

SUBJECT: Response to General Officer Memorandum of Reprimand Issued to XXXXX

1. Sir, I understand the purpose of this GOMOR is that I am accused of disobeying a lawful order, refusing to be vaccinated for COVID-19. I respectfully disagree that I have violated a lawful order as the order I was given was impossible to follow.

2. First, my refusal is to be vaccinated with a vaccine that has only received Emergency Use Authorization (EUA) status. This includes the Johnson and Johnson, Moderna and Pfizer BioNTech vaccines. They are all EUA. In fact, BioNTech had its EUA status extended in August of 2021. By law informed consent is required when utilizing an EUA product which allows service members the absolute right refuse them. (See 10 USC §1107 and 1107a).

3. The SECDEF Memo, dtd 24 Aug. 2021, specifically states, “Mandatory vaccination against COVID-19 will only use COVID-19 vaccines that receive **full licensure** from the Food and Drug Administration (FDA), in accordance with FDA-approved labeling and guidance.” It goes on to state that service members may voluntarily become immunized with a COVID-19 vaccine under FDA Emergency Use Authorization.

4. The order and counseling I received, dtd 8 Nov. 2021, from XXXXX, references the SECDEF memo, and specifically states, “4. You are hereby ordered to become fully vaccinated with a COVID-19 vaccine that has received full licensure from the Food and Drug Administration (FDA), in accordance with FDA-approved labeling and guidance NLT 15 NOV 2021, subject to the availability of vaccines.”

5. Comirnaty is currently the only vaccine with “full licensure.” Comirnaty is not available.<sup>1</sup> There have been claims and memorandums stating that BioNTech is, “interchangeable.” The Secretary of Defense and my commander did not order me to become vaccinated with an interchangeable vaccine but a “fully licensed” vaccine unless I choose to receive an EUA vaccine. Even the CDC has said BioNTech and Comirnaty are “legally distinct.” To claim BioNTech is “approved” does not mean licensed. The Pfizer BioNTech vaccine is not fully licensed but is still under EUA. In fact, as stated, its EUA status was extended in August. To claim BioNTech is approved is like someone being granted their driver’s license but also having their driver’s permit extended. Additionally, by law, if a fully licensed vaccine is available then all vaccines with an EUA status may not legally be used, and the pharmaceutical companies lose their immunity from negative reactions to the vaccine. It would appear that in order to continue to push the EUA vaccines, and not put Johnson and Johnson and Moderna out of business, as well as not open liability to the pharmaceutical companies, Comirnaty would continue to not be available as a fully licensed vaccine.

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<sup>1</sup> Emergency Use Authorization, at: <https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization>.

6. In an order issued Nov. 12 in *Doe et al. v. Austin*, U.S. Federal District Judge Allen Winsor stated that “the DOD cannot mandate vaccines that only have an EUA.” One reason for his ruling is the difference in ingredients and manufacturing process between Pfizer’s EUA vaccine and the approved Comirnaty. The Judge also stated, “The DOD’s interpretation of §1107a is unconvincing. For starters, FDA licensure does not retroactively apply to vials shipped before BLA (Biologics License Application) approval. See 21 U.S.C. §355(a). Thus, as a legal matter, vaccines sent before August 23—and vaccines produced after August 23 in unapproved facilities—remain “product[s] authorized for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act.’ §1107a(a)(1). Section 1107a’s explicit cross-reference to the EUA provisions suggests a concern that drugs mandated for military personnel be BLA-approved, not merely chemically similar to a BLA-approved drug. And the distinction is more than mere labeling . . . . Moreover, the DOD concedes that some of its current vials are not BLA-compliant, and that there is no policy to ensure that servicemembers get only BLA-compliant vaccines.”

7. Per the FDA:

a) **FDA Fact Sheet:** “WHAT IF I DECIDE NOT TO GET COMIRNATY (COVID-19 VACCINE, mRNA) OR THE PFIZER-BIONTECH COVID-19 VACCINE? Under the EUA, it is your choice to receive or not receive the vaccine. Should you decide not to receive it, it will not change your standard medical care.”

b) Informed Consent. Additionally, per the EUA law (§1107a), if there is an approved vaccine, experimental vaccines are unlawful to use. Under the EUA, they must provide informed consent, which allows you to refuse the vaccine (See, 21 U.S. Code §360bbb–3(e)(1)(a)(ii)):

(ii) Appropriate conditions designed to ensure that individuals to whom the product is administered are informed—

(I) that the Secretary has authorized the emergency use of the product;

(II) of the significant known and potential benefits and risks of such use, and of the extent to which such benefits and risks are unknown; and

(III) of the option to accept or refuse administration of the product, of the consequences, if any, of refusing administration of the product, and of the alternatives to the product that are available and of their benefits and risks.

8. As such, at no time should the DOD or any other agency presume that BioNTech is an approved drug; it is not, and therefore it continues to carry the characterization of an Investigational New Drug (IND) for Emergency Use only.<sup>2</sup>

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<sup>2</sup> See, “FDA Does a Bait and Switch with COVID Shots,” <https://lc.org/newsroom/details/082721-fda-does-a-bait-and-switch-with-covid-shots>.

9. For the injections to be mandatory with an EUA vaccine, as mentioned above, the President himself must sign an Executive Order (EO) mandating the shot for service members. Absent that EO, service members have the absolute right to refuse.

10. Sir, as stated, the “fully licensed” vaccine is not available and was never made available to me. Based on reports I have read, heard, as well as entries in the Vaccine Adverse Event Reporting System (VAERS) with the many severe negative reactions to include thousands of deaths presumably associated with the vaccines, I respectfully refuse any EUA vaccine.

11. In addition, I would like to point out my years of stellar and unblemished service and commitment to the Army and my commands and their leadership. XXXXXXXX