

(b) A person is considered to be acting under the authority of the credential or endorsement while engaged in official matters regarding the credential or endorsement. This includes, but is not limited to, such acts as applying for renewal, taking examinations for raises of grade, requesting duplicate or replacement credentials, or when appearing at a hearing under this part.

(c) A person does not cease to act under the authority of a credential or endorsement while on authorized or unauthorized shore leave from the vessel.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by USCG-2006-24371, 74 FR 11214, Mar. 16, 2009]

§5.59 Offenses for which revocation of credentials or endorsements is mandatory.

An Administrative Law Judge enters an order revoking a respondent's credential or endorsement when—

(a) A charge of misconduct for wrongful possession, use, sale, or association with dangerous drugs is found proved. In those cases involving marijuana, the Administrative Law Judge may enter an order less than revocation when satisfied that the use, possession or association, was the result of experimentation by the respondent and that the respondent has submitted satisfactory evidence that he or she is cured of such use and that the possession or association will not recur.

(b) The respondent has been a user of, or addicted to the use of, a dangerous drug, or has been convicted for a violation of the dangerous drug laws, whether or not further court action is pending, and such charge is found proved. A conviction becomes final when no issue of law or fact determinative of the respondent's guilt remains to be decided.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by USCG-2006-24371, 74 FR 11215, Mar. 16, 2009]

§5.61 Acts or offenses for which revocation of credentials is sought.

(a) An investigating officer seeks revocation of a respondent's credential or endorsements when one of the following acts or offenses is found proved:

(1) Assault with a dangerous weapon.

(2) Misconduct resulting in loss of life or serious injury.

(3) Rape or sexual molestation.

(4) Murder or attempted murder.

(5) Mutiny.

(6) Perversion.

(7) Sabotage.

(8) Smuggling of aliens.

(9) Incompetence.

(10) Interference with master, ship's officers, or government officials in performance of official duties.

(11) Wrongful destruction of ship's property.

(b) An investigating officer may seek revocation of a respondent's credential or endorsements when the circumstances of an act or offense found proved or consideration of the respondent's prior record indicates that permitting such person to serve under the credential or endorsements would be clearly a threat to the safety of life or property, or detrimental to good discipline.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by USCG-2006-24371, 74 FR 11215, Mar. 16, 2009]

§5.65 Commandant's decisions in appeal or review cases.

The decisions of the Commandant in cases of appeal or review of decisions of Administrative Law Judges are officially noticed and the principles and policies enunciated therein are binding upon all Administrative Law Judges, unless they are modified or rejected by competent authority.

§5.67 Physician-patient privilege.

For the purpose of these proceedings, the physician-patient privilege does not exist between a physician and a respondent.

§5.69 Evidence of criminal liability.

Evidence of criminal liability discovered during an investigation or hearing conducted pursuant to this part will be referred to the Attorney General's local representative or other appropriate law enforcement authority having jurisdiction over the matter.

§5.71 Maritime labor disputes.

Under no circumstances will the Coast Guard exercise its authority for the purpose of favoring any party to a

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maritime labor controversy. However, if the situation affecting the safety of the vessel or persons on board is presented, the matter shall be thoroughly investigated and when a violation of existing statutes or regulations is indicated, appropriate action will be taken.

Subpart D—Investigations

§ 5.101 Conduct of investigations.

(a) Investigations may be initiated in any case in which it appears that there are reasonable grounds to believe that the holder of a credential or endorsement issued by the Coast Guard may have:

(1) Committed an act of incompetency, misconduct, or negligence while acting under the authority of a credential or endorsement;

(2) Violated or failed to comply with subtitle II of title 46, U.S.C., a regulation prescribed under this subtitle, or any other law or regulations intended to promote marine safety or to protect the navigable waters, while acting under the authority of a credential or endorsement;

(3) Been convicted of a dangerous drug law violation, or has been a user of, or addicted to the use of, a dangerous drug, so as to be subject to the provisions of 46 U.S.C. 7704.

(b) In order to promote full disclosure and facilitate determinations as to the cause of marine casualties, no admission made by a person during an investigation under this part or part 4 of this title may be used against that person in a proceeding under this part, except for impeachment.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by USCG-2006-24371, 74 FR 11215, Mar. 16, 2009]

§ 5.103 Powers of investigating officer.

During an investigation, the investigating officer may administer oaths, issue subpoenas in accordance with subpart F of this title, and require persons having knowledge of the subject matter of the investigation to answer questions.

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§ 5.105 Course of action available.

During an investigation, the investigating officer may take appropriate action as follows:

(a) Issue complaint.

(b) Accept voluntary surrender of a credential or endorsement.

(c) Accept voluntary deposit of a credential or endorsement.

(d) Refer the case to others for further action. The investigating officer may refer the case to the Commandant or to an Officer in Charge, Marine Inspection, at any port for completion of administrative action if an adequate basis for action is found and the person under investigation and/or witnesses are not locally available.

(e) Give a written warning. The investigating officer may give a warning to any person holding a credential or endorsement. Refusal to accept the written warning will normally result in a withdrawal of the warning and the preferral of charges. An unrejected warning will become a part of the person's record.

(f) Close the case.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by USCG-1998-3472, 64 FR 28075, May 24, 1999; USCG-2006-24371, 74 FR 11215, Mar. 16, 2009]

§ 5.107 Service of complaints.

(a) When the investigating officer determines that an S&R proceeding is appropriate, he or she shall prepare and serve a complaint in accordance with 33 CFR part 20.

(b) When the investigating officer serves the complaint, he or she shall also advise the respondent—

(1) Of the nature of S&R proceedings and their possible results;

(2) Of the right to be represented at the hearing by another person, who may, but need not, be a lawyer;

(3) Of the right to obtain witnesses, records, and other evidence by subpoena; and

(4) That failure or refusal to answer the complaint or to appear at the time, date, and place specified for the hearing may result in a finding of default, which will constitute an admission of the facts alleged in the complaint and