Exploring the Military's Medical Standards in the Context of Low Recruitment Numbers

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I. Introduction

With only 23 percent of American youth eligible for military service without a waiver,[1] due to a myriad of physical, medical, and other conditions, the Defense Department can and should amend Department of Defense Instruction, 6130.03 Volume 1 (DoDI 6130.03 V1),[2] the military's "Medical Standards for Military Service: Appointment, Enlistment, or Induction," to increase the number of eligible and qualified candidates without compromising standards that could impact warfighting.

The U.S. military is suffering a significant recruiting crisis. In 2022, the Army Deputy Chief of Staff, G-1 stated "physical and medical qualifications are among the top disqualifiers for service."[3] Both the United States Army and Navy have even created preparatory courses for recruits who do not meet the services' weight standards.[4] Until recently,[5] the military did not look to overhaul another part of the entrance process responsible for disqualifying individuals from serving, namely the medical processing and review aspects of recruiting. This overhaul has resulted in another new process, Military Health System Genesis (Genesis), which pulls an applicant for accession's past medical history. While Genesis helps to eliminate risks when recruits fail to disclose their medical history, the system has made it more difficult to recruit medically qualified servicemembers, has resulted in more recruits requiring waivers,[6] and has partially

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1. Off. of the Under Sec'y of Def. for Pers. and Readiness, 2020 Qualified Military Available (QMA) Study (2020), https://perma.cc/9JZK-QBF7 [hereinafter 2020 QMA].

2. U.S. Dep't of Def., Instr. 6130.03, Volume 1, Medical Standards for Military Service: Appointment, Enlistment, or Induction 13-55 (Nov. 16, 2022) [hereinafter DoDI 6130.03 V1] (focusing in on section 6 and the conditions listed).

3. Inspector General, U.S. Dep't of Def., Review of the Military Services' Policies and Procedures on the Medical Waiver Process for Recruiting 2 (May 17, 2023) [hereinafter Inspector General's Review]

4. Michael Lee, *Navy follows Army in giving overweight recruits chance to slim down amid deepening recruiting crisis*, Fox News (Mar. 23, 2023, 11:25 AM), https://perma.cc/DD5P-9P92; *see also* Rose Thayer, *Pentagon Reviews Whether 38 Medical Conditions Should Remain Disqualifiers for Military Service*, Stars & Stripes (Mar. 7, 2023), https://perma.cc/JW9T-UPFN.

5. Thayer, *supra* note 4.

6. Irene Loewenson & Geoff Ziezulewicz, *The 'Genesis' of Today's Recruiting Crisis*, Mil. Times (Apr. 10, 2023), https://perma.cc/8TWL-2HAP.

eliminated[7] what used to be an almost completely blind process prior to a service-member's medical evaluation at Military Entrance Processing Stations (MEPS).

A. Inconsistency Across the Military's Accession, Retention, and Deployment Standards

Despite new accession[8] issues posed by Genesis, there are still millions of individuals who are ineligible to join the military even if they meet both the military's weight standards and the military's physical fitness standards. A perfect score on a service branch's physical fitness test (PFT) is not enough to qualify individuals who are permanently disqualified under DoDI 6130.03 V1, the Department of Defense's Medical Standards for Appointment, Enlistment, or Induction in the Military Services. Medical and fitness standards are separate, distinct evaluative processes, and either or both can prevent an individual from joining and staying in the military.

1. 32. C.F.R. part 66

Title 10, Chapter 31 U.S. Code sets minimal requirements and waiver authority regarding military enlistment and there is further guidance specified for enlistment, appointment, and induction in 32 C.F.R. part 66. These provisions direct who has the statutory authority to provide policy, including the Office of the Undersecretary of Defense for Personnel and Readiness, which sets guidance and limitations in the DoDI, specifically DoDI 6130.03. DoDI 6130.03 is the implementing guidance document for the accession and retention in the military services and allows for the Department of Defense to write regulations that are specific and outline what Service Secretaries can and cannot waive. The different services then have additional internal regulations that include further restrictions, based on needs, and service policies specify the procedures for waivers.

For accession purposes, the military has several standards. The military's standard for enlistment resides in 32 C.F.R. Part 66 Qualification Standards for Enlistment, Appointment, and Induction.[9] Title 32 prescribes the general eligibility criteria as it relates to age, citizenship, education, aptitude, medical, fitness, dependency, character/conduct, and drugs and alcohol. 32 C.F.R. Part 66 has two sub-sections we'll focus on here, sub-section (b)(5) covers medical standards and sub-section (b)(6) covers physical fitness standards.

32 C.F.R. Part 66 (b)(6) references DoD Instruction 1308.3, DoD's Physical Fitness/Body Composition Program,[10] and contains pre-accession height and weight standards. Under DoDI 1308.3, the military services must design and

7. *See generally* Phillip N. Ash, *The Bureaucratic Fix to the Military Recruitment Crisis*, COUNCIL ON FOREIGN RELS. (Dec. 21, 2023), https://perma.cc/SBU4-24Z9. Genesis does not encompass every individual's medical records. Thus there are still cases when Genesis may not provide substantial information to medical evaluating officials. *Id.*

8. Accession, as used throughout this paper, is the process through which individuals enter the military.

9. Qualification Standards for Enlistment, Appointment, and Induction, 32 C.F.R. § 66 (2015).

10. U.S. DEP'T OF DEF., INSTR. 1308.3, DOD PHYSICAL FITNESS/BODY COMPOSITION PROGRAM (Mar. 10, 2022).

carry out physical fitness and body composition programs that fit the needs of the service while "maintaining health and fitness for general duty [. . .and] meet occupational-specialty and operationally relevant physical fitness requirements."[11] This will come up later as we examine if the military's medical standards have any bearing or relation to the military's physical fitness standards.

2. DoDI 6130.03 V1 – The Military's Medical Accession Standards

32 C.F.R. Part 66, sub-section (b)(5)[12] references DoDI 6130.03 V1. DoDI 6130.03 V1 is the medical guide for appointment, enlistment, and induction of personnel into the military, and it establishes common medical standards and ensures that individuals being considered for accession into the military are free of conditions that could harm other personnel or lead to loss of duty time; it also states that servicemembers will be medically capable of training, adapting, and performing their duties.[13] DoDI 6130.03 V1 contains the list of disqualifying conditions that would prevent an individual from meeting the standards for appointment, enlistment or induction into the military services.[14] Additionally, DoDI 6130.03 V1 outlines the waiver process under which medical waivers can be requested and adjudicated.[15]

The disqualifying conditions can be found in DoDI 6130.03 V1 section 6; this section is exhaustive, accounting for the majority of the Instruction and amounting to forty pages. Several common medical conditions that are prevalent throughout the general populace are considered potentially disqualifying conditions,[16] including: the use of orthodontic appliances,[17] asthma past age thirteen,[18] use of an inhaled or oral steroid past age thirteen,[19] gastritis,[20] dietary intolerances,[21] irritable bowel syndrome,[22] a history of colon cancer,[23] individuals being treated for acne,[24] history of headaches within the last 24 months,[25] Attention Deficit Hyperactivity Disorder,[26] and history of systemic or acute allergic reac-

11. *Id*.
12. 32 C.F.R. § 66(b)(5).
13. DoDI 6130.03 V1, *supra* note 2, para. 1.2.
14. *See id*. at para. 6.1.
15. *See id*. at paras. 2.4(b) and 5.2(b)-(c).
16. The conditions listed in DoDI 6130.03 V1, *supra* note 2, para. 6 are conditions that do not meet the military's medical standards because of current diagnosis or past medical history. DoD Component's waiver authority for medical conditions can consider a waiver based on available information about the condition as well as the Military's needs. *See* DoDI 6130.03 V1, *supra* note 2, at paras. 5-6.
17. DoDI 6130.03 V1, *supra* note 2, at para. 6.8(g).
18. *See id*. at para. 6.10(e).
19. *See id*. at para. 6.10(c)(2).
20. *See id*. at para. 6.12(b)(1).
21. *See id*. at para. 6.12(c)(4).
22. *See id*. at para. 6.12(c)(9).
23. *See id*. at para. 6.12(c)(11).
24. *See id*. at para. 6.21.
25. *See id*. at para. 6.26(e).
26. *See id*. at para. 6.28(a).

tions.[27] The Secretary of Defense, Service Secretaries, and those delegated with waiver authority have the flexibility to provide individuals with non-permanent disqualifying health conditions a waiver "in individual cases for applicable reasons and ensure uniform waiver determinations."[28] Service waiver authorities review "the permanently disqualified applicant's physical and medical conditions based on the mission of the Services and the retainability and deployability of the applicant."[29] The waiver authority can then issue waivers based on the information they have and the needs of the service.[30] These waivers permit individuals to access into that branch of service. However, it is important to note that many conditions have low rates of waivers.[31] Given that DoDI 6130.03 V1 identifies over forty pages of medical conditions that can disqualify an individual from joining the military,[32] one would think that the military's standards concerning retaining servicemembers and maintaining a healthy and able fighting force are just as rigorous.

3. DoDI 6130.03 V2 – The Military's Medical Retention Standards

Department of Defense Instruction 6130.03, Volume 2 (DoDI 6130.03 V2) is the military's medical standards for retaining servicemembers.[33] DoDI 6130.03 V2 outlines the processes and criteria for retaining or discharging servicemembers based on medical conditions and basic military tasks.[34] Like DoDI 6130.03 V1, DoDI 6130.03 V2 also lists a series of disqualifying medical conditions for retention purposes; this version includes twenty-five pages of describing medical conditions that would result in one's separation from military service.[35]

4. DoDI 6490.07 – The Military's Medical Deployment Standards

Finally, Department of Defense Instruction 6490.07[36] (DoDI 6490.07) consists of the military's "Deployment-Limiting Medical Conditions for Service Members and DoD Civilian Employees." DoDI 6490.07 concerns medical policies, standards, and evaluations for deployment[37] and lists conditions that would bar a servicemember or DoD civilian from deploying.[38] Notably, the disqualifying conditions for deployment are the least stringent, compared to both the

27. *See id*. at para. 6.23(f)-(g).
28. *See id*. at para. 2.4(b).
29. INSPECTOR GENERAL'S REVIEW, *supra* note 3, at 4.
30. *See* DoDI 6130.03 V1, *supra* note 2, at para. 5.2(c)(1).
31. *See generally* WALTER REED ARMY INST. OF RES., ACCESSION MEDICAL STANDARDS ANALYSIS AND RESEARCH ACTIVITY, 2022 ANNUAL REPORT, https://perma.cc/584K-FT5J.
32. *See* DoDI 6130.03 V1, *supra* note 2 (focusing in on section 6 and the conditions listed).
33. U.S. DEP'T OF DEF., INSTR. 6130.03, VOLUME 2, MEDICAL STANDARDS FOR MILITARY SERVICE: RETENTION (Jun. 06, 2022) [hereinafter DoDI 6130.03 V2].
34. *See id*. at paras. 1.2 and 3.2.
35. *See id*. at para. 5.
36. U.S. DEP'T OF DEF., INSTR. 6490.07, DEPLOYMENT-LIMITING MEDICAL CONDITIONS FOR SERVICE MEMBERS AND DOD CIVILIAN EMPLOYEES (Feb. 05, 2010) [hereinafter DoDI 6490.07].
37. *See id*. at para. 4.
38. *See id*. at encl. 3.

accession and retention disqualifiers.[39] While DoDI 6490.07 states that disqualifying conditions from deployment are not "all-inclusive,"[40] the list should be more exhaustive because only the most healthy and fit individuals should be able to deploy, given the physical and mental stress associated with deployments. Right now, the military operates under a sunk cost-like policy; once a servicemember has passed MEPS, the servicemember is in the clear to accumulate health issues that would have previously disqualified them from service. However, these conditions, hypothetically accrued during one's time in service (otherwise the individual would have never passed MEPS) are not necessarily going to disqualify that individual from deploying. If the military opened its aperture to take on medically disqualified individuals, it would not lower the quality of new recruits.

II. BACKGROUND

A. History of Medical Recruitment Standards

The military's rationale for establishing stringent medical accession standards resulted from the growing number of post-World War I disability claims and the heavy financial costs to the government.[41] As a result, during World War II, the U.S. military repeatedly changed its recruiting standards to process enough recruits to sustain the war effort. Prior to the United States' entrance into World War II, the military maintained stringent medical and physical standards, only accepting candidates for enlistment who were fit for unrestricted service.[42] In August 1942, selective service registrants not physically qualified for general military service, but who had specified conditions qualifying them for limited service, were authorized for induction into the military.[43] Recruitment statistics from November 1940 to August 1945 have shown that 35.8 percent of individuals examined for service were rejected.[44]

In comparison, military recruiting statistics prior to the war were more stringent, as more than 50 percent of recruits were rejected.[45] By 1944, General McNair and the U.S. military implemented the "Physical Profile Plan," which sought to categorize individuals and align them to various units.[46] The categories were as follows:

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39. *Compare* DODI 6130.03 V1, *supra* note 2, *with* DODI 6130.03 V2, *supra* note 33, *and with* DODI 6490.07, *supra* note 36.

40. DODI 6490.07, *supra* note 36, at encl. 3.

41. Jade Ryerson, *Unfit for Service: Physical Fitness and Civic Obligation in World War II*, NAT'L PARK SERV. (Oct. 5, 2023), https://perma.cc/347U-P6LL.

42. MED. DEP'T, U.S. ARMY, PHYSICAL STANDARDS IN WORLD WAR II 15-17 (1967).

43. *Id*. at 19.

44. John R. Egan, Lionel Jackson, & Richard H. Eanes, *A Study of Neuropsychiatric Rejectees*, 145 J. AM. MED. ASS'N 466, 466-69 (1951).

45. SELECTIVE SERV. SYS., MED. STAT. BULL. NO. 2. CAUSES OF REJECTION AND INCIDENCE OF DEFECTS 1 (Aug. 1, 1943).

46. ROBERT R. PALMER, BELL I. WILEY, & WILLIAM R. KEAST, THE PROCUREMENT AND TRAINING OF GROUND COMBAT TROOPS 64 (1948).

> Category A, to include "men who must walk as riflemen, litter-bearers and linemen, and are capable of full combat service"; Category B, to include men able to function in service units, or in combat units in jobs carrying a place in the loading chart of a vehicle; and Category C, to include men permanently disqualified for shipment overseas.[47]

With the implementation of these categories, Army units would then formulate their requirements for individuals from each category.[48] During World War II, the U.S. Army Surgeon General's Office considered three main factors for determining whether potential recruits were medically eligible to access:

> (1) the contributions that could be made by persons with certain defects, (2) what the policy should be on the physical rehabilitation of men to make them capable of service, and (3) the merit or legal implications or both of calling in men with physical defects, thereby inviting future claims against the Government.[49]

Further, the Army Medical Service laid out three major areas of focus during the war: "(1) Writing the standards to meet the needs of the country, (2) applying the standards during entrance or separation physical examinations, and (3) keeping personnel physically qualified to meet such standards between acceptance and separation through the application of modern principles of preventive and curative medicine."[50]

The military has not demonstrated that rigid enlistment standards contribute to military readiness or warfighter effectiveness. During times of crisis, medical, academic, and physical standards are lowered due to the need for recruits; during times of peace and/or a smaller standing army, the military can increase those same standards and raise its level of selectivity. In the context of World War II, the Army was careful in lowering standards, attempting to create standards to induct individuals who are "capable of making valuable contributions to the Army, without risk that they may become medical or financial burdens, or a danger to the health of others."[51] During World War II, many limited-service personnel were rated for general duty.[52] In fact, contributions from these personnel, who otherwise may not have been rated for general duty, may have significantly contributed to American success in World War II.

In 1947, the military drastically changed with the reorganization of the War Department and Navy Department into a Department of Defense, which now contained three separate and distinct branches: the Army, Navy, and newly created Air Force.[53] After this reorganization, the military expanded

47. *Id.* at 66.
48. *Id.*
49. *See* MED. DEP'T, U.S. ARMY, *supra* note 42, at 15.
50. *Id.* at 1.
51. *Id.*
52. *Id.* at 17-21.
53. National Security Act of 1947, Pub. L. No. 80-253, 61 Stat. 495 (1947).

in size[54] and integrated personnel and occupations beyond combat arms.[55] With the expansion of non-combat job duties, functions, and units, the military has built out occupational specialties that mirror the duties of many private sector positions. These non-combat arms positions, such as nurses, judge advocates, public affairs specialists, and intelligence analysts, include critical skills that are easily transferrable to a career outside the military. This draws question as to whether the saying "every Marine is a rifleman," as coined by Gen. Alfred Gray at a time when 35 percent of all units were considered combat elements, is valid today.[56] While the famed phrase applies to the Marine Corps, the Army has had a similar mentality over the years by ensuring every individual acceding into the Army is trained to fight. Despite this fact, most of the Army's positional classifications, such as those for officers, do not fall under combat arms.[57]

During the Vietnam War, Secretary of Defense Robert McNamara called for Project 100,000, which lowered physical and aptitude-based military recruiting standards with the aim of increasing the number of eligible individuals who could serve in Vietnam.[58] Despite critics of the program, some have assessed that Project 100,000 did not seriously degrade the military's capability in Vietnam.[59] During Operation Iraqi Freedom, the military again lowered its recruiting standards due to personnel needs. The military began "accepting more enlistees who lack high school diplomas, [. . .] have low scores on the military's aptitude test or receive waivers for criminal and medical problems."[60] Waivers for serious misdemeanors increased over 100 percent from 2005 to 2007, and the percentage of Army personnel with high school diplomas went from almost 100 percent in the 1990s to 79 percent by the mid-2000s.[61] The increase in waivered candidates did not necessarily have a negative impact on the Army; the Army's analysis of this candidate pool showed "that these soldiers tended to have better performance in basic training, re-enlist at a higher rate"[62] and were promoted more quickly, in comparison to those without waivers.[63] At the same time, the Army's analysis showed that recruits who received waivers were more likely to be discharged for

54. Geoff Dyer, *Boots off the Grounds*, FIN. TIMES (Feb. 28, 2014), https://perma.cc/G4HW-AB59.

55. Richard P. Mustion, *Sustaining Our Army Then and Now*, 41 ARMY SUSTAINMENT 25, 25 (2009), https://perma.cc/T3GX-PRXX.

56. Philip Athey, '*Every Marine a Rifleman*' *Still Relevant, Says Sergeant Major of the Corps*, MARINE CORPS TIMES (Apr. 2, 2021), https://perma.cc/W5VH-JLW8.

57. *See* U.S. DEP'T OF THE ARMY, PAM. 611-21, MILITARY OCCUPATIONAL CLASSIFICATION AND STRUCTURE, ch. 2 (2022) [hereinafter PAM. 611-21].

58. *Project 100,000*, U.S. VIETNAM WAR COMMEMORATION (Aug. 23, 1966), https://perma.cc/J96C-TQLK.

59. DAVID A. DAWSON, THE IMPACT OF PROJECT 100,000 ON THE MARINE CORPS 8 (U.S. Marine Corps Hist. and Museums Div., 1995).

60. Steve Inskeep & Tom Bowman, *Army Documents Show Lower Recruiting Standards*, NAT'L PUB. RADIO (Apr. 17, 2008), https://perma.cc/V3LW-X52L.

61. *Id.*

62. *Id.*

63. *Id.*

misconduct, desertion, and alcohol related issues.[64] The Army's analysis is in line with RAND's assessment that waivered recruits do not always perform worse, and sometimes perform better, than similar non-waivered recruits,[65] though RAND's analysis specifically keyed in on marijuana use and behavioral health waivers.

B. Occupational Breakdown by Military Service

Generally, the Army is broken down by basic branches and special branches.[66] This can be further narrowed down into combat arms, combat support arms, and combat services.[67] The Army uses the following guidelines to outline the differences amongst the three: (1) Combat arms are directly involved in fighting and include occupations such as Armor, Aviation, Infantry, and Special Forces; (2) Combat support provide operational assistance to the combat arms and include occupations such as Civil Affairs, Chemical, Corps of Engineers, and Military Intelligence, and Signal Corps; and (3) Combat services who provide combat service support and/or administrative support to the Army and include the Army Medical Department, Chaplain, Finance, Quartermaster, Signal Corps, Logistics, and the Judge Advocate General.[68] While not necessarily a tiered system, the Army has created classes of occupational specialties.[69] Even though many of these specialties have occupation-specific physical fitness requirements,[70] most occupational specialties do not have additional medical requirements outside of those required for entrance.[71]

The Navy has restricted and unrestricted line officers.[72] Restricted line officers cannot take command at sea and often fall into the following career specialties: human resources, professors, engineers, public affairs, foreign affairs, cryptologic, intelligence, cyber and information warfare, and acquisition officers.[73] The Navy also has a separate "Staff Corps" that fall into specialized career fields, to include Medical Corps, Dental Corps, Medical Service Corps, Nurse Corps, Chaplain Corps, Supply Corps, and Judge Advocate General (JAG) Corps.[74] The

64. *Id.*

65. BETH J. Asch, MICHAEL L. HANSEN, ROSANNA SMART, DAVID KNAPP, & DANIEL SCHWAM, AN EMPIRICAL ASSESSMENT OF THE U.S. ARMY'S ENLISTMENT WAIVER POLICIES: AN EXAMINATION IN LIGHT OF EMERGING SOCIETAL TRENDS IN BEHAVIORAL HEALTH AND THE LEGALIZATION OF MARIJUANA 79 (RAND Corp., 2021).

66. PAM. 611-21, *supra* note 57.

67. *Id*. at 3

68. *Id*. at 3

69. *See id*. at 2; *see generally* U.S. DEP'T OF THE ARMY, PAM. 600-3, OFFICER TALENT MANAGEMENT (2023).

70. *See* U.S. DEP'T OF THE ARMY, PAM. 611-21, MILITARY OCCUPATIONAL CLASSIFICATION AND STRUCTURE, ch. 10 (2022).

71. Occupational specialties that have additional medical requirements are found at U.S. DEP'T OF THE ARMY, ARMY REG. 40–501, STANDARDS OF MEDICAL FITNESS (2019).

72. *See* U.S. DEP'T OF NAVY, SEC'Y OF NAVY INSTR. 1400.1C, OFFICER COMPETITIVE CATEGORIES FOR ACTIVE DUTY LIST OF THE NAVY AND MARINE CORPS (2019) [hereinafter SECNAVINST 1400.1C]

73. *Id.*

74. *Staff Corps Communities*, MYNAVY HR, https://perma.cc/PT9T-73TR.

Navy utilizes five duty codes that apply to officers and enlisted sailors, these include shore duty, sea duty, overseas remote land-based sea duty, overseas sea duty, and overseas shore duty.[75] When Navy personnel have medical restrictions, they are usually assigned to limited duty and restricted from sea duty.[76]

Except for the Navy's Supply Corps and the Navy's JAG force, the Navy's Staff Corps also serve with the Marine Corps. In addition to these officers, the Marine Corps has a cadre of restricted duty officers in addition to specialist officers.[77] Although many of the Marine Corps' positions are unrestricted, the following positions are considered limited duty officer positions: cyber, ordnance, ammunition, electronics maintenance, food service, aircraft engineers, meteorology and oceanography, and Marine Band.[78] For many of these positions, there are only certain individuals with the required background and qualification who have the requisite skills necessary to perform such job functions (Marine Band, oceanography and meteorology, and cyber, as a few examples).[79]

Enlisted Air Force positions can generally be characterized into one of the following career groups: operations, logistics, support, medical or dental, legal or chaplain, acquisition or finance, special investigation, or special duty.[80] While Air Force officers are also characterized under those same career groups,[81] the Air Force utilizes officer development categories that include: Air Operations and Special Warfare, Nuclear and Missile Operations, Space Operations, Information Warfare, Combat Support, and Force Modernization.[82] Each of these categories includes various occupational specialties[83] that require different skillsets, and all six groupings provide an understanding of the different career paths in which potential officers may be appointed. For example, under force modernization, there are unique skillsets required such as chemists, nuclear engineers, and physicists;[84] these jobs require rigorous academic coursework and limiting a potentially qualified candidate's ability to apply for one of these positions may hinder the Air Force's ability to fill a critical occupation. Additionally, under the information warfare specialty, there are other unique career specialties that

75. MILPERSMAN 1306-102, TYPE DUTY ASSIGNMENT CODES, para. 1 (Apr. 27, 2007).

76. MILPERSMAN 1300-800, TRANSFER OF PERSONNEL TO OPERATIONAL DUTY, para. 2 (Nov. 14, 2011).

77. *See* U.S. MARINE CORPS, ORDER 1400.31C, MARINE CORPS PROMOTION MANUAL, VOLUME 1, OFFICER PROMOTIONS (2006); SECNAVINST 1400.1C, *supra* note 72.

78. SECNAVINST 1400.1C, *supra* note 72.

79. *See Meteorology & Oceanography Officer (METOC)*, U.S. NAVY, https://perma.cc/7C6T-5529; *Cyber Warfare Engineer*, U.S. NAVY, https://perma.cc/B7ML-JS8H; *Career Information 2023*, U.S. MARINE BAND AND MARINE CHAMBER ORCHESTRA, https://perma.cc/PHK3-UD6N.

80. U.S. DEP'T OF AIR FORCE, AIR FORCE MANUAL 36-2100, MILITARY UTILIZATION AND CLASSIFICATION, table 2.1 (2021).

81. *Id*. at table 2.2.

82. *Air Force Announces New Officer Developmental Categories*, AIR RSRV. PERS. CTR. (October 25, 2019), https://perma.cc/Y9C5-8NF5.

83. Sec. of the Air Force Pub. Affs. and Air Force Reserve Comm. Pub. Affs., *Officer Promotions*, AIR RESERVE PERS. CTR. (2021), https://perma.cc/UMK8-2LNP.

84. *Id*.

require certain non-physical skillsets, such as information operations and cyber operations.[85] Many of the Air Force's occupational specialties require niche skillsets. Limiting applicants with critical skills because they have non-relevant medical conditions that are not essential to perform their job function may harm the Air Force and the other services' abilities to carry out their missions.

C. Combat Units vs. Support Units

Combat units only account for approximately 33 percent of military personnel and one-quarter of the military's operational costs.[86] Today's combat units are supported by two other types of units, support and administrative units.[87] Support and administrative units account for the remaining two-thirds of military personnel; these units span from "engineering, intelligence, civil affairs, ordnance, maintenance, transport" to medical, recruiting, training, acquisitions, and administrative units.[88]

Even with this breakdown, it is important to recognize that about half of servicemembers are never deployed to combat zones.[89] Of the 60 percent of servicemembers who are deployed, the majority never see combat.[90] In fact, only 29 percent of veterans have combat experience.[91] Given that only 23 percent of Americans would qualify for military service without a waiver[92] for a myriad of physical, medical, and other conditions, the Department of Defense must find ways to increase the number of eligible and qualified candidates without compromising standards that could impact warfighting. The military services could all adopt medically restricted and medically unrestricted positions, based on combat and combat support functions. Restricted positions could encompass certain, non-front line occupational specialties, corresponding with locations where medical care could more easily be obtained. Unrestricted positions could include positions that require maximum flexibility when it comes to deployability and additional health and fitness screenings such as those that pilots, submariners, and others undergo to ensure they are fit for duty.[93] The issue with the services shifting towards a restricted and unrestricted model, writ large, would be the creation of a tiered system within the military's ranks, which could lead to disenchantment among servicemembers and between restricted and unrestricted units. Additionally, if war broke out, the military would have to ensure restricted units

85. *Id.*

86. CONG. BUDGET OFF., THE U.S. MILITARY'S FORCE STRUCTURE: A PRIMER, 2021 UPDATE 8 (2021), https://perma.cc/Y3UD-MKN5.

87. *See id*. at 8-10.

88. *Id*. at 9.

89. Kim Parker, Ruth Igielnik, Amanda Barroso, & Anthony Cilluffo, *The American Veteran Experience and the Post-9/11 Generation,* PEW RSCH. INST. (Sept. 10, 2019), https://perma.cc/X6MQ-K5AB.

90. Everett Bledsoe, *What Percentage of The Military Sees Combat?*, SOLDIERS PROJECT (Oct. 1, 2023), https://perma.cc/T46R-JZQM.

91. Parker et al., *supra* note 89.

92. 2020 QMA, *supra* note 1.

93. *See generally* U.S. DEP'T OF NAVY, MANUAL OF THE MED. DEP'T, NAVMED P-117 (2023).

meet medical deployability standards[94] and are trained and physically able to perform both combat support functions and combat functions, when necessary.

III. THE PROBLEM: DODI 6130.03 V1'S ACCESSION DISQUALIFYING CONDITIONS CONTAIN COMMON MEDICAL CONDITIONS THAT MAY NOT IMPACT PERFORMANCE OF A MILITARY OCCUPATION

Approximately 80 percent of the country's young adult population could possibly be disqualified from military service.[95] The top three disqualifiers from military service are weight, drug and alcohol use, and medical/physical health conditions.[96] One area that has not been heavily studied is the military's predilection for automatically disqualifying individuals with pre-existing medical conditions that may have limited bearing on one's ability to serve.

Diving into a few of these conditions shows the true impact banning individuals with such conditions has on attracting and securing recruits for service. Food allergies are one of the most prolific conditions, impacting between four and eight percent of Americans (approximately 20-30 million Americans)[97] and between five to eight percent of Americans seeking to join the military.[98] Acute food allergies[99] are not the only disqualifying food-based condition impacting millions of Americans. Celiac disease impacts at least two million[100] Americans and is a disqualifying condition for military service.[101] On average, it takes four years for an individual to be diagnosed with Celiac disease;[102] and many adults are diagnosed with food allergies.[103] For these reasons, it is likely that there are thousands of individuals in the military who entered without knowledge of a food allergy or Celiac disease and have since been provided care while in the military, especially given documentation regarding the rise in Celiac disease in the military from 2000 to 2021.[104] Furthermore, "military members are required to have an engraved

94. *See* DODI 6490.07, *supra* note 36.

95. Leroy Triggs, *80% of Americans Ages 17 to 24 are Unfit for Military Service*, KSNB (Mar. 19, 2023, 11:50 PM), https://perma.cc/W2EX-8SAB; *See generally 77 Percent of American Youth Can't Qualify for Military Service*, STRONG NATION, (Jan. 24, 2023), https://perma.cc/7HAH-MTXP.

96. 2020 QMA, *supra* note 1.

97. Mitchell Grayson, *Allergy Facts*, ASTHMA AND ALLERGY FOUND. OF AM., (Apr. 2022), https://perma.cc/C7LG-65MM; *see also Facts and Statistics*, FOOD ALLERGY RSCH. & EDUC., https://perma.cc/SX2Z-39GL.

98. Kirk Waibel, Rachel Lee, Christopher Coop, Yun Mendoza, & Kevin White, *Food allergy guidance in the United States military: A work group report from the American Academy of Allergy, Asthma & Immunology's Military Allergy and Immunology Assembly*, 142 J. ALLERGY AND CLINICAL IMMUNOLOGY 54, 54-55 (2018).

99. DODI 6130.03 V1, *supra* note 2, at para. 6.23(g).

100. *Definition & Facts for Celiac Disease,* NAT'L. INST. OF DIABETES AND DIGESTIVE AND KIDNEY DISEASES, CELIAC DISEASE (Oct. 2020), https://perma.cc/9PAT-6X4H.

101. DODI 6130.03 V1, *supra* note 2, at para. 6.12(c)(3).

102. *Celiac Disease Facts and Figures*, UNIV. CHI. MED., https://perma.cc/2SJK-LZ3A.

103. Waibel et al., *supra* note 98.

104. Rachel U. Lee, Shauna L. Stahlman, & Jared S. Magee, *Celiac Disease on the Rise in the US Military Population: A 22 Year Retrospective Epidemiologic Study*, DIGESTIVE DISEASES AND SCIENCES (2023).

medical warning identification tag (i.e., "dog tag") listing any food, medication, or insect allergy and carry an epinephrine autoinjector when indicated."[105] Given these standard procedures, it is evident there is a prevalence of servicemembers with allergies, including those with acute or severe allergies, and that an oral food challenge, the usual precondition for a food-allergy waiver,[106] limits servicemember accession but does not prevent servicemembers from carrying out their duties.

The military outlines five specific reasons for its appointment, enlistment, and induction standards: (1) to prevent disease that could endanger the health of other servicemembers; (2) to prevent time lost from duty; (3) to ensure training can be completed; (4) to prevent limitations on where servicemembers can be stationed; (5) to ensure servicemembers can perform their duties without medical restrictions.[107] Despite these specifications, disqualifying conditions stretch the bounds of the aforementioned reasoning. While the military's rationale for banning certain acute allergies and intolerances is likely due to a concern with servicemembers suffering from severe food-based reactions in hostile environments, the decision to disqualify individuals with acute allergies and intolerances does not fit with the original reason for disqualifying conditions. Consider the following scenario:

> A deployed servicemember suffers from an allergic reaction to peanuts. If that servicemember is in a deployed environment, consumes an MRE with peanuts, and goes into anaphylaxis, they could be far away from medical care or a hospital and pose an undue risk to their fellow servicemembers. However, if that individual is prescribed an EpiPen, his or her reaction could be substantially mitigated and permit them to carry on with their duties as necessary until they can seek appropriate medical care.

This scenario can also be explored through a variety of lenses. If that servicemember is engaged in combat, one could understand the military's concerns that the individual may become incapacitated and/or a burden to their unit. However, if that individual predominantly works on a forward operating base or a major hub (such as Bagram, Afghanistan), then they are likely surrounded by numerous medical personnel who could monitor such a condition and return that servicemember to action within a few hours. Instead of creating baseline bans due to certain medical conditions, the military should look at the condition in the context of an individual's intended occupation.

In that same hypothetical, if that servicemember had disclosed his or her anaphylactic allergy to MEPS, he or she would never have been able to wear a uniform, regardless of his or her physical fitness, aptitude, and/or the need for his or her unique skillset. However, if that same servicemember joined the military

105. *Id.*
106. *Id.*
107. DoDI 6130.03 V1, *supra* note 2, at para. 1.2(d).

without knowing (or stayed silent) about the condition, the military would simply prescribe an EpiPen after the diagnosis and the individual could continue to serve without any restrictions on occupations or deployments.[108] EpiPens were first designed for members of service as an easily deployable tool to troops suffering from exposure to noxious gases.[109] It is understandable that the military does not want servicemembers in the heat of battle accidentally consuming something that may induce a condition like anaphylaxis and putting other servicemembers at risk; at the same time, with the invention of modern medicine, EpiPens are easily transportable, they are permitted for servicemembers deploying to CENTCOM,[110] and deployed medical care has evolved to become extremely effective over the last twenty years.

Another lens through which this can be explored is by looking at the military's ability to provide specific food services for individuals with religious needs. The military must consider a request for separate rations related to a servicemember's religious practice.[111] The military currently provides both halal and kosher Meals-Ready-to-Eat (MRE) packets for both Jewish and Muslim servicemembers.[112] Additionally, the military has MREs for vegetarian servicemembers; the 2023 National Defense Authorization Act even authorized the Defense Logistics Agency to explore the feasibility of vegan MREs.[113] Despite a variety of religion-specific or diet-specific MREs, the military has not provided for nut-free, gluten-free, or other allergy-specific MREs.

Another potential medical disqualifier is asthma, a condition that impacts approximately 25 million Americans. While the military may be quick to view asthma as a justified disqualifier because it is associated with physical fitness and it can be exacerbated by other health conditions, there is reason to take a deeper look into a condition like asthma. The military treats asthma so seriously that any diagnosis of asthma past age thirteen is a medical disqualifier.[114] This is likely short-sighted given that many individuals outgrow asthma after age thirteen[115] and diagnosed asthmatics go on to physically perform equal, or above, their non-asthmatic counterparts. Many individuals once diagnosed with asthma can perform intense physical tasks without any supplemental medicine. All of this draws the need for reevaluation – instead of looking at whether an individual had been

108. Waibel et al., *supra* note 98.

109. *See* Alex Brewer, *All About EpiPen*, HEALTHLINE (Jun. 30, 2023), https://perma.cc/ZH93-5M2U.

110. *See generally* USCENTCOM MOD FIFTEEN TO USCENTCOM INDIVIDUAL PROTECTION AND INDIVIDUAL-UNIT DEPLOYMENT POLICY, para. 7(I)(15) (Apr. 2020), https://perma.cc/7LM8-M22Q [hereinafter USCENTCOM MOD FIFTEEN].

111. U.S. DEP'T OF DEF., INSTR. 1300.17, RELIGIOUS LIBERTY IN THE MILITARY SERVICES, para 3.3 (b) (Feb. 10, 2019).

112. Sarah Sicard, *Will Vegan Meals Finally Join the MRE Lineup?*, MIL. TIMES (Sept. 29, 2022), https://perma.cc/6R5D-UGPR.

113. *See id.*

114. DODI 6130.03 V1, *supra* note 2, at para. 6.10(e).

115. *See Your Child's Asthma*, STAN. MED., (2023), https://perma.cc/U54Y-3SUM.

treated or diagnosed with asthma past age thirteen[116] and "all available information"[117] concerning the medical "issue or condition,"[118] maybe the military should look at asthma and other conditions in the context of an individual's physical fitness level, such as how an individual performs on the service's physical fitness test and the individual's history of physical and/or athletic activity, including if asthma medications were necessary to perform such activities. This would seemingly provide for a more comprehensive evaluation of one's condition, as opposed to a blanket disqualification on individuals with a diagnosis or history of asthma past age thirteen.

The final conditions in the spotlight are acne and dermatitis. Acne is the most common skin condition in the United States, affecting over fifty million Americans.[119] Dermatitis, another skin condition, can affect 10 percent of Americans.[120] While both acne and dermatitis are not permanent disqualifiers, serious conditions may require a waiver prior to accession into the military.

While not an allergy or intolerance, the military recently shifted its policies on Human Immunodeficiency Virus (HIV). In the context of joining the military, HIV was, and still is, considered a permanent disqualifier for individuals desiring to accede into the military.[121] Prior to 2022, HIV positive individuals were severely limited when it came to whether or not they could commission, deploy, or even discharged.[122] With the release of updated standards, individuals who are already in the military and are "HIV positive, asymptomatic, and who have a clinically confirmed undetectable viral"[123] load no longer face the same in-service restrictions they were previously subject to.

These are just a sampling of the conditions that can disqualify individuals from serving. The military's disqualifying conditions from entrance are extensive, however, the military's deployment-disqualifying conditions are far less stringent[124] and apply solely to conditions affecting force health protection, conditions requiring care or affecting job performance, or conditions that could cause incapacitation. Deployment-preventing conditions are less exhaustive than accession-disqualifying conditions because they seemingly focus solely on conditions that could impact warfighting, implicate greater risk to servicemembers, or strain military medical centers in austere environments.

116. DODI 6130.03 V1, *supra* note 2, at para. 6.10(c).

117. *Id*. at para. 5.2(c), noting that "all available information" likely refers to medical information and not one's physical fitness level or physical fitness history.

118. *Id*.

119. *Skin Conditions By The Numbers*, AM. ACAD. OF DERMATOLOGY, https://perma.cc/2CV2-JH5Q.

120. *See id*.

121. U.S. DEP'T OF DEF., INSTR. 6485.01, HUMAN IMMUNODEFICIENCY VIRUS (HIV) IN MILITARY SERVICE MEMBERS para 3(a) (June 7, 2013) [hereinafter DODI 6485.01].

122. Memorandum from Sec. of Def. to Senior Pentagon Leadership on Pol'y Regarding Human Immunodeficiency Virus-Positive Pers. Within the Armed Forces (June 6, 2022).

123. DODI 6485.01, *supra* note 121, at para. 7.

124. DODI 6490.07, *supra* note 36, at encl. 3.

IV. ARGUMENT

A. Exploring The Military's Rationale for Establishing Disqualifying Conditions in DoDI 6130.03 V1

Given the proliferation of these conditions, among other disqualifiers, throughout the American populace, there is significant reason to question if these conditions should be disqualifying or if a servicemember could still perform their occupational duties should they be granted a waiver for their condition or their condition is no longer listed as disqualifying in DoDI 6130.03 V1. In organizations such as MEPSCOM, there is a prevailing fear that admitting individuals with pre-existing medical conditions will put an additional strain on the already existing strained military and veterans' healthcare systems.[125] This fear, albeit a rational one, drives the military's stringent medical requirements.

On one hand, the military's stringent medical requirements ensure that the military is not taking on individuals who will add further strain to the military healthcare system. Individuals with pre-existing conditions can have greater healthcare needs, require higher costs of care, demonstrate lower physical fitness and readiness rates, and produce higher frequencies of medical incidents. Another reason the Department of Defense and military services have likely established stringent disqualifying conditions is based on the belief that if the military takes on individuals with pre-existing conditions, it would cost the government more in terms of post-service care and benefits. While insurance companies cannot discriminate against individuals based on pre-existing conditions,[126] the military can and may have fiscal reasons to do so, especially given the massive rise in government spending on veterans' health and disability benefits in the last twenty years.[127]

The military's concern regarding pre-existing conditions' ability to strain the healthcare system and the post-service conditions' cost on the Veterans Affairs benefits system is flawed. In terms of pre-existing conditions, many of the conditions medically disqualifying individuals from military service do not correspond with higher costs of care during or post service (e.g., food allergies, acne, etc. when compared with something like obesity which costs the U.S. healthcare system 173 billion dollars a year[128]) and do not impact an individual's ability to carry out his or her occupational specialty. Finally, concerning pre-entrance MEPS disqualifiers, the long list of disqualifying conditions incentivizes individuals to lie about not having pre-existing conditions, thus posing a greater risk to the individual and his or her unit. If you look at online military-related forums, Reddit,

125. Melissa Chan, *Thousands of Workers Leave the VA Amid a Flood of New Case and Quota Demands*, NBC NEWS, (Sep. 30, 2023), https://perma.cc/QB6X-Z55J.

126. *Pre-Existing Conditions*, U.S. DEP'T OF HEALTH AND HUMAN SERVS. (2022), https://perma.cc/3SUF-9LSN.

127. Kyle Greenberg & Mark Duggan, *How Runaway Disability Compensation is Straining Veterans Affairs*, THE HILL (Nov. 11, 2023), https://perma.cc/6FEU-V6UP.

128. *Health and Economic Costs of Chronic Diseases*, CTR. FOR DISEASE CONTROL, https://perma.cc/NV5A-LGPJ.

Quora, or other websites where individuals aspiring to join the military post questions, there are numerous "lying at MEPS" threads.[129] The issue with this is that if a medical issue is not on a servicemember's record, it can severely hamper medical response and treatment that could save the servicemember's life, from what might otherwise not be a life-threatening condition. This not only risks the health of servicemembers, but also compromises servicemembers' and recruiters' integrity as there are incentives to lie during the recruiting process to boost recruiting numbers and gain employment with the military. The paradox here is that someone who has a medically disqualifying condition and discloses it is barred from service, whereas someone with a medically disqualifying condition who never discloses it until they have entered the service is provided with the requisite medicine and care to perform their duties in a safe manner.

Looking at post-service care, the military's rationale surrounding post-service care and benefits can be dispelled by looking at how Veterans Affairs (VA) benefits work. To qualify for VA benefits, you must meet the following criteria: (1) you have a current illness or injury (known as a condition) that affects your mind or body; and (2) you served on active duty, active duty for training, or inactive duty training.[130] Additionally, at least one of the following must be true: (1) you got sick or injured while serving in the military—and can link this condition to your illness or injury; (2) you had an illness or injury before you joined the military—and serving made it worse (called a pre-service disability claim); or (3) you have a disability related to your active-duty service that did not appear until after you ended your service.[131]

So long as you limit individuals' ability to make pre-service disability claims solely based on their pre-existing condition (such as allergies worsening due to reactions had while in the military or acne worsening due to the clothing they were required to wear), you are no longer exposing the military to the same risks that could strain the Veterans Affairs healthcare system. While someone could bring up a hypothetical where an asthmatic is exposed to noxious gas, that individual would be able to make the same claim as a non-asthmatic if the noxious gas exposure were the fault of the military, regardless of what pre-existing condition or non-condition the individual had. With the amount the U.S. government spends on post-service healthcare, providing in-service medical care for some of the major medical disqualifiers and post-service care for only conditions that resulted from military service, the cost of medical care may be at a minimal cost to the military.

The military must decide if it is worth reviewing the current list of medically disqualifying conditions for accession and if amending the list would impact military fitness, readiness, job-performance, or burden the military health system.

129. *See* Loewenson & Ziezulewicz, *supra* note 6.

130. *Eligibility for VA Disability Benefits*, U.S. DEP'T OF VETERANS AFF., (Aug. 15, 2023), https://perma.cc/M5HB-CMHT.

131. *Id.*

The likelihood of substantively amending the list would not impact any of the four aforementioned factors to a significant degree. Considering low recruitment numbers and a polarized geopolitical world, amending, or replacing, DoDI 6130.03 V1 to reflect standards that reflect retention standards[132] or deployment readiness-reducing or deployment disqualifying conditions[133] would make sense. For example, instead of looking at a history of asthma past age thirteen, the military could look to disqualify a *history of asthma within the last five years impacting an individual's ability to accomplish physical tasks without the use of medicine*. Similarly, when it comes to food allergies, the military could look to either grant more waivers for anaphylactic allergies or eliminate food allergies as a disqualifying condition, since MRE's can accommodate religious and dietary needs.[134] EpiPens are not a disqualifier for servicemembers already serving,[135] and individuals requiring an EpiPen have been and still are permitted to deploy to the Middle East.[136] Finally, the military should consider merging its accession and retention standards, such as by adopting the less restrictive retention standards found in Department of Defense Instruction 6130.03 Volume 2, Medical Standards For Military Service: Retention (DoDI 6130.03 V2). If an individual is medically qualified to be a servicemember, then the military must not deem their medical condition to be of significant risk to servicemember health or safety. If this is the case, then retention standards could even replace accession standards.

B. Comparing DoDI 6130.03 V1, DoDI 6130.03 V2, & DoDI 6490.07

Outside of the pre-accession medical process found in DoDI 6130.03 V1, once in the military, there are separate medical retention standards and qualifications required for an individual to be deployed. Medical retention standards are found in DoDI 6130.03 V2, while medical conditions for deployment decisions are governed by a completely different DoD Instruction, DoDI 6490.07. DoDI 6130.03 V2 addresses the military's medical requirements for retaining active duty servicemembers.[137] DoDI 6130.03 V2 examines many of the same disqualifying conditions found in DoDI 6130.03 V1, but specifies far more serious cases of those conditions as disqualifying servicemembers from staying in military. For example, a condition like asthma would only be disqualifying if it resulted in persistent symptoms, persistently low forced expiratory volume below seventy percent despite treatment with corticosteroids, or multiple uses of oral steroids within a one-year period.[138] Eczema or dermatitis would only be disqualifying if it prevented

132. DoDI 6130.03 V2, *supra* note 33.

133. DoDI 6490.07, *supra* note 36.

134. U.S. DEP'T OF DEF., INSTR. 1300.17, RELIGIOUS LIBERTY IN THE MILITARY SERVICES, para 3.3 (b) (Feb. 10, 2019).

135. *Is Food Allergy a Disqualification for Military Service?,* FARE (Jun. 19, 2018), https://perma.cc/W8RC-2UZG.

136. USCENTCOM MOD FIFTEEN, *supra* note 110, at TAB A, para. 7(I)(15).

137. DoDI 6130.03 V2, *supra* note 33.

138. *Id*. At para. 5.10(a).

the proper wearing of military uniform or equipment,[139] and food allergies are nowhere to be found in the Instruction.[140]

DoDI 6490.07, Deployment-Limiting Medical Conditions for Service Members and DoD Civilian Employees, is responsible for providing pre-deployment medical standards. Both military servicemembers and civilians of the Department of Defense have the same deployment medical standards, minus specific deployment standards set out by an individual's occupational specialty[141] or by a Combatant Commander based on geographic location.[142] DoDI 6490.07 also contains an enclosure that lists the medical conditions usually precluding a deployment. These conditions fall into the following categories: Conditions Affecting Force Health Protection; Unresolved Health Conditions Requiring Care or Affecting Performance; Conditions That Could Cause Sudden Incapacitation; Pulmonary Disorders; Sensory Disorders; Cardiac and Vascular Disorders; Mental Health Disorders.[143] It is important to note that these conditions are vastly different and often far more severe than other conditions that are disqualifiers from military service. For example, despite pulmonary disorders' inclusion on the disqualifying condition list for deployment, only asthmatics with forced expiratory volume of less than 60 percent, asthma that has required hospitalization at least 2 times in the last 12 months, or asthma that requires daily steroids[144] would prevent an individual from deploying. These are extremely severe cases of asthma, in sharp contrast to DoDI 6130.03 V1's asthma past age thirteen,[145] which disqualifies an individual from military service, regardless of their MOS, deployment status, etc. Other conditions such as food allergies, Celiac disease, and acne are not barring conditions for deployments, just as they pose minimal hurdles to military retention, per DoDI 6130.03 V2.

Even the military's waiver process is different for deployments, in comparison to when trying to accede into the military. For a deployment, if a commander "wishes to deploy an individual with a medical condition that could be disqualifying [. . .] the commander or supervisor must request a waiver [to the] applicable Combatant Commander."[146] A waiver request is comprehensive and includes a detailed medical evaluation, the "service experience, position to be placed in, any known specific hazards of the position, anticipated availability and need for care while deployed, the benefit expected to accrue from the waiver"[147] and the commander's recommendation. Compared to the MEPSCOM accession waiver process, the deployment-based waiver process seemingly favors the applicant.

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139. *Id*. At para. 5.21.
140. *See id*.
141. USCENTCOM MOD FIFTEEN, *supra* note 110, at para. 15.C.3.B.3.
142. *See* generally, *id*. at TAB A.
143. DODI 6490.07, *supra* note 36, at encl. 3 (d).
144. *Id*.
145. DODI 6130.03 V2, *supra* note 2, at para. 6.10(e).
146. DODI 6490.07, *supra* note 36, at encl. 2 (3).
147. *Id*.

The military's medical standards are substantially different when comparing accession and deployment. This can be explained by looking at the Air Force's Medical Examinations and Standards, stating that "accession medical standards are used for military service candidates (usually civilians wishing to serve in the military) and are typically more restrictive than medical standards for service members currently serving."[148] Medical standards are tougher for candidates who want to join the military than for those already in the military or for those deploying. This difference is likely due to the "sunk cost" that the military has already invested into the individual. For those whose condition is not exposed, developed, or identified until they are integrated into their respective service, the military has already invested tens or hundreds of thousands of dollars into their training and education. Financially, it makes sense to keep that individual in the service, as opposed to discharging them and replacing them with a new recruit. One can develop a condition that would have otherwise barred the individual from joining the military, however, the same condition may not disqualify a servicemember from deploying to an austere environment.

For accession purposes, each service sets uniform standards for physical fitness.[149] Physical fitness standards, unlike medical standards, provide an almost unbiased assessment of an individual's fitness levels. Fitness tests do not take pre-existing conditions into consideration and significant medical conditions impacting physical performance may appear on an individual's physical fitness test score, depending on the condition and its impact on the individual. However, uniform fitness tests provide all candidates with an identical starting point to achieve the highest score, regardless of an individual's medical history. Rather than pre-disqualify individuals for medical conditions, the military could see how an individual performs on a physical fitness test before looking at the medical condition. As of recent, the Army exempted servicemembers who obtain a certain score with minimums in each event on the Army Combat Fitness Test from body fat requirements.[150] The intent behind these tests is to ensure physical and operational readiness, aerobic and anaerobic fitness, endurance, strength, and job-performance in occupational specialties; a fitness test may be a better indicator of an individual's ability to carry out a job and mission than a medical condition or one's body composition.[151] The following is a hypothetical meant to illustrate and challenge issues with the current standards:

148. U.S. DEP'T OF AIR FORCE, MANUAL 48-123, MEDICAL EXAMINATIONS AND STANDARDS para 1.3.2 (Dec. 8, 2020).

149. *See generally* U.S. DEP'T OF THE ARMY, USAREC REG. 350-1, ARMY TRAINING AND LEADER DEVELOPMENT (2022); U.S. DEP'T OF AIR FORCE, MANUAL 36-2905, DEPARTMENT OF THE AIR FORCE PHYSICAL FITNESS PROGRAM (2022); U.S. MARINE CORPS, ORDER 6100.13A, MARINE CORPS PHYSICAL FITNESS AND COMBAT FITNESS TESTS (2018); U.S. DEP'T OF NAVY, CHIEF OF NAVAL OPERATIONS INSTR. 6110.1K, PHYSICAL READINESS PROGRAM (2022).

150. U.S. Dep't of the Army, Inspector General Update 23-4: Guidance on Changes to Army Directive 2023-11 (Army Body Fat Assessment for the Army Body Composition Program) (2023).

151. U.S. DEP'T OF DEF., INSTR. 1308.03, DOD PHYSICAL FITNESS/BODY COMPOSITION PROGRAM, para 1.2 (Mar. 10, 2022).

> An asthmatic ironman, age 30, performs in the 95th percentile on the Army Physical Fitness. The asthmatic ironman does not take any respiratory medicine and has not used oral steroids since he was sixteen years old – should the fact that the individual has asthma past age thirteen disqualify him from service, despite scoring in the 95th percentile? In today's world of modern medicine, even individuals hampered by asthma can operate at near-peak physical condition. Why should a prescription for a precautionary inhaler bar one individual from serving yet be prescribed to individuals who are serving in a deployed environment?

Another way in which the military can and does screen applicants is through multi-phased physical testing based on occupational specialty. The services design their physical fitness programs to suit the needs of their service; additionally, they provide for fitness and training programs that maintain the service's health and fitness for both general duty and specific occupational specialties.[152] When a service branch identifies an occupation's "critical physical tasks, they will indicate the specific physical fitness tests, standards, and results associated with each identified occupational physical task."[153] The services already have the capacity to craft and engineer occupation-specific physical tests, such as the Army's Occupational Physical Assessment Test (OPAT), which "allows the Army to better predict a person's ability to meet the physical standards of their MOS."[154] The military should consider evaluating candidates for enlistment against occupation-specific tasks. While many of the services cannot guarantee an occupational specialty or job until after the service's basic training equivalent, occupation-specific fitness testing may increase the number of recruits who can qualify for certain jobs and may help to better place potential candidates upon accession into the military. Individuals who suffer from currently disqualifying medical could be utilized in deployable units, specialty fields, and with a grave condition, shore, or CONUS-based assignments.

C. Looking at Current Instructions for Solutions

By adopting the military's retention or deployment medical standards, the military would ensure it has a cadre of recruits who could perform their jobs, deploy, and serve in warzones. The standards set forth in DoDI 6130.03 V2 or DoDI 6490.07 would enable the military to maintain an adequate number of deployable recruits, and allow the military to be more selective in its recruiting based on aptitude, diversity of experience, and physical fitness.

Currently, there are three major issues with how the Department of Defense handles permanent medically disqualifying conditions. First, the DoD's broad list of permanently disqualifying medical conditions disqualifies over 70 percent of

152. *Id.* at para 3.1(b).

153. *Id.*

154. *Occupational Physical Assessment Test*, U.S. ARMY (March 28, 2016), https://perma.cc/J2X6-SJRA.

Americans aged seventeen to twenty-four,[155] thus preventing more than one in four Americans from eligibility to serve as soon as they list the condition on their enlistment paperwork. Second, many of these conditions[156] have little-to-no outcome or impact on an individual's ability to perform a job in the military, which is one of the five listed reasons for the disqualifying conditions listed in DoDI 6130.03 V1.[157] Given the prevalence of the military's non-combat and combat-support roles and the fact that almost 40 percent of all veterans never deployed during their time in the military,[158] these conditions should not bar individuals from service. Third, most of these conditions, if developed (or seemingly first appearing) upon entering the military, would not disqualify an individual from continuing to serve because military accession standards differ from military retention standards and military deployment standards.[159]

As a result, the military should either establish occupation-based standards or synchronize entrance and deployment standards to: (1) increase the recruitment of quality individuals who may have disqualifying medical conditions[160] but satisfy the military's fitness and aptitude standards, and (2) ensure the military has deployment-eligible[161] servicemembers.

The military already conducts pre-deployment physicals for all servicemembers to determine whether deployment conditions will impact a servicemember's health conditions. The military can comprehensively evaluate health conditions for deployment in the context of environmental and physical stressors. In the context of the all-volunteer force and in the case of a draft, the military should consider moving to a purely fitness-based entry standard instead of disqualifying thousands of individuals for physical conditions that have no bearing on their ability to perform their job.

V. PROPOSED POLICY CHANGE

There are multiple ways the military could re-evaluate disqualifying medical conditions. First, and likely the easiest given the current MEPS process, the military could look at granting more waivers in the context of an applicant's ability to meet physical fitness and/or weight standards and the needs of the service; this is

155. Heather Maxey, Sandra Bishop-Josef, & Ben Goodman, *Unhealthy and Unprepared: National Security Depends on the Health and Education of Our Children,* COUNCIL FOR A STRONG AM. (Oct. 2018), at 3.

156. As this paper will discuss, conditions that have limited impact a servicemember's ability to perform job duties include, but are not limited to, medical conditions such as allergies, intolerances, and skin conditions, pulmonary conditions, and HIV.

157. DODI 6130.03 V1 (1.2)(d), *supra* note 2.

158. Kim Parker, Ruth Igielnik, Amanda Barroso, & Anthony Cilluffo, *Deployment, Combat, and Their Consequences*, PEW RSCH. INST. (Sept. 10, 2019), https://perma.cc/TWV4-RHBV.

159. *Compare* DODI 6130.03 V1, *supra* note 2 *with* DODI 6130.03 V2, *supra* note 33, *and with* DODI 6490.07, *supra* note 36.

160. *Compare* DODI 6130.03 V1, *supra* note 2 *with* DODI 6490.07, *supra* note 36.

161. *See generally* DODI 6490.07, *supra* note 36.

what the military has started to do considering low recruiting numbers[162] and the paper will not explore this given it is the currently chosen policy option. Second, MEPSCOM could look to swap the disqualifying medical conditions for accession laid out in DoDI 6130.03 V1- Department of Defense's Medical Standards for Appointment, Enlistment, or Induction in the Military Services with the more severe disqualifying conditions for retention listed in DoDI 6130.03 V2 or even the disqualifying conditions for deployment listed in DoDI 6490.07. Third, the military could examine recruits in the context of their respective by utilizing physical profiling. Fourth, the military could overhaul its structure to create medical and/or physical fitness-based occupations (combat arms, combat arms support, services) or duty-restricted types (unrestricted and restricted duty). This section will cover the second, third, and fourth proposed changes.

A. Harmonize Entrance and Deployment Standards

Marrying retention or deployment disqualifying medical conditions with the list of disqualifying medical conditions for entrance is a logical approach. The military's stringent entry requirements are tied to their need to maintain a healthy, able, and deployable fighting force that can function given the various occupations across the services. Given that both the DoD's disqualifying medical conditions for retention (DoDI 6130.03 V2) and deployment-disqualifying medical conditions (DoDI 6490.07) are far less extensive than the military's standards for entry,[163] adopting the disqualifying conditions in either of these Instructions into the military's standard for accession would greatly expand the number of individuals who could perform military service. While DoDI 6490.07 was likely not written to encompass every medical condition that could impact one's service, it does identify specific conditions that could pose a threat to an individual's ability to achieve mission success if deployed. DoDI 6130.03 V2 is more exhaustive in its listing of disqualifying conditions, although the conditions it lists are often more severe versions of the conditions listed in DoDI 6130.03 V1 and thus would disqualify fewer candidates. If the military, specifically the ARMSWG,[164] were to adopt the conditions in either DoDI 6130.03 V2 or DoDI 6490.07 versus DoDI 6130.03 V1, the Department of Defense would open the aperture for tens of thousands of individuals previously disqualified from serving to now be able to serve.

If the military did not want to fully adopt either DoDI 6130.03 V2 or DoDI 6490.07 as a new standard, comprehensively re-evaluating each of the conditions set forth in DoDI 6130.03 V1 and reconciling it with the rationale for the conditions in DoDI 6130.03 V2 would be a step in the right direction. In conjunction with re-evaluating DoDI 6130.03 V1, the military could look to a 'waiver first' process for medical conditions and remove permanently disqualifying conditions

162. *See* Courtney Kube and Molly Boigon, *Every Branch of the Military is Struggling to Meet its 2022 Recruiting Goals, Officials Say*, NBC NEWS (June 27, 2022), https://perma.cc/S6EN-4KTJ.

163. *Compare* DODI 6490.07, *supra* note 36, at encl. 3 *with* DODI 6130.03 V1, *supra* note 2, at paras. 6.1-6.30.

164. DODI 6130.03 V1, *supra* note 2, para. 4.1.

except for egregious issues and/or extremely severe medical conditions. A 'waiver first' process would allow applicants to automatically be put in for a waiver if disqualified at MEPS and the military could look to grant more waivers for conditions that currently have a less than 50 percent chance of obtaining waivers, such as skin, vascular, gastrointestinal, and lung-related conditions.[165]

B. Utilize The PULHES Factors with New Recruits to Determine Job-Eligibility

The military could cateogrize recruits through the Physical condition, Upper extremities, Lower extremities, Hearing, Eyes, Stability (PULHES) factors to determine job-eligibility. World War II brought about the Army's "Physical Profile Serial System [. . .] a method by which job assignment within the Army was to be made, based on the physical capacity and the skills of the individual."[166] While the Physical Profile Serial System only came about in 1944 and was of minimal utility at the time,[167] it laid the groundwork for evaluating individuals' physical capabilities and potential occupation fits.[168] If the military coded recruits based on PULHES factors upon entrance into the service (and subsequently during physical examinations), the military could better categorize the types of jobs recruits may be best suited for and further track recruits' physical profiles over their history in the military. There are two ways in which the military could do this: one would be a physical fitness and occupation-based approach across the services, similar to how the Army utilizes the OPAT with recruits, and the other would be to restructure the services into three categories.

C. Restructure the Services Based on Occupations Requiring Physical and/or Medical Criteria

In an occupation-based approach, the military could shift to a recruiting system where applicants apply for a certain occupation or group of occupations for which they qualify medically, physically, and academically. While not guaranteed a specific specialty (e.g., someone wants to be Special Forces but fails SFQT – they are still qualified for infantry), each occupation carries certain physical and or medical requirements. Services could have both baseline physical fitness standards as well as aptitude standards that all applicants would have to meet for entry. Subsequently, occupations could have certain physical and aptitude-based standards that could be more stringent than the service's initial standards for entry. Certain occupations could have specific medical requirements due to the nature of the occupation. Essentially, only individuals applying for specific occupations designated medically high-risk must apply for waivers.

Under this approach, the DoD could grant waivers based on meeting physical fitness standards and weight standards. Through this method, the military could also evaluate a candidate utilizing the PULHES factors and the needs of the

165. WALTER REED ARMY INST. OF RES., *supra* note 31.
166. MED. DEP'T, U.S. ARMY, *supra* note 42, at 94.
167. *Id*. at 68.
168. *See id*. at 68-73.

service. This holistic approach would allow MEPSCOM to consider medical conditions along with an applicant's physical profile, performance on a physical fitness test, ASVAB, education, character traits, and unique skills in evaluating admittance to service. This comprehensive evaluation would give the military a sense of an individual's ability to deploy. With the loosening of restrictions, the military could evaluate the deployability of an individual upon entering without precluding him or her from serving. Given that DoDI 6490.07 lists many deployment-preventing conditions that could be considered temporary medical conditions, assessing deployability at MEPS would provide the service with a rough number of qualified deployable troops based on when they first entered and permit the military to shift its recruiting as necessary based on deployable troop numbers.

The military could also make a more radical change, albeit one that already exists in practice, and either stratify or restructure the services by occupation or duty types. One way the military could do this is by breaking the military into three categories consisting of combat units, combat support units, and services units. As the services already set different standards for different occupations based on physical fitness test scores and ASVAB scores, the military could score an individual based on health conditions that impact an occupational specialty. The military could use a structure like the Army's combat, combat support, and services breakdown, or it could look to the Navy and Marine Corps' use of restricted and unrestricted duty positions to categorize positions and stipulate medical, physical, and testing conditions upon accession into the service. However, as previously mentioned, this stratification could lead to discontent between the various categories of occupations or units.

VI. CONCLUSION

Providing individuals who have certain medical conditions with an ability to serve in the military opens the aperture for more skilled and qualified individuals, at little cost to the service. At a time of low recruitment, amending the military's stringent medical disqualification guidance would open the pool of individuals available and create a more diverse military that is hedged against recruitment issues. A change to the military's medical disqualifiers and/or occupational specialty structure would open the generating force to have the most skilled people join, even if every individual was not deemed deployable. Given how warfare has evolved, many critical positions on the battlefield can now be done remotely, and support positions can often be carried out from afar.

The standards set forth in DoDI 6130.03 V1 are black and white when it comes to whether one will be able to accede, but most individuals' medical history and medical conditions are far more nuanced. The military should take a less restrictive approach to evaluating recruits' medical conditions. If the military were to now allow individuals previously disqualified based on certain medical conditions, the military would likely see a swath of applicants in the short term given the countless individuals who have been permanently disqualified and still yearn for a career the military. One way to measure the number of potential recruits

would be to look at the number of recruits who have been rejected due to medical conditions over the last five years and conduct an analysis of the specific conditions that disqualified them from service. If the conditions are low-risk and mitigatable, such that they would not result in an individual needing a medical discharge if they were already on active duty, maybe the condition should be revisited by the Department of Defense.

There is no determinative reason why a servicemember needs to do a certain job, outside of very specific warfighter occupations; one can look to contractor deployments to see the number of deployed positions and personnel in combat support capacities. The military's list of disqualifying medical conditions is based on the military's historical design. As designed by the framers, the military was meant to serve as a small standing force; given the military's historical construct, it should consist of solely combat arms specialties. Pre-World War II, the military consisted of mostly combat arms specialties and there was a far greater need for infantrymen. Today's military is more expansive, and most occupations do not fall under the combat arms specialty. With innovations such as the Genesis system linking into MEPSCOM systems, more individuals will continue to be disqualified from military service.[169] Given that 25 percent of new enlisted recruits have a parent who served in the military,[170] MEPSCOM's ability to view the health records of potential recruits and preemptively disqualify them is only going to prevent interested individuals from serving.

The military can maintain a high standard for physical fitness and intellectual aptitude without thinking about an applicant's medical conditions. In looking at a service candidate, the military need not make an exception or accommodation to intelligence-based or physical fitness-based standards for entrance to the military; rather, the military should permit all individuals to attempt to meet physical and intellectual standards instead of preemptively disqualifying them without evaluation. By preemptively disqualifying individuals based on medical conditions, the military is losing out on qualified applicants who want to serve. If the military opens its recruiting aperture in the context of disqualifying medical conditions, it will increase the number of applicants and see fewer recruiting issues.

As warfare evolves, the fighting force must evolve. Today's warfare involves complex domains such as cyber and intelligence, surveillance, and reconnaissance; these are functions that can be managed from afar, even outside of a combat zone. Further, the number of individuals qualified for cyber positions is small; to ensure the military has the most qualified candidates, the military must look to the skills required versus purely ruling out individuals based on medical

169. Loewenson & Ziezulewicz, *supra* note 6.

170. *Military Recruiting is a Family Affair*, U.S. ARMY RECRUITING BATTALION TAMPA, ADVERT. AND PUB. AFFS. OFF. (Jan. 19, 2022), https://perma.cc/9WTR-M3AL; Mark Thompson, *Here's Why the U.S. Military Is a Family Business*, TIME (Mar. 10, 2016).

conditions. By ruling out individuals based on medical conditions, individuals are not even given a chance to demonstrate their competence to meet the military's basic physical fitness standards. It is a misnomer that individuals who are not medically qualified are also unable to meet the military's standards for physical fitness; it is important to look at physical and intellectual aptitude first, before ruling a potential candidate for service out on a non-deployment disqualifying condition.