

The White House

Office of the Press Secretary

For Immediate Release

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**Presidential Executive Order on Corrections to Service Member records related to the Department of Defense Anthrax Vaccine Immunization Program and the Mandatory Coronavirus Disease Vaccination**

**Lt Col Russell E. Dingle<sup>i</sup> Memorial Record Corrections Executive Order**

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EXECUTIVE ORDER

In the interest of justice, and by the authority vested in me as President by the laws of the United States of America, including Article II, Section 2 of the Constitution, wherein the President shall be the Commander in Chief, with the power to grant reprieves and pardons for offenses against the United States, I hereby grant unconditional, retroactive, and unilateral record corrections for all Service Members for any discharge or discipline imposed by the Department of Defense related to the mandatory Department of Defense Anthrax Vaccine Immunization Program and the mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members.

Section 1. Purpose.

Anthrax: Federal Courts affirmed (341 F. Supp. 2d 20) the anthrax vaccine utilized in the Department of Defense Force Protection Program was investigational, and inconsistent with Federal Regulation and law, prior to the December 19, 2005 publication by the Food and Drug Administration of a Final Rule for the Anthrax Vaccine Adsorbed (AVA) in the Federal Register (Volume 70, Number 242, page 75180-75198). It is indisputable from a historic lens that the mandate was illegal. Therefore, corrections are in order for any Service Member previously punished or discharged for refusing to submit to the anthrax vaccine. This is a just and overdue course of action in the best interest of good government.

COVID: According to the August 24, 2021 Secretary of Defense (SecDef) Directive for the Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members, “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.” Further, the directive acknowledged that “Service members [could be] voluntarily immunized with a COVID-19 vaccine under FDA Emergency Use Authorization [EUA].” Ultimately, only EUA unapproved medical products existed throughout the entirety of the mandate’s deadlines, and therefore the program should have been exclusively voluntary in accordance with the SecDef Directive. It is indisputable that the mandate violated the SecDef’s Directive. Therefore, corrections are in order for any Service Member

previously discharged or punished for refusing to submit to the COVID vaccine. This is a just and overdue course of action in the best interest of good government.

## Section 2. Basis.

### (a) LEGISLATIVE INQUIRY.

Anthrax: Multiple bipartisan Congressional Hearings resulted in House Report 106-556 in April 2000. The report found the Department of Defense Anthrax Vaccine Immunization Program (AVIP) conflicted with Food and Drug Administration regulations, and declared the anthrax vaccine investigational absent a properly approved indication for use against inhaled anthrax. The unapproved medical product and unlicensed status of the anthrax vaccine was later corroborated in Article III Federal Court rulings.

COVID: Congress undertook unprecedented legislative action to halt the mandatory COVID vaccination program with the 2023 National Defense Authorization Act (NDAA), which the President signed into law on December 23, 2022. While the Congress encouraged the Defense Department (DoD) to correct records in the law's Joint Explanatory language, the DoD took no substantive actions to resurvey this matter or humbly institute remedies for mandating unapproved medical products in violation of the SecDef directive

### (b) JUDICIAL INQUIRY.

Anthrax: Federal Courts found the AVIP violated 10 U.S.C. § 1107 due to the mandate of a vaccine that was being used for a known investigational purpose absent a required Presidential Waiver or informed consent as directed in Executive Order 13139. A December 2003 preliminary injunction, and an October 2004 permanent injunction by the Federal District Court of Washington DC, enjoined mandatory Anthrax inoculations and vacated the existing rulemaking process until the vaccine's license final rule had been properly completed. The court opined regarding its "obligation to ensure that FDA follow the law in order to carry out its vital role in protecting the public's health and safety," and affirmed that "Congress has prohibited the administration of investigational drugs to service members without their consent." The Court ruled it would "not permit the government to circumvent this requirement," adding that "The men and women of our armed forces deserve the assurance that the vaccines our government compels them to take into their bodies have been tested by the greatest scrutiny of all — public scrutiny." The Court enjoined use of the anthrax vaccine, citing 10 U.S.C. § 1107, and declared the involuntary, forced or compelled Anthrax Vaccination Program "illegal absent informed consent or a Presidential waiver." This court ruling remains undisturbed, and the District of Columbia Federal Court affirmed that the government's position regarding mandatory use of the anthrax vaccine was "not substantially justified" given the licensing was not finalized by the Food and Drug Administration until December 19, 2005 through publication of a final order for the vaccine, including approval for use against inhalation anthrax.

COVID: In the midst of the COVID mandate controversies multiple federal court cases were weighed by the federal judiciary. Unlike the anthrax vaccine controversy, where there was a precedential illegality ruling, ultimately most COVID cases were dismissed following the rescission of the COVID mandate by the 2023 NDAA. Considering the merits of mandate legality were never adjudicated, the duty falls to the President of the United States and Commander in Chief to ineluctably resolve this matter.

### (c) EXECUTIVE INQUIRY.

Anthrax: Executive Branch review, predating the AVIP, included a Department of Defense acknowledgment that there was "no vaccine in current use which will safely and effectively protect military personnel against exposure to this hazardous bacterial agent [Anthrax]." Additionally, the FDA issued a Notice of Intent to Revoke the Anthrax vaccine manufacturer's license in 1997, citing multiple instances of quality control deviations in 1998 & 1999. In April 2001, the White House directed the Department of Defense to review the Anthrax Vaccine program. By August 2001, an internal Department of Defense review recommended the Secretary of Defense minimize use of the vaccine. The deliberative policy process was disrupted by the Anthrax Letter attacks in September and October 2001. Following the attacks, the Department of Defense renewed anthrax vaccinations because officials unwittingly believed "The anthrax attacks in October 2001 illustrated the risk..." A preliminary report in August 2008, and a final report in February 2010, by the Federal Bureau of Investigation affirmed the perpetrator's motive in the anthrax letter attacks was "to save the failing anthrax vaccine program" by creating a "scenario where people all of a sudden realize the need to have this vaccine." The report revealed a United States Army anthrax vaccine scientist committed the crimes, and was successful in getting the failing program "rejuvenated ... within a few months of the anthrax attacks." The report disclosed that following the attacks the "FDA fast-tracked the approval process and approved the Anthrax Vaccine Adsorbed ... even though it didn't meet the original potency standards." Additionally, as President, I directed the DoD review and correct anthrax mandate punishments in 2018. This effort was halted during Pres Biden's tenure.

COVID: Executive branch review of COVID mandate legality by the DoD appears to have been nonexistent outside of a Department of Justice opinion by unelected bureaucrats that ignored the precedent anthrax vaccine experience and the promulgation of 10 U.S.C. § 1107a for Emergency Use Authorized unapproved medical products. That law required a prior consent right for Service Members and the "option to accept or refuse administration of a product." This requirement was ignored by the DoD regardless of the fact that it could be "waived only by the President." A Presidential waiver never occurred, as was the historical precedent with the illegal anthrax vaccine experience. Of note, anthrax vaccine was the first-ever EUA allowed and its use was specifically caveated as exclusively voluntary with "no penalty" permitted for Service Members that exercised their legal option to accept or refuse. The Federal Register entry on this matter was explicit: "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."<sup>iii</sup> That EUA precedent from the Federal Register, Vol. 70, No. 21, on February 2, 2005, page 5452, was ignored by the DoD and Executive branch for the COVID mandate.

(d) JUSTICE.

Based on the above examples of legislative, judicial and executive inquiry, the Department of Defense disciplines warrant corrections for Service Members from 1997 to 2005 that refused to submit to mandatory anthrax vaccinations and from 2021 to 2023 for refusing to submit to mandatory COVID vaccination during the timeframes that the vaccines were unapproved medical products or EUA's. The totality of circumstances support expunging punishments meted out for both mandates. Accordingly, all disciplines will be unconditionally, retroactively, and unilaterally corrected without application.

Section 3. Policy.

(a) CORRECTIONS.

In the case of a current or former Service Member of the Armed Forces or any similarly situated citizen who was the subject of any form of adverse personnel action as a result of the refusal to submit to anthrax or COVID vaccination, the Secretary of Defense, acting through the appropriate military board for the correction of military records under title 10 and 32 of the United States Code, shall:

1. Without necessity of application from the Service Member, or representatives of former Service Members, administratively and retroactively correct the personnel records for all adversely impacted Service Members or former Service Members.
2. Fully correct all records to include:

Anthrax: unconditionally upgrade all characterizations of discharge to fully honorable, issue good conduct metals in accordance with anthrax mandate precedent corrections cases, and reinstate previously earned Veteran Administration GI Bill educational benefits.

COVID: unconditionally upgrade all characterization of discharge to fully honorable, reinstate previously earned Veteran Administration GI Bill educational benefits, issue good conduct metals in accordance with anthrax mandate precedent corrections cases, offer reinstatement, grant constructive credits for all missed service for discharged Service Members and for all currently Serving Members that lost creditable service, offer special selection boards for all missed promotions, allocate retroactive pay for any Service Member that returns to duty, and expunge all records of any adverse personnel action.

3. Notify all affected current and former Service Members of this Presidential Expungement Order causing updates to personnel records and reissue updated discharge documentation with restoration of de novo rights and privileges pertaining to the unconditional fully honorable upgrade to characterizations of service for any and all former Service Members.
4. Submit to the President and Congress an annual report at the end of each fiscal year regarding activities under this section until complete. Each such report shall identify the specific records corrected and coordinate with Congress to include anthrax and COVID vaccinations to the PACT Act for presumptive disability determinations.

(b) ADMINISTRATION.

This order shall be implemented and paid for with existing DoD appropriations, and is not intended to, and does not create, beyond administrative corrections, any additional right or benefit, substantive or procedural, enforceable by law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. This Executive Order serves as a formal national apology to our Service Members and their families for what they have endured and a formal warning to DoD officials to never again repeat such willful violations of Service Member rights.

DONALD J. TRUMP, 45<sup>th</sup> and 47<sup>th</sup> President of the United States, The White House

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<sup>i</sup> Lieutenant Colonel Russell E. Dingle served as an A-10 Pilot and Commander with the Connecticut Air National Guard. He was a member of a command-directed Tiger Team in 1997 that identified the now affirmed illegalities associated with the anthrax vaccine immunization program for his superiors. He testified to Congress in 1998. His research was a foundational aspect of the Doe v. Rumsfeld case, and was cited by the federal court reference FDA Citizen Petition Docket # 01P-0471. LtCol Dingle passed away in 2005, leaving two daughters and a widow who are honored to have their father and husband's seminal work on behalf of U.S. troops honored by the President.

<sup>ii</sup> Inaugural EUA for anthrax vaccine in Federal register, Feb. 2, 2005.

<https://www.federalregister.gov/documents/2005/02/02/05-2028/authorization-of-emergency-use-of-anthrax-vaccine-adsorbed-for-prevention-of-inhalation-anthrax-by> and <https://www.govinfo.gov/content/pkg/FR-2005-02-02/pdf/05-2028.pdf>