

**CONDITIONS AND CIRCUMSTANCES NOT
CONSTITUTING A PHYSICAL DISABILITY: A NEW
CHAPTER**

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When a young Soldier presents with mental health symptoms, the stakes are high. Despite every command effort to support a Soldier, there are times when mental health symptoms, the most severe of which being the desire to cause harm to others or oneself, can increase. Because many mental health conditions develop in early adulthood, ensuring that Soldiers have access to mental health providers quickly is of paramount importance. There are times when the weight of a mental health disorder is too heavy to carry; it is best for a Service member to return to their home of record to rely on the care of their Family members. These circumstances are rare, but due to the high stakes, it is important that every judge advocate understand the fastest administrative separation tools, empowering leaders to help their struggling Service members and treat them with kindness, dignity, and respect.

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Sometimes Soldiers suffer from “conditions and circumstances not constituting a physical disability”¹ (CCnCPD), which can serve as a basis to administratively separate the Soldier under Army Regulation (AR) 635-200, paragraph 5-14.² However, the leaders in their unit frequently misunderstand paragraph 5-14, which is arguably the most confusing provision in AR 635-200. This article examines the regulatory framework surrounding such separations, provides legal practitioners guidance on improving the processing of these separations, and offers recommendations on how to revise the regulation. It explains in practical terms what CCnCPD are for the legal practitioner. It then delves into the legal framework surrounding the separation of Soldiers, including an overview of the applicable legislation, Department of Defense (DoD) regulatory guidance, and Department of the Army guidance for separating Soldiers with CCnCPD. In addition, this article explores the regulatory frameworks established by the Departments of the Navy and Air Force, comparing and contrasting their implementing regulations with that of the Department of the Army. It then addresses immediate actions legal practitioners may take to streamline processing administrative separations under the current iteration of AR 635-200 and further argues for reading a voluntary administrative separation into the regulation.³ Finally, it looks to the future, proposing language for an entirely new chapter.

I. Behavioral Health Conditions

Before addressing the law, legal practitioners should understand the magnitude of behavioral health conditions throughout the U.S. population and, consequently, the military. The National Institute of Mental Health (NIMH) found that 5.5 percent of U.S. adults suffer from serious mental illness (SMI).⁴ However, when narrowed to young adults between

¹ U.S. DEP’T OF DEF., INSTR. 1332.14, ENLISTED ADMINISTRATIVE SEPARATIONS encl. 3, para. 3(a)(8) (27 Jan. 2014) (C7, 23 June 2022) [hereinafter DoDI 1332.14]. This article employs the common term CCnCPD from DoDI 1332.14 instead of the various terms employed by the Services.

² U.S. DEP’T OF ARMY, REG. 635-200, ACTIVE DUTY ENLISTED ADMINISTRATIVE SEPARATIONS para. 5-14 (28 June 2021) [hereinafter AR 635-200].

³ See discussion *infra* section titled “Reading in a Voluntary Separation.” General court-martial convening authorities (GCMCAs) may promulgate a policy letter to administer voluntary separations with a template request.

⁴ *Mental Illness*, NAT’L INST. MENTAL HEALTH, <https://www.nimh.nih.gov/health/statistics/mental-illness> (Mar. 2023).

eighteen and twenty-five years old, that percentage jumps to 11.4 percent.⁵ This figure is significant because the NIMH defines SMI as “a mental, behavioral, or emotional disorder resulting in serious functional impairment, which substantially interferes with or limits one or more major life activities,” such as workplace performance.⁶ Two categories of mental illness, personality and adjustment disorders, merit further discussion as they feature prominently below.⁷

A. Personality Disorders

Within the broader category of behavioral health conditions are personality disorders, which the DoD carves out from other CCnCPD.⁸ Generally, a personality disorder “is an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual’s culture, is pervasive and inflexible.”⁹ Importantly, personality disorders have “*an onset in adolescence or early adulthood*, [are] stable over time, and lead[] to distress or impairment.”¹⁰ Personality disorder refers to a larger group of twelve cognizable disorders that share the previously mentioned criteria.¹¹ A 2007 study of the prevalence of personality disorders in the general population indicates that 9.1 percent of the U.S. population has a personality disorder of some variety, a statistic echoed in the *Fifth Edition of the Diagnostic and Statistical Manual of Mental Disorders* (DSM-5).¹² Personality disorders uniquely affect military ranks, as 45 percent of the active-duty force consists of Soldiers aged twenty-five years or younger—the prime demographic for the onset

⁵ *Id.*

⁶ *Id.*

⁷ See *infra* Sections titled “Overview of Applicable Law and Regulations” to “Rewriting AR 635-200, Paragraph 5-14.”

⁸ See *infra* Section titled “DoDI 1332.14.”

⁹ AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 645 (5th ed. 2013) [hereinafter DSM-5] (emphasis added).

¹⁰ *Id.*

¹¹ *Id.* at 645-46. The twelve cognizable personality disorders are paranoid personality disorder, schizoid personality disorder, schizotypal personality disorder, antisocial personality disorder, borderline personality disorder, histrionic personality disorder, narcissistic personality disorder, avoidant personality disorder, avoidant personality disorder, dependent personality disorder, obsessive-compulsive personality disorder, personality change due to another medical condition, and other specified personality disorder and unspecified personality disorder. *Id.*

¹² Mark F. Lenzenweger et al., *DSM-IV Personality Disorders in the National Comorbidity Survey Replication*, 62 BIOLOGICAL PSYCHIATRY 549, 556 (2007); DSM-5, *supra* note 9, at 646.

of a personality disorder.¹³ Soldiers with a personality disorder are likely to experience interpersonal issues in the workplace, which, if serious enough, may result in adverse action.

B. Adjustment Disorders

In addition to personality disorders, the Army carves out adjustment disorders from other CCnCPD.¹⁴ Unlike personality disorders, the DSM-5 notes that adjustment disorders are common in the general population.¹⁵ Adjustment disorders nest within the larger category of “[t]rauma- and stressor-related disorders,” all of which share one common diagnostic criterion: “exposure to a traumatic or stressful event.”¹⁶ As discussed in the DSM-5, an adjustment disorder diagnosis is appropriate when five criteria are met:

- 1) The development of emotional or behavioral symptoms in response to an identifiable stressor(s) within [three] months of the onset of the stressor(s).
- 2) . . . [C]linically significant [symptoms,] as evidenced by . . . [m]arked distress out of proportion to the severity or intensity of the stressor . . . [and/or] [s]ignificant impairment in social, occupational, or other important areas of functioning.
- 3) The stress-related disturbance does not meet the criteria for another mental disorder and is not merely an exacerbation of a preexisting mental disorder.
- 4) The symptoms do not represent normal bereavement

¹³ U.S. DEP’T OF DEF., 2020 DEMOGRAPHICS: PROFILE OF THE MILITARY COMMUNITY vii (2020).

¹⁴ See AR 635-200, *supra* note 2, para. 5-14; see *infra* section titled “Separation for Other Designated Physical or Mental Conditions.”

¹⁵ DSM-5, *supra* note 9, at 286-87.

¹⁶ *Id.* at 265.

5) Once the stressor or its consequences have terminated, the symptoms do not persist for more than an additional [six] months.¹⁷

The behavioral health provider, command legal team, or chain of command's failure to process Soldiers for separation promptly may result in the loss of a Soldier to suicide, as adjustment disorders correspond with "an increased risk of suicide attempts and completed suicide."¹⁸ Compounding matters, existing treatment regimens limit behavioral health providers, as recent studies conclude that developing standardized treatment plans for behavioral health practitioners requires additional research.¹⁹

II. Overview of Applicable Law and Regulations

With a firm understanding of behavioral health conditions, legal practitioners must next understand the legal framework surrounding CCnCPD administrative separations. Authority to administratively separate a Soldier flows from the U.S. Constitution to the President and Congress,²⁰ the Secretary of Defense, the Services, and the local chain of command for a particular Soldier.

A. Department of Defense Instruction 1332.14

The Secretary of Defense, acting pursuant to 10 U.S.C. § 1169²¹ and through his designee, the Under Secretary of Defense for Personnel and Readiness, promulgated DoD Instruction (DoDI) 1332.14, which implements the various Title 10 provisions as they relate to the separation of enlisted Service members. Enclosure 3 outlines sixteen bases for separation, including a broad category of separations for the convenience of the Government and a category of separations for disability.²² Nested within the nine separations for the convenience of the Government is a

¹⁷ *Id.* at 286-87.

¹⁸ *See id.* at 287.

¹⁹ *See* Paulina Zelviene & Evaldas Kazlauskas, *Adjustment Disorder*, 14 NEUROPSYCHIATRIC DISEASE & TREATMENT 1, 377 (2018).

²⁰ *See* U.S. CONST. arts. I, § 8, II, § 2.

²¹ 10 U.S.C. § 1169 empowers the Secretary of Defense to promulgate regulations governing the separation of Service members from the Armed Forces.

²² *See* DoDI 1332.14, *supra* note 11, encl. 3.

subparagraph titled “Conditions and Circumstances not Constituting a Physical Disability.”²³

1. Conditions and Circumstances Not Constituting a Physical Disability Separations

DoDI 1332.14 authorizes the separation of Service members with CCnCPD “that interfere with assignment to or performance of duty.”²⁴ Within this broad administrative mandate is a carveout for Service members with a “personality disorder, or other mental disorder not constituting a physical disability.”²⁵ An additional carveout exists for those Service members “unsuitable for deployment or worldwide assignment.”²⁶

For all CCnCPD separations relating to physical ailments, such as airsickness and enuresis, DoDI 1332.14 requires that “the enlisted Service member [be] formally counseled on their deficiencies and . . . given an opportunity to correct those deficiencies,” and further notes that “[s]eparation processing will not be initiated until the enlisted Service member has been counseled in writing that the condition does not qualify as a disability.”²⁷ Read another way, this counseling requirement is the only limit for separating Service members with purely physical, non-behavioral health issues that do not constitute a disability.²⁸

Several restrictions, however, exist when separating a Service member for personality disorders and other mental disorders. To begin the process, a behavioral health provider must diagnose the Service member and determine “that the disorder is so severe that the [Service] member’s ability to function effectively in the military environment is significantly impaired.”²⁹ With this diagnosis in hand, the chain of command must clear several administrative hurdles before initiating separation of that Service member.³⁰

²³ *Id.* encl. 3, para. 3(a)(8).

²⁴ *Id.* encl. 3, para. 3(a)(8)(a).

²⁵ *Id.* encl. 3, para. 3(a)(8)(c).

²⁶ *Id.* encl. 3, para. 3(a)(8)(b). The administrative limits for separating Service members for “unsuitab[ility] for deployment or worldwide assignment” are outside the scope of this article. *Id.*

²⁷ *Id.* encl. 3, para. 3(a)(8)(a).

²⁸ *See id.* para. 3(a).

²⁹ *Id.* encl. 3, para. 3(a)(8)(c)(1).

³⁰ *Id.*

First, DoDI 1332.14 implores “supervisors, peers, and others, as necessary to establish that the behavior is persistent,” to document “specific deficiencies,” presumably stemming from the Service member’s behavioral health condition.³¹ If, after being counseled, the “specific deficiencies” continue to manifest themselves in the workplace, then the chain of command has cleared the first administrative hurdle, establishing that “the behavior is persistent, interferes with assignment to or performance of duty, and has continued after the Service member was counseled and afforded an opportunity to overcome those deficiencies.”³²

Second, DoDI 1332.14 requires the Service member to be “counseled in writing on the diagnosis of a personality disorder, or other mental disorder not constituting a physical disability.”³³ However, the instruction does not specify who must conduct this counseling session with the Service member, nor is it clear when to counsel the Service member.³⁴

Finally, the chain of command may not separate Service members “who have served or are currently serving in imminent pay danger areas,” as well as Service members who are the victim of sexual assault or sex-related offenses, intimate partner violence, and spousal-abuse offenses, unless the Surgeon General of their respective service approves the separation.³⁵ DoDI 1332.14 also mandates that “unsatisfactory performance or misconduct” separations trump separation for behavioral health reasons.³⁶

Outside of the limitations placed on the chain of command to involuntarily separate a Soldier, DoDI 1332.14 contemplates voluntary separations for CCnCPD; the regulation places explicit limitations on involuntary CCnCPD separations, which imply the existence of a voluntary separation for CCnCPD, as discussed further below.³⁷

2. Disability Separations

Legal practitioners must also be able to distinguish conditions and circumstances that *do* constitute a physical disability from CCnCPD. Department of Defense Instruction 1332.14 briefly addresses the concept

³¹ *Id.* encl. 3, para. 3(a)(8)(c)(1)(b).

³² *Id.*

³³ *Id.* encl. 3, para. 3(a)(8)(c)(3).

³⁴ *See id.* encl. 3, para. 3(a).

³⁵ *Id.* encl. 3, para. 3(a)(8)(c)(4)–(5).

³⁶ *Id.* encl. 3, para. 3(a)(8)(d).

³⁷ *See id.* encl. 3, para. 3(a)(8)(f); *infra* section titled “Reading in a Voluntary Separation.”

of disability separations in one-half page of text, simply empowering the Services to issue regulatory guidance for the separation of Service members with disabilities.³⁸ Department of Defense Instruction 1332.14 does not define “disability” or “physical disability” and employs both terms interchangeably throughout its text.³⁹ However, DoDI 1332.14 does refer the reader to DoDI 1332.18, which defines a “disability” as:

A medical impairment, mental disease, or physical defect which is severe enough to interfere with the Service member’s ability to adequately perform his or her duties, regardless of assignment or geographic location. A medical impairment, mental disease, or physical defect standing alone does not constitute a disability. The term includes mental disease, but not such inherent defects as developmental or behavioral disorder.⁴⁰

This definition of a “disability” is unhelpful. If a disability, in its most basic form, is (1) some “medical impairment, mental disease, or physical defect” that is (2) “severe enough to interfere with the Service member’s ability to perform his or her duties,”⁴¹ it is unclear what distinguishes it from CCnCPD, which require “conditions and circumstances not constituting a physical disability that interfere with assignment to or performance of duty.”⁴²

Instead, the more illuminating definition is what triggers a Service member’s referral to the Integrated Disability Evaluation System (IDES). A physician may refer a Service member to the IDES if they have: (1) “[o]ne or more medical conditions that may, singularly [or] collectively, . . . prevent the Service member from reasonably performing the duties of their office [or] rank”; (2) “[a] medical condition that represents an obvious medical risk to the health of the member or to the health or safety of other members”; or (3) “[a] medical condition that imposes unreasonable requirements on the military to maintain or protect the Service member.”⁴³ These criteria clarify that a “disability” is an acute

³⁸ See DoDI 1332.14, *supra* note 1, encl. 3, para. 4.

³⁹ See *id.* enc l. 3, *passim*.

⁴⁰ U.S. DEP’T OF DEF., INSTR. 1332.18, DISABILITY EVALUATION SYSTEM Glossary, at 66 (10 Nov. 2022) [hereinafter DoDI 1332.18].

⁴¹ *Id.*

⁴² DoDI 1332.14, *supra* note 1, encl. 3, para. 3(a)(8)(a).

⁴³ DoDI 1332.18, *supra* note 40, sec. 5.2(a).

medical condition,⁴⁴ whereas CCnCPD may or may not interfere with a Service member's ability to perform their duties.⁴⁵ Another way to distinguish between the two terms is that DoDI 1332.18 states that "medical authorities *will* refer eligible Service members into the [disability evaluation system],"⁴⁶ but DoDI 1332.14 provides that commanders, if authorized by their Service secretary, "*may* authorize separation on the basis of [CCnCPD]."⁴⁷

B. Army Regulation 635-200

The Department of the Army implements DoDI 1332.14 through AR 635-200 and includes provisions governing CCnCPD under paragraph 5-14.⁴⁸ This paragraph fits within the broader provisions of the regulation's chapter 5, which lays out "separation for the convenience of the Government,"⁴⁹ and is analogous to the provisions in DoDI 1332.14, enclosure 3, paragraph 3.⁵⁰

1. *Voluntary versus Involuntary Separations*

As noted above, under DoDI 1332.14, the Services may separate Service members both voluntarily and involuntarily for CCnCPD. AR 635-200, paragraph 5-2, unlike DoDI 1332.14, explicitly states that it "contains policies and procedures for voluntary and involuntary separations for the convenience of the Government."⁵¹ However, a careful reading reveals that paragraph 5-14 does not address voluntary separations, and the regulatory language only establishes the parameters for involuntarily separating a Soldier.⁵²

2. *Separation for Other Designated Physical or Mental Conditions*

AR 635-200, paragraph 5-14, provides four distinct CCnCPD, referred to as "[o]ther designated physical or mental conditions," and their prerequisites that may qualify for administrative separation.⁵³ The four sub-bases for separation include adjustment disorder, personality disorder,

⁴⁴ *Id.*

⁴⁵ See DoDI 1332.14, *supra* note 11, encl. 3, para. 3(a)(8).

⁴⁶ DoDI 1332.18, *supra* note 40, sec. 5.2(a) (emphasis added).

⁴⁷ DoDI 1332.14, *supra* note 1, encl. 3, para. 3(a)(8)(a) (emphasis added).

⁴⁸ See AR 635-200, *supra* note 2, para. 5-14.

⁴⁹ See *id.* ch. 5.

⁵⁰ See DoDI 1332.14, *supra* note 1, encl. 3, para. 3.

⁵¹ AR 635-200, *supra* note 2, para. 5-2.

⁵² See *id.* para. 5-14.

⁵³ See *id.*

other mental conditions, and other physical conditions.⁵⁴ This regulatory construct differs substantially from DoDI 1332.14 in that it parses out four sub-bases, discussed in turn below.

a. Adjustment Disorder. The first basis is adjustment disorder, which begins with a behavioral health provider diagnosing the Soldier with the disorder.⁵⁵ After making this diagnosis, the behavioral health provider must obtain corroboration from the installation director of psychological health.⁵⁶ The behavioral health provider must further document three findings to support a separation for adjustment disorder: (1) there have been “one or more incidents of acute adjustment disorder;” (2) the Soldier “does not respond to behavioral health treatment or refuses treatment when one or more treatment modalities have been afforded or attempted;” and (3) “the condition [will] continue to interfere with assignment to or performance of duty even with treatment.”⁵⁷ The behavioral health provider annotates these findings in a Department of the Army Form (DA Form) 3822, Report of Mental Status Evaluation.⁵⁸

Although not explicitly mentioned in paragraph 5-14 of AR 635-200, the behavioral health provider completing the DA Form 3822 should notify the Soldier’s chain of command of the adjustment disorder diagnosis and recommend that the chain of command consider separation under paragraph 5-14.⁵⁹ The importance of this implied task cannot be overstated. Soldiers experiencing “an episode of adjustment disorder [that] has persisted for longer than [six] months . . . must be referred to the [IDES].”⁶⁰

The next step in the process falls to “a responsible official,” typically the company commander, to counsel the Soldier and inform them that their diagnosis of adjustment disorder interferes with the Soldier’s ability to perform their duty.⁶¹ AR 635-200, paragraph 5-14, notes that “[s]eparation processing may not be initiated under this paragraph until the Soldier has been counseled formally, in writing, concerning deficiencies and has been

⁵⁴ See *id.*

⁵⁵ *Id.* para. 5-14(a)(6)(a).

⁵⁶ *Id.* para. 5-14(d).

⁵⁷ *Id.* para. 5-14(a)(6)(a).

⁵⁸ See *id.* para. 5-14(d).

⁵⁹ See *id.* para. 5-14.

⁶⁰ *Id.* para. 5-14(a)(6)(c).

⁶¹ *Id.* paras. 1-17(b), 5-14(j).

afforded ample opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records.”⁶² This “ample opportunity to overcome those deficiencies” stands in contrast to the requirement in DoDI 1332.14 that Service members be given “an opportunity.”⁶³ AR 635-200 does not specify what “ample opportunity to overcome those deficiencies” means, leaving this determination to the chain of command, in consultation with their servicing legal advisor.⁶⁴ In addition to counseling the Soldier about their deficiencies, the commander or other responsible official must inform the Soldier that their adjustment disorder diagnosis “does not qualify as a disability.”⁶⁵

If the Soldier fails to overcome their deficiencies after “ample opportunity,” the chain of command builds the administrative separation file to initiate separation under paragraph 5-14.⁶⁶ In addition to a completed DA Form 3822 and the required counseling statements, the Soldier receives medical screening using a DoD Form (DD Form) 2808 and a DD Form 2807-1.⁶⁷ The Soldier must also complete the Soldier for Life-Transition Assistance Program (SFL-TAP), as with all other separations.⁶⁸

The command then submits all documentary evidence to the servicing legal office to compile the administrative separation file. Unlike other administrative separations, the legal office is not the final stop before initiating separation; rather, the complete administrative separation file must include a DA Form 7771, Enlisted Behavioral-Health Related Administrative Separation Checklist.⁶⁹ In section II of the form, a commander must certify detailed administrative tasks are complete; then, a medical reviewer must certify that they have reviewed the separation packet for conditions that would require review by The Surgeon General

⁶² *Id.* para. 5-14(j).

⁶³ *See* DoDI 1332.14, *supra* note 1, encl. 3, para. 3(a)(8)(c)(2).

⁶⁴ *See* AR 635-200, *supra* note 2, para. 5-14(j).

⁶⁵ *Id.* para. 5-14(j).

⁶⁶ *See id.* para. 5-14.

⁶⁷ *Id.* para. 1-33; U.S. Dep’t of Def., DD Form 2808, Report of Medical Examination (15 July 2019); U.S. Dep’t of Def., DD Form 2807-1, Report of Medical History (29 Oct. 2018).

⁶⁸ *See* U.S. DEP’T OF ARMY, REG. 600-81, SOLDIER FOR LIFE - TRANSITION ASSISTANCE PROGRAM para. 7-2 (17 May 2016) [hereinafter AR 600-81].

⁶⁹ AR 635-200, *supra* note 2, para. 5-14(f); U.S. Dep’t of Army, DA Form 7771, Enlisted Behavioral-Health Related Administrative Separation Checklist (01 June 2021) [hereinafter DA Form 7771].

(TSG).⁷⁰ Once this review is complete, the medical reviewer forwards the complete administrative separation packet to the commander for initiation.

b. Personality Disorder. Personality disorder separations follow the same process as separations for adjustment disorder, but they differ in one key area.⁷¹ Unlike adjustment disorders, the behavioral health provider merely documents the diagnosis and includes a statement in the DA Form 3822 that “the Soldier’s disorder is of sufficient severity to interfere with the Soldier’s ability to function in the military.”⁷² As with adjustment disorders, the behavioral health provider must obtain the installation director of psychological health’s corroboration of the diagnosis.⁷³

c. Other Mental Conditions Not Amounting to a Disability. In addition to personality and adjustment disorders, commanders may also choose to separate Soldiers for “other . . . mental conditions not amounting to disability.”⁷⁴ As with the diagnosis of a personality disorder, the behavioral health provider is not required to document specific findings but must determine “that the Soldier’s disorder is of sufficient severity to interfere with the Soldier’s ability to function in the military” and document it appropriately on a DA Form 3822.⁷⁵ Beyond the difference in diagnosis, other mental condition separations follow the same administrative steps outlined above for adjustment and personality disorders, including corroboration by the installation director of psychological health.⁷⁶

3. *Other Physical Conditions Not Amounting to a Disability.*

As with the aforementioned mental condition administrative separations, the key difference with other physical conditions not amounting to disability is the diagnosis. Army Regulation 635-200 outlines a non-exhaustive list of physical conditions that may qualify, including “airsickness, motion, or travel sickness,” as well as “enuresis.”⁷⁷

⁷⁰ AR 635-200, *supra* note 2, para. 5.14(m); DA Form 7771, *supra* note 69, secs. II, III.

⁷¹ See AR 635-200, *supra* note 2, para. 5-14.

⁷² *Id.* para. 5-14(d).

⁷³ *Id.*

⁷⁴ *Id.* para. 5-14(a).

⁷⁵ *Id.* para. 5-14(d).

⁷⁶ See *id.* para. 5-14.

⁷⁷ *Id.* para. 5-14(a)(1)–(5).

Significantly, separation for other physical conditions does not require the use of the DA Form 7771; instead, an appropriate medical provider must diagnose the Soldier with the condition, determine that the diagnosis “interfere[s] with assignment to or performance of duty,” annotate this finding in the DD Forms 2808 and 2807-1, and forward them to the command team.⁷⁸ Once the command receives the diagnosis, the commander counsels the Soldier “concerning [their] deficiencies” and affords the Soldier “ample opportunity to overcome those deficiencies.”⁷⁹

C. Naval Military Personnel Manual 1900-120

The Department of the Navy differs markedly from the Department of the Army when processing Sailors and Marines for separation due to CCnCPD. The Department of the Navy promulgated Naval Military Personnel Manual (MILPERSMAN) 1900-120 as its regulation for separating Sailors and Marines with physical or behavioral health CCnCPD.⁸⁰ Similar to AR 635-200, behavioral health CCnCPD separations require “an authorized mental health provider” to diagnose the Sailor or Marine and to conclude “that the disorder does not constitute a disability, and is so severe that the member’s ability to function effectively in the military environment is significantly impaired.”⁸¹

Unique to MILPERSMAN 1900-120 is the ability of “[c]ommanding officers, . . . based on a written opinion of appropriate medical providers, [to] determine if the [non-disabling medical] condition warrants an opportunity to overcome the medical condition and the resulting negative impact on performance.”⁸² MILPERSMAN 1900-120 includes “asthmas or allergies” as appropriate for such a determination.⁸³

MILPERSMAN 1900-120 further notes that for “command-initiated” CCnCPD separations (i.e., involuntary separations), the counseling requirement, required under DoDI 1332.14, may be waived when “an appropriate medical provider finds that the condition precludes the

⁷⁸ *Id.* paras. 1-33(h), 5-14(a).

⁷⁹ *Id.* para. 5-14(j).

⁸⁰ U.S. DEP’T OF NAVY, NAVAL MILITARY PERSONNEL MANUAL 1900-120, SEPARATION BY REASON OF CONVENIENCE OF THE GOVERNMENT – MEDICAL CONDITIONS NOT AMOUNTING TO A DISABILITY para. 1(a) (9 Nov. 2018) [hereinafter MILPERSMAN 1900-120].

⁸¹ *Id.* para. 1(b).

⁸² *Id.* para. 1(c).

⁸³ *Id.*

member from overcoming deficiencies.”⁸⁴ This common-sense provision is not explicitly present in AR 635-200, which, as discussed above, mandates counseling.⁸⁵

MILPERSMAN 1900-120’s most significant departure from AR 635-200, however, is the clear delineation of both “command-initiated request[s]” and “Service member-initiated request[s]” for administrative separation.⁸⁶ Addressing command-initiated separations first, the regulation mandates certain procedural hurdles, including: formal notification “via NAVPERS 1070/613 Administrative Remarks entry”; notification “of medical resources (if applicable) that may assist in the member’s retention”; “reasonable time to . . . overcome deficiencies . . . [or] an appropriate medical provider find[ing] that the condition precludes the member from overcoming deficiencies”; and “[d]ocumentation . . . as necessary to establish that the behavior is persistent, interferes with assignment to or performance of duty and has continued after the member was counseled and afforded an opportunity to overcome the deficiencies.”⁸⁷ This command-initiated separation roughly tracks AR 635-200’s involuntary separation requirements for CCnCPD, except for the medical or behavioral health provider waiver of the “reasonable time to . . . overcome deficiencies.”⁸⁸

For Service member-initiated requests, Sailors and Marines may request voluntary separation with the recommendation of their physician or behavioral health provider, but “only after all medical avenues of relief have been exhausted” (a provision not explicitly present in AR 635-200, paragraph 5-14).⁸⁹ MILPERSMAN 1900-120 does not elaborate on the meaning of “exhausted” medical treatment options. A practical reading of the text, however, requires the physician or behavioral health provider to document that the Sailor or Marine failed to respond to treatment for their condition and that further treatment is unlikely to result in a Sailor or Marine who can fulfill their service obligation.⁹⁰

⁸⁴ *Id.* para. 1(g)(1).

⁸⁵ *See* AR 635-200, *supra* note 2.

⁸⁶ *See* MILPERSMAN 1900-120, *supra* note 80, para. 1(g).

⁸⁷ *Id.* para. 1(g)(1).

⁸⁸ *See id.*

⁸⁹ *Id.* para. 1(g)(2).

⁹⁰ *See id.*

MILPERSMAN 1900-120 does add a procedural hurdle absent from AR 635-200: a flag medical officer must review separations for personality disorder.⁹¹ In addition, MILPERSMAN 1900-120 explicitly requires assessment for potential referral to a medical evaluation board (MEB), which AR 635-200 accomplishes through the general medical screening requirements.⁹²

D. Department of the Air Force Instruction 36-3211

Unlike the Department of the Navy, the Department of the Air Force's regulatory guidance for separating Airmen with CCnCPD closely tracks the Army's interpretation of DoDI 1332.14.⁹³ Of note, and unlike AR 635-200,⁹⁴ Department of the Air Force Instruction (DAFI) 36-3211 states that "documentation from the member's supervisory chain" must accompany any separation for CCnCPD in the Air Force, and requires the squadron commander "ensure" the Airman is appropriately counseled.⁹⁵ As with the overarching guidance in DoDI 1332.14⁹⁶ and the Navy's service-specific guidance,⁹⁷ the Air Force⁹⁸ does not further delineate adjustment disorders as the Army does.⁹⁹

E. Processing Separations Under the Current Iteration of AR 635-200

As discussed above, the plain language and implementation of AR 635-200, paragraph 5-14, involve a non-linear process with the potential administrative separation bouncing back and forth between the chain of command, the behavioral health provider, the command legal team, and the separating Soldier. There is, however, a better way to process these separations: empowering the medical or behavioral health provider to complete the counseling requirements of AR 635-200. In addition, medical and behavioral health providers may be empowered to determine, using their medical expertise, whether a Soldier can overcome the physical or mental condition that resulted in the command referring the Soldier for

⁹¹ *Id.* para. 1(j)(1).

⁹² *Id.* para. 1(i); *see also* AR 635-200, *supra* note 2, sec. VI ("Medical Processing").

⁹³ *See* U.S. DEP'T OF AIR FORCE, INSTR. 36-3211, MILITARY SEPARATIONS para. 7.11 (24 June 2022) (C1, 20 Nov. 2023) [hereinafter DAFI 36-3211].

⁹⁴ *See* AR 635-200, *supra* note 2.

⁹⁵ DAFI 36-3211, *supra* note 93, paras. 7.11.1.2, 7.11.2.2.

⁹⁶ *See* DoDI 1332.14, *supra* note 1, encl. 3, para. 3(a)(8).

⁹⁷ *See* MILPERSMAN 1900-120, *supra* note 80.

⁹⁸ *See* DAFI 36-3211, *supra* note 93, para. 7.11.

⁹⁹ *See* AR 635-200, *supra* note 2, para. 5-14(a)(6).

evaluation and possible separation under AR 635-200, paragraph 5-14. Finally, as written, AR 635-200 authorizes general court-martial convening authorities (GCMCAs) to promulgate a policy letter providing for voluntary CCnCPD separations.

1. Counseling

The first improvement concerns the counseling requirement, which the medical or behavioral health provider can and should complete instead of the commander. As discussed above, separating a Soldier for CCnCPD merely requires that “the Soldier has been counseled formally, in writing, concerning deficiencies [and] . . . that the condition does not qualify as a disability.”¹⁰⁰ AR 635-200, paragraph 5-14, does not require the commander or even a member of the chain of command complete this counseling requirement.¹⁰¹ In fact, AR 635-200, paragraph 1-17, discusses counseling generally, and it notes that “commanders will ensure that adequate counseling and rehabilitative measures are taken before initiating separation proceedings” and elaborates that “the commander will ensure that a responsible official formally notifies the Soldier of his or her deficiencies,” although AR 635-200 does not define a “responsible official.”¹⁰² Other requirements in paragraph 1-17 germane to this point include the need for a minimum of one formal counseling session before initiating separation, as well as the need to document counseling sessions in writing.¹⁰³

Because the medical or behavioral health provider may serve as a “responsible official” as contemplated in AR 635-200, paragraph 1-17, the medical or behavioral health provider should do so, as they are better equipped to assess the impact of a medical condition on the Soldier’s performance of the duties of their military occupational specialty. Incorporating the commander or chain of command into this process is not logical; the commander has already referred the Soldier for assessment by a medical or behavioral health provider who has rendered an appropriate medical diagnosis of CCnCPD. It is unnecessary for the commander, who has already had their suspicions of a medical or behavioral health condition confirmed, to counsel the Soldier. Further, the medical or behavioral health provider is best situated to explain the deficiencies to the

¹⁰⁰ *Id.* para. 5-14(j).

¹⁰¹ *See id.* para. 5-14.

¹⁰² *Id.* para. 1-17(a)-(b).

¹⁰³ *Id.* para. 1-17(b).

Soldier, as well as suggest strategies to overcome those deficiencies. In the same counseling, the medical or behavioral health provider may notify the Soldier that their CCnCPD are not a disability.¹⁰⁴ This scheme meets the minimum requirement that the commander “ensure” counseling by a “responsible official.”¹⁰⁵ As long as the counseling is in writing, the medical or behavioral health provider may accomplish it in memorandum format or with a standard DA Form 4856, Developmental Counseling Form.¹⁰⁶

In the field, passing the action back and forth creates the opportunity for the procedural ball to be dropped, leaving the Soldier suffering from the physical or behavioral health condition languishing in the formation. Stated another way, allowing the medical or behavioral health provider to counsel the Soldier reduces friction in an already convoluted process.

Finally, empowering the medical or behavioral health provider to conduct these counseling sessions does not disempower the commander. It is still a command decision to refer the Soldier to a medical or behavioral health provider in accordance with AR 635-200, paragraph 5-14, as well as to initiate separation.

2. *Inability to Overcome the Deficiency*

In addition to placing the medical or behavioral health provider in the figurative driver’s seat to counsel the Soldier, the health provider may issue a written opinion to expeditiously separate Soldiers suffering from CCnCPD. As discussed above, Soldiers must be “afforded ample opportunity to overcome those deficiencies” associated with their CCnCPD, although what exactly “ample opportunity” means is up for debate.¹⁰⁷ A plain reading of AR 635-200 is to provide the Soldier “ample opportunity” in the form of time, with further discretion between the commander and their legal advisor. Questions of what constitutes adequate progress furthers the regulation’s vagueness.

However, a practical solution to satisfying this requirement may be found in MILPERSMAN 1900-120, which authorizes the behavioral health or medical provider to opine on the ability, or lack thereof, of a

¹⁰⁴ See *id.* para. 5-14(j).

¹⁰⁵ See *id.* para. 1-17.

¹⁰⁶ See *id.*; U.S. Dep’t of Army, DA Form 4856, Developmental Counseling Form (01 Mar. 2023).

¹⁰⁷ See *id.* para. 5-14(j); *supra* Section titled “Adjustment Disorder.”

Sailor or Marine to overcome CCnCPD.¹⁰⁸ If a Soldier in the. Army expresses their unwillingness to improve, the medical or behavioral health provider may add language to their counseling statement or to the DA Form 3822 that the Soldier is unwilling to overcome their CCnCPD deficiency. Similarly, the medical or behavioral health provider may include a statement that it is medically impossible for the Soldier to improve and recommend the Soldier for separation under paragraph 5-14 if it is medically demonstrable that the Soldier cannot overcome their physical or behavioral health condition.

F. Reading in a Voluntary Separation

The final improvement to processing AR 635-200, paragraph 5-14, separations is to read in a voluntary separation provision for CCnCPD by promulgating policies at the GCMCA level. The following outlines the legal and regulatory underpinnings, the minimum regulatory requirements to separate a Soldier who requests voluntary separation, and practical considerations for administering voluntary separations.

1. Regulatory Underpinnings

Absent express guidance in AR 635-200, a voluntary separation may only be read into the regulation if supported by the law and regulation. As discussed above, the Secretary of Defense promulgated DoDI 1332.14, which contains policies and procedures for separating Service members for the convenience of the Government, including CCnCPD.¹⁰⁹ DoDI 1332.14 contemplates both voluntary and involuntary separations,¹¹⁰ and AR 635-200, paragraph 5-2, states that “[t]his chapter . . . contains policies and procedures for voluntary and involuntary separations for the convenience of the Government.”¹¹¹ The Army only delineated involuntary separations in AR 635-200, paragraph 5-14, whereas the Navy, in MILPERSMAN 1900-120, clearly defined both voluntary and involuntary administrative procedures to separate Sailors and Marines with CCnCPD.¹¹²

In the absence of detailed guidance, Army commanders may further regulate their formation, regardless of the echelon of command. An

¹⁰⁸ MILPERSMAN 1900-120, *supra* note 80, para. 1(g)(1).

¹⁰⁹ DoDI 1332.14, *supra* note 1, encl. 3.

¹¹⁰ *See id.* encl. 3, para. 3(a)(8)(f).

¹¹¹ AR 635-200, *supra* note 2, para. 5-2.

¹¹² *See* MILPERSMAN 1900-120, *supra* note 80, para. 1(g).

example of such regulation is the common practice of signing a policy letter addressing open-door requests in finer detail than what is outlined in AR 600-20.¹¹³ Similarly, the GCMCA may promulgate regulatory guidance within their jurisdiction to further regulate processing administrative separations. GCMCA's may issue policy letters setting forth the circumstances under which a Soldier can request voluntary separation from the Army, so long as the policy letter articulates the minimum statutory, DoD, and Army-level requirements to separate a Soldier.

2. *Minimum Requirements for a Voluntary Separation for CCnCPD*

If it is possible by regulation for a Soldier to voluntarily separate from the Army, the next step is to determine what baseline requirements must be completed before separation. Some requirements are common to all administrative separations, regardless of voluntariness. All Soldiers separating must obtain a Separation History and Physical Examination (SHPE)¹¹⁴ and complete SFL-TAP.¹¹⁵ Soldiers must complete a DA Form 3822 for any behavioral-health-related separation but not for physical condition separations under AR 635-200, paragraph 5-14.¹¹⁶

Although 10 U.S.C. §§ 1145 and 1177 do not require a medical evaluation for every Service member separating from active duty, DoDI 6040.46 requires that virtually every Service member separating from active duty complete a SHPE using DD Forms 2807-1 and 2808.¹¹⁷ The Army implements this guidance in AR 40-501, mandating that “all [Regular Army] and [Reserve Component] Soldiers separating from [active duty] after serving for 180 days or more, or over 30 days in support of contingency operations, . . . complete a [SHPE].”¹¹⁸ In addition, AR 600-81 mandates “all eligible Soldiers will participate in SFL-TAP transition services” and defines “eligible Soldiers” as virtually any Soldier who served on active duty.¹¹⁹

¹¹³ See U.S. DEP'T OF ARMY, REG. 600-20, ARMY COMMAND POLICY para. 2-2 (24 July 2020).

¹¹⁴ See AR 635-200, *supra* note 2, para. 1-33; U.S. DEP'T OF ARMY, REG. 40-501, STANDARDS OF MEDICAL FITNESS para. 3-37 (27 June 2019) [hereinafter AR 40-501].

¹¹⁵ AR 600-81, *supra* note 68, para. 7-2.

¹¹⁶ AR 635-200, *supra* note 2, para. 5-14(d).

¹¹⁷ U.S. DEP'T OF DEF., INSTR. 6040.46, THE SEPARATION HISTORY AND PHYSICAL EXAMINATION (SHPE) FOR THE DoD SEPARATION HEALTH ASSESSMENT (SHA) PROGRAM secs. 1.2.a., 3.1(a) tbl.1, 3.2(c) (14 Apr. 2016).

¹¹⁸ AR 40-501, *supra* note 114, para. 3-37(b).

¹¹⁹ AR 600-81, *supra* note 68, para. 4-3; see also *id.* para. 7-2.

AR 635-200 further mandates “mental status evaluations,” using the DA Form 3822, for Soldiers separating in lieu of trial by court-martial and for unsatisfactory performance, misconduct, adjustment disorder, personality disorder, and other mental condition separations.¹²⁰ However, purely physical condition separations do not require DA Form 3822.¹²¹

DA Form 3822 is vital for documenting several items for Soldiers separating due to behavioral health conditions. Before requesting voluntary separation, a behavioral health provider must diagnose the Soldier with a qualifying behavioral health condition appropriate for separation under AR 635-200, chapter 5. Thus, the behavioral health provider serves as a gatekeeper to the process, determining whether to refer the Soldier to the IDES due to an acute disability¹²² or whether the Soldier is a candidate for separation due to CCnCPD. The behavioral health provider should document specific findings just as they would document findings to support an involuntary separation if the behavioral health provider “concludes that the disorder is so severe that the [Service] member’s ability to function effectively in the military environment is significantly impaired” and that the Soldier is not an appropriate candidate for processing under the IDES.¹²³ For adjustment disorder,¹²⁴ the provider must determine that: (1) there have been “one or more incidents of acute adjustment disorder,” (2) the Soldier “does not respond to behavioral health treatment or refuses treatment when one or more treatment modalities have been afforded or attempted,” and (3) “[t]he condition will continue to interfere with assignment to or performance of duty even with treatment.”¹²⁵ For personality disorders and other mental conditions not amounting to a disability,¹²⁶ no specific findings are required, only the corroboration of the installation director of psychological health.¹²⁷ Behavioral health providers, in assessing “significant impairment,” must document “specific deficiencies” to “establish that the behavior is persistent [and] interferes with assignment to or performance of duty,” and

¹²⁰ AR 635-200, *supra* note 2, paras. 1-33(b), 5-14(d), 10-3(c)(2).

¹²¹ *See id.* para. 5-14(d).

¹²² *See supra* Section titled “Disability Separations.”

¹²³ DoDI 1332.14, *supra* note 1, encl. 3, para. 3(a)(8)(c)(1).

¹²⁴ *See supra* Section titled “Adjustment Disorder.”

¹²⁵ AR 635-200, *supra* note 2, para. 5-14(a)(6)(a).

¹²⁶ *See supra* Sections titled “Personality Disorder” and “Other Mental Conditions Not Amounting to a Disability.”

¹²⁷ *See* AR 635-200, *supra* note 2, paras. 5-14(a)(7), 5-14(d).

they can capture these in the “Further Comments” section of the DA Form 3822 or in a separate memorandum.¹²⁸

Once the behavioral health provider diagnoses a Soldier and determines that they are an appropriate candidate for separation under AR 635-200, chapter 5, the behavioral health provider could, as discussed above, counsel the Soldier “concerning deficiencies and . . . that the condition does not qualify as a disability.”¹²⁹ During this same counseling session, the behavioral health provider could also notify the Soldier of their ability to request voluntary separation under AR 635-200, chapter 5, as well as the chain of command’s ability to initiate involuntary separation.¹³⁰

DoDI 1332.14 does not merely address behavioral health conditions;¹³¹ it also addresses physical conditions not amounting to a disability, such as airsickness and enuresis (or bedwetting, as it’s more commonly known), as highlighted in AR 635-200, paragraph 5-14.¹³² Such Soldiers must be diagnosed by a medical provider with a qualifying physical condition, and the medical provider must determine that the physical condition “interfere[s] with assignment to or performance of duty,” as documented on a DD Form 2807-1, DD Form 2808, memorandum for record, or another applicable form.¹³³ With this appropriately documented diagnosis, the Soldier may then request voluntary separation under AR 635-200, chapter 5, as further defined in a command policy letter.

3. *Policy Letters to Administer Voluntary Separations for CCnCPD*

First, any policy letter should require that the Soldier requesting voluntary separation affirmatively waive the requirement for formal counseling by the commander. The policy letter should also include, as an enclosure, a template for Soldiers to request voluntary separation. DoDI 1332.14 requires that, for physical CCnCPD, “[s]eparation processing will not be initiated until the enlisted Service member has been formally counseled on their deficiencies and has been given an opportunity to

¹²⁸ See DoDI 1332.14, *supra* note 1, encl. 3, para. 3(a)(8)(c)(1)(b).

¹²⁹ See AR 635-200, *supra* note 2, para. 5-14(j).

¹³⁰ See DoDI 1332.14, *supra* note 11, encl. 3, para. 3(a)(8)(c)(1).

¹³¹ See *id.* encl. 3, para. 3(a)(8)(c).

¹³² See *id.* encl. 3, para. 3(a)(8)(a); AR 635-200, *supra* note 2, para. 5-14(a)(1), (5).

¹³³ See AR 635-200, *supra* note 2, para. 5-14(a).

correct those deficiencies.”¹³⁴ A virtually identical counseling requirement exists for behavioral health-related separations in DoDI 1332.14,¹³⁵ and both of these provisions are echoed in AR 635-200.¹³⁶ At first blush, it appears that this provision means someone in a position of authority must counsel the Soldier and give the Soldier an opportunity to overcome their deficiencies, but a careful reading reveals that this requirement may be sidestepped when the Soldier requests voluntary separation.¹³⁷ AR 635-200, in implementing the general guidance in DoDI 1332.14, is clear that commanders cannot initiate separation prior to taking “adequate counseling and rehabilitative measures,” but the door for the Army to implement the guidance differently and permit Soldiers to request voluntary separation without adequate counseling and rehabilitative measures is wide open.¹³⁸

For an example of how this is accomplished, the Navy authorizes Sailors and Marines to submit requests for voluntary separation and even provides a template for the Sailor or Marine to complete.¹³⁹ The Navy’s template, however, does not address that, absent the Sailor or Marine requesting voluntary discharge, the Sailor or Marine would be entitled to formal counseling and an opportunity to attempt to overcome their deficiency.¹⁴⁰ Accordingly, any template should include language in which the Soldier affirmatively waives their administrative right to formal counseling on deficiencies, as required in DoDI 1332.14.

The policy letter should also include language in which the Soldier acknowledges that their CCnCPD is not a disability to comply with DoDI 1332.14’s second requirement of counseling the Soldier that the condition is not a disability.¹⁴¹ Again, the template in MILPERSMAN 1900-120 serves as an example. The template is a good starting point, as it states, in pertinent part, “I request separation based on the medical condition for which my attending physician believes to exist, but does not amount to a disability per current Navy guidance.”¹⁴² This language may be improved,

¹³⁴ DoDI 1332.14, *supra* note 11, encl. 3, para. 3(a)(8)(a)(1).

¹³⁵ *See id.* encl. 3, para. 3(a)(8)(c)(2).

¹³⁶ *See* AR 635-200, *supra* note 2, para. 1-17.

¹³⁷ *See* DoDI 1332.14, *supra* note 1, encl. 3, para. 3(a)(8)(a)(1).

¹³⁸ *See* AR 635-200, *supra* note 2, para. 1-17(a).

¹³⁹ MILPERSMAN 1900-120, *supra* note 80, para. 1(g)(2), exhibit 2.

¹⁴⁰ *See id.* exhibit 2.

¹⁴¹ DoDI 1332.14, *supra* note 1, encl. 3, para. 3(a)(8)(a)(2).

¹⁴² MILPERSMAN 1900-120, *supra* note 80, exhibit 2.

however, by citing the Army's regulation governing what qualifies as a medical disability.¹⁴³

The third and final DoDI requirement in the request for voluntary separation is the Soldier certifying whether they "served or are currently serving in imminent danger pay areas," "made an unrestricted report of sexual or assault[, or] . . . self-disclosed that they are the victim of a sex-related offense, an intimate partner violence-related offense, or a spousal-abuse related offense during service."¹⁴⁴ The example in MILPERSMAN 1900-120 omits a discussion of such statuses.¹⁴⁵ This is problematic as Soldiers with qualifying statuses require review by TSG.¹⁴⁶

Appendix A combines these points into a template command policy letter for promulgation at the GCMCA level. Appendix B, the enclosure to Appendix A, contains a template request for voluntary separation, incorporating a statement that the Soldier's condition does not amount to a disability, an affirmative waiver of the right to be counseled, the opportunity to correct their deficiencies, and the status certifications that may require elevation to TSG.

III. Rewriting AR 635-200, Paragraph 5-14

The process of separating Soldiers for CCnCPD risks missteps. These issues, collectively, put Soldiers with mental disorders at risk of disciplinary issues or, at worst, potential harm to themselves or others. It is within the power of the Army to do better. By rewriting AR 635-200, paragraph 5-14, and incorporating the Navy's best practices, in addition to their "lessons learned," the Army can better process administrative separations for Soldiers with CCnCPD. The Army can streamline the process by codifying behavioral health and medical provider-led counseling and opine. With these two addendums, plus clear regulatory language establishing a voluntary separation, AR 635-200, paragraph 5-14, would be decidedly improved.

¹⁴³ See AR 40-501, *supra* note 114, ch. 3.

¹⁴⁴ DoDI 1332.14, *supra* note 1, encl. 3, para. 3.a.(8)(c)(4)–(5).

¹⁴⁵ See MILPERSMAN 1900-120, *supra* note 80, exhibit 2.

¹⁴⁶ See DoDI 1332.14, *supra* note 1, encl. 3, para. 3(a)(8)(c)(4)–(5).

A. Streamlining the Involuntary Separation Process

Improvements begin with streamlining and defining the process. The current method is analogous to a game of ultimate frisbee, a series of tosses in which the chain of command, the behavioral health provider, and the command legal team all have an opportunity to drop the frisbee. Unwritten in AR 635-200, paragraph 5-14, is the behavioral health provider's implied task to pass the frisbee and notify the chain of command when they believe a Soldier is suffering from CCnCPD and separation is appropriate. The company commander must then catch the pass, counsel the Soldier, and conduct follow-up counseling as necessary. The command legal advisor can set a pick for the company commander by providing clear guidance on the contents of the counseling statement. Once the counseling is complete, the company command team must forward the packet to the legal team, which assembles the separation file. Then, in the case of a mental CCnCPD, the legal team must again pass the frisbee back to the behavioral health provider to certify their review of the separation packet for conditions that require TSG's review. Finally, the behavioral health provider passes the frisbee to the company commander in the end zone for initiation. At any point in this process, behavioral health and medical provider-led counseling, as well as the behavioral health and medical provider opine, can help avoid failures or delays.

1. Behavioral Health and Medical Provider-Led Counseling

The first key to streamlining this process and shortening the ultimate frisbee field is to empower the behavioral health or medical provider and systemize it in AR 635-200, paragraph 5-14. As discussed above, once the behavioral health or medical provider diagnoses a Soldier with CCnCPD that "interfere with assignment to or performance of duty," they can and should counsel the Soldier on several items. For all CCnCPD, the provider should notify the Soldier of the diagnosis and counsel the Soldier that the diagnosis does not amount to a disability requiring referral to the IDES. Further, the behavioral health provider, in consultation with the company command team, should cite specific deficiencies in the Soldier's duties or assignments that must be remedied, lest the Soldier face involuntary separation under AR 635-200, paragraph 5-14. During this same counseling session, the behavioral health provider should notify the Soldier of their ability to request voluntary separation. If the Soldier does not request voluntary separation, the behavioral health provider may follow up with the Soldier to determine if the Soldier has overcome their specific deficiencies.

The current iteration of AR 635-200, paragraph 5-14, does not specify a timeline for Soldiers to overcome these deficiencies, instead relying on the vague phrase “ample opportunity” to set a time limit.¹⁴⁷ The “ample opportunity” of AR 635-200, paragraph 5-14, should be replaced in favor of DoDI 1332.14’s presumably less-rigorous “an opportunity” standard.¹⁴⁸ Accordingly, when incorporating the “an opportunity” standard, the timeline should reflect a reasonable opportunity, which Appendix C proposes to be thirty calendar days—an entire month for the Soldier to overcome or demonstrate progress towards overcoming their deficiencies.

However, simply empowering the behavioral health provider without adjusting the administrative process is insufficient. A corollary step to behavioral-health-led counseling is to revise the DA Form 7771. This form, mandated in the latest version of AR 635-200, is a new document that designates the behavioral health provider as the protector of the involuntary separation process. Thrusting the behavioral health provider into this role is inconsistent with the way all other administrative separations are conducted under AR 635-200, in which the command legal advisor advises the chain of command on whether the separation packet is complete, and then the Soldier is allowed to seek guidance from military counsel.¹⁴⁹ With the advent of the DA Form 7771, it is insufficient for the command legal team to review the Soldier’s separation file and determine whether the evidence requires TSG’s endorsement before separation; rather, the behavioral health provider must review the complete file and provide their determination as to whether TSG review is required.

Given the oddity of inserting the behavioral health provider into the equation immediately before the initiation of administrative separation, the DA Form 7771 should be revised and completed by the behavioral health provider in their follow-up counseling with the Soldier once the provider determines the Soldier had an opportunity to overcome their specific deficiencies and failed to do so. At that time, a revised DA Form 7771 could screen the Soldier for the factors outlined in the current DA Form 7771’s section III, which require review by TSG.¹⁵⁰

¹⁴⁷ See AR 635-200, *supra* note 2, para. 5-14(j).

¹⁴⁸ See *id.*; DoDI 1332.14, *supra* note 1, encl. 3, para. 3(a)(8)(a)(1), (c)(1)(b).

¹⁴⁹ See AR 635-200, *supra* note 2, para. 2-2(c)(1).

¹⁵⁰ AR 635-200, *supra* note 22, para. 5-14(e), (m) (including Soldiers who have ever been deployed to an imminent danger pay area or been a victim of a sex-related, intimate partner violence-related, or spousal-abuse offense during service in the Army).

With these screening questions complete, the behavioral health provider may contact the chain of command and recommend separation under AR 635-200, paragraph 5-14. If the Soldier recommended for involuntary separation requires review by TSG and the Soldier's chain of command directs involuntary separation, then the behavioral health provider may notify the chain of command and advise them on using the medical technical chain of command to seek TSG's endorsement. Otherwise, this leaves the ill-equipped company command team to determine how to obtain TSG concurrence to involuntarily separate the Soldier. This common-sense revision complies with the direction of DoDI 1332.14, which mandates that TSG of the relevant military department endorses a separation.¹⁵¹

Empowering the behavioral health provider in the text of AR 635-200, paragraph 5-14, to counsel Soldiers with CCnCPD and screen them for TSG review, however, is not enough. More must be done to delineate the process so that the chain of command, the behavioral health provider, the command legal advisor, and the Soldier understand "who's on first."¹⁵²

2. Behavioral Health Provider Opinion to Override Necessity for Rehabilitative Counseling

Taking a page from the Department of the Navy would further streamline the process, where MILPERSMAN 1900-120 authorizes commanders to rely on medical providers' guidance to determine if the CCnCPD "warrants an opportunity to overcome the medical condition and the resulting negative impact on performance."¹⁵³ Similarly, in the Army, if either a behavioral health or medical provider opines, to a preponderance of the evidence standard, that a Soldier will not overcome a deficiency or deficiencies associated with their behavioral health or medical diagnosis, a behavioral health or medical provider should be able to override this requirement based on their medical expertise.

With this expert medical opinion, the chain of command could elect to initiate involuntary separation and determine that this opinion satisfies the "an opportunity" standard in DoDI 1332.14. Once complete, the

¹⁵¹ DoDI 1332.14, *supra* note 11, encl. 3, para. 3(a)(8)(c)(4)–(5).

¹⁵² Bud Abbott and Lou Costello performed this famous comedy sketch various times throughout their careers. *See, e.g., THE NAUGHTY NINETIES* (Universal Films 1945).

¹⁵³ MILPERSMAN 1900-120, *supra* note 80, para. 1(c).

behavioral health or medical provider may note this determination in their counseling statement with the Soldier and notify them that the behavioral health or medical provider is forwarding relevant portions of their file to the chain of command to consider initiating involuntary separation. By explicitly permitting the behavioral health or medical provider to opine on the ability to overcome the CCnCPD and by further empowering behavioral health and medical providers to counsel Soldiers before initiation of involuntary separation for a CCnCPD, the entire involuntary separation process will operate more efficiently.

B. Codifying the Voluntary Separation

The third and final key to re-writing AR 635-200, paragraph 5-14, is establishing a clear voluntary separation option for Soldiers with CCnCPD. As discussed above, a voluntary separation option already exists in chapter 5 of AR 635-200 for Soldiers with CCnCPD, but plain language that defines when and how to request a voluntary separation does not exist. The policy letter and accompanying template mentioned above are ad hoc remedies that may lead to inconsistencies from jurisdiction to jurisdiction throughout the Army. The better remedy is to promulgate regulatory guidance for Soldiers to submit voluntary requests. Accordingly, Appendix C, paragraph n, codifies the guidance delineated in the proposed policy letter in Appendix A, creating a uniform approach for Soldiers to request voluntary separation for CCnCPD. The request for voluntary separation in Appendix B may be included as a figure, referenced in paragraph 5-14, and immediately following paragraph 5-14 for the ease of the Soldier with CCnCPD to request voluntary separation.

IV. Conclusion

The individuals who join the U.S. Army run the gamut of mental wellness and resilience, but not every Soldier who joins can mentally cope with military life due to behavioral health conditions or circumstances. AR 635-200 should empower leaders to address the needs of these Soldiers by being as clear and straightforward as possible. This process has real-world consequences for individuals; either the temporary remedies to improve how the Army addresses CCnCPD administrative separations under the current iteration of AR 635-200, paragraph 5-14, or the proposed rewrite of the paragraph will put both Soldiers and their leaders on more solid footing as they navigate the process.

APPENDIX A



DEPARTMENT OF THE ARMY
ORGANIZATIONAL NAME/TITLE
STANDARDIZED STREET ADDRESS
CITY STATE 12345-6789

OFFICE SYMBOL (ARIMS Record Number)

Date

MEMORANDUM FOR All Unit Name Personnel

SUBJECT: Command Policy Letter #X – Voluntary Separation for Other Designated Physical or Mental Conditions Pursuant to Army Regulation 635-200, Chapter 5

1. Authorities.

- a. 10 U.S.C §1169.
- b. Department of Defense Instruction (DoDI) 1332.14, Enlisted Administrative Separations, 27 January 2014, Incorporating Change 7, 23 June 2022.
- c. Army Regulation (AR) 635-200, Enlisted Administrative Separations, 28 June 2021.
- d. AR 40-501, Standards of Medical Fitness, 27 June 2019.

2. Purpose. This policy memorandum establishes the procedures for Soldiers to request voluntary separation under AR 635-200 for other designated physical or mental conditions.

3. Background.

a. 10 U.S.C §1169 authorized the Secretary of Defense to promulgate policies and procedures for the separation of Service members for the convenience of the government. The Secretary of Defense, acting pursuant to that grant of authority, issued DoDI 1332.14, authorizing the service secretaries to separate Service members for conditions and circumstances not constituting a physical disability, to include requests for voluntary separation, as well as involuntary separation taken by the chain of command. The Secretary of the Army acted on this grant of authority, issuing AR 635-200, paragraph 5-14, to govern the separation of Soldiers for conditions and circumstances not constituting a physical disability, which are referred to as other designated physical or mental conditions by the Department of the Army.

b. AR 635-200, paragraph 5-14, contains guidance for the chain of command to involuntarily separate Soldiers for other designated physical or mental conditions, but the corollary procedures for requests for voluntary separation, which is explicitly authorized in paragraph 5-2, are missing from AR 635-200. This policy letter establishes procedures for Soldiers to request voluntary separation for other designated physical or mental conditions.

SUBJECT: Request for Voluntary Separation for Other Designated Physical or Mental Conditions Pursuant to Army Regulation 635-200, Chapter 5

4. Policy.

a. Qualifying Diagnosis.

(1) Prior to requesting voluntary separation for other designated physical conditions, the Soldier must have a qualifying diagnosis from a medical provider, documented on a DD Form 2807-1, DD Form 2808, other applicable form, or memorandum for record. In the applicable section of the relevant form, or in a separate memorandum for record, the medical provider will document how the diagnosis interferes with the Soldier's assignment to or performance of duty.

(2) Prior to requesting voluntary separation of other designated mental conditions, the Soldier must have a qualifying diagnosis from a behavioral health provider, as documented on a DA Form 3822. In the "Further Comments" section, the behavioral health provider will document specific, persistent deficiencies affecting the ability of the Soldier to function effectively in the military environment.

b. Request for Voluntary Separation. Once appropriately diagnosed with a qualifying physical or mental condition, the Soldier may submit a request for voluntary separation, using the Enclosure to this memorandum as a template. Paragraphs (1) through (5) below outline the minimum requirements to request voluntary separation. Failure to comply with all requirements outlined in paragraphs (1) through (5) below will result in the request being returned to the requestor. In order to request voluntary separation, Soldiers will:

(1) Acknowledge that their condition does not amount to a disability in accordance with AR 40-501. Soldiers with a diagnosis that amounts to a disability must be referred to the Integrated Disability Evaluation System and may not be processed for separation under AR 635-200 for other designated physical or mental conditions.

(2) Affirmatively waive their right to be counseled on deficiencies tied to the Soldiers' physical or mental condition. Soldiers will not be considered for voluntary separation unless they affirmatively waive this right.

(3) Indicate whether they have served or are currently serving in an imminent danger pay area.

(4) Indicate whether they have filed an unrestricted report of sexual assault.

(5) Indicate whether they have self-disclosed that they are the victim of a sex-related offense, an intimate partner violence-related offense, or a spousal abuse offense during service.

SUBJECT: Request for Voluntary Separation for Other Designated Physical or Mental Conditions Pursuant to Army Regulation 635-200, Chapter 5

5. Point of contact for this memorandum is the Chief of Justice, Office of the Staff Judge Advocate, Unit, at XXX-XXX-XXXX or first.mi.last.mil@army.mil.

Encl

FIRST MI. LAST
Major General, USA
Commanding

APPENDIX B



DEPARTMENT OF THE ARMY
ORGANIZATIONAL NAME/TITLE
STANDARDIZED STREET ADDRESS
CITY STATE 12345-6789

OFFICE SYMBOL (ARIMS Record Number)

Date

MEMORANDUM THRU

Company/Troop/Battery Commander
Battalion/Squadron Commander
Brigade/Regimental Commander

FOR Separation Authority

SUBJECT: Request for Voluntary Separation for Other Designated Physical or Mental Conditions Pursuant to Army Regulation 635-200, Chapter 5

1. References.

- a. Army Regulation (AR) 635-200, Enlisted Administrative Separations, 28 June 2021.
- b. AR 40-501, Standards of Medical Fitness, 27 June 2019.
- c. Department of Defense Instruction (DoDI) 1332.14, Enlisted Administrative Separations, 27 January 2014, Incorporating Change 7, 23 June 2022.
- d. Command Policy Letter #X – Voluntary Separation for Other Designated Physical or Mental Conditions Pursuant to Army Regulation 635-200, Chapter 5, X Month 20XX.

2. In accordance with Reference a, I request separation based on the [physical] [mental] condition that my medical provider believes to exist, but does not amount to a disability in accordance with Reference b.

3. In accordance with Reference c, I acknowledge that my condition does not amount to a disability in accordance with Reference b.

4. In accordance with References a and c, I cannot be involuntarily separated until I have been counseled on my deficiencies and given an opportunity to correct those deficiencies. I affirmatively waive this right to be counseled and request voluntary separation prior to the expiration of my term of service.

5. I [have] [have not] served or are currently serving in an imminent danger pay area.

6. I [have] [have not] filed an unrestricted report of sexual assault.

SUBJECT: Request for Voluntary Separation for Other Designated Physical or Mental Conditions Pursuant to Army Regulation 635-200, Chapter 5

7. I [have] [have not] self-disclosed that I am the victim of a sex-related offense, an intimate partner violence-related offense, or a spousal abuse offense during service.

8. Point of contact is the undersigned at XXX-XXX-XXXX or first.mi.last.mil@army.mil.

FIRST MI. LAST
RNK, U.S. Army
Position

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The proposed additional language to AR 635-200 is both bolded and italicized below. Suggested deletions are presented as strikethrough text.

5-14. Other designated physical or mental conditions

a. Excluding conditions appropriate for separation under paragraph 5 – 10, commanders specified in paragraph 1 – 20 may initiate separation under this paragraph on the basis of other physical or mental conditions not amounting to disability (see DoDI 1332.18, AR 40 – 501, and AR 635 – 40) that interfere with assignment to or performance of duty. Such physical or mental conditions may include, but are not limited to:

- (1) Airlsickness, motion, and/or travel sickness.
- (2) Phobic fear of air, sea, and submarine modes of transportation.
- (3) Attention-Deficit/Hyperactivity Disorder.
- (4) Sleepwalking.
- (5) Enuresis.
- (6) Adjustment Disorder (except Chronic Adjustment Disorder).

(a) Soldiers recommended for separation under this paragraph based upon a diagnosis of adjustment disorder must meet the following criteria, *as documented by a behavioral health provider in both the medical record and in formal, written counseling statements with the Soldier (as discussed in paragraph j below)*: Soldier experiences one or more incident(s) of acute adjustment disorder and does not respond to behavioral health treatment (or refuses treatment) when one or more treatment modalities have been offered and/or attempted. *If the condition must* continues to interfere with assignment to or performance of duty even with treatment, *Soldiers will be afforded an opportunity to overcome those deficiencies, as discussed in paragraph j below.*

(b) Duration of adjustment disorder episode must be less than 6 months when separation procedures are initiated. The provider must clearly document in the medical record how the condition interferes with assignment to or performance of duty.

(c) When an episode of adjustment disorder has persisted for longer than 6 months and continues to interfere with assignment to or performance of duty, the Soldier must be referred to the Integrated Disability Evaluation System.

(7) Personality disorder. A personality disorder is an enduring pattern of inner experience and behavior that deviates markedly from cultural expectations, is pervasive and inflexible, is stable over time and leads to clinically significant distress or impairment in functioning. The onset of personality disorder typically occurs in adolescence or early adulthood and may manifest as an inability to adapt to the military environment as opposed to an inability to perform the requirements of specific jobs or tasks (though both may be present in some cases). Observed behavior of specific conditions should be documented in appropriate counseling or personnel records, and should establish that the behavior is persistent, interferes with assignment to or performance of duty, and has continued after the Soldier was counseled and afforded an opportunity to overcome ~~the mental condition~~ those deficiencies, as discussed in paragraph j below.

(8) Other Mental Conditions. In addition to adjustment disorder and personality disorder, other mental conditions, as defined in the Diagnostic and Statistical Manual of Mental Disorders, current edition, exist that do not amount to a disability as defined in DoDI 1332.18, AR 40–501, and AR 635–40. When a Soldier is diagnosed with such a condition that does not amount to a disability, and the condition interferes with the Soldier's assignment to or performance of duty,

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the Soldier will be afforded an opportunity to overcome those deficiencies, as discussed in paragraph j below.

(9) Other Physical Conditions. In addition to the physical conditions outlined in paragraph a(1)–(5) above, other physical conditions may exist that do not amount to a disability as defined in DoDI 1332.18, AR 40–501, and AR 635–40. When a Soldier is diagnosed with such a condition that does not amount to a disability, and the condition interferes with the Soldier's assignment to or performance of duty, the Soldier will be afforded an opportunity to overcome those deficiencies, as discussed in paragraph j below.

b. When a commander is concerned that a Soldier may have a physical or mental condition that interferes with assignment to or performance of duty, the commander will refer the Soldier for a medical examination and/or mental status evaluation in accordance with DoDI 1332.14 and DoDI 6490.04. Mental status evaluations are only required for separation on the basis of mental disorders (not physical conditions), including personality disorders, not amounting to a disability.

c. The evaluation will assess whether PTSD, TBI, depression, sexual assault, and other behavioral health conditions may be contributing factors to the basis for administrative separation.

d. The behavioral health provider will document in the electronic medical record the specific diagnostic criteria for the condition used as the basis for the Soldier's separation action in accordance with the most current edition of the Diagnostic and Statistical Manual of Mental Disorders. A statement indicating that the Soldier's disorder is of sufficient severity to interfere with the Soldier's ability to function in the military must be included. The diagnosis must be established by a privileged mental health provider as defined in DoDI 6490.04. The installation Director of Psychological Health (DPH), or designee, will corroborate the diagnosis and sign the DA Form 3822 (Report of Mental Status Evaluation).

(1) In accordance with paragraph 1 – 33, Soldiers will not be processed for administrative separation under this paragraph if PTSD, TBI, and/or other co-morbid behavioral health conditions are significant contributing factors to the basis for separation, but will instead be evaluated under DES in accordance with AR 635 – 40.

(2) In accordance with paragraph 1 – 34, Soldiers determined to have a medical condition that may not meet medical fitness standards for retention under AR 40 – 501 will be evaluated under DES. Processing under DES takes precedence over administrative separation under this chapter.

(3) In accordance with AR 600 – 85, Soldiers who present with symptoms consistent with alcohol and/or drug use disorder must be referred for further evaluation and treatment.

(4) In accordance with AR 608 – 18, in cases where a mandated referral to the Family Advocacy Program is required based on the Soldier's clinical presentation, documentation must be submitted in order to confirm that a referral was made.

e. In the case of Soldiers who have served or are currently serving in an imminent danger pay area, the installation DPH will corroborate the diagnosis and forward to the Office of The Surgeon General (OTSG), Behavioral Health Division (DASG – HSZ) for final review. OTSG will ensure healthcare provider compliance with the requirements in paragraphs 5–14d(1) through 5–14d(4) and provide a memorandum to the installation DPH. The OTSG review will be included in the separation packet. Soldiers who have never served in an imminent danger pay area do not require review by OTSG.

f. For mental condition separations listed in paragraph a(6)–(8) above, The separation action must include the DA Form 7771 (Enlisted Behavioral-Health Related Administrative Separation

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Screening Checklist). A behavioral health provider will complete the DA Form 7771 prior to forwarding the chain of command for review and consideration of initiation of elimination, as discussed in paragraph j below.

g. Commanders will not take action prescribed in this chapter in lieu of disciplinary action solely to spare a Soldier who may have committed acts of misconduct for which punishment may be imposed under the UCMJ.

h. Separation under this paragraph on the basis of other physical or mental conditions not amounting to a disability is authorized only if the condition is so severe that the Soldier's ability to function effectively in the military environment is significantly impaired. Separation under this paragraph is not appropriate when separation is warranted under chapters 4, 5, 7, 9, 10, 11, 13, 14, or 18, of this regulation; AR 380 – 67; or AR 635 – 40.

i. Nothing in this paragraph precludes separation of a Soldier who has such a condition for other reasons authorized by this regulation.

j. Separation processing may not be initiated under this paragraph until the Soldier has been counseled formally, in writing, *by a behavioral health or medical provider* concerning *their* deficiencies and has been afforded ~~ample~~ *an opportunity, usually 30 calendar days, to demonstrate progress in overcoming, or overcome entirely,* those deficiencies as reflected in appropriate counseling or personnel records (see para 1–17). The Soldier will also be counseled, in writing, that the condition does not qualify as a disability. *Figures X through X below are template counseling statements that behavioral health and medical providers may employ.* Additionally, applicable counseling statements that support separation will be included as part of the separation action and will be uploaded by the TC into IPERMS prior to the administrative separation of the Soldier.

(1) Prior to counseling the Soldier, the behavioral health or medical provider will consult with the chain of command to identify the Soldier's specific deficiencies as they relate to assignment to or performance of duty as it relates to the Soldier's behavioral health or medical diagnosis and afford the Soldier an opportunity to overcome those deficiencies.

(2) If the Soldier fails to overcome those deficiencies, as determined by the behavioral health or medical provider in consultation with the chain of command, the behavioral health or medical provider will forward a copy of the written counseling statements, along with supporting medical documentation, to include a DA Form 3822, DA Form 7771, DD Form 2807-1, and DD Form 2808, as applicable, to the chain of command for review and consideration of initiation of elimination.

(3) Alternatively, if, prior to counseling the Soldier, the behavioral health or medical provider assesses that a mental or physical condition not amounting to a disability cannot be overcome, the behavioral health or medical provider may issue a written opinion documenting this fact to the chain of command. Once issued, the behavioral health or medical provider will counsel the Soldier, notifying the Soldier of the behavioral health or medical provider's opinion, as well as the behavioral health or medical provider's forwarding of the counseling statement, and relevant supporting medical documentation discussed in paragraph j(2) above, to the chain of command for review and consideration of initiation of elimination.

k. When it has been determined that separation under this paragraph is appropriate, the unit commander will take the actions specified in the notification procedure in this regulation under chapter 2, section I; or the administrative board procedure in chapter 2, section II, as applicable.

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I. Separation authority is as follows:

(1) Separation authority for Soldiers separated under this paragraph who are, or have been, deployed to an area designated as an imminent danger pay area, or Soldiers who filed an unrestricted report of sexual assault within 24 months of initiation of separation, is the GCMCA. This authority may not be delegated but may be exercised by a general officer serving as the acting GCMCA. In cases where the sexual assault results in a mental health condition not amounting to a physical disability, and the Soldier is being discharged based solely on such condition, the separation will be per paragraph 5-14i(3).

(2) Separation authority for Soldiers who have been the victim of a sex-related offense, an intimate partner violence-related offense, or a spousal-abuse offense during service in the Army is the GCMCA. This delegation may not be further delegated. Specific instruction for these separation actions are contained in paragraph 5-14m.

(3) Separation authority for Soldiers separated under this paragraph for a physical condition not expressly listed in paragraph 5-14a(1) through 5-14a(7) is the GCMCA. For Soldiers in an entry-level status, this authority may be delegated in writing to the SPCMCA. For separation under this paragraph, for a condition not expressly listed in paragraph 5-14a(1) through 5-14a(7), the separation authority will include a statement that the requirements of this paragraph have been complied with.

(4) In all other cases, the separation authority is the SPCMCA.

m. Before a member of the Armed Forces who was the victim of a sex-related offense, an intimate partner violence related offense, or a spousal-abuse offense during service in the Army (whether or not such offense was committed by another member of the Armed Forces), and who has a mental health condition not amounting to a physical disability, is separated, discharged, or released from the Army based solely on such condition, the diagnosis of such condition must be corroborated by a competent mental healthcare professional at the peer level or a higher level of the healthcare professional making the diagnosis and endorsed by TSG. The endorsement by TSG may not be delegated.

(1) Narrative reason for separation if mental health condition present. If the narrative reason for separation, discharge, or release from the Armed Forces of a member of the Armed Forces is a mental health condition that is not a disability, the appropriate narrative reason for the separation, discharge, or release will be a condition, not a disability, or Secretarial plenary authority under chapter 15.

(2) Definitions. In this section only, the following definitions apply:

(a) Intimate partner violence-related offense. An offense under UCMJ, Art. 128 or UCMJ, Art. 130 or an offense under State law for conduct identical or substantially similar to UCMJ, Art. 128 or UCMJ, Art. 130.

(b) Sex-related offense. An offense under UCMJ, Art. 120 or UCMJ, Art. 120b or an offense under state law for conduct identical or substantially similar to UCMJ, Art. 120 or UCMJ, Art. 120b.

(c) Spousal-abuse offense. An offense under UCMJ, Art. 128 or an offense under state law for conduct identical or substantially similar to UCMJ, Art. 128.

n. For characterization or description of service, see paragraph 5-1.

a. Voluntary Separation.

(1) Qualifying Diagnosis. Prior to requesting voluntary separation, Soldiers must be diagnosed with a qualifying physical or mental condition, as outlined in paragraph a above.

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- (a) A medical provider will document a qualifying physical condition on a DD Form 2807-1, DD Form 2808, other applicable form, or memorandum for record. In the applicable section of the relevant form, or in a separate memorandum for record, the medical provider will document how the diagnosis interferes with assignment to or performance of duty by the affected Soldier.*
- (b) A behavioral health provider will document a qualifying mental condition on a DA Form 3822. In the "Further Comments" section, the behavioral health provider will document how the diagnosis interferes with assignment to or performance of duty by the affected Soldier.*
- (2) Request for Voluntary Separation. Once appropriately diagnosed with a qualifying physical or mental condition, the Soldier may submit a request for voluntary separation, using Figure X as a template. Paragraphs (a) through (e) below outline the minimum requirements to request voluntary separation. Failure to comply with all requirements outlined in paragraphs (a) through (e) below will result in the request being returned to the requestor. In order to request voluntary separation, Soldiers will:*
- (a) Acknowledge that their condition does not amount to a disability in accordance with AR 40-501. Soldiers with a physical or mental condition that amounts to a disability must be referred to the Integrated Disability Evaluation System, and may not be processed for separation under AR 635-200 for other designated physical or mental conditions.*
- (b) Affirmatively waive their right to be counseled on deficiencies tied to the Soldiers' physical or mental condition. Soldiers will not be considered for voluntary separation unless they affirmatively waive this right.*
- (c) Indicate whether they have served or are currently serving in an imminent danger pay area.*
- (d) Indicate whether they have filed an unrestricted report of sexual assault.*
- (e) Indicate whether they have self-disclosed that they are the victim of a sex-related offense, an intimate partner violence-related offense, or a spousal abuse offense during service.*

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