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STEPHEN I. VLADECK
Charles Alan Wright Chair in Federal Courts

November 14, 2021

Mark J. Langer
Clerk
U.S. Court of Appeals for the D.C. Circuit
333 Constitution Avenue, N.W.
Washington, DC 20001-2866

Re: *Larrabee v. Del Toro*, No. 21-5012

Dear Mr. Langer,

I represent Plaintiff-Appellee in the above-captioned matter, which was argued on October 22, 2021. I write to apprise the Court of two recent Marine Corps directives, copies of which are attached.

The first directive, MARADMINS 462/21 (Sept. 1, 2021), requires all “active and reserve component” Marine Corps members to receive COVID-19 vaccinations in order to “reduce transmission of disease, reduce severity of disease among personnel who become infected, preserve medical resources, and facilitate mission accomplishment at the individual, unit, and organizational levels.” *Id.* ¶ 2. The directive also applies to *inactive* reservists, even though they are not subject to the Uniform Code of Military Justice (UCMJ) while they are inactive. But it does *not* apply to retirees such as Plaintiff-Appellee. *See id.* ¶ 3.a.

The second directive, MARADMINS 612/21 (Oct. 23, 2021), explains that “a fully vaccinated force is a matter of operational readiness and good order and discipline,” *id.* ¶ 2, and directs that active-duty and Ready Reserve members who fail to be vaccinated or receive an approved exemption by a fixed date “shall be processed for administrative separation,” and shall lose numerous benefits. *Id.* ¶ 3.a. It also authorizes administrative separation for other reserve component members who fail to comply with the September 1 directive. *Id.* ¶ 4.d.

These directives may be relevant to this Court’s consideration of this case in at least two respects. First, they demonstrate that the Marine Corps does *not* view vaccination of retirees like Plaintiff-Appellee as relevant to the attainment of a “fully vaccinated force [for] operational readiness and good order and discipline.” This may bear upon Plaintiff-Appellee’s argument that retirees perform no military function while retired.

Second, these directives also illustrate that the Marine Corps can promote “operational readiness and good order and discipline” by imposing regulatory requirements—and consequences for non-compliance—even on personnel who are *not* subject to court-martial, such as inactive reservists. This may bear upon Plaintiff-Appellee’s argument that it is not necessary to subject retirees to the UCMJ while retired to preserve their future availability.

I would appreciate it if you could share this letter with the panel.

Sincerely yours,



Stephen I. Vladeck

MANDATORY COVID-19 VACCINATION OF MARINE CORPS ACTIVE AND RESERVE COMPONENTS

Date Signed: 9/1/2021 | MARADMINS Number: 462/21

MARADMINS : 462/21

R 011400Z SEP 21
MARADMIN 462/21
MSGID/GENADMIN/CMC WASHINGTON DC PPO//
SUBJ/MANDATORY COVID-19 VACCINATION OF MARINE CORPS ACTIVE AND RESERVE
COMPONENTS//
REF/A/GENADMIN/CMC/17DEC20//
REF/B/DOC/SECDEF/24AUG21//
REF/C/DOC/USN/30AUG21//
REF/D/DOC/DHA WASHINGTON DC/6MAY21//
REF/E/DOC/DHA WASHINGTON DC/10MAY21//
REF/F/DOC/DODI/23JUL19//
REF/G/DOC/USN/07OCT13//
REF/H/GENADMIN/USN/31AUG21//
REF/I/DOC/USC/12JAN21//
REF/J/DOC/USN/14SEP90//
REF/K/DOC/CMC/15FEB19//
REF/L/DOC/USN/22NOV16//
REF/M/DOC/ASD (HA) WASHINGTON DC/03JUN2021//
REF/N/DOC/MANUAL FOR COURTS MARTIAL (2019 ED.)//
NARR/ REF A IS MARADMIN 754/20, COVID-19 VACCINE GUIDANCE FOR ACTIVE AND
RESERVE COMPONENTS (HEREBY CANCELED). REF B IS OSD MEMO, MANDATORY
CORONAVIRUS DISEASE 2019 VACCINATION OF DEPARTMENT OF DEFENSE SERVICE
MEMBERS. REF C IS ALNAV 062/21 2021-2022 DEPARTMENT OF NAVY MANDATORY COVID-
19 VACCINATION POLICY. REF D IS DEFENSE HEALTH AGENCY INTERIM PROCEDURES
MEMORANDUM 20-004, DEPARTMENT OF DEFENSE (DOD) CORONAVIRUS DISEASE 2019
(COVID-19) VACCINATION PROGRAM IMPLEMENTATION. REF E IS DEFENSE HEALTH
AGENCY PROCEDURAL INSTRUCTION 6205.01, MEDICAL LOGISTICS GUIDANCE FOR THE
DOD CORONAVIRUS DISEASE 2019 (COVID-19) VACCINATION PROGRAM. REF F IS

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DODINST 6205.02, DOD IMMUNIZATION PROGRAM. REF G IS BUMEDINST 6230.15B, IMMUNIZATIONS AND CHEMOPROPHYLAXIS FOR THE PREVENTION OF INFECTIOUS DISEASES. REF H IS NAVADMIN 190/21, 2021-2022 NAVY MANDATORY COVID-19 VACCINATION AND REPORTING POLICY. REF I IS 10 U.S.C. CHAPTER 47, UNIFORM CODE OF MILITARY JUSTICE. REF J IS U.S. NAVY REGULATIONS, PARAGRAPH 1144. REF K IS MARINE CORPS ORDER 1900.16 CHAPTER 2 (MARCORSEPMAN). REF L IS OPNAVINST 3710.7V, NAVAL AIR TRAINING AND OPERATING PROCEDURES STANDARDIZATION GENERAL FLIGHT AND OPERATING INSTRUCTIONS. REF M IS ASSISTANT SECRETARY OF DEFENSE (HEALTH AFFAIRS) MEMO, CO-ADMINISTRATION OF CORONAVIRUS DISEASE 2019 VACCINES WITH OTHER VACCINES. REF N IS MANUAL FOR COURTS MARTIAL UNITED STATES (2019 EDITION).//

POC/OWINGS, ALFRED/CDR/HQMC/HS/DIRECTOR OF PUBLIC HEALTH/TEL: 703-604-4602/EMAIL: ALFRED.OWINGS@USMC.MIL//

POC/MARINE CORPS COVID-19 CELL/HQMC/PP&O/MCCC/TEL: 703-604-5307/EMAIL: SMB_HQMC_MCCAT@USMC.MIL//

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POC/PULITANO, MATTHEW/HMC/HQMC/PP&O/MRRS COORDINATOR/TEL: 703-571-1050/EMAIL: HQ_MRRS@USMC.MIL//

POC/JUDGE ADVOCATE DIVISION/HQMC/DEPUTY BRANCH HEAD, JCA, JAD/TEL: 703-614-2510/EMAIL: JENNIFER.PARKER@USMC.MIL//

GENTEXT/REMARKS/1. This MARADMIN provides guidance to Marine Corps active and reserve components to implement Secretary of Defense (SECDEF)-directed mandatory Coronavirus Disease 2019 (COVID-19) vaccination of Department of Defense (DoD) service members. This MARADMIN cancels and replaces ref (a).

2. Background. COVID-19 is a disease caused by infection with the SARS-CoV-2 virus. Ref (b) mandates vaccination of all DoD service members in order to mitigate risk to the Department's national security mission. **Maximum vaccination of the force will reduce transmission of disease, reduce severity of disease among personnel who become infected, preserve medical resources, and facilitate mission accomplishment at the individual, unit, and organizational levels.**

3. Execution

3.a. Per refs (b) and (c), **all Marine Corps active and reserve component (Active Reserve, Selected Marine Corps Reserve, and Individual Mobilization Augmentee) service members shall be fully vaccinated against COVID-19, unless medically or administratively exempt.** All non-exempt active component personnel will achieve full vaccination no later than 90 days from the date of ref (c), and all non-exempt reserve component personnel will achieve full vaccination no later than 120 days from the date of ref (c).

3.b. COVID-19 vaccines that have received Food and Drug Administration (FDA) licensure are mandated for all DoD service members by ref (b). FDA Licensed vaccine(s) are the only vaccine(s) that can be mandated for DoD personnel at this time. However, service members who voluntarily receive a complete initial series of an FDA Emergency Use Authorization (EUA) COVID-19 vaccine, or a vaccine included in the World Health Organization (WHO) Emergency Use Listing, will meet the requirements of refs (b) and (c) and this MARADMIN. Service members are considered

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fully vaccinated two weeks after completing the second dose of a two-dose COVID-19 vaccine or two weeks after receiving a single dose of a one-dose COVID-19 vaccine.

3.c. Any requirement for Marine Corps personnel to receive one or more additional doses of COVID-19 vaccine (e.g., “boosters”), will be promulgated separately in a follow-on MARADMIN.

3.d. Additional guidance regarding vaccination of Marine Corps civilian employees and contractors will be promulgated in a follow-on MARADMIN as required.

3.e. Marine Corps commanders and surgeons shall coordinate with their supporting Military Treatment Facilities (MTFs), and/or other supporting approved DoD Vaccination Sites, to ensure rapid full vaccination of all Marine Corps service members. Supply of COVID-19 vaccine is not expected to be constrained; however, if supply is initially constrained locally, commanders will coordinate locally to prioritize vaccination based on operational and training requirements.

3.f. Reserve component commanders should encourage members to seek vaccination via the civilian healthcare network if they do not have access to an MTF.

3.g. Marine Corps active and reserve component commands shall monitor COVID-19 vaccination compliance via the Medical Readiness Reporting System (MRRS). If a command does not have a designated MRRS representative with appropriate system access, immediately contact the local MRRS security officer or the HQMC Health Services MRRS POC listed in this message for assistance in acquiring appropriate access.

3.h. Documentation of Vaccination

3.h.1. Commanders will coordinate with supporting MTFs and/or other Vaccination Sites to ensure the following vaccine administration information is documented in each service member’s Electronic Health Record (EHR): date of administration, vaccine name or CVX code, manufacturer and lot number, dose administered, route and anatomic site of vaccination, and name of healthcare provider administering the vaccine.

3.h.2. Marine Corps units administering COVID-19 vaccines (as a Vaccination Site or Remote Site, per paragraph 4.a.) will document administration of vaccine in the EHR to the maximum extent practical. Units that do not have access to the EHR may document vaccination directly in MRRS.

3.h.3. Vaccination will be documented within 24 hours of administration to enable timely and accurate daily monitoring of Force compliance with this MARADMIN.

3.h.4. Personnel who receive COVID-19 vaccination from approved non-DoD facilities (e.g., civilian pharmacies, health departments, or civilian healthcare providers) shall provide documented verification (e.g., a signed authorized vaccination card or healthcare provider note) to their command no later than 1600 on the next regular duty day. The documentation shall include the information listed in paragraph 3.i. Commands will immediately transcribe that information completely and accurately into the EHR, or into MRRS if unable to access the EHR. If commands require assistance with MRRS access or documentation, contact the local MRRS security officer or the HQMC Health Services MRRS POC.

3.i. Documentation of Exemptions. Medical and administrative exemptions will be documented IAW ref (g) and existing EHR and MRRS business rules. Medical exemptions will be documented in the EHR to the maximum extent practical, but may be documented directly in MRRS if access to the EHR is not readily available. Administrative exemptions will be documented directly in MRRS to the maximum extent practical.

3.j. Medical Exemptions

3.j.1. Permanent medical exemptions will be granted only when an individual has a medical contraindication to the required COVID-19 vaccine(s). For COVID-19 vaccination, a permanent medical exemption must be approved by the first O-5 or O-6 Command Surgeon in the member's chain of command, after initial recommendation by a licensed DoD healthcare provider, and after evaluation by an appropriate medical specialist when appropriate. Marine Corps commands without a Command Surgeon will refer any permanent medical exemption requests to the Director of Health Services, Headquarters Marine Corps, after appropriate initial recommendation by a licensed DoD healthcare provider.

3.j.2. Temporary medical exemptions must be authorized by a licensed DoD healthcare provider, and may be granted when there is a temporary medical reason for postponing vaccination.

3.j.3. Healthcare providers should refer to the following for detailed guidance regarding vaccine medical contraindications and precautions, and required screening and evaluation of recipients: ref (d); Centers for Disease Control and Prevention (CDC) COVID-19 Vaccine Information Statements (VIS); FDA EUA Fact Sheets for Healthcare Providers; and CDC Advisory Committee on Immunization Practices (ACIP) Interim Clinical Considerations for Use of COVID-19 Vaccines Currently Authorized in the United States.

3.j.4. Per CDC, COVID-19 vaccination is strongly encouraged for pregnant women due to the safety of the vaccine, and the risk of COVID-19 disease to these individuals and their unborn children. At this time, a temporary medical exemption may be granted by a licensed DoD healthcare provider for pregnant service members, after individual consultation with that provider. Further guidance will be promulgated as indicated.

3.j.5. A history of COVID-19 disease and/or positive serology is not a valid exemption from COVID-19 vaccination, per ref (b). Vaccination of individuals with confirmed current SARS-CoV-2 infection should be deferred until the individual has met criteria to discontinue isolation.

3.j.6. Testing to assess for current or prior infection, or for current or prior immunity, is not recommended or required at this time for the purposes of determining whether to vaccinate for COVID-19.

3.j.7. Service members who are actively enrolled in COVID-19 clinical trials are exempted from mandatory vaccination against COVID-19, per ref (b), until their participation in the trial is complete.

3.k. Administrative Exemptions

3.k.1. Exempting personnel from vaccination for an administrative reason is a non-medical decision. These exemptions will be granted only when the commander determines that an individual service member has a valid reason to remain unvaccinated, typically for a brief (30 days or less) period.

3.k.2. Per ref (g), proximity to separation or retirement is not a valid exemption for COVID-19 vaccination for Marine Corps service members.

3.l. The provisions contained within paragraph 3.a of this MARADMIN constitute a lawful general order and any violation of these provisions is punishable as a violation of Article 92 of ref (i).

Marines shall take action to fully immunize themselves against COVID-19 per ref (j). Paragraph 3.a is punitive and applies without further implementation. Commanders, commanding officers, and officers in charge shall issue appropriate orders to ensure that their Marines and Sailors are fully vaccinated. In accordance with Rule for Court Martial 306 of ref (n), initial disposition authority for cases arising from COVID-19 vaccine refusals is withheld to the general court-martial convening

authority level except that administrative counseling pursuant to paragraph 6105 of ref (k) may be issued at the special court martial convening authority level.

4. Vaccine Storage, Handling, and Administration

4.a. Marine Corps units administering COVID-19 vaccine shall comply with all requirements of refs (d) – (h), to include being approved as a Vaccination Site, in accordance with refs (d) and (e), if those units are ordering and storing COVID-19 vaccine doses. Units which are not approved Vaccination Sites IAW refs (d) and (e) may operate as Remote Sites under the authority and direction of an approved Vaccination Site (typically the supporting MTF). Those units will comply with refs (d) and (e), and with the direction of their parent Vaccination Site

4.b. Marine Corps units which are approved Vaccination Sites will order vaccines IAW refs (e) and (h).

4.c. Distribution and redistribution of COVID-19 vaccines at the local level will be the responsibility of the approved Vaccination Site (typically the supporting MTF), who will coordinate all ordering, distribution, and redistribution IAW refs (d), (e), and (h).

4.d. Safe receipt, storage, transportation, handling, and administration of COVID-19 vaccines is the responsibility of the approved Vaccination Site, any Remote Sites operating under their authority and direction, and any personnel involved with any aspect of those vaccine processes.

4.e. COVID-19 vaccines shall be stored, transported, prepared, and administered IAW all requirements of refs (d) and (e), and IAW manufacturer-specific requirements.

4.f. Whether operating as an approved Vaccination Site or a Remote Site, all medical personnel assigned to Marine Corps units who handle and/or administer COVID-19 vaccines shall complete all required training IAW Appendix 1 of ref (d), and their competencies shall be documented.

4.g. Only appropriately trained and qualified medical personnel, working under signed orders of an appropriately privileged healthcare provider, will administer COVID-19 vaccines, IAW ref (d).

4.h. Commanders will ensure that all vaccine evolutions incorporate appropriate COVID-19 mitigation measures (e.g., social distancing, mask wear, etc.) and comply with Installation Health Protection Condition (HPCON) requirements.

4.i. All COVID-19 vaccines will be administered IAW the applicable vaccine-specific Package Insert or EUA Fact Sheet for Healthcare Providers, and ACIP Interim Clinical Considerations for Use of COVID-19 Vaccines Currently Authorized in the United States (see paragraph 8.c.).

4.j. Vaccine co-administration. Per CDC guidance, COVID-19 vaccines and other vaccines may be administered without regard to timing. This includes administration of COVID-19 vaccine and other vaccines on the same day. Every effort should be made to deliver the COVID-19 vaccine, and all other required vaccines (to include Seasonal Influenza) as soon as possible to service members. Administering units will comply with ref (m) until rescinded.

4.k. Prior to receiving the COVID-19 vaccine, service members will have access to healthcare providers at DoD administration sites to address questions or concerns with COVID-19 vaccination.

4.l. Prior to vaccination at a DoD administration site, all individuals being vaccinated shall be screened by medical personnel using DHA Form 207 (version 13 or subsequent), and shall be provided the current Vaccine Information Statement (VIS) or EUA Fact Sheet for Vaccine Recipients for the specific vaccine product being administered. Individuals receiving vaccine from a non-DoD site will comply with the site-specific required screening.

5. Vaccine Reactions

5.a. COVID-19 vaccines are extremely safe and effective. To date, millions of Americans and DoD-affiliated individuals, have safely received COVID-19 vaccines under the most intense safety monitoring in U.S. history. The CDC, and the Defense Health Agency Immunizations Healthcare Directorate (DHA-IHD), closely monitor all adverse event reporting. The measures outlined in paragraphs 4 and 5 are intended to ensure the safety of all Marine Corps personnel.

5.b. Local reactions (pain, redness, swelling at injection site) and systemic reactions (e.g., fatigue, headache, muscle aches, or fever) may occur after COVID-19 vaccination. These reactions generally resolve within 1-3 days after onset. Local and systemic reactions that resolve without medical intervention are not required to be reported in the Vaccine Adverse Event Reporting System (VAERS).

5.c. Extremely rare cases of severe reactions have occurred following COVID-19 vaccination. Personnel should seek medical attention immediately if they experience symptoms concerning for a severe reaction, as-listed in the vaccine-specific VIS or EUA Fact Sheet for Vaccine Recipients.

5.d. In accordance with ref (d) and CDC guidance, commands will ensure that all clinically important adverse events, to include severe reactions, following COVID-19 vaccination are evaluated by a medical provider. Medical personnel will ensure these events are reported to the VAERS system at www.vaers.hhs.gov. Adverse events will also be reported via the local patient safety reporting system. Additional detailed guidance regarding adverse event reporting can be found in ref (d), but at a minimum, the following events are required to be reported:

5.d.1 Vaccine administration errors.

5.d.2. Serious adverse events (e.g., severe reactions).

5.d.3. Cases of Multisystem Inflammatory Syndrome.

5.d.4. Cases of COVID-19, following vaccination, that result in hospitalization or death.

5.e. Navy and Marine Corps personnel in a flight duty status have a recommended self-limited grounding period of 48-hours after any dose in a COVID-19 vaccine series, per ref (l) and the current Navy Aeromedical Reference and Waiver Guide. Personnel in a dive duty status should follow the guidance of their medical specialty leader.

5.f. Commanders are authorized to grant Sick In Quarters or convalescent leave, as needed, for personnel who experience symptoms after vaccination.

5.g. All Marine Corps units administering COVID-19 vaccine will ensure the following, IAW ref (d):

5.g.1. A written plan for emergency response, and standing orders for the management of anaphylaxis and fainting, are present.

5.g.2. Staff are trained on the equipment and proper response to anaphylaxis.

5.g.3. Units have the minimum emergency supplies for managing anaphylaxis, per CDC guidance found at <https://www.cdc.gov/vaccines/covid-19/info-by-product/pfizer/anaphylaxis-management.html>.

6. Commanders Critical Information Reports (CCIRs)

6.a. COVID-19-related hospitalization or death, post-vaccination. In addition to the requirements of paragraph 5.e, commands will report to the Marine Corps COVID-19 Cell, at SMB_HQMC_MCCAT@USMC.MIL all instances of a vaccinated service member, regardless of the number of doses received, who is subsequently hospitalized with, or dies from, COVID-19 disease.

6.b. Other COVID-19 CCIRs remain in effect. Units will continue reporting all service member, dependent, civilian employee, and contractor positive cases, regardless of vaccination status, along

7. Communication Strategy and Operations. HQMC Communication Directorate will provide and amplify information regarding all COVID-19 mitigation efforts, to include the imperative that all DoD service members be vaccinated against COVID-19 as soon as possible. Communications Directorate will also continue to communicate the progress of Marine Corps vaccination efforts, as appropriate, to external stakeholders.

8. Additional Information and Resources.

8.a. Defense Health Agency (DHA) Immunizations Healthcare Directorate (IHD) COVID-19 Vaccine Resource Center for Healthcare Personnel: <https://www.health.mil/Military-Health-Topics/Health-Readiness/Immunization-Healthcare/IHD-COVID-19-Vaccine-Resource-Center-for-Health-Care-Personnel>.

8.b. DHA-IHD Immunization Healthcare Support Center: 1-877-GET-VACC (1-877-438-8222, option 2); or via email at: DoDvaccines@mail.mil. Provides clinical consultation, to include assistance with questions regarding vaccine screening and potential vaccine-related adverse events.

8.c. CDC Interim Clinical Considerations for Use of COVID-19 Vaccines Currently Authorized in the United States: https://www.cdc.gov/vaccines/covid-19/clinical-considerations/covid-19-vaccines-us.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fvaccines%2F covid-19%2Finfo-by-product%2Fclinical-considerations.html.

8.d. CDC Frequently Asked Questions about COVID-19 Vaccination: <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/faq.html>.

8.e. MCCC SharePoint: <https://eis.usmc.mil/sites/hqmcppo/MCCAT/SitePages/Home.aspx>. Additional information regarding COVID-19 and COVID-19 vaccine-related information can be found at <https://www.marines.mil/Coronavirus/>.

9. This MARADMIN is applicable to the Marine Corps total force.

10. This MARADMIN remains in effect until canceled.

11. Release authorized by General David H. Berger, Commandant of the Marine Corps.//

SUPPLEMENTAL GUIDANCE (2) TO MANDATORY COVID-19 VACCINATION OF MARINE CORPS ACTIVE AND RESERVE COMPONENTS

Date Signed: 10/23/2021 | MARADMINS Number: 612/21

MARADMINS : 612/21

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MARADMIN 612/21

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SUBJ/SUPPLEMENTAL GUIDANCE (2) TO MANDATORY COVID-19 VACCINATION OF MARINE
CORPS ACTIVE AND RESERVE COMPONENTS//

REF/A/MSG/MARADMIN 462/21//

REF/B/MSG/MARADMIN 533/21//

REF/C/DOC/SECDEF/24AUG21//

REF/D/DOC/USMC/01MAY18//

REF/E/DOC/USMC/15FEB19//

REF/F/DOC/MANCOURTMARTIAL/2019ED//

REF/G/DOC/USMC/01JAN21//

REF/H/DOC/USMC/01JUL09//

REF/I/DOC/USMC/14JUN12//

REF/J/DOC/USMC/12JUL21//

REF/K/DOC/DOD/24JUL19//

REF/L/DOC/USMC/11AUG21//

REF/M/DOC/USMC/15MAR18//

REF A IS MARADMIN 462/21, MANDATORY COVID-19 VACCINATION OF MARINE CORPS
ACTIVE AND RESERVE COMPONENTS. REF B IS MARADMIN 533/21, SUPPLEMENTAL
GUIDANCE TO MANDATORY COVID-19 VACCINATION OF MARINE CORPS ACTIVE AND
RESERVE COMPONENTS. REF C IS OSD MEMO, MANDATORY CORONAVIRUS DISEASE
2019 VACCINATION OF DEPARTMENT OF DEFENSE SERVICE MEMBERS. REF D IS MARINE
CORPS ORDER 1610.7A, PERFORMANCE EVALUATION SYSTEM. REF E IS MARINE CORPS
ORDER 1900.16, SEPARATION AND RETIREMENT MANUAL (MARCORSEPMAN). REF F IS
MANUAL FOR COURTS-MARTIAL. REF G IS UNIFORM CODE OF MILITARY JUSTICE. REF H
IS MARINE CORPS ORDER 1400.31C W/CH 1, MARINE CORPS PROMOTION MANUAL,

VOLUME 1 OFFICER PROMOTIONS. REF I IS MARINE CORPS ORDER 1400.32D W/CH 2, MARINE CORPS PROMOTION MANUAL, VOLUME 2, ENLISTED PROMOTIONS. REF J IS MARINE CORPS ORDER 1730.9, ACCOMMODATION OF RELIGIOUS PRACTICES IN THE MARINE CORPS. REF K IS SECNAV INSTRUCTION 1920.6D ADMINISTRATIVE SEPARATION OF OFFICERS. REF L IS MCO 1001.62C INDIVIDUAL MOBILIZATION AUGMENTEES (IMA) PROGRAM. REF M IS MCO 1001R.1L CH1 MARINE CORPS RESERVE ADMINISTRATIVE MANAGEMENT MANUAL (MCRAMM)//

POC/MARINE CORPS COVID-19 CELL/PP&O/HQMC/TEL:(703) 604-5307/NIPR EMAIL: SMB_HQMC_MCCAT@USMC.MIL//

GENTEXT/REMARKS/1. Background and General Guidance. This guidance is a Headquarters Marine Corps coordinated update. It supplements ref (a) and ref (b).

2. In accordance with direction on COVID-19 vaccination from the Secretary of Defense and the Secretary of the Navy, a fully vaccinated force is a matter of operational readiness and good order and discipline. This MARADMIN provides procedural guidance and reporting requirements for administrative disposition of active duty Marines, and Ready Reserve Marines in an active duty status who are not fully vaccinated, in accordance with (IAW) ref (a) through (c) by 28 November 2021 for active component and 28 December 2021 for reserve component.

3. Policy

3.a. Marines refusing the COVID-19 vaccination, absent an approved administrative or medical exemption, religious accommodation, or pending appeal shall be processed for administrative separation IAW this MARADMIN and supporting references. General Court-Martial Convening Authorities (GCMCA) retain authority to take any additional adverse administrative or disciplinary action they deem appropriate.

3.b. Ref (a) is a lawful order that all Marines receive the Pfizer-BioNTech/COMIRNATY (or any EUA/WHO-approved) COVID-19 vaccine within prescribed timeframes to meet Service requirements. Commanders, Commanding Officers, Inspector-Instructors, and Officers-in-Charge are therefore responsible to ensure Marines complete vaccination. In most cases, Marines will be ordered to begin the vaccination process before the Service deadline. A Marine is considered to have "refused the vaccine" when they do not have an approved administrative or medical exemption, religious accommodation, or pending appeal per ref (a) and (b) and they (1) received and willfully disobeyed a lawful order from a superior commissioned officer to be vaccinated against COVID-19; or, (2) they are not or will not be fully vaccinated on the date(s) required by ref (a) and (b). A Marine is not considered to have "refused the vaccine" until final adjudication of any administrative or medical exemption, religious accommodation, or pending appeal per ref (a) and (b).

3.c. A Marine who has not been fully vaccinated is not considered worldwide deployable and shall be assigned or reassigned, locally, to billets which account for health risks to the unvaccinated Marine and those working in proximity to the Marine. Units with Marines who are stabilized for upcoming operational deployments and have "refused the vaccine" shall immediately contact Commandant of the Marine Corps (CMC) (MMIB) to address any staffing issues.

3.d. Commanders, Commanding Officers, Inspector-Instructors, or Officers In Charge, with the concurrence of the first General Officer in the chain of command, are authorized to temporarily reassign unvaccinated Marines based on operational readiness or mission requirements.

Permanent change of station (PCS) or assignment (PCA) actions are not authorized for such temporary reassignments. Commands are encouraged to consult with their Command Surgeon or local cognizant public health authority to inform temporary reassignments.

3.e. Marines refusing the vaccine shall not reenlist or execute orders, with the exception of separation orders.

3.f. Promotion Delays. Commanders, Commanding Officers, Inspector-Instructors and Officers-in-Charge shall delay the promotion of any Marine having refused the vaccine IAW ref (h) and (i).

3.g. Marines who have refused the vaccine may not serve in a command assignment (e.g., Commanding Officers, Inspector-Instructors, Senior Enlisted Advisors, or Officers-in-Charge) without an approved administrative or medical exemption, religious accommodation, or pending appeal. Commanders will relieve for cause unvaccinated Marines without an approved administrative or medical exemption, religious accommodation, or pending appeal currently serving in command assignments. Unvaccinated Marines without a pending or approved exemption or accommodation request or appeal will not assume a command assignment.

3.h. Marines separated for vaccination refusal will not be eligible for involuntary separation pay and will be subject to recoupment of any unearned special or incentive pays and advance educational assistance. Marines who do not complete their service obligation for Transfer of Education Benefits will lose their eligibility to retain transferred Post-9/11 GI Bill benefits and may be subject to recoupment if the Veterans Affairs has already processed a payment for transferred benefits.

3.i. Marines who separate or commence terminal leave, and will no longer be physically present in the Department of Defense (DoD) workplace, on or before their lawfully ordered vaccination deadlines are administratively exempt from vaccine requirements. Marines who physically enter a DoD facility must comply with all other DoD vaccination and testing requirements as-applicable.

3.j. All medical exemptions will be re-evaluated within no more than 365 days from approval.

4. Disposition

4.a. Administrative actions outlined in this MARADMIN should begin as soon as a Marine meets the definition of having “refused the vaccine in paragraph 3.a.

4.b. Officer Administrative Separation. In the case of an officer refusing the vaccine, the cognizant Commander or Commanding Officer shall refer the case to the first GCMCA in the chain of command. GCMCAs will promptly report all officers refusing the vaccine to CMC (JPL) via the Officer Disciplinary Notebook, and will initiate processing for administrative separation. All reports of officers refusing vaccination must be formally closed with a report of disposition in accordance with MCO 5800.16. The least favorable characterization of service authorized for an officer refusing the vaccine is “General (under honorable conditions),” unless inclusion of another basis for separation warrants characterization of the officer’s service as “other than honorable.”

4.c. Enlisted Administrative Separation. In the case of any enlisted Marines refusing the vaccine, the cognizant Commander or Commanding Officer shall notify the Marine that the Commander intends to recommend the GCMCA involuntarily administratively separate them. If the sole basis for separation is vaccine refusal, the least favorable characterization of service that may be approved is “General (under honorable conditions).”

4.d. Per ref (l) and (m), Reserve component (Active Reserve, Selected Marine Corps Reserve, and Individual Mobilization Augmentee) Marines refusing COVID-19 vaccination may be involuntarily transferred to the Individual Ready Reserve. **Marines involuntarily transferred to the Individual**

Ready Reserve for refusing COVID-19 vaccination remain subject to the mandatory processing requirements in paragraphs 4.b. and 4.c.

5. Other Misconduct. The withholding of disposition authority in ref (a) does not extend to conduct other than refusing COVID-19 vaccination. Other misconduct may include misconduct related to vaccine refusal such as failing to wear a mask when required, falsifying vaccination records, or not complying with COVID-19 testing requirements. If in doubt, Commanders, Commanding Officers, Inspector-Instructors, and Officers-in-Charge should consult with their servicing Staff Judge Advocate in determining disposition authority.

6. The Senior Marine Representative at commands outside the Marine Corps (e.g., Navy, Joint, NATO) will identify Marines who refuse to be vaccinated and coordinate with the GCMCA exercising ADCON to appropriately address the refusal.

7. Documentation and Reporting

7.a. Retain all records, materials, and written communications, including emails, pertaining to vaccine refusals IAW SECNAV M-5210.1.

7.b. Provide the Marine Corps COVID-19 Cell by-name rosters of all Marines pending legal/administrative action for refusal to comply with 462/21 no later than 30 November 2021 for active component and 29 December 2021 for Reserve component.

8. Separation Processing

8.a. Servicing personnel administrative center or reporting unit shall document Marines refusing the vaccine under Training Event Code XR: COVID VACCINE REFUSAL via unit diary, using the Page 11 or 6105 as the source documentation for reporting Training Event Code XR. Upon discharge for refusal of the COVID-19 vaccine, the servicing personnel administrative center or reporting unit will document Training Event Code XD: COVID VACCINE REFUSAL DISCHARGE prior to the drop entries being reported/posting to the Marine Corps Total Force System.

8.b. Enlisted Marines separated from active duty on the sole basis of failure to comply with MARADMIN 462/21 will receive a reentry code of "RE-4" per ref (e).

9. Command and Signal.

9.a. Command. This MARADMIN applies to the Total Force.

9.b. Signal. This MARADMIN is effective upon release. Ensure widest dissemination.

10. This message is approved for release by Lieutenant General D. J. Furness Deputy Commandant, Plans, Policies, and Operations.//