



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
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WASHINGTON, D.C. 20350-1000

SECNAVINST 5300.28C
N313

24 March 1999

SECNAV INSTRUCTION 5300.28C

From: Under Secretary of the Navy
To: All Ships and Stations

Subj: MILITARY SUBSTANCE ABUSE PREVENTION AND CONTROL

Ref: (a) HA Policy Memorandum 9700029 of 13 Feb 97 (NOTAL)
(b) SECNAVINST 5300.29A of 3 Nov 97
(c) DODDIR 1010.7 of 10 Aug 83 (NOTAL)
(d) 21 U.S.C. 801 et. seq. (NOTAL)
(e) 10 U.S.C. 978 (NOTAL)
(f) DODDIR 1010.4 of 3 Sep 97 (NOTAL)
(g) SECDEF Memo of 8 May 89 (NOTAL)
(h) DODDIR 1010.1 of 9 Dec 94 (NOTAL)
(i) OPNAVINST 1620.2A/MCO 1620.2C
(j) SECNAVINST 1910.4B (NOTAL)
(k) SECNAVINST 1920.6A

Encl: (1) Preservice and In-service Military Drug and Alcohol Abuse
(2) Detection and Deterrence of Military Drug and Alcohol Abuse
(3) Definitions

1. Purpose. To establish policies and procedures for the prevention and control of alcohol and drug abuse within the Department of the Navy (DON), under references (a) through (k) and to establish responsibility for their execution. This instruction is a complete revision and should be read in its entirety.

2. Cancellation. SECNAVINST 5300.28B.

3. Applicability. This instruction applies to all Navy and Marine Corps active duty personnel and members of their Reserve components on active duty or inactive-duty training.

4. Policy. The release of information pertaining to treatment and/or rehabilitation programs is subject to Federal laws such as the Privacy Act (5 U.S.C. 552a), Freedom of Information Act (5 U.S.C. 552), as well as the implementing instructions and

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directives. Alcohol and drug abuse by members of the Armed Forces is incompatible with the maintenance of high standards of performance, military discipline, readiness, and reliable mission accomplishment. Therefore, it is the goal of the DON to be free from: the effects of alcohol and drug abuse; the illegal possession of and/or the trafficking of drugs by DON military personnel; and the wrongful possession, use, distribution, or promotion of drugs or drug abuse paraphernalia. To achieve these goals it is the DON policy that:

a. Persons who have any record of drug trafficking offenses or whose patterns of drug involvement indicate dependency shall not be inducted in the Navy or Marine Corps except as provided in enclosure (1).

b. Navy and Marine Corps members shall not at any time unlawfully possess, distribute, or abuse drugs or drug abuse paraphernalia or be under the unauthorized influence of prescribed drugs.

c. Possession, sale, or advertising of drug abuse paraphernalia by Navy and Marine Corps resale outlets is prohibited. The prohibition applies to military exchanges, open messes, and commissaries, and to private organizations and concessions located on DON installations.

d. Military members determined to be using drugs, in violation of applicable provisions of the Uniform Code of Military Justice (UCMJ), Federal, State or local statutes, or who unlawfully engage in the trafficking of drugs or drug abuse paraphernalia, or who are diagnosed as drug dependent shall be disciplined as appropriate, and processed for administrative separation. Additionally, military members who incur a subsequent alcohol incident after entering a prescribed treatment program (successful completion notwithstanding) precipitated by a prior alcohol incident, shall be disciplined as appropriate, and normally processed for administrative separation. Members who are found to be physically dependent on alcohol and/or drug(s) shall, prior to separation, be afforded treatment and/or detoxification by an appropriate medical/alcohol treatment facility based on a medical officer's or Department of Defense (DoD) authorized licensed practitioner's opinion of the necessity of such treatment. Members who have received treatment for alcohol and/or drug dependency and are in a prescribed command-approved aftercare status may not be eligible for another treatment period prior to separation.

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e. Military personnel who are alcohol abusers or alcohol dependent, but who are determined to have a high probability of successful treatment shall be disciplined as appropriate, and provided counseling and/or treatment in order to rehabilitate and restore to full duty as many members as is feasible under enclosure (2).

f. Family members of alcohol or drug dependent military members and, to the extent feasible, others in their household should be counseled and encouraged to participate on a voluntary basis in the member's rehabilitation program.

g. Family members who are themselves alcohol or drug dependent shall be encouraged to enter treatment voluntarily for their own, and the service member's benefit. Eligible beneficiaries shall be referred for evaluation and treatment, as appropriate, to the nearest TRICARE program. Refer to reference (a).

h. Proactive preventive education and counseling programs shall be conducted by commands to help prevent alcohol and drug abuse.

i. Driving While Intoxicated (DWI) or Driving Under the Influence (DUI) is a violation of the UCMJ and shall be handled in accordance with the provisions of reference (b) as required by reference (c).

5. Punitive Regulations Governing the Conduct of DON Military Personnel. For purposes of this paragraph, the definitions of controlled substances, drug abuse paraphernalia, and controlled substance analogues (designer drugs) in enclosure (3) of this instruction apply.

a. Controlled Substance Abuse, Possession, Manufacture, Distribution, Importation, Exportation, and Introduction. Article 112a of the UCMJ prohibits all persons subject to the UCMJ from wrongfully using, possessing, manufacturing, distributing, importing into the United States, or introducing into an installation, vessel, vehicle, or aircraft used by or under the control of the Armed Forces a substance described in subparagraphs (1) and (2) below.

(1) Cannabinoids, cocaine, amphetamine, methamphetamine, morphine, codeine, heroin, phencyclidine, barbituric acid, lysergic acid diethylamide (LSD), anabolic steroids, and any compound, derivative, or isomer of any such substance.

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(2) Any substances not specified in subparagraph (1) which are listed on a Controlled Substances Act (CSA) schedule of controlled substances prescribed by the President under clause (2) of Article 112a UCMJ or which are listed in Schedules I through V of section 202 of the Controlled Substances Act (reference (d)).

b. Drug Abuse Paraphernalia. Except for authorized medicinal purposes, the use, possession, or distribution of drug abuse paraphernalia by persons in the DON is prohibited. A violation of this prohibition by such personnel may result in punitive action under the UCMJ or adverse administrative action or both. Refer to definition of drug abuse paraphernalia in enclosure (3).

c. Other Substance Abuse. The unlawful use by persons in the DON of controlled substance analogues (designer drugs), natural substances (e.g., fungi, excretions), chemicals (e.g., chemicals wrongfully used as inhalants), propellants, and/or a prescribed or over-the-counter drug or pharmaceutical compound, with the intent to induce intoxication or excitement, or stupefaction of the central nervous system, is prohibited and may subject the violator to punitive action under the UCMJ or adverse administrative action or both.

6. Training and Education. Continuing education and training programs shall be conducted and shall focus especially on the identification and prevention of alcohol and drug abuse. These programs shall include, but not be limited to:

a. Training of appropriate military supervisors in detection, recognition, deterrence, enforcement, discipline, intervention, and referral to treatment of alcohol and drug abusers.

b. Training of appropriate military treatment program staff personnel in the counseling and rehabilitation of members with substance abuse-related problems and disorders, alcohol abusers, and drug dependent members.

c. Preventive education in alcohol and drug abuse policy for all DON military personnel and, on a voluntary basis, when feasible, for family members of active duty members.

d. Remedial/motivational education of alcohol abusers with emphasis on behavior modification and motivation toward adoption and achievement of positive goals with the objective of

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satisfactory performance and conduct without further abuse of alcohol.

e. Orientation, education, and training focused on military health care personnel who have an increased risk for alcohol and drug abuse because of easier access to alcohol and drugs within their work environment.

f. Special education for medical personnel responsible for dispensing medication focusing on prevention of drug dependency as an unintended secondary result of authorized medical treatment.

7. Standards of Practice. Programs and standards of practice established in execution of this policy for military personnel and their application to military dependents shall be in compliance with references (a), (e), (f), and (g).

8. Interagency Cooperation. Navy and Marine Corps alcohol and drug abuse program managers shall work in concert with national alcohol abuse and controlled substance abuse prevention programs, maintaining appropriate relationships with governmental and non-governmental agencies.

9. Responsibility. The Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN(M&RA)) is responsible for overall policy and execution of the alcohol and drug abuse prevention and control programs. The Chief of Naval Operations (CNO) and the Commandant Marine Corps (CMC) are responsible for the establishment and conduct of alcohol and drug abuse control programs consistent with this policy guidance, giving specific attention to the functional areas of detection and deterrence, treatment and rehabilitation, preventive education and intervention training, enforcement and discipline, including support of Chief of Naval Research programs as mutually agreed.

a. These programs shall be designed to support functional areas of personnel management, recruiting, retention, and administrative separation.

b. To enhance integration of the total substance abuse prevention and control program, the CNO and CMC shall each establish offices in their respective headquarters to monitor and coordinate all aspects of prevention, detection, testing, deterrence, enforcement, education, training, treatment and rehabilitation.

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c. The CNO shall establish and operate drug testing laboratories, and contract as necessary for testing services, to be fully responsive to the military urinalysis testing requirements of the Navy and Marine Corps.

d. The CNO and CMC shall ensure that procedures related to collection, transmission, testing, storing and documentation in the urinalysis testing program are conducted under a standard procedure conforming to the requirements of reference (h).

e. The DON shall establish and operate flexible alcohol and drug abuse treatment programs. Additionally, the CNO and CMC will provide coordination and integration of these services applying a standardized treatment regimen, following the requirements of reference (a), to be fully responsive to the rehabilitation requirements of the Navy and Marine Corps under this instruction and references (c) and (f).

f. Treatment and rehabilitation programs and standards of practice for eligible family members with substance abuse disorders shall be consistent, to the extent permitted by law and within the limitations in this instruction, with those for military personnel, and with accepted practices in the substance abuse area.

g. The CNO and CMC shall provide alcohol and drug abuse program managers from each respective service to represent DON on military and governmental committees and task groups as may be requested by the Office of the Secretary of Defense. Those representatives may not make policy commitments on behalf of the DON, but shall keep the ASN(M&RA) continuously apprised of actions considered by such groups which would modify or impact upon the effectiveness of DON policies and programs under this instruction.

h. The CNO and CMC shall ensure that appropriate measures are taken to:

(1) Prevent trafficking of controlled substances and drug abuse paraphernalia by Department of Defense and non-Department of Defense personnel, on military ships, aircraft and installations.

(2) Minimize the effect on military personnel of illegal possession and use of controlled substances by civilian employees.

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(3) Provide for off-station enforcement (e.g., establishment of off-limits areas), in compliance with references (c) and (i), when the availability of controlled substances and drug abuse paraphernalia in the civilian community reveals a threat to the discipline, health, welfare or morale of members of the Armed Forces.

(4) Provide guidance and assistance to commanding officers and activity heads to ensure effective execution of alcohol and drug abuse control policies and programs.

(5) Provide training to military and civilian supervisors and counselors in accordance with reference (f).

i. The CNO and CMC shall assure maximum coordination and cooperation through joint participation in a policy committee sponsored by the CNO. The committee shall ensure that Navy and Marine Corps programs demonstrate uniformity and economy of purpose. As part of this cooperation, rehabilitation treatment services will be provided for the Marine Corps. The CMC will provide counselors and administrative assistance to naval treatment centers in appropriate proportion to the numbers of Marine Corps personnel undergoing treatment.

j. The CNO and CMC shall establish procedures for identifying preservice drug users at the point of initial application and in recruit and major initial specialty training programs, accepting for service and continuing only those who are highly likely to meet acceptable standards of performance and conduct without further abuse as provided in enclosure (1).

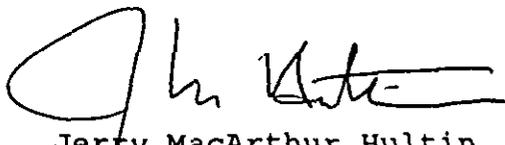
k. The CNO and CMC may request exceptions to these policies for medical, educational, operational or personnel management purposes when deemed essential, and propose changes when needed to meet basic policy objectives, providing supporting justification.

l. The CNO and CMC shall maintain such records to be able to supply data similar to that provided in reference (e) as required to the Office of the Secretary of Defense with copies to ASN(M&RA).

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10. Reports. The reporting requirements contained in this instruction are exempt from reports control per SECNAVINST 5214.2B.



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PRESERVICE AND IN-SERVICE MILITARY DRUG AND ALCOHOL ABUSE

1. Policy. It is Department of the Navy policy that no person who is alcohol and/or drug dependent, who currently abuses alcohol and/or drugs, whose preservice abuse of alcohol and/or drugs indicates a proclivity to continue abuse in the service, or who has a record of any trafficking offenses, be permitted to enter or be retained in the Naval Service.

a. Some people have clear potential to adhere to a substance abuse-free military service despite past substance use/abuse. Preservice use/abuse, as long as the substance use/abuse is completely discontinued upon entry into the Naval Service, is not necessarily disqualifying. Therefore, persons who have abused alcohol or drugs prior to application for military service, but who are not substance dependent, may be considered for entrance on a case-by-case basis. However, the overall record must show the applicant is qualified in all other ways and displays the potential to meet acceptable standards of performance and conduct.

2. Guidelines for Acceptance. The CNO and CMC shall establish recruiting procedures that will screen out individuals whose past drug and/or alcohol abuse was of such a kind, intensity, frequency or duration as to render them unsuitable for enlistment, appointment, or commissioning. Guidelines for acceptance into the Naval Service are as follows:

a. Except as provided for in paragraph 2b, applicants are not eligible for enlistment, appointment, or commissioning if they have:

(1) Ever been convicted of or the subject of action tantamount to conviction of a drug abuse offense;

(2) Ever been psychologically or physically dependent upon any chemical, drug or alcohol;

(3) Ever been a trafficker of drugs.

b. Acceptance may be authorized for applicants in categories a(1) and a(2) on a case-by-case basis when the preservice abuse or dependency was resolved in such a way that there is little likelihood that such behavior will recur. CNO and CMC shall establish procedures for acceptance to preservice

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drug users and alcohol abusers considered to be good risk applicants.

c. Applicants for service as a commissioned officer and for Submarine, Nuclear Power and Personnel Reliability Programs, Medical and Dental rating and other programs requiring an exceptional degree of reliability, dependability or trust and confidence, as designated by the CNO or CMC, may be considered for acceptance under additional special entry criteria established by the CNO and CMC for each program to assure a very low risk of drug-related incidents in such programs.

3. New Entrant Drug Use and Alcohol Testing and Dependency Evaluation. Per references (e) and (g), unless otherwise directed by the Secretary, all new entrants shall be tested for drug and alcohol use and evaluated for dependency within 72 hours after the member's initial entry on active duty (IEAD) following enlistment or appointment. For reserve component members not entering active duty, the tests shall be administered no later than 72 hours after the beginning of the first scheduled annual training or initial active duty training.

a. Testing Policy

(1) All persons covered by this accession program shall be tested for the use of cannabinoids (THC), cocaine and alcohol. The CNO and CMC may direct testing for additional substances as necessary, whenever circumstances warrant expanding the testing program to ensure that individuals using chemicals or drugs are identified at the entry point.

(2) All persons covered by this program shall be medically evaluated for dependency using appropriate medical/psychiatric criteria.

b. Enlisted Separation Policy

(1) Enlisted personnel who refuse to consent to testing or evaluation during IEAD or whose drug test is confirmed positive for cocaine shall be discharged.

(2) Enlisted personnel whose drug test is confirmed positive for cannabinoids alone shall be discharged unless a waiver is granted under criteria established by the CNO and CMC following an individual assessment of the particular case.

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(3) Enlisted personnel whose alcohol test indicates a 0.05 percent blood alcohol level and who are determined not alcohol dependent shall be discharged unless a waiver is granted under criteria established by the CNO and CMC following an individual assessment of the particular case.

c. Officer Separation Policy

(1) Applications for appointment as midshipmen shall be disapproved if the applicant refuses to consent to drug testing or alcohol testing, or if the drug test is confirmed positive for cannabinoids or cocaine, or through medical evaluation the applicant is determined to be dependent on chemicals and/or drugs and/or alcohol.

(2) Appropriate disenrollment action shall be taken against a Naval Reserve Officer Training Corps (NROTC) member and no offer of appointment will be made to such an individual upon refusal to consent to drug or alcohol testing, or if the results indicate a positive drug test for THC or cocaine, or a medical diagnosis of alcohol, chemical or drug dependency is determined. A drug test indicating a drug presence or refusal to consent to drug testing or evaluation may be treated as evidence of misconduct on the part of the NROTC member for the purpose of recoupment or ordering to active duty in an enlisted status. Only those NROTC midshipmen with a confirmed drug test positive for THC alone and who receive a waiver from the Secretary may be ordered to active duty, except during periods of conscription.

(3) Officers who are drug tested after appointment under this policy and are found to use THC or cocaine, or who refuse to consent to substance testing or evaluation, shall be given an uncharacterized discharge unless the separating authority determines that a characterized discharge is more appropriate based upon other misconduct.

(4) Applicants for appointment as midshipmen and officers who are tested after appointment and who are found to have a 0.05 percent blood alcohol level and who are not alcohol dependent shall be denied the appointment established by the CNO and CMC following an individual assessment of the particular case.

4. Post Enlistment Disclosure of Preservice Alcohol and/or Drug Abuse. Military personnel who as applicants disclaim preservice alcohol and/or drug abuse and subsequently admit to preservice

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DETECTION AND DETERRENCE OF MILITARY DRUG AND ALCOHOL ABUSE

1. Policy. Alcohol and/or drug abuse result in the loss of resources, interfere with reliable mission accomplishment and can cost the life of the abusing member, as well as, the lives of others. Effective detection and deterrence programs are essential to prevent and eliminate alcohol and/or drug abuse in the Naval Service. To be effective, detection and deterrence programs must be supported by a rehabilitation program for those who want help, without risk of disciplinary action. It is Department of the Navy (DON) policy to impose a zero tolerance for drug abuse, and to discipline as appropriate for alcohol abuse. Alcohol abusers who are determined to have a potential for future useful service shall be provided counseling and/or treatment and restored to full duty whenever feasible.

a. Alcohol Abuse and Alcoholism. Alcohol abuse and the disease of alcoholism are treatable. Prevention of alcohol abuse is the responsibility of the individual. Enlightened attitudes and techniques by command, supervisory, and health service personnel can help individuals recognize and accept their personal responsibility for its prevention. Less seriously afflicted individuals are also responsible for obtaining treatment. However, the denial by the alcohol dependent member of his or her alcoholism is a common symptom of the illness, and the actively drinking alcohol dependent member is least qualified to diagnose his or her illness and prescribe proper treatment. Restoration of those with potential for further useful abuse-free service is cost effective. Accordingly, it is Department of the Navy policy to identify as early as possible all alcohol dependent military personnel. The DON will treat and provide the required rehabilitation for those members showing potential for further useful service, whether or not they first seek treatment, and effect separation for those members who cannot perform duties free from alcohol abuse after rehabilitation.

b. Drug Use and Drug Dependence. All effective methods shall be employed to identify incidents of drug abuse and to identify and treat military members, whether or not they first seek treatment. Effective detection and deterrence, urinalysis testing, and voluntary self-referral for rehabilitation are the primary methods of drug use identification.

c. Referral of Dependent Separatees. Drug or alcohol dependent members who are to be separated will be given appropriate required treatment by referral to a military treatment facility, or if in the commander's judgment the needs of the service member warrants, to a Medical Treatment Facility in accordance with reference (a).

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2. Detection and Deterrence. To ensure that programs to control alcohol and/or drug abuse among DON personnel are effective and to provide maximum contribution to good order and discipline, individual performance and unit operational readiness, comprehensive actions to detect and deter abuse are necessary. Commanders, commanding officers, and officers in charge shall, within the limits of their resources, make fullest use of administrative and disciplinary procedures including, but not limited to, the following:

a. Employ to the extent feasible trained investigative and enforcement personnel.

b. Request "drug detector dog" team sweeps on frequent but unpredictable schedules.

c. Use urinalysis to support inspection and readiness programs.

d. Schedule frequent inspections and assistance visits.

e. Conduct random inspection of vehicles and personal possessions on entry or exit of vessels, military installations or other property under military control.

f. In every case, without exception, take prompt corrective disciplinary and/or administrative action.

g. When warranted, initiate positive restorative actions such as motivational education coupled with a rigorous, productive work routine and command counseling, or rehabilitation at an outpatient counseling center or residential rehabilitation facility, as appropriate.

h. Monitor the aftercare regimen of rehabilitees after treatment and promptly address any recidivism.

i. Provide prompt and accurate substance abuse-related incident reports as prescribed by CNO and CMC to help identify area "hot spots" and abuse trends, and apply or realign resources to meet the threat. Reporting of onboard alcohol and/or drug abuse problems will be treated like other reports of serious manpower or equipment casualties. The mere fact of reporting incidents will not reflect adversely upon the reporting officer's professional abilities.

j. Develop and maintain the disciplined lifestyle anticipated by virtually all members upon entry into Naval Service. Reinforce historic Navy and Marine Corps customs and

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traditions coupled with strong emphasis on honor, courage, and commitment to establish a climate where substance abuse is not tolerated by the mature officers and enlisted members, is rejected as a matter of choice by the younger leaders, and is generally discouraged through positive peer pressure.

3. A Comprehensive Drug Testing Program

a. The primary drug testing method for DON personnel will be through the Department of Defense certified urinalysis testing program. Detection and deterrence measures will utilize the urinalysis program to disclose drug use among military personnel. Mandatory urinalysis testing of all officers and enlisted members for drugs is authorized under the following four major collection premises:

(1) Inspection - periodic inspections, including unit sweep and random sampling, health and welfare inspections, under Military Rule of Evidence 313.

(2) Search or seizure - a search or seizure under Military Rules of Evidence 312 through 316.

(3) Medical examination - any examination ordered by medical personnel for a valid medical purpose including emergency medical treatment, periodic physical examinations, and such other medical examinations as are necessary for diagnostic or treatment purposes, but not including fitness for duty examinations.

(4) Fitness for Duty - a command-directed examination or referral of a specified member for a valid medical purpose when there is a reasonable suspicion of drug use, and examination of a specified member incident to a mishap or safety investigation, or an examination of a specified member in conjunction with a member's participation in a drug treatment or rehabilitation program. This includes a command-directed examination of a specified individual to determine a member's competency for duty or to ascertain whether a member requires counseling, treatment, or rehabilitation for substance use/abuse.

b. The DON selected urinalysis testing in its certified laboratories as the best method to maintain rigorous scientific standards for the protection of those tested and to ensure the integrity of the program. While other means of substance abuse testing have proliferated, those weighing results contradicting a finding from the certified urinalysis laboratory are reminded to consider carefully the scientific credibility and limits of detection of alternate means of substance abuse testing.

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4. Limitation on Use of Urinalysis Test Results. Results obtained from urinalysis testing under paragraph 3a(4), if not supported by probable cause or valid medical purposes, may not be used against the member in actions under the Uniform Code of Military Justice (UCMJ) or as the basis for the unfavorable characterization of a discharge in separation proceedings, except when used for impeachment or rebuttal purposes in any proceeding in which the evidence of drug abuse (or lack thereof) has been first introduced by the member. Subject to the above limitations, the results of mandatory urinalysis may be used to refer a military member to a treatment or rehabilitation program, to take appropriate disciplinary action, and to establish the basis for separation and characterization of discharge in separation proceedings in accordance with applicable laws and regulations. The results of mandatory urinalysis may be used in other administrative determinations except as otherwise limited in this instruction or under rules issued by the Secretary of the Navy.

5. Statistical and Analytical Studies. Data from urinalysis test results may be used to conduct longitudinal, statistical, and analytical studies of military personnel drug testing and drug usage by military personnel. Demographic data reports regarding drug testing shall not contain personal identifiers in accordance with the provisions of the Privacy Act of 1974 as amended, 5 United States Code, Section 552a. Demographic data reports regarding drug testing may contain information regarding age, gender, rank/rate, specialty, geographic location, military service or component, and related demographic information concerning military personnel, both active duty and reserve. All requests for Service-specific drug testing demographics data shall be approved by DoD Coordinator for Drug Enforcement Policy and Support.

6. Voluntary Self-Referral for Rehabilitation for Drug Abuse

a. All Navy and Marine Corps active duty and reserve personnel who self-refer for drug abuse to qualified self-referral representatives shall be screened for drug dependency at a medical facility and an official determination shall be made. Personnel screened as drug dependent who are confirmed as valid self-referrals shall be exempt from any disciplinary action, processed for administrative separation, and offered treatment as outlined in reference (a).

b. All personnel who self-refer for drug abuse and are subsequently screened as "not drug dependent" will not be eligible for exemption from disciplinary action.

7. Confidentiality of Records. Records of the identity, diagnosis, prognosis, or treatment of any member who has sought or received counseling, treatment, or rehabilitation in any DON substance abuse counseling, treatment, or rehabilitation program which are maintained in connection with such program may not be introduced against the member in a court-martial except as authorized by a court order issued under the standards set forth in 21 U.S.C. 1175 or 42 U.S.C. 290dd-3 and 290ee-3 or for rebuttal or impeachment purposes where evidence of illegal substance use or alcohol abuse (or lack thereof) has first been introduced by the member. It is intended to create an enforceable right of privacy for all medical and rehabilitation records associated with the drug and alcohol program. Except on an administrative discharge proceeding, no medical or rehabilitation record covered by this instruction may be released to any person without the signed consent of the service member or the written order of a military judge.

8. Limitations on Use of Information. Disclosures made by a member to substance abuse screening, counseling, treatment or rehabilitation personnel relating to the member's past substance use/abuse, or possession incident to such use, including disclosures made at Alcoholics Anonymous meetings, Narcotics Anonymous meetings or when attending Navy/Marine Corps preventive education or intervention classes, may not be used against the member in any disciplinary action under the UCMJ or as the basis for characterizing a discharge, provided that the information is disclosed by the member for the express purpose of seeking or obtaining treatment or rehabilitation. This does not preclude the use of disclosed information to establish the basis for separation in a separation proceeding or to take other administrative action, nor does it preclude the introduction of evidence for impeachment or rebuttal purposes in any proceeding in which illegal substance abuse (or lack thereof) has first been introduced by the member. The use of information disclosed by a member to persons other than military substance abuse program personnel is not limited under this paragraph. Similarly, the use of information disclosed in response to official questioning in connection with any investigation or disciplinary proceeding will not be considered information disclosed for the purpose of seeking or obtaining treatment or rehabilitation and is not limited under this paragraph.

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DEFINITIONS

1. The following definitions are for operational use within the military drug and alcohol abuse prevention and control programs of the DON. The terms and provisions of this instruction are not intended to modify or otherwise affect statutory provisions and those regulations or DoD Directives concerned with personnel administration, medical care, or with determination of misconduct and criminal or civil responsibilities for persons acts or omissions.

a. Alcohol Abuse. The use of alcohol to an extent that it has an adverse effect on performance, conduct, discipline, or mission effectiveness, and/or the users health, behavior, family, community, or DON, or leads to unacceptable behavior as evidenced by one or more acts of alcohol-related misconduct. Alcohol abuse is also a clinical diagnosis based on specific diagnostic criteria delineated in the American Psychiatric Association, "Diagnostic and Statistical Manual of Mental Disorders," current edition (DSM), and must be determined by a qualified medical officer (MO) or DoD-authorized licensed practitioner. A diagnosis of alcohol abuse generally requires some form of intervention and treatment.

b. Alcohol Dependence and/or Alcoholism. Psychological and/or physiological reliance on the drug alcohol as indicated by evidence of tolerance or symptoms of withdrawal as characterized by the development of withdrawal symptoms 12 hours or so after the reduction of intake following prolonged, heavy, alcohol ingestion. People are said to be dependent on alcohol when abstinence from use impairs their performance or behavior. Alcohol dependence is a clinical diagnosis based on specific diagnostic criteria delineated in the DSM, and must be determined by an MO or DoD-authorized licensed practitioner. Untreated, alcohol dependence may lead to death.

c. Alcohol-Incident. An offense punishable under the UCMJ or civilian authority committed by a member where, in the judgment of the member's Commanding Officer, the consumption of alcohol was a contributing factor.

d. Anabolic Steroids. Any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, and includes any salt, ester, or isomer of such a drug or substance described or listed in 21 U.S.C. 802, if that salt, ester, or isomer promotes muscle growth.

e. Controlled Substances. Chemical compounds, anabolic steroids or other substance included in Schedule I, II, III, IV,

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or V under reference (d) as updated and republished under the provisions of the Controlled Substance Act, Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and its amendments.

f. Controlled Substance Analogue (Designer Drugs).

(1) Except as provided in subparagraph (2) below, this term means a substance:

(a) The chemical structure of which is substantially similar to the chemical structure of a controlled substance in schedule I or II of reference (d):

(b) Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II of reference (a); or

(c) With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II of reference (d).

(2) Such a term does not include:

(a) A controlled substance;

(b) Any substance for which there is an approved new drug application;

(c) With respect to a particular person any substance, if an exemption is in effect for investigation use, for that person under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) to the extent conduct with respect to such substance is under such exemption; or

(d) Any substance to the extent not intended for human consumption before an exemption takes effect with respect to that substance.

g. DUI/DWI (Driving Under the Influence/Driving While Intoxicated). DUI/DWI refers to the operation of, or being in the physical control of a motor vehicle or craft while impaired by any substance, legal or illegal. Definitions vary slightly from state to state. In most states a recorded blood alcohol content (BAC) for alcohol ranging from 0.08 to 0.10 is prima facie proof of DUI/DWI without any other evidence. It should be

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noted that in many states, drivers can be impaired at levels lower than 0.08 and can be convicted on other evidence without a recorded BAC (see Substantiated DUI/DWI). Additionally, operation of, or being in physical control of a motor vehicle or craft with any recorded BAC for alcohol by a person under the age of 21 may be prima facie evidence of DUI in many states. Further guidance concerning DUI/DWI is contained in Article 111, UCMJ and its analysis.

h. Drug Abuse. The wrongful use of a controlled substance, prescription medication, over-the-counter medication, or intoxicating substance (other than alcohol) to an extent that it has an adverse effect on performance, conduct, discipline, or mission effectiveness, and/or the users health, behavior, family, community, or DON, or leads to unacceptable behavior as evidenced by one or more acts of drug-related misconduct. For purposes of this instruction, drug abuse also includes the intentional inhalation of fumes or gasses of intoxicating substances with the intent of achieving an intoxicating effect on the users mental or physical state, and steroid usage other than that specifically prescribed by a competent authority. Drug abuse is also a clinical diagnosis based on specific diagnostic criteria delineated in the American Psychiatric Association, "Diagnostic and Statistical Manual of Mental Disorders," current edition (DSM), and must be determined by a qualified medical officer (MO) or DoD-authorized licensed practitioner. A diagnosis of drug abuse generally requires some form of intervention and treatment. See definition of wrongful.

i. Drug Abuse Paraphernalia. All equipment, products, and materials of any kind that are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body controlled substance in violation of reference (d). Drug abuse paraphernalia includes, but is not limited to:

(1) Hypodermic syringes, needles and other objects used, intended for use, or designed for use in injecting controlled substances into the human body, and metallic or other containers used for mixing or other preparation of heroin, morphine, or other narcotic substances prior to such an injection;

(2) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing controlled substances (e.g., marijuana, cocaine, or hashish oil) into the human body, such as:

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(a) Pipes, with or without screens, designed for the purpose of smoking marijuana, hashish, or cocaine bearing names such as chamber pipes, carburetor pipes, electric pipes, air-driven pipes, chillums, bonges, ice pipes or chiller, hashish heads, punctured metal bowls, etc.;

(b) Roach clips: meaning objects used to hold burning material, such as a marijuana cigarettes, that has become too small or too short to be held in the hand; and

(c) Cocaine spoons.

(3) The words "equipment, products, and materials" should be interpreted according to their ordinary or dictionary meaning. To insure that innocently possessed objects are not classified as drug abuse paraphernalia, paragraph 6b of the basic instruction makes the criminal intent of the person in possession or control of an object a key element of the definition. Some evidentiary factors to consider in determining this criminal intent, and hence whether an object is illegal drug abuse paraphernalia, are as follows:

(a) Statements by the person in possession or by anyone in control of the object concerning its use;

(b) The proximity of the object, in time and space, to the unlawful use, possession, or distribution of drugs;

(c) The proximity of the object to controlled substances;

(d) The existence of any residue of controlled substances on the object;

(e) Instructions, oral or written, provided with the object concerning its use;

(f) Descriptive materials accompanying the object which explain or depict its use;

(g) The existence and scope of legitimate uses for the object in the community; and

(h) Expert testimony concerning its use.

j. Drug Dependence. Psychological and/or physiological reliance on a chemical or pharmacological agent as such reliance is defined by the DSM. The physiological alteration to the body or state of adaptation to a drug which after repeated use results in the development of, tolerance, and/or withdrawal symptoms when

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discontinued, and/or the psychological craving for the mental or emotional effects of a drug that manifests itself in repeated use and leads to a state of impaired capability to perform basic functions. Drugs have varying degrees of risk of addiction with nicotine and crack cocaine having the highest potential for addiction with very little use. The term does not include the continuing prescribed use of pharmaceuticals as part of the medical management of a chronic disease or medical condition.

k. Drug-Related Incident. Any incident where the use of a controlled substance or illegal drug, or the misuse of a legal drug or intoxicating substance (other than alcohol) is a contributing factor. Mere possession or trafficking in a controlled substance, illegal drug, legal drug intended for improper use, or drug paraphernalia may be classified as a drug-related incident. Additionally, testing positive for a controlled substance, illegal drug or a legal drug not prescribed, may be considered a drug-related incident.

l. Drug Trafficking. The wrongful distribution (includes sale or transfer) of a controlled substance, and/or the wrongful possession or introduction into a military unit, base, station, ship, or aircraft of a controlled substance with the intent to distribute.

m. Inhalant Abuse (Huffing). The intentional inhalation or breathing of gas, fumes or vapors of a chemical substance or compound with the intent of inducing intoxication, excitement, or stupefaction in the user. Nearly all abused inhalants produce effects similar to anesthetics, which slow down the body's function. Varying upon the level of dosage, the user can experience slight stimulation, feeling of less inhibition, loss of consciousness, or suffer from Sudden Sniffing Death Syndrome. (This means the user can die from the first, tenth, or one hundredth time he or she abuses an inhalant.)

n. Marijuana and Cannabis. For purposes of this instruction the terms marijuana and cannabis are used interchangeably. Cannabis is the botanical name for a genus of plants commonly referred to as marijuana.

o. Prevention Program. An ongoing process of planned activities to specifically counter the identified threat of drug and alcohol abuse in a geographical area or command. Prevention programs normally include: threat assessment, policy development and implementation, public information activities, education and training, deglamorization, and evaluation. Effective prevention programs are tailored to the specific area or command, i.e., command-/community-based.

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p. Wrongful. Possession, use, distribution or manufacture of a controlled substance is wrongful if it is without legal justification, authorization or excuse, and includes use contrary to the directions of the manufacturer or prescribing healthcare provider, and use of any intoxicating substance not intended for human ingestion. Possession, use, distribution, or manufacture of a controlled substance is not wrongful if such act or acts are:

(1) Done under legitimate law enforcement activities (e.g., an informant who receives drugs as part an undercover operation is not in wrongful possession),

(2) Done by authorized personnel in the performance of medical duties, or

(3) Without knowledge of the contraband nature of the substance (e.g., a person who possesses cocaine, but actually believes it to be sugar, is not guilty of wrongful possession of cocaine).