The first section should be used as a cover letter because your commander might not take the time to read the document without that motivation. Feel free to add/delete but keep it as short as possible. NOTE: You know your commander(s) and, therefore, should modify the contents of this document to fulfill your goal of communicating language without appearing offensive. Article 89 is the most abused article of the UCMJ: disrespect of a superior officer. I do not believe this document violates that article, but I give this information for your review. This document will be updated to maintain its freshness. **Version July 20, 2022**

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Rank Surname,

In reference to my (BOI, ADSEP, LOR, etc.) I am sharing information vital to the success of your command. The attached document provides you with the understanding that Senior Pentagon Leadership never required any service member to participate in an EUA product under threat of penalty. You will discover that certain GO/FOs and their subordinate commanders have been the only leaders to require the use of experimental drugs to comply with a non-existent mandate.

By non-existent, I mean that SECDEF Austin declared that “mandatory” vaccines would only use full licensure drugs according to FDA labeling guidelines. He never said those requirements were to be based on a drug’s formula. Federal laws govern drugs by their labels, not by their formulas.

Lt Gen Place, Director of the Defense Health Agency, directed all Military Departments on 16 June 2022 to ensure that, “[service members] have the option to accept or refuse the EUA product and are free from any consequences of refusing administration of the product.”

To penalize service members for refusing to volunteer for medical experimentation violates significant ratified treaties, federal laws, and military regulations. Such violations are required to be reported to USAMRDC on Fort Detrick, MD.

I respectfully request you to carefully review the attached document providing clarity to SECDEF Austin’s 24 August 2021 orders.

- - -

NOTE: The below would be your attachment - of course make sure to remove this comment and those at the bottom before submission.

Rank Surname,

1. There has been much confusion surrounding the COVID-19 vaccine requirements and subsequent compliance within the DoD. To ensure you are fully briefed, below are facts concerning the COVID-19 mandate.

2. The orders and instructions issued by SECDEF Lloyd Austin, Dr. Terry Adirim (ASD (HA)), and Lt Gen Ronald Place, Director of the Defense Health Agency, are important to consider, especially as these instructions also impact your issuance of my (LOR, BOI, referral OPR, etc...fill in as applicable).

3. SECDEF Austin's 24 August 2021 memorandum stated, "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. Service members **voluntarily** immunized with a COVID-19 vaccine under FDA Emergency Use Authorization or World Health Organization Emergency Use Listing in accordance with applicable dose requirements prior to, or after, the establishment of this policy are considered fully vaccinated." The indisputable facts surrounding this order are as follows:

    a. SECDEF Austin provided two paths for service members to comply with their vaccination requirements. Path one is legally binding and requires the use of full licensure drugs according to the product's labeling (e.g., COMIRNATY or Spikevax vaccines). Path two is voluntary and utilizes substances that the FDA has not licensed (e.g., PfizerBioNTech or Moderna vaccines). Those substances fall under DoDI 6200.02 legal authority.

b. SECDEF Austin declared that one drug classification would be under a legally binding order, and one drug classification would be acceptable but not mandated.

c. “Mandatory vaccination” is a legally binding order of which non-compliance can be penalized under the Uniform Code of Military Justice (UCMJ). “Voluntarily” is a non-legal binding order which can not be penalized under UCMJ.

d. Under the UCMJ rules, military leaders may not penalize a service member for refusing to volunteer for medical experimentation.

4. Senior Pentagon Leadership **has never required the use of COVID-19 EUA products** under threat of penalty by service members irrespective of interchangeability.
    a. On 14 September 2021, Dr. Terry Adirim issued guidance to “DoD healthcare providers” that they “will use” both drugs to comply with SECDEF’s mandate. She stated that, “Consistent with FDA guidance, DoD **health care providers will use** both the Pfizer- BioNTech COVID-19 vaccine and the COMIRNATY COVID-19 vaccine interchangeably for the purpose of vaccinating Service members in accordance with Secretary of Defense Memorandum.”

        i. Dr. Adirim affirmed SECDEF Austin’s order by informing healthcare workers that they will use both drugs for mandated compliance. Since service members can take two paths to arrive at the same conclusion, she ensured healthcare providers were made aware of that fact.

            1. COMIRNATY and SPIKEVAX will be used for “mandatory” orders (Path One).

            2. Pfizer-BioNTech COVID-19 and Moderna will be used for “voluntary” purposes (Path Two).

        ii. Dr. Adirim did not guide commanders to legally administer both drugs under threat of penalty because doing so would violate SECDEF’s order. Instead, she informed “healthcare providers” that

they would use both vaccines because one can be used voluntarily, and one is required under a legally binding order.

iii. There is no federal statute that JAG nor the Department of Justice can provide DoD leadership that an experimental drug can be legally administered to a service member as if it is a fully licensed product. To do so violates 32CFR219, 45CFR46, USAMRDC regulations, DoDI 6200.02, DoDI 3216.02, and the Belmont Report legal obligations. Not to mention it violates the Political Rights Treaty, ratified by the United States Senate in 1992.

iv. 21 USC §360bbb-2 requires products under expanded access authorization to be governed by their classification irrespective of their formula. There is NO STATUTE that governs substances by their formulas. They are always governed by their respective classification attached to the label. To declare that an experimental product may be legally administered as an approved product within the DoD should be construed as an attempt to circumvent the authority of the Commander in Chief under 1107 and 1107a USC 10.

v. Dr. Adirim DID NOT authorize the use of the EUA Pfizer product under the "mandatory" requirements of SECDEF Austin. Instead, she directed healthcare workers to administer both of them depending on the chosen path (One, Two) of service members stipulated by SECDEF's vaccination requirements.

b. Lt Gen Ronald Place stated in his 16 June 2022 memorandum (DHA-IPM 20.004) to Military Departments that a) "mandatory vaccination against COVID-19 **will only** use COVID-19 vaccines that receive full licensure from the FDA in accordance with FDA-approved labeling and guidance;" b) "[service members] have the option to accept or refuse the EUA product and **are free** from any consequences of refusing administration of the product;" c) "In accordance with…FDA guidance, phosphate buffered saline (PBS)-buffer Pfizer-BioNTech/COMIRNATY® has the same formulation and can be used interchangeably with the EUA PBS-buffer Pfizer-BioNTech COVID-19 vaccine **without presenting any safety or effectiveness concerns**;" and d) "**[healthcare] providers** will use the

PBS-buffer Pfizer-BioNTech COVID-19 vaccine and the PBS-buffer Pfizer-BioNTech/COMIRNATY® COVID-19 vaccine interchangeably for the purpose of vaccinating Service members to meet DoD COVID-19 vaccination requirements."

i. Lt Gen Place stated that "mandatory" vaccination **will only** use full licensure drugs to comply with SECDEF's order (Path One).

ii. Lt Gen Place stated that service members can volunteer for EUA products, but if they refuse them, they are "free from any consequences." This also complied with SECDEF's order regarding the voluntary actions of service members (Path Two).

iii. Lt Gen Place echoed Dr. Adirim's guidance to "healthcare providers" that both drugs can be used without safety concerns and both meet SECDEF's orders. COMIRNATY must be used for legal mandatory actions and BioNTech can be used voluntarily but is not required.

c. Under Secretary of Defense (Personnel & Readiness) Gil Cisneros issued a legal definition for "fully vaccinated" status in his 04 April 2022 memorandum, 'Consolidated Department of Defense Coronavirus Disease Force Health Protection Guidance' that states:

> "An individual is considered "fully vaccinated" when at least 2 weeks have elapsed after a second dose of a two-dose COVID-19 vaccine series (e.g., PfizerBioNTech/COMIRNATY, or Moderna/Spikevax vaccines), or 2 weeks after receiving a single dose of a one-dose COVID-19 vaccine (e.g., Johnson & Johnson's Janssen vaccine) that are: (1) fully licensed or authorized or approved by the FDA; (2) listed for emergency use on the World Health Organization Emergency Use Listing (e.g., AstraZeneca/Oxford); or (3) approved for use in a clinical vaccine trial for which vaccine efficacy has been independently confirmed (e.g., Novavax)." **NOTE:** Under Secretary Cisneros is providing a definition that meets the legal requirements of SECDEF's order. He lists products that must be used for "mandatory" vaccination (Path One) and products that can be used voluntarily (Path Two) by

service members. Notice the use of the forward slash "/" meaning and or. He is affirming SECDEF's order that service members can use both BioNTech and or COMIRNATY, ie, their choice. However, if they refuse to participate in an EUA substance, they are free of negative consequences.

d. Acting Assistant Secretary of Defense for Health Affairs, Seileen Mullen, issued a memorandum providing health guidance for the new Moderna/Spikevax vaccines:

    i. "On March 29, 2022, the FDA reissued the letter of Emergency Use Authorization (EUA) for the Moderna COVID-19 vaccine, and stated that "the Moderna COVID-19 Vaccine (supplied in multiple-dose vials with red caps and labels with light blue borders) and Spikevax (COVID-19 Vaccine, mRNA) can be used interchangeably to provide the primary series doses . . . **without presenting any safety or effectiveness concerns.**"

    ii. Consistent with FDA guidance, DoD **health care providers will use** both the **Moderna COVID-19 (Path Two)** Vaccine supplied in multi-dose vials with red caps and labels with a light blue border and the **SPIKEVAX COVID-19 vaccine (Path One)** interchangeably for the purpose of vaccinating Service members in accordance with the August 24, 2021, Secretary of Defense Memorandum, "Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members."

5. Let us recap:

    a. SECDEF Austin gave a legally binding order to DoD commanders only to use full licensure drugs for "mandatory" vaccination requirements according to the product's labeling and not according to a formula (Path One).

    b. SECDEF Austin declared the DoD would accept voluntary participation in EUA products for compliance but this is a non-binding order (Path Two).

c. Dr. Adirim informed healthcare providers to use both products when administering a COVID-19 vaccine per FDA medical guidance to meet vaccination requirements. Fulfills Path One and Path Two Options.

d. Lt Gen Place reiterated that “mandatory” vaccinations will only use full licensure vaccines according to their labels and not their formulas (Path One).

e. Lt Gen Place reiterated SECDEF Austin’s order that participation in EUA products is on a voluntary basis and is not a legally binding order (Path Two).

f. Acting Assistant Secretary of Defense for Health Affairs, Seileen Mullen, issued the same health advice to DoD health care providers to use both drugs to comply, either with Path One and Path Two options, as ordered by SECDEF Austin.

g. Senior Pentagon Leadership has never required the administration of EUA products under the force of penalty. Path Two requires the free will and voluntary consent of the service member. SECDEF Austin and Senior Pentagon Leadership left no room for discussion that only full licensure vaccines will be used for “mandatory” vaccination. The only way to know if vaccines comply with his direct order is according to the product’s labeling. This labeling requirement was to ensure Path One complied with his legally binding order.

h. Authorities within the DoD requiring the use of EUA products under threat of penalty are certain GO/FOs and their subordinates, contrary to SECDEF’s legally binding order.

i. Path One is mandatory and requires the availability of the US FDA approved and labeled COMIRNATY and/or Spikevax before punishment can be applied to a service member for non-compliance. Path Two is a non-mandatory option available to service members requiring their free will and voluntary consent absent a Presidential waiver.

j. Not one service member nor civilian employee has been afforded the opportunity to comply with SECDEF Austin’s “mandatory” vaccination requirements. Those requirements include the use of full licensure

vaccines according to their labels, and to date, no such product exists in the marketplace.

6. The only COVID-19 substances that have been made available to service members by the DoD and local health providers are classified by the FDA as Investigational New Drugs (IND). DoD healthcare providers have stated they have US based EUA products and gray cap COMIRNATY labeled experimental products. As of the submission date of this document, the Army Surgeon General has not declared receipt of full licensure drugs according to FDA labeling guidelines.

    a. The federal government defines an IND as "a substance that has been tested in the laboratory and approved by the U.S. Food and Drug Administration for testing in people. Also called an experimental drug, IND, investigational agent, and investigational new drug."

    b. On 23 August 2021, with issuance of EUA letter, the FDA informed Pfizer that BioNTech COVID-19 vaccine was not approved and must submit to the IND application.

7. SECDEF Austin provided a legal distinction between EUA drugs and full licensure drugs within his order to comply with an international treaty, federal law, and military regulations involving humans in experimental drugs such as Pfizer's BioNTech COVID-19 vaccine.

8. EUA INDs fall under the purview of DoDI 6200.02, 32CFR219, 45CFR46, DoDI 3216.02, the Belmont Report, Nuremberg Code, and HQ USAMRDC 'Institutional Review Board Policies and Procedures Reflecting 2018 Common Rule Requirements.'

9. Federal law and military regulations require absolute adherence to the Belmont Report policies regarding a human subject involved in an experimental product.

    a. 32 CFR 219.101(c), 32 CFR 219.101(c), 45 CFR 46.101(c), 45 CFR 46.101(c), USAMRDC: 2-1(b), 7-4, Chap. 25 (a), Pg. 139 are the primary statutes and regulations requiring adherence to the Belmont Report.

    b. The National Research Act passed by Congress in 1974 established the Belmont Report.

c. The Belmont Report legally defined the meaning of informed consent. All of the statutes mentioned above and regulations require the DoD to obtain the legally effective informed consent of the service member before administering an experimental COVID-19 vaccine. The requirement to obtain legally effective informed consent in advance is indisputable and may only be waived by the Commander in Chief.

d. Legally effective informed consent is obtained when authorities: 1) disclose quality information to the individual required to make an informed decision; 2) ensures the individual understands the risks and benefits of the experimental drug; 3) provides an opportunity for the individual to consider whether or not to participate; and 4) ensures the individual is not under "sanctions," "coercion," or "undue influence" by persons of authority when consenting to participate. - (The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research.- Belmont Report. Washington, DC: U.S. Department of Health and Human Services. 1979.)

e. Congress declared in the Belmont Report that if a service member is under outside pressure to participate in an EUA product then they are unable to give their honest and free will consent.

10. DoDI 6200.02 E.2.7 provides clarity to commanders that COVID-19 INDs are considered an unapproved product: "A medical product that has not been approved by the FDA for general commercial marketing or that the FDA has determined may not be used for its intended purpose without an Emergency Use Authorization or under rules applicable to investigational new drugs or investigational devices." This definition declares that all EUA products are governed by DoDI 6200.02, and as a result, subject to the aforementioned legal requirements.

    a. It is a felony to promote and or advertise an investigational new drug "as if" it is a full licensure drug in most US states.

    b. 21 CFR 312.7(a) states, "any person acting on behalf of a sponsor [DoD is the sponsor] or investigator, shall not represent in a promotional context that an investigational new drug is safe or effective for the purposes for which it is under investigation or otherwise promote the drug."

c. 21 USC §360bbb-2 requires the HHS Secretary to assign classification to drugs utilized under expanded access in order for authorities to know the regulations governing such drugs.

d. The FDA issued an EUA to Pfizer for the BioNTech COVID-19 Vaccine on 23 August 21, informing the manufacturer their product had not been approved and they must submit to the IND application and utilize 19736 as their identification number.

e. The statutes, as mentioned earlier, and military regulations require DoD authorities to obtain the legally effective informed consent of the service member before the administration of an EUA substance. Mandates automatically nullify the ability of service members to give their effective consent. This is why SECDEF Austin and the Senior Pentagon Leadership made it abundantly clear that EUA products must be administered voluntarily without the threat of penalty.

11. Service members being penalized for refusing the administration of an EUA product indicate those members are being subjected to medical experimentation without their free consent. Subjecting service members to medical experimentation is evident in the fact that only EUA experimental products have been made available to service members. In addition, these penalties violate several provisions of international treaties, executive agreements, federal laws, state laws, and military regulations.

    a. The 1992 Senate ratified the International Covenant on Civil and Political Rights Treaty declaring in Article VII that “no one shall be subjected without his free consent to medical or scientific experimentation.” The word “subjected” means to be forced under threat of penalty by one’s government.

    b. 32CFR219 and 45CFR46 govern the administration of INDs under military authority.

        i. Both require the legally effective informed consent of the service member before the administration of an EUA product. Many will attempt to mislead you into believing these regulations only apply to clinical studies, but that is a fallacy. The statute declares that the policy applies to all research involving humans in medical experimentation, including, but not limited to, clinical studies.

ii. Heads of federal departments, agencies, and the military must abide by the Belmont Report.

c. HQ USAMRDC Institutional Review Board Policies (IRB) and Procedures Reflecting 2018 Common Rule Requirements:

i. USAMRDC acts as the single IRB for INDs and EUA products under DoD authority.

ii. 18-6 of USAMRDC regulations require the reporting of deviations from its requirements, as under the Belmont Report and the Nuremberg Code, and must be sent in writing to: HQ USAMRDC 810 Schreider Street Fort Detrick, Maryland 21702-5000.

d. DoDI 6200.02 stipulates:

i. Heads of DoD Components MUST comply with 1107 USC 10, 1107a USC 10, Section 564, and USAMRDC regulations when involving service members with experimental substances or devices under section 564 authorization.

ii. Under Secretary of Defense (Personnel & Readiness) is the head authority for all INDs and EUA products under DoD authority.

iii. The Secretary of the Army is the lead DoD Component for EUA products.

iv. Informed consent requirements will not be waived without the written order signed by the Commander in Chief.

v. Even if the President issues a waiver for informed consent, DoD Components must still obtain the legally effective informed consent of DoD employees to include government civilians and contractors accompanying the Armed Forces.

vi. The right of refusal of EUA substances is inalienable before the issuance of a Presidential waiver.

e. Section 564:

i. Requires the free consent of the service member to participate.

ii. Declares that not even the HHS Secretary has the authority to require anyone to participate in any activity relating to products authorized under provisions in Reference to 21 USC §360bbb-3.

iii. Requires those who participate in an EUA substance to abide by its Scope of Authorization.

12. (Rank Surname), I understand that you have a legal requirement to ensure 100% of those under your command are fully vaccinated according to the orders given by SECDEF Austin. In light of this document, if 100% of service members under your command have either volunteered to participate in an EUA product and/or refused an EUA product, then you have completed that mission until full licensure drugs are available. Procuring full licensure drugs is not under your purview, therefore you have abided by the SECDEF's order.

13. Because the military profession requires commanders and their subordinates to work together to accomplish the mission, my due diligence as an effective follower was to provide you with federal laws and military regulations applicable to the issue at hand. To further demonstrate previous legal and administrative precedent, please see below.

In 2004, U.S. District Judge Sullivan ruled that "Congress has prohibited the administration of investigational drugs to service members without their consent. This court will not permit the government to circumvent this requirement."

In 2005, the FDA affirmed these legal obligations by issuing instructions to the DoD regarding the Anthrax IND substance stating, "Refusal may not be grounds for any disciplinary action under the Uniform Code of Military Justice. Refusal may not be grounds for any adverse personnel action." This instruction did not relate to the drug's formula but rather to the classification of the drug.

Furthermore, the FDA issued an EUA to the DoD for an investigational new drug (Anthrax) with the following statement, "You may refuse Anthrax vaccination under the EUA, and you will not be punished. No disciplinary action or adverse personnel action will be taken. You will not be processed for separation, and you will still be deployable. There will be no penalty or loss of entitlement for refusing Anthrax vaccination."

Anthrax drug was classified as an investigational new drug and is the same classification (EUA) as Pfizer's BioNTech COVID-19 Vaccine, as issued by the FDA on 23 August 2021, EUA.

14. To penalize a service member who exercised the right to accept or refuse the administration of an experimental product sullies the sacred ideals of our Constitution. One such ideal is expressed in the 14th Amendment requiring equal treatment of service members at all times before the law and military regulations. To disregard this Amendment is to violate one's oath, discrediting the military profession. Currently, service members who refused the administration of an EUA product had their 14th Amendment rights violated per the below examples.

    a. Revocation of payment for labor
    b. Denied accrual of retirement points
    c. Refused deployment orders, curtailment of current orders
    d. Refused access to training and education
    e. Separated through Boards of Inquiry
    f. Forced to wear a mask
    g. Forced to participate in experimental COVID-19 testing articles
    h. Denied promotion
    i. Denied travel and other activities relating to their job position
    j. Other punishments

15. 45CFR46, 32CFR219, DoDI 6200.02, DoDI 3216.02, and HQ USAMRDC 'Institutional Review Board Policies and Procedures Reflecting 2018 Common Rule Requirements' all provide service members the absolute right to refuse administration of any EUA product unless the President issues an 1107 USC 10 or 1107a USC 10 waiver. That waiver may not be issued by any other authority in the nation, and any attempt to do so could be construed as a seditious act, a heinous crime against the military profession. The right of refusal applies to COVID-19 IND vaccines and COVID-19 EUA testing articles. The absence of full licensure drugs does not exempt commanders from their legal requirements. To date, only certain GO/FOs and their subordinates have required the mandatory use of experimental products according to FDA labeling guidelines, invalidating SECDEF Austin's vaccination mandate.

16. (Rank Surname), might I suggest requesting the following:

    a. Senior Pentagon Leadership (SPL) orders requiring a service member to participate in an EUA product according to its labeling under threat of penalty.

    b. USAMRDC to provide you the availability and location of full licensure drugs according to federal and military regulations. Please ensure they do NOT say “COMIRNATY labeled'' FDA-authorized drugs from the EU. Drugs must have full licensure according to US FDA regulations. Also, ask for the first available date of the product and in what quantities.

    c. JAG to provide you with federal statutes exempting the DoD from the laws that govern drug labels. Also the statute that declares they may use the statutes attached to Pfizer’s BioNTech COVID-19 Vaccine as if they are the statutes attached to Pfizer’s COMIRNATY vaccine.

    d. Your Superior officer to furnish a copy of the written waiver issued by the President granting commanders the legal authority to punish those under their command who refused the administration of an EUA product.

    e. Review SPL orders with the new understanding that they agreed to accept EUA products for mandated compliance but never required their use under threat of penalty.

    f. Review the Belmont Report and ask the Surgeon General of the Army if a service member can ever be ordered to participate in an experimental product according to the product’s labeling without the express written order of the Commander in Chief.

    g. Ask JAG if a commander may assume the authority of the Commander in Chief and exempt informed consent requirements relating to the administration of Pfizer’s BioNTech COVID-19 EUA substance.

17. (Rank Surname), it is with humility that I have provided the above information. I respect your position, and wish to avoid tarnishing your reputation. Numerous prosecutorial agencies, from both Senate and House Armed Services Committees to state Attorneys General, are investigating these matters with increasing fervor. My genuine concern is that good commanders may be held

accountable for the bad decisions of others. Until today, you may not have fully understood the orders from the senior Pentagon leadership. You will make a startling discovery that service members were NEVER required to participate in an EUA product under threat of penalty. The only leaders in the DoD requiring participation in medical experimentation are certain GO/FOs and subordinate commanders. Most likely you were unaware of the contents and acted under the false pretense that because SECDEF accepted the voluntary participation in EUA products by service members that he also mandated their use.

18. I respectfully request that upon careful examination of the facts of this memorandum, and your affirmation of their authenticity, that you rescind my (LOR, BOI, referral OPR, etc...fill in as applicable) and restore my [pre-vaccination requirement] status.

Respectfully,
(Rank & Name)

Instructions:

- There is a Word version @ CovidPenalty.com
- There is a DoD video @ CovidPenalty.com under the “Military” section that provided more context
- There is a 23 page DoD Policy Paper @CovidPenalty.com with more information
- Replace yellow highlights with correct information
- Cut and paste your letterhead if desired into this document
- Delete anything that you don’t feel comfortable with
- Add anything you feel is missing because this is only a template and you should personalize it

Disclaimer: This document was not produced by a lawyer, and it must not be taken as professional legal advice. However, you can certainly follow the laws prescribed herein to ensure their authenticity.

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