

01-Oct-2022

MEMORANDUM FOR XXXXXXXX

SUBJECT: Clarification of My Position and Rights Under the Law – Rank First Last

1. I am being ordered to become fully vaccinated by

_____ [Name and Rank of Person giving Order].

The assumption is that this order is subsequent to the order by the SECDEF from August of 2021. I understand that _____ [XX name and rank of person giving order] believes his/her order to be lawful, but I respectfully disagree.

2. All current vaccines, except for Comirnaty, are under “Emergency Use Authorization” (EUA) and by law require informed consent which allows service members the absolute right refuse them. (See 10 USC §1107 and 1107a). Additionally, the SECDEF memo states that service members are mandated to be vaccinated using a vaccine that has received “full licensure.”

3. Comirnaty is currently the only vaccine with “full licensure.” Comirnaty is not available.¹ 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, 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.

4. 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.”

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

5. 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.

6. Therefore, by fact and law, Comirnaty and BioNTech are not interchangeable. Additionally, by law, once a licensed vaccine exists, e.g., Comirnaty, EUA vaccines may not be utilized. 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.²

7. 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.

8. Therefore, any order to be vaccinated that does not include the words, "fully licensed vaccine," that do not provide me the opportunity to reject an EUA vaccine, which is coercive or threatening, is an unlawful order. The following are articles of the UCMJ that may be applicable to an unlawful order. "Cruelty and Maltreatment" (Art. 93), "False Official Statement" (Art. 107), "Communicating Threats" (Art. 115), "Extortion" (Art. 127), "Assault" (Art. 128), "Conduct Unbecoming" (Art. 133), the "General Article" (Art. 134), and other potential charges.

² 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. Per this notice, I will comply with reporting for a vaccine. If the “fully licensed” vaccine Comirnaty is not available, I will respectfully refuse.

10. To clarify, (Sir/Ma’am), are you ordering me to become fully vaccinated utilizing the only “fully licensed vaccine” Comirnaty? Yes: _____ No: _____

11. If no, are you ordering me to become fully vaccinated utilizing a vaccine that is still under EUA status? Yes: _____ No: _____

Signature Block