

Exhibit 20

Secretary of Defense

Mandatory Coronavirus Disease 2019 Vaccination

<https://media.defense.gov/2021/Aug/25/2002838826/-1/-1/0/MEMORANDUM-FOR-MANDATORY-CORONAVIRUS-DISEASE-2019-VACCINATION-OF-DEPARTMENT-OF-DEFENSE-SERVICE-MEMBERS.PDF>

Can Service Members Fight Taking a Mandatory COVID Vaccine?

<https://www.military.com/daily-news/opinions/2021/08/12/can-service-members-fight-taking-mandatory-covid-vaccine.html>



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

AUG 24 2021

MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP
COMMANDERS OF THE COMBATANT COMMANDS
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members

To defend this Nation, we need a healthy and ready force. After careful consultation with medical experts and military leadership, and with the support of the President, I have determined that mandatory vaccination against coronavirus disease 2019 (COVID-19) is necessary to protect the Force and defend the American people.

Mandatory vaccinations are familiar to all of our Service members, and mission-critical inoculation is almost as old as the U.S. military itself. Our administration of safe, effective COVID-19 vaccines has produced admirable results to date, and I know the Department of Defense will come together to finish the job, with urgency, professionalism, and compassion.

I therefore direct the Secretaries of the Military Departments to immediately begin full vaccination of all members of the Armed Forces under DoD authority on active duty or in the Ready Reserve, including the National Guard, who are not fully vaccinated against COVID-19.

Service members are considered 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 vaccine. Those with previous COVID-19 infection are not considered fully vaccinated.

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. Service members who are actively participating in COVID-19 clinical trials are exempted from mandatory vaccination against COVID-19 until the trial is complete in order to avoid invalidating such clinical trial results.

Mandatory vaccination requirements will be implemented consistent with DoD Instruction 6205.02, "DoD Immunization Program," July 23, 2019. The Military Departments should use existing policies and procedures to manage mandatory vaccination of Service members to the extent practicable. Mandatory vaccination of Service members will be subject to any identified contraindications and any administrative or other exemptions established in Military Department policy. The Military Departments may promulgate appropriate guidance to carry out the requirements set out above. The Under Secretary of Defense for Personnel and

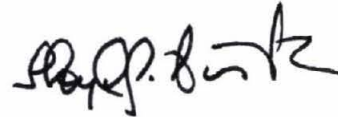


OSD007764-21/CMD010116-21

Readiness may provide additional guidance to implement and comply with FDA requirements or Centers for Disease Control and Prevention recommendations.

The Secretaries of the Military Departments should impose ambitious timelines for implementation. Military Departments will report regularly on vaccination completion using established systems for other mandatory vaccine reporting.

Our vaccination of the Force will save lives. Thank you for your focus on this critical mission.

A handwritten signature in black ink, appearing to read "Stephen P. Bunker". The signature is written in a cursive, somewhat stylized font.

Can Service Members Fight Taking a Mandatory COVID Vaccine?

12 Aug 2021

Military.com | By Brenner M. Fissell and Philip D. Cave

Brenner M. Fissell is an associate professor of Law at Hofstra University and vice president of the National Institute of Military Justice. Philip D. Cave is a partner in Cave & Freeburg LLP and a director (and past president) of the National Institute of Military Justice. He is a retired [Navy](#) judge advocate with 41 years of military law experience in courts-martial and appeals.

Some service members are [objecting](#) to mandatory COVID-19 vaccinations. At the moment, there is no order compelling them to take the vaccine, allowing them to decline immunization without punitive consequences. That will change should President Joe Biden grant a written waiver using his authority under [10 U.S. Code 1107](#) to compel military members to take even authorized but unapproved vaccines. Reports suggest Biden has set a Sept. 15 deadline for doing so, and a recent [Office of Legal Counsel opinion](#) supports that such an order would be lawful.

An [emergency use authorization](#) from the Food and Drug Administration allows the use of one of three available COVID-19 vaccines, and there's no clear timeline for full FDA approval. Because of this emergency status, a service member currently must give consent to be vaccinated.

Service members are asking experienced military lawyers the "what if I ..." question. There are some answers based on prior experience with the anthrax vaccine mandate. In addition, people serving in the military are already required to be vaccinated against many infectious diseases.

In the 1990s, the Defense Department established a mandatory anthrax vaccine program, and there were refusers. Some of those who refused were subjected to administrative disciplinary action and administrative separation, while others were prosecuted at court-martial. At the same time, federal courts were deciding that the program was not lawful and that informed consent was required. Circumstances changed when the FDA removed the experimental status of the vaccine.

So what could happen if mandatory COVID-19 vaccinations are ordered?

Every military lawyer (and service member) knows that all orders are presumed lawful and that a person disobeys "at their peril." [Disobedience of a lawful order](#) is a criminal offense under the Uniform Code of Military Justice. That said, are there any defenses to such disobedience that can be raised at a court-martial? The answer, based on the anthrax precedent, is likely no. If there are any defenses, they would be grounded in a medical or religious exemption.

In the 2012 case of [United States v. Mixon](#), a Marine deploying to Afghanistan refused anthrax and smallpox shots for religious reasons. (The case notes that he had "numerous other immunizations earlier in his career, including Hepatitis A and B, influenza, pneumococcal, polio, yellow fever, tetanus-diphtheria, measles, mumps, rubella booster and meningococcal.) We don't know if his defense would have worked for him because he pleaded guilty to the disobedience and, along with convictions for other offenses, his sentence included three months in the brig and a bad conduct discharge.

How would Chance Mixon have fared had he not waived the defense and were his trial heard today -- at a time when the [Religious Freedom Restoration Act](#), or RFRA, is in place? [U.S. v. Sterling](#), a recent military law precedent, provides some clues.

First, a "religious exercise triggers the RFRA inquiry." Refusal to take a vaccine for religious reasons almost certainly would count since that concept includes "abstention from ... physical acts ... for religious reasons."

Next, a court would ask whether the lawful order "substantially burdened" a "sincerely held" religious belief.

Finally, the sincerity inquiry will probe your motives: Is your refusal really based on your religion, or is it something you read online? This is highly specific to you.

But what about "substantial burden"? This part of the analysis asks whether the order burdens an "important" practice of the religion, such as violating a tenet of the faith. The Sterling court held that service members would not be "substantially burdened" as a legal matter unless they first request accommodation through their command and that accommodation is denied. (This denial is likely in the COVID vaccine context.) Again, the decision will depend on your individual circumstances. You will need to show that an important part of your religion was burdened by taking the vaccine.

But even if someone makes it past these hurdles, they still can be punished for violating the order if the substantial burden on their religious exercise is "the least restrictive means of furthering a compelling government interest." No court is likely to hold that ending the COVID-19 pandemic does not constitute a compelling interest, but what about the first question? Is a vaccine the least restrictive means of ending the pandemic? This would also be a fertile area of litigation, where the service member would need to show that other measures -- say, masks, distancing, or working from home -- are workable solutions.

Service members should be aware of regulations and policy in place that allows them to first seek an exemption on medical or religious grounds. Failure to use the exemption request process is part of the reason Monifa Sterling got in trouble.

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