to 18 U.S.C. §208.

(l) DoD health care providers cannot be authorized TRICARE providers or be reimbursed for providing TRICARE services to DoD beneficiaries

per 5 U.S.C. § 5536. TRICARE beneficiaries must be screened and identified as such and the charges reduced to reflect that portion of the services that are provided by the health care provider. This restriction does not apply to dental services provided to TRICARE Dental Program enrollees in the continental United States; however, because Active Duty, Guard, and Reserve Service members are eligible for dental care through the direct care system, dental care services delivered by off-duty employment of Navy dentists to Active Duty, Guard, and Reserve Service members are prohibited by DoD dual compensation and conflict rules. Title 5 U.S.C. § 5536 does not prohibit DoD health care providers from becoming enrolled Medicare providers with regard to their off-duty employment and billing for Medicare for their services. There are no prohibitions against DoD dentists providing care in their off-duty capacity to family members of active duty or Reserve Component personnel when those family members are enrolled in the TRICARE Dental Program (TDP) because the TDP enrollees are not eligible for care in a military facility. Refer to DoD Health Affairs Policy memo of 23 July 1996 (health care providers) and 15 April 2013 (NOTAL) (dental care providers) refers.

(m) Collateral or subsequent obligations arising out of off-duty employment, such as appearances in court or testimony before a compensation board, which take place during normal working hours, must be accomplished only while on annual leave. Refer to SECNAVINST 5820.8A.

(n) Health care providers are expected to be aware of and comply with all other statutes and regulations pertaining to off-duty employment. Where doubt exists on whether all applicable constraints have been considered, consult with a Navy Medicine attorney or local Naval Legal Service Office.

(o) These guidelines do not apply to the provision of emergency medical assistance in isolated instances. Also excluded are non-remunerative community services operated by nonprofit organizations for the benefit of all the community and deprived persons, such as a drug abuse program, program volunteer, venereal disease centers, and family planning centers.

### (3) *Withdrawal of Authorization*

(a) Permission to engage in off-duty employment must be withdrawn by the commanding officer when such employment is determined to be

inconsistent with the above guidelines. Where permission is withdrawn, the health care provider affected must be afforded an opportunity to submit to the commanding officer a written statement containing the health care provider's views or any information pertinent to the discontinuance of the employment. Additionally, commanding officers must withdraw permission in writing for:

(1) Health care providers at the beginning of any inquiry into potentially reportable actions of misconduct until the issue is resolved; and

(2) Health care providers who had previously been granted permission to engage in outside employment and who are either appealing a decision to limit or suspend part or all of his or her clinical privileges or the decision to not fully restore clinical privileges. The provider must be notified of the withdrawal. No new permission will be granted during the appeal process.

(b) Commanding officers must ensure that the appropriate officials at all civilian places of employment are immediately notified whenever permission is withdrawn for providers to engage in off-duty employment.

(c) The local command has primary responsibility for control of off-duty employment by military and Federal civilian health care providers. Guidelines above serve as a basis for carrying out this responsibility.

#### (4) *Requesting Permission*

(a) Health care providers requesting permission to engage in off-duty employment must submit their request to the commanding officer on NAVMED 12610/1, Off-duty Remunerative Professional Civilian Employment Request, and must sign the Statement of Affirmation. Approval or disapproval by the commanding officer must be indicated in the appropriate section of NAVMED 12610/1. Medical Department personnel must advise their off-duty employers that as military or civilian members they are required to respond immediately to calls for military duty or patient care that may arise during scheduled off-duty employment. The commanding officer's approval of a health care provider's request for off-duty employment may not be granted without written certification from the off-duty employer that he or she accepts the availability limitations placed on the health care provider contained in NAVMED 12610/1.

(b) The health care provider will inform the commanding officer in writing of any changes in the off-duty employment prior to any deviation in the stated request and prior to the inception of any such changes.

(c) Non-health care personnel, who desire to engage in off-duty employment, will refer to local command or regional policy. BUMED headquarters personnel will refer to BUMEDINST 5370.5.

#### (5) *Annual Review, Recordkeeping, Reports*

(a) Commanding officers will establish internal controls for an annual review of health care provider compliance with applicable policy and regulatory guidance. During annual review, but not limited to annual review, commanding officers will increase staff awareness of the policies and procedures contained in this article and their local command directive through any means of communication, orientation, distribution, or training.

(b) Commanding officers will maintain record of personnel participating in off-duty employment sufficient to monitor and evaluate the functioning of this program during annual review, by BUMED, or higher authority. Records created will be managed under SSIC 12610 per SECNAV M-5210.1 and retained for 6 years.

(c) Reports are not required to be submitted to BUMED by field activities.

(d) Command compliance with this MANMED article will be the subject of review during Inspectors' General visits, naval audits, or other administrative onsite visits.

(e) BUMED headquarters Chief of Staff will comply with these requirements.

(6) *Reports.* The requirement in paragraph (4)(a) is exempt from reports control per SECNAV M-5214.1 of December 2005, part IV, paragraph 7k.

(7) *Forms.* NAVMED 12610/1 (03/2016), Off-Duty Civilian Employment Request Form, is available at: <https://navalforms.documentservices.dla.mil/>.

~~(j) Subsidiary obligations arising out of off-duty employment, such as appearances in court or testimony before a compensation board, which take place during normal working hours, shall be accomplished only while on annual leave.~~

~~(k) These guidelines do not apply to the provision of emergency medical assistance in isolated instances. Also excluded are nonremunerative community services operated by nonprofit organizations for the benefit of all the community and deprived persons, such as a drug abuse program, program volunteer, venereal disease centers, and family planning centers.~~

~~(l) Medical Department officers are expected to be aware of and comply with all other statutes and regulations pertaining to off-duty employment. Where doubt exists as to whether all applicable constraints have been considered, consultation should be effected with the local naval legal service office.~~

~~(3) The local command has primary responsibility for control of off-duty employment by Medical Department officers. Guidelines above serve as a basis for carrying out this responsibility.~~

~~(4) Medical Department officers requesting permission to engage in off-duty employment shall submit their request to the commanding officer on NAVMED 1610/1, Off-duty Remunerative Professional Civilian Employment Request, and shall sign the Statement of Affirmation thereon in the commanding officer's presence or designee. Approval or disapproval by the commanding officer shall be indicated in the appropriate section of NAVMED 1610/1. Medical Department officers shall advise their off-duty employers that as military members they are required to respond immediately to calls for military duty that may arise during scheduled off-duty employment. The commanding officer's approval of an officer's request for off-duty employment may not be granted without written certification from the off-duty employer that he or she accepts the availability limitations placed on the Medical Department officer.~~

~~(5) The requester shall inform the commanding officer in writing of any deviation in the stated request prior to the inception of any such changes.~~

~~(6) Permission shall be withdrawn at any time by the commanding officer when such employment is determined to be inconsistent with the above guidelines. Where permission is withdrawn the officer affected shall be afforded an opportunity to submit to the commanding officer a written statement containing the Medical Department officer's views or any information pertinent to the discontinuance of the employment.~~

~~(7) Reports are not required to be submitted to BUMED by field activities. However, during Medical and Dental Inspectors General visits or other administrative onsite visits, local command compliance with this article will be reviewed. In addition, adequate records should be maintained to pro-~~

~~vide summarized information as may be necessary for monitoring and evaluating the functioning of this program by BUMED or higher authority.~~

MANMED article 1-22 has been updated. The information above is no longer valid.

## 1-23 Witness in Court (Regulatory)

### (1) Appearance in Litigation Matters Not Related to the Department of the Navy.

(a) A Medical Department officer who appears in court as an expert witness in litigation not related to the Department of the Navy must take leave, appear out of uniform, and establish the character of the officer's appearance and testimony as being other than on behalf of the Navy.

(b) A Medical Department officer appearing as a witness for a party in litigation not related to the Department of the Navy should request an advisory opinion from an agency ethics official as to the propriety of accepting any fee tendered for such appearance. An honorarium prohibition on receipt of compensation for an appearance, speech, or article is implemented in the Code of Federal Regulations, Title 5, Sections 2636.201 through 2636.205. Section 501(b) of the Ethics Reform Act of 1989 which instituted the honorarium ban, is presently being challenged in the courts as unconstitutional. Until such litigation is final, the ban remains in effect.

### (2) Appearance in Litigation Matters Related to Department of the Navy.

(a) Official information is:

(1) All information of any kind, however stored, in the custody and control of the DoD or its components, including DON.

(2) All information relating to information in the custody and control of DoD and its component.

(3) All information acquired by DoD personnel or DoD component personnel as part of their official duties, or because of their official status within DoD or its components, while such personnel were employed by or on behalf of DoD or on active duty with the U.S. Armed Forces.

(b) If a litigation request or demand is made of DON personnel for official DON or DoD information or testimony concerning such information, the individual to whom the request or demand is made will immediately notify the cognizant DON official who will determine the availability and respond to the request or demand.

(c) Medical Department officers shall not provide such official information, testimony, or documents, submit to interview or permit a view or visit without the authorization required by SECNAVINST 5820.8 series.

(d) Medical Department officers shall not provide, with or without compensation, opinion or expert testimony concerning official DoD information, except on behalf of the United States or a party represented by the Department of Justice or with the written special authorization. Any request for the testimony of Medical Department officers shall be forwarded to the officer exercising general court martial jurisdiction for a determination per SECNAVINST 5820.8 series.

(e) In instances where the interest of the Government is not involved, a Medical Department officer who appears involuntarily as the physician or dentist having firsthand knowledge of a person eligible for care in a naval medical or dental facility may accept any fee established by rule or statute and one who appears as an expert may accept any negotiated higher expert witness fee commensurate with professional local custom. However, such fee, beyond any actual expenses, shall be delivered to the disbursing officer of the command for deposit to the Miscellaneous Receipt Account 173099, recoveries and refunds, not otherwise classified.

(f) Where a Medical Department officer appears as a witness on behalf of the Government under temporary additional duty orders, the officer is compensated following Navy travel instructions, par. 6200 in conjunction with chapter 4, part B; see also NAVCOMPT Manual, par. 042781. The officer will not otherwise request or accept a witness fee. The foregoing applies in such instances as where a Government third party claim is attached to an independent suit filed by a member or other person eligible for care in a naval medical facility, the Government is a co-claimant at suit, or the Government is being sued under the Federal Tort Claims Act and the Medical Department officer is appearing as having firsthand knowledge of the facts or as expert witness.

be endorsed by the commanding officer.

(2) **Witness in Court.** See article 1-23.

(3) **Ambulances.** Navy ambulances and Navy ambulance drivers are susceptible to efforts or requests by local police officers or other persons for aid in cases of accidents or emergencies. Operators of ambulances, either members of the hospital corps or civil employees, should be thoroughly indoctrinated:

(a) To adhere strictly to orders for picking up and transporting the patient for whom dispatched.

(b) To remain with vehicle and never to stop or to leave ambulance out of curiosity when halted by traffic condition at the scene of an accident when the driver by reason of orders to pick up and carry a Navy patient is not in a position to offer a patient care or ambulance service.

(c) To recognize that the Medical Department is expected as a matter of policy to cooperate with local authorities in emergencies when this cooperation will not interfere with a Medical Department operation, and that operators of Navy ambulances which are not carrying patients or proceeding under orders to pick up patients are expected to offer, in humanitarian emergency situations, such assistance as they are qualified to render.

(d) In any instance in which an ambulance carrying a patient or proceeding under orders to pick up a patient is stopped or otherwise subjected to interference by State or other local authorities for any reason whatever, including aid to an emergency humanitarian patient: to give courteous information about current orders; to courteously request that compliance with these orders not be subjected to interference; and to report to the commanding officer, for transmittal by the commanding officer to the Judge Advocate General of the Navy, and measures applied by State or local authorities which prevent direct compliance with orders.

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## **1-24**

### **Civil Actions**

(1) **Report.** Any Medical Department officer served with Federal or State court civil or criminal process or pleading arising from actions performed in the course of official duties shall immediately inform his or her commanding officer. The commanding officer shall make a prompt report to the Judge Advocate General per the Manual of the Judge Advocate General. The officer may request representation by a Department of Justice attorney. Requests for representation shall be addressed to the Judge Advocate General and shall

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## **1-25**

### **Restrictions Relative to Prospective Applicants (Regulatory)**

(1) Officers of the medical or dental corps on active duty shall not undertake to operate upon or treat prospective applicants for the Navy or Marine Corps, Regular or Reserve, with a view to correcting defects, disqualifications, and disabilities barring them from enlistment or appointment.