



Mandatory COVID-19 Vaccinations

Purpose

This practice advisory addresses the COVID-19 vaccination requirement for all active and reserve Marines (Active Reserve, Selected Marine Corps Reserve, and Individual Mobilization Augmentee).¹ Additionally, this advisory contains guidance and recommendations regarding vaccination refusals and vaccination exemption requests. This practice advisory **does not** remove the requirement for judge advocates to conduct their own thorough review of all applicable directives and policies prior to giving any legal advice related to the vaccination mandate.

BLUF: All Marines—regardless of whether on active duty or a member of the Reserve Component—are required to be fully vaccinated against COVID-19 unless they have a valid exemption. Commands should counsel their unvaccinated Marines to ensure they know the potential consequences of failing to be fully vaccinated. Should a Marine refuse to be vaccinated without a valid exemption, only a GCMCA may decide to administratively separate or take punitive action against a Marine for his or her vaccination refusal. Upon request by a SPCMCA, a GCMCA may authorize the SPCMCA to initiate administrative separation proceedings or take punitive action.

Background

The Secretary of Defense (SECDEF) mandated COVID-19 vaccination for all active duty and Ready Reserve service members via a memorandum published 24 August 2021. Pursuant to this memorandum, the Secretary of the Navy (SECNAV) published ALNAV 062/21 on 30 August 2021 with additional guidance applicable to the Department of the Navy (DON). Specifically, the ALNAV states:

Effective immediately, all DON active duty Service Members, who are not already vaccinated or exempted, are required to be fully vaccinated within 90 days and all Reserve Component Service Members are required to be fully vaccinated within 120 days of this issuance with an FDA approved vaccination against COVID-19.

The Commandant published MARADMIN 462/21, on 1 September 2021, implementing the SECNAV's timeline and providing additional service level guidance on the vaccination mandate.

The SECNAV has the authority to order members of the Department of the Navy to receive vaccinations licensed by the FDA. CMC has the same authority over Marines. U.S. Navy Regulations 1990, paragraph 1144 requires members of the Naval Service to make themselves available to be vaccinated against diseases. Both ALNAV 062/21 and MARADMIN 462/21 contain punitive language which make them lawful general orders.

Vaccination Requirement and Exemptions

Vaccination Requirement

¹ This advisory does not address non-Marine service members assigned to Marine Corps commands. Marine Corps commands seeking guidance on how to process or address a vaccination refusal by non-Marine service member should contact Judge Advocate Division through the provided points of contact.

Food and Drug Administration (FDA) licensed vaccinations are subject to the vaccination mandate. Currently, the only vaccine with a FDA license is the Pfizer-BioNTech product Comirnaty (COVID-19 Vaccine, mRNA).

However, in accordance with FDA guidance available at <https://www.fda.gov/vaccines-blood-biologics/qa-comirnaty-covid-19-vaccine-mrna>, doses of the Pfizer-BioNTech COVID-19 vaccine authorized under the FDA Emergency Use Authorization (EUA) produced prior to the issuance of the FDA license may be used interchangeably with doses produced post-licensing by Pfizer (Comirnaty). The Pfizer COVID-19 vaccines produced prior to and after FDA licensure have the same formulation. Accordingly, commanders may order an unvaccinated Marine to receive the Pfizer produced vaccine regardless of whether the particular dose of the Pfizer vaccine to be administered was produced before or after FDA licensure. Commanders, however, cannot order a Marine to receive any other COVID-19 vaccine, even if that vaccine is approved for use under an EUA or World Health Organization (WHO) Emergency Use listing (i.e., the Moderna or Johnson & Johnson vaccines).

Despite not being able to order an unvaccinated Marine to receive the Moderna or Johnson & Johnson vaccines, active duty Marines who voluntarily receive the complete series of these vaccinations by 14 November 2021, or who have previously received a complete series of these vaccinations, will be in compliance with the mandate to be fully vaccinated by 28 November 2021. Reserve Component Marines not on active duty who have received the complete series of these vaccinations by 14 December 2021 will be in compliance with the mandate to be fully vaccinated by 28 December 2021.

Currently, a Marine previously infected with COVID-19 or who has tested positive for COVID-19 antibodies through a standard serology test is not considered fully vaccinated for the purpose of the vaccination requirement. If unvaccinated by the deadlines established in the mandate, in order to not be in violation of the vaccination mandate, unvaccinated Marines must obtain an administrative or medical exemption, or be granted a religious accommodation.

Marines are not limited to obtaining their vaccination from a Military Treatment Facility (MTF). Commanders should encourage their Marines to comply with the vaccination mandate in the most expeditious manner possible, to include encouraging those without regular access to a MTF to obtain the vaccination from a civilian vaccination site. Marines electing to be vaccinated at a location other than a MTF are required to provide documentation verifying their vaccination status (e.g. signed authorized vaccination card or healthcare provider note) to their command no later than 1600 the first duty day after the vaccine was administered.

Exemptions from the COVID-19 Vaccination Requirement

A number of health conditions and personal/professional circumstances may justify temporary or permanent noncompliance with the COVID-19 vaccination mandate. Whether an exemption is to be granted is determined on a case-by-case basis and in accordance with applicable policies and directives. If a Marine is granted an exemption, whether it be a temporary or permanent exemption, the Marine's command must take action to document the exemption in the Marine's Electronic Health Record and/or Medical Readiness Reporting System, as applicable. While the types of exemption are described below, legal practitioners should, prior to advising a commander on any claim of or request for an exemption, conduct a thorough review of implementing policies and directives.

Administrative Exemptions Administrative exemptions are non-medical, temporary (typically 30 days or less) exemptions granted when a service member is momentarily unable or unwilling to obtain the vaccine due to their individual circumstance. Commanders, as defined in JAGMAN, paragraph 0102a, are responsible for acting upon administrative exemption requests. Reasons for granting an administrative exemption include, but are not limited to: providing the time necessary to process and receive final action on medical exemption requests by an authorized medical provider; providing time necessary to process and receive final action on a religious accommodation request;

and training/operational conflicts. A Marine's proximity to separation or retirement is not a basis for an administrative exemption to the vaccination mandate.²

Medical Exemptions Depending upon the unvaccinated Marine's medical status, medical exemptions may be permanent or temporary. Decisions concerning medical exemptions can only be made by licensed DoD healthcare providers in accordance with Defense Health Agency, Center for Disease Control and Prevention, FDA, and other applicable medical guidance related to the use of COVID-19 vaccines. While pregnant women are strongly encouraged to obtain the COVID-19 vaccine, they may receive a temporary medical exemption from a licensed DoD healthcare provider after individual consultation. Permanent medical exemptions will be granted only when a Marine has a medical contraindication to the vaccine. After initial recommendation by a licensed DoD healthcare provider and, when required, evaluation by an appropriate medical specialist, a permanent medical exemption may be approved by the first O-5 or O-6 Command Surgeon in the Marine's chain of command. After an initial recommendation is obtained from a licensed DoD healthcare provider, commands without an O-5 or O-6 Command Surgeon will refer permanent medical exemption requests to the Director of Health Services, HQMC, for determination.³ Additional information concerning medical exemptions and their processing is provided in MARADMIN 462/21 and BUMEDINST 6230.15B, paragraph 2-6.a. Due to the litigation risks involved, it is strongly advised that an administrative exemption be granted until a final medical exemption determination has been made by the appropriate medical authority.

Religious Accommodations All religious accommodation requests must be processed in accordance with MCO 1730.9 (Accommodation of Religious Practices in the Marine Corps). Because vaccination for COVID-19 is a DoD established requirement, all religious accommodation requests related to receiving the vaccination must be forwarded to the Deputy Commandant, Manpower and Reserve Affairs (DC M&RA) for decision. Requests originating in CONUS must be forwarded within 30 days of receipt by the command. Requests originating OCONUS or from Reserve Component Marines not on active duty must be forwarded within 60 days of receipt by the command. Commands in receipt of a request for religious accommodation based upon the vaccination mandate should ensure the Marine is interviewed by a chaplain in an expeditious manner in order to facilitate a timely decision. Due to the litigation risk involved, it is strongly advised that an administrative exemption be granted to until a final religious accommodation determination has been made by DC M&RA.

Clinical Trials Service members actively enrolled in COVID-19 clinical trials are exempt from the mandatory vaccination until their participation in the trial is complete.

Responding to Vaccination Refusal

The below guidance describes the courses of action and processing timelines commands are recommended to follow in the event an unvaccinated Marine fails to be fully vaccinated by the mandated deadline or refuses to obey a commander's order to obtain the COVID-19 vaccine. This guidance is meant to inform staff judge advocates as to how they might advise their commander and should not be read as requiring a specific course of action or processing timeline.

Commands should encourage all personnel to obtain the vaccine as soon as possible. Initial informal counseling can be conducted at the lowest echelons of leadership and should include opportunities for the unvaccinated Marine to speak to medical personnel who can answer questions concerning the vaccine.

² Additional guidance related to administrative exemptions can be found in BUMEDINST 6230.15B, paragraph 2-6.b. and Appendix C.

³ An administrative exemption may be granted by the Marine's commander to allow for the processing of and action upon a medical exemption by the appropriate medical authority.

If informal counseling is deemed insufficient, commanders may provide their unvaccinated Marine with a written counseling (“Page 11”) requiring the unvaccinated Marine to acknowledge the requirement to be fully vaccinated by 28 November 2021 for active duty Marines or 28 December 2021 for Reserve Component Marines not on active duty.⁴

Alternatively, commanders may choose to give the unvaccinated Marine an oral or written order requiring them to obtain the Pfizer vaccine. Written orders are recommended. The order may require immediate vaccination, vaccination at a specific time, date and location, or vaccination not later than a particular date. An enlisted Marine’s refusal to comply with a supplemental order should be documented using a 6105(1) counseling which explains the deficiency, a date by which the deficiency must be corrected, and resources available to the help address the deficiency. Enclosure 1 contains templates commands are encouraged to use when drafting a Page 11 counseling, supplemental written orders, and 6105 counselings.

In accordance with MARADMIN 462/21, initial disposition decisions made pursuant to R.C.M. 306 in cases involving COVID-19 vaccination refusals, with the exception of the issuance of a 6105(1) counseling to a refusing enlisted Marine, are withheld to the general court-martial convening authority (GCMCA) level. The SECNAV and Commandant’s 90 day (120 days for Reserve Component) deadline for full vaccination limits when a GCMCA can take adverse administrative or punitive action based solely upon non-compliance with the ALNAV or MARADMIN. Based on that timeline, 15 November 2021 (15 December 2021 for Reserve Component not on active duty) is the first day on which the GCMCA may act based solely upon non-compliance with the ALNAV or MARADMIN. If presented with such a case on or after that date, the GCMCA retains the authority to use the full range of administrative and punitive actions to hold accountable non-exempt Marines who fail to be fully vaccinated by the imposed deadline. This includes authorizing a subordinate commander to take action (e.g. NJP, initiating administrative separation, or court-martial) when a subordinate commander has requested the authority to do so. While the GCMCA may authorize a subordinate commander to take action, the GCMCA may not demand action by the subordinate commander.

If an unvaccinated enlisted Marine is given and refuses a commander’s order to be vaccinated, the commander issuing the order, if they are not a GCMCA, may issue the refusing enlisted Marine a 6105(1) counseling to document the deficiency without first requesting permission to do so from the GCMCA. However, if the commander issuing the order desires to take administrative or punitive action against the enlisted Marine for refusing his/her order beyond issuing a 6105(1) counseling, that commander must communicate to the GCMCA their desire to do so. The GCMCA authority will then make an R.C.M. 306 disposition determination. The GCMCA can either return the case to the subordinate commander authorizing that commander to take the requested action against the refusing enlisted Marine (6105(2) counseling, NJP, court-martial, initiation of administrative separation proceedings), or retain the case for disposition action at the GCMCA level.

If an unvaccinated Marine officer is given and refuses a commander’s order to be vaccinated and the commander issuing the order is not a GCMCA, the commander issuing the order cannot take any administrative or punitive action against the refusing Marine officer. That commander must forward the issue to the refusing officer’s GCMCA for an R.C.M. 306 disposition determination. This determination may trigger an ODN entry requirement.

Administrative Separations

⁴ The below dates are the last possible date on which a Marine can obtain the first vaccine shot of the Pfizer, Moderna, or Johnson & Johnson vaccine and still have sufficient time to comply with the mandated deadline given required delay between shots in two-shot versions and the 14 day post-shot requirement for full vaccination.

- Pfizer vaccine – 1st shot NLT 24 October 2021 (23 November 2021 for Reserve Component) ;
- Moderna vaccine – 1st shot NLT 17 October 2021 (16 November 2021 for Reserve Component);
- Johnson & Johnson – shot NLT 14 November 2021 (14 December 2021 for Reserve Component).

The MARCOSEPMAN includes several bases that may be used to administratively separate a Marine who refuses to be vaccinated. For example, an enlisted Marine who disobeys a commander's order to receive the vaccination may be processed for administrative separation pursuant to paragraph 6210.6 Misconduct (Commission of a Serious Offense). Depending on the refusing enlisted Marine's individual circumstances, it may be more appropriate to process that Marine using the basis Convenience of the Government (Refusal of Medical Treatment) in accordance with paragraph 6203.7e. An officer who refuses the vaccine may be administratively separated.

NJP and Court-Martial

Marines refusing to be vaccinated may be subject to NJP and/or court-martial for violation of a lawful general order (ALNAV 062/21 and MARADMIN 462/21) and/or violation of a lawful order (local commander's order) under Article 92, UCMJ. Marines refusing to be vaccinated after receiving an order to do so by their local commander may also be subject to NJP and/or court-martial for willfully disobeying a superior commissioned officer under Article 90, UCMJ.

The staff judge advocate for any command considering referring charges stemming from a vaccination refusal to court-martial should consult with their servicing Regional Trial Counsel. The Trial Service Organization has issued specific prosecutorial guidance to its personnel to ensure trial counsel are prepared to advise staff judge advocates and commanders on the prosecutorial merits of COVID-19 vaccination refusal cases.

Conclusion

COVID-19 vaccination is required for the force. Best practice is to inform all commanders of these processes and remain available to answer their questions. A service member who refuses to obtain a COVID-19 vaccination and who does not have a valid exemption will be in violation of several lawful orders and can be held accountable via administrative or punitive action. Depending on what order is violated—the general orders to be fully vaccinated by the imposed deadline articulated in ALNAV 062/21 and MARADMIN 462/21 or a local commander's order to receive the Pfizer vaccination—will determine when administrative or punitive action can be taken against the unvaccinated Marine.

Point of Contact

Questions about this Practice Advisory may be directed to the following JAD offices, as appropriate, Military Justice Branch (MJ) at (703) 693-9299; Civil and Administrative Law Branch (JCA) at (703) 693-8164; Personnel Law Branch at (703) 693-9145; or Trial Services Organization at (703) 693-6711.



ADMINISTRATIVE REMARKS (1070)

| | | |
|---|---|--|
| DATE Articles UCMJ explained to me this date as required by Article 137, UCMJ. | DATE Articles UCMJ explained to me this date as required by Article 137, UCMJ. | DATE I have been counseled concerning SBP and fully understand the automatic enrollment and future enrollment provisions on the Plan. |
| <i>(Signature)</i> | <i>(Signature)</i> | <i>(Signature)</i> |

_____ : Counseled this date concerning MARADMIN 462/21 (MANDATORY COVID-19 VACCINATION OF MARINE CORPS ACTIVE AND RESERVE COMPONENTS).

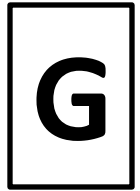
MARADMIN 462/21, effective 1 September 2021, is a military order issued by the Commandant of the Marine Corps. Paragraph 3.a. of MARADMIN 462/21 ordered that all Marine Corps active and reserve component (Active Reserve, Selected Marine Corps Reserve, and Individual Mobilization Augmentee) service members 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 28 November 2021. All non-exempt reserve component personnel will achieve full vaccination no later than 28 December 2021. The provisions contained within paragraph 3.a of MARADMIN 462/21 constitute a lawful general order and failure to comply with its terms is punishable as a violation of a lawful order under Article 92, Uniform Code of Military Justice, and may result in punitive or adverse administrative action or both.

I acknowledge that I have read and understand ALNAV 062/21 dated 30 August 2021 and MARADMIN 462/21 dated 1 September 2021.

[Printed Name of Marine Counseled]
[Rank], USMC[R]
Marine Counseled

Date Signed

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| NAME (last, first, middle) | EDIPI |
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| (Signature) | (Signature) | (Signature) |

_____ : Counseled this date concerning the following deficiencies: *(as appropriate)*

Refused inoculation with the COVID-19 vaccine
-or-

Violation of Article 92, (describe order)
-or-

Violation of Article 90, (describe willful disobedience)
-or-

Other

Specific recommendations for corrective action are to become fully vaccinated by 28 November 2021 and to seek assistance, which is available through the chain of command. Healthcare providers are available to discuss any objections or concerns you may have concerning the COVID-19 vaccine.

I understand that failure to complete my enlistment contract with an honorable characterization of service may preclude my eligibility for benefits from the Department of Veterans Affairs or other organizations and may have an adverse effect on future civilian employment.

Failure to take corrective action and any further violations of the UCMJ may result in judicial or adverse administrative action, including but not limited to administrative separation.

I was advised that within 5 working days after acknowledging this entry I may submit a written rebuttal which will be filed on the document side of the service record. I choose to ___/not to ___ make such a statement.

[Printed Name of Marine Counseled] Date Signed
[Rank], USMC[R]
Marine Counseled

Commanding Officer Date Signed

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| NAME (last, first, middle) | EDIPI |
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ADMINISTRATIVE REMARKS (1070)

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Violation of Article 90, (describe willful disobedience)

-or-

Other

Specific recommendations for corrective action are to become fully vaccinated and to seek assistance, which is available through the chain of command. Healthcare providers are available to discuss any objections or concerns you may have concerning the COVID-19 vaccine.

I understand that failure to complete my enlistment contract with an honorable characterization of service may preclude my eligibility for benefits from the Department of Veterans Affairs or other organizations and may have an adverse effect on future civilian employment.

I understand that I am being processed for the following judicial or adverse administrative action: administrative separation per paragraph *(as appropriate)*

6203.7e MARCORSEPMAN for Convenience of the Government (Refusal of Medical Treatment)

-or-

6210.6 MARCORSEPMAN for Misconduct (Commission of a Serious Offense)

-or-

Other

I was advised that within 5 working days after acknowledging this entry I may submit a written rebuttal which will be filed on the document side of the service record. I choose to ____ /not to ____ make such a statement.

[Printed Name of Marine Counseled]
[Rank], USMC[R]
Marine Counseled

Date Signed

Commanding Officer

Date Signed

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| NAME (last, first, middle) | EDIPI |
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[Date]

From: Commander
To: Marine

Subj: ORDER TO RECEIVE COVID-19 VACCINATION

Ref: (a) MARADMIN 462/21
(b) JMJ Practice Advisory 8-21

1. In accordance with Reference (a), you are hereby ordered to report to [SPECIFIC MEDICAL FACILITY] and receive your first dose of the COVID-19 vaccine [on DATE/within the thirty (30) calendar days of the date of this order]. You are further ordered to receive your second dose of the COVID-19 vaccine within thirty (30) calendar days of receiving your first dose. You may receive the COVID-19 vaccine from an alternate medical provider instead of [SPECIFIC MEDICAL FACILITY], however the timeline of this order remains in effect.
2. You shall report receipt of your first and second dose of the COVID-19 vaccine to the [UNIT G/S-1] within one business day of receiving each dose. If the vaccine is unavailable you shall notify the [UNIT G/S-1] of this status within one (1) business day of learning it.
3. This correspondence is a lawful order the violation of which may subject you to punitive and/or administrative action.
4. If you believe you should be granted an exemption from this order, you must provide documentation of exemption approval by a competent authority that is acceptable to your chain of command within thirty (30) calendar days of the date of this order. Otherwise, this order remains in effect. If you believe you need additional time to receive exemption approval, you must request an extension of time in writing through your chain of command; without written extension approval from your chain of command, this order remains in effect. Seek the assistance of your chain of command and review References (a) and (b) to learn about available exemptions and the procedures for seeking an exemption.

I. M. COMMANDER

From: Marine
To: Commander

Subj: ORDER TO RECEIVE COVID-19 VACCINATION

1. On _____ I received the foregoing order to receive both doses of the COVID-19 vaccine. I have been given a copy of this order and the MARADMIN listed as Reference (a). I hereby certify that I have read and fully understand this order.

I. M. MARINE

Enclosure (1)