



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

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Docket No. 6092-23  
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF FORMER █  
XXX XX █/█ USMC

Ref: (a) 10 U.S.C. § 1552  
(b) MCO 1900.16, Separation and Retirement Manual (Short Title: MARCORSEPMAN), 15 February 2019  
(c) SECNAVINST 1730.8B, Change 1, Accommodation of Religious Practices, 28 March 2012  
(d) MCO 1730.9, Accommodation of Religious Practices in the Marine Corps, 12 July 2021  
(e) Rule for Courts-Martial 306  
(f) USD (P&R) Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military / Naval Records Regarding Equity, Injustice, or Clemency Determinations," 25 July 2018

Encl: (1) DD Form 149  
(2) DD Form 214  
(3) SECDEF Memo, subj: Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members, 24 August 2021  
(4) ALNAV 062/21, subj: 2021-2022 Department of Navy Mandatory COVID-19 Vaccination Policy, dtg 302126Z AUG 21  
(5) MARADMIN 462/21, subj: Mandatory COVID-19 Vaccination of Marine Corps Active and Reserve Components, dtg 011400Z SEP 21  
(6) NAVMC 118(11), Administrative Remarks, 27 July 2022  
(7) NAVMC 118(11), Administrative Remarks, 21 September 2021  
(8) MARADMIN 533/21, subj: Supplemental Guidance to Mandatory COVID-19 Vaccination of Marine Corps Active and Reserve Components, dtg 061806Z OCT 21  
(9) MARADMIN 612/21, subj: Supplemental Guidance (2) to Mandatory COVID-19 Vaccination of Marine Corps Active and Reserve Components, dtg 222100Z OCT 21  
(10) Petitioner's Rebuttal, 3 August 2022  
(11) NAVMC 118(11), Administrative Remarks, 20 July 2022  
(12) █ CO Memo 1900 LEG, subj: Notification of Separation Proceedings (Board Case), 26 July 2022  
(13) Petitioner's Memo 1910, subj: Acknowledgement of Rights to be Exercised or Waived during Separation Proceedings (Board Case), 28 July 2022  
(14) MARADMIN 464/22, subj: Interim Guidance Regarding Marines Requesting Religious Accommodation from COVID-19 Vaccination Requirements,

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dtg 132100Z SEP 22

- (15) SECDEF Memo, subj: Rescission of August 24, 2021 and November 30, 2021 Coronavirus Disease 2019 Vaccination Requirements for Members of the Armed Forces, 10 January 2023
- (16) MARADMIN 025/23, subj: Rescission of COVID-19 Vaccination Requirement, dtg 181130Z JAN 23
- (17) ALNAV 009/23, subj: Rescission of COVID-19 Vaccination Requirement for Members of the Armed Forces, dtg 201839Z JAN 23
- (18) MARADMIN 109/23, subj: Update to Mandatory COVID-19 Vaccination Requirement of Marine Corps Active and Reserve Components, dtg 272000Z FEB 23

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records, hereinafter referred to as the Board, requesting removal of the adverse information entered into his record due to his refusal to comply with the former COVID-19 vaccination mandate.<sup>1</sup>

2. The Board reviewed Petitioner's allegations of error or injustice on 3 November 2023 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on Petitioner's naval record in the interests of justice. Documentary material considered by the Board included the enclosures, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies.

3. Having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or injustice, the Board found as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy (DON).

b. Petitioner enlisted in the Marine Corps and began a period of active duty service on 9 September 2013. See enclosure (2).

c. By memorandum dated 24 August 2021, the Secretary of Defense (SECDEF) mandated that all members of the Armed Forces under Department of Defense authority be fully vaccinated against the COVID-19 virus with a vaccine receiving full licensure from the Food and Drug Administration (FDA).<sup>2</sup> Accordingly, he directed the Service Secretaries to immediately begin full vaccination of all Service members of their respective services. See enclosure (3).

d. On 30 August 2021, the Secretary of the Navy (SECNAV) implemented the SECDEF's directive referenced in paragraph 3c above in ALNAV 062/21, ordering all DON active duty Service Members who were not already vaccinated or exempted to be fully vaccinated within 90 days, and all Reserve Component Service Members to be fully vaccinated within 120 days with

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<sup>1</sup> Specifically, Petitioner requested the removal of three Administrative Remarks from his naval record, dated 20 July 2020, 27 July 2022, and 29 September 2021 respectively.

<sup>2</sup> A Service member was considered to be 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.

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an FDA-approved COVID-19 vaccination. In issuing this directive, SECNAV made the following statement:

The order to obtain full vaccination is a lawful order, and failure to comply is punishable as a violation of a lawful order under Article 92, Uniform Code of Military Justice [(UCMJ)], and may result in punitive or adverse administrative action or both. The Chief of Naval Operations and Commandant of the Marine Corps have authority to exercise the full range of administrative and disciplinary actions to hold non-exempt Service Members appropriately accountable. This may include, but is not limited to, removal of qualification for advancement, promotions, reenlistment, or continuation, consistent with existing regulations, or otherwise considering vaccination status in personnel actions as appropriate.

See enclosure (4).

e. On 1 September 2021, the Marine Corps published MARADMIN 462/21 to implement the COVID-19 vaccination mandates referenced in paragraphs 3c and 3d above. Specifically, MARADMIN 462/21 directed all Marine Corps Active and Reserve Component Service Members to be fully vaccinated against COVID-19, unless medically or administratively exempt. All non-exempt Active Component Marines were to achieve full vaccination no later than 28 November 2021,<sup>3</sup> while all non-exempt Reserve Component Marines were to achieve full vaccination no later than 28 December 2021.<sup>4</sup> MARADMIN 462/21 further specified that this mandate “constitutes a lawful general order and any violations of these provisions is punishable as a violation of Article 92 of [the UCMJ].” It further provided that initial disposition authority for cases arising from refusal of this order is withheld to the general court-martial convening authority level, “except that administrative counseling pursuant to paragraph 6105 of [reference (b)] may be used at the special court-martial convening authority level.” See enclosure (5).

f. On 20 September 2021, Petitioner requested religious accommodation from the mandatory COVID-19 vaccination pursuant to reference (c).<sup>5</sup> See enclosure (6).

g. On 29 September 2021, Petitioner was administratively counseled in writing regarding the order issued by the Commandant of the Marine Corps in MARADMIN 462/21 to be fully vaccinated against COVID-19 no later than 28 November 2021. He indicated that he submitted a request for religious accommodation on 20 September 2021 (see paragraph 3f above), and that he was temporarily administratively exempt from the vaccination requirement pending final action upon his request. Petitioner further acknowledged that his further refusal to comply with the vaccination mandate if his request for religious accommodation was denied would constitute a violation of a lawful general order, and be punishable under Article 92, UCMJ. See enclosure (7).

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<sup>3</sup> This date was 90 days from issuance of ALNAV 062/21 (see paragraph 3d above).

<sup>4</sup> This date was 120 days from issuance of ALNAV 062/21 (see paragraph 3d above).

<sup>5</sup> Petitioner’s record does not include his actual religious accommodations request, but it, and the actions taken upon it, are clearly referenced in enclosure (6).

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h. On 7 October 2021, the Marine Corps published MARADMIN 533/21 to supplement the guidance of MARADMIN 462/21 referenced in paragraph 3e above. This message specified that “[i]n order to meet Commandant-directed deadlines as stated in [MARADMIN 462/21], all Active Component Service Members must receive their first dose of Pfizer-BioNTech/COMIRNATY vaccine no later than 24 October 2021 and all Reserve Component Service Members must receive their first dose no later than 24 November 2021.” It further specified that all Active Component Marines must receive their second dose no later than 14 November 2021, while all Reserve Component Marines must receive their second dose no later than 14 December 2021. The message also provided guidance for recording vaccine refusals in the Medical Readiness Reporting System, and advised that adverse administrative or judicial proceedings may be initiated in accordance with the authorities delineated in MARADMIN 462/21 when a Marine has refused to take the vaccine, and that “[t]here is no requirement to delay action until the deadlines established in [MARADMIN 462/21].” See enclosure (8).

i. On 23 October 2021, the Marine Corps published MARADMIN 612/21 to further supplement the guidance of MARADMIN 462/21 referenced in paragraph 3e above. This message provided guidance that “Marines refusing the COVID-19 vaccination, absent an approved administrative or medical exemption, religious accommodation, or pending appeal shall be processed for administrative separation.” It further clarified that, in most cases, Marines will be ordered to begin the vaccination process before the deadlines established in MARADMIN 462/21, and that 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, 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 by the deadline established in MARADMIN 462/21. Finally, this message established restrictions upon the assignments available to, ability to reenlist or execute assignment for, authority to promote, and separation benefits available to Marines who have refused the vaccine, and authorized the temporary reassignment of such unvaccinated Marines based upon operational readiness or mission requirements. See enclosure (9).

j. On 1 November 2021, the Deputy Commandant for Manpower and Reserve Affairs (DC (M&RA)) denied Petitioner’s request for religious accommodation from the vaccination mandate. See enclosure (6).

k. On 29 November 2021, Petitioner appealed the denial of his religious accommodation request by the DC (M&RA) to the Assistant Commandant of the Marine Corps in accordance with reference (d). See enclosure (6).

l. On 20 May 2022, Petitioner submitted a package requesting authorization to participate in the SkillBridge program with the [REDACTED] Police Department. See enclosure (10).

m. On 7 July 2022, the Assistant Commandant of the Marine Corps denied Petitioner’s appeal. See enclosure (6).

n. On 8 July 2022, Petitioner’s commander approved his requested participation in the SkillBridge program (see paragraph 3l above). See enclosure (10).

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o. Petitioner claims that he consulted with the immunization department at the U.S Naval Hospital [REDACTED] regarding the availability of SPIKEVAX and COMIRNATY on 13-14 July 2022, and was informed that neither of those two vaccines were available at that facility. See enclosure (10).

p. On or about 14 July 2022, Petitioner was verbally ordered by his commander to be vaccinated against COVID-19.<sup>6</sup> See enclosures (6) and (10).

q. On 19 July 2022, Petitioner informed his commander of his intention to decline vaccination for COVID-19. See enclosures (6) and (10).

r. On 20 July 2022, Petitioner was formally counseled in writing that his approval to participate in the [REDACTED] Police Department Skillbridge Program was rescinded. Petitioner indicated his intent to provide a rebuttal statement. See enclosure (11).

s. By memorandum dated 26 July 2022, Petitioner was formally notified of his command's intent to recommend that Petitioner be administratively discharged from the Marine Corps for misconduct due to commission of a serious offense with a general (under honorable conditions) characterization of service. The factual basis for this proposed action was Petitioner's refusal to comply with the COVID-19 vaccination mandate after his religious accommodation appeal rights were exhausted. See enclosure (12).

t. On 27 July 2022, Petitioner was formally counseled in writing regarding his failure to obey a lawful general order in violation of Article 92, UCMJ.<sup>7</sup> He acknowledged that he was being processed for administrative separation for misconduct due to commission of a serious offense, and that he was eligible but not recommended for promotion to Staff Sergeant due to his pending administrative separation. Petitioner indicated his intent to make a rebuttal statement. See enclosure (6).

u. By memorandum dated 28 July 2022, Petitioner acknowledged receipt of the formal notice of administrative separation proceedings referenced in paragraph 3s above, and elected to exercise his right to an administrative separation board after consulting with counsel. See enclosure (13).

v. By letter dated 3 August 2022, Petitioner provided a rebuttal to the formal administrative counseling statements referenced in paragraphs 3r and 3t above.<sup>8</sup> Specifically, he asserted that it was impossible for him to comply with ALNAV 062/21 and MARADMIN 462/21 because the only two COVID-19 vaccines which were fully licensed and approved by the FDA (i.e.,

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<sup>6</sup> According to enclosure (10), this order was made under the threat of revoking Petitioner's approval to depart the command to participate in the SkillBridge program.

<sup>7</sup> This counseling statement was signed by a commanding officer, and the signature is different than the signature of Petitioner's company commander reflected in enclosure (11). Applying the presumption of regularity, the Board presumes that the commanding officer whose signature appears on enclosure (6) was a special court-martial convening authority, and that it was therefore issued in accordance with MARADMIN 462/21.

<sup>8</sup> Petitioner asserts in enclosure (1) that this was a 55-page document, but that his unit's legal office "unjustly attached only three pages of it for inclusion." Only three pages of this document appear in Petitioner's naval record.

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COMIRNATY and SPIKEVAX) were not currently available to him in theater.<sup>9</sup> He further asserted that he did not desire to receive the COVID-19 vaccines available to him because of his sincerely held religious beliefs. See enclosure (10).

w. On 18 August 2022, the U.S. District Court for the [REDACTED] issued a preliminary injunction prohibiting the Marine Corps from taking certain actions against Marines whose requests for religious accommodation for the COVID-19 vaccination mandate were disapproved by the DC (M&RA) when that disapproval was unsuccessfully appealed to the Assistant Commandant of the Marine Corps. In response to this injunction, on 13 September 2022 the Marine Corps published MARADMIN 464/22, amending the aforementioned guidance of MARADMINs 462/21, 533/21, 612/21, and 733/21 to prevent the enforcement of the COVID-19 vaccination mandate for Marines who met the criteria stated above. Specifically, MARADMIN 464/22 provided that the Marine Corps would not enforce any order to accept the COVID-19 vaccination, administratively separate, or retaliate against Marines who met this criteria for asserting statutory rights under the Religious Freedom Restoration Act. Accordingly, the involuntary administrative separation of Marines who met this criteria for refusing the vaccination mandate was suspended. Petitioner's administrative separation was among those which was so suspended. See enclosure (14).

x. On 23 December 2022, the James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 was enacted. Section 525 of the FY 2023 NDAA directed the SECDEF to rescind the vaccination mandate referenced in paragraph 3c above. See enclosure (15).

y. On 5 January 2023, Petitioner was honorably discharged upon the completion of his enlistment and issued an RE-1A reentry code. See enclosure (2).

z. By memorandum dated 10 January 2023, the SECDEF rescinded the vaccine mandate referenced in paragraph 3c above in accordance with the FY 2023 NDAA. He also directed the military departments to update the records of individuals currently serving in the Armed Forces who sought an accommodation to the vaccine mandate on religious, administrative, or medical grounds "to remove any adverse actions solely associated with denials of such requests, including letters of reprimand." Individuals who had already been discharged for refusing the COVID-19 vaccination mandate were encouraged to petition the Board for relief. See enclosure (15).

aa. On 18 January 2023, the Marine Corps published MARADMIN 025/23, rescinding MARADMINs 462/21, 533/21, 612/12, and other MARADMINs related to the former vaccination mandate, and directing the immediate suspension of any new adverse administrative actions associated with refusal of the COVID-19 vaccine. See enclosure (16).

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<sup>9</sup> Petitioner noted that the available vaccines were approved by the FDA only under the Emergency Use Authorization (EUA). In this regard, he cited to 10 U.S.C. § 1107(a)(1) in support of his argument that he could not lawfully be compelled to receive a vaccine authorized under the EUA absent a waiver signed by the President upon his determination that compliance with such a requirement is not in the interests of national security. Petitioner made this argument in consultation with the Regional Defense Counsel, USMC Defense Services Organization – Pacific.

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bb. On 20 January 2023, the SECNAV published ALNAV 009/23, cancelling ALNAV 062/21. See enclosure (17).

cc. On 28 February 2023, the Marine Corps published MARADMIN 109/23 to supplement MARADMIN 025/23 (see paragraph 3aa above) and to provide implementing guidance related to the rescission of the COVID-19 vaccination requirement. Amongst the guidance provided was that the DC (M&RA) would “direct an audit to search for adverse information in the [official military personnel files (OMPF)] of all currently serving members who requested religious accommodations to the COVID-19 vaccine mandate,” and that such adverse matters would be removed as necessary in accordance with the SECDEF’s guidance referenced in paragraph 3z above. MARADMIN 109/23 also provided that “[s]eparated Marines may petition the [Board] to request removal of adverse matters.” See enclosure (18).

t. Petitioner asserts relief is warranted in accordance with the SECDEF’s guidance in enclosure (15) to remove any adverse actions solely associated with denials of requests for religious accommodation for the COVID-19 vaccination mandate (see paragraph 3z above). He further asserts that relief is warranted because only three pages of the 55 page rebuttal he submitted on 3 August 2022 was forwarded for consideration (see paragraph 3v above). See enclosure (1).

#### CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Board determined that equitable relief is warranted in the interests of justice.

The Board found no error in the issuance and filing of the adverse information pertaining to Petitioner’s refusal to abide by the former COVID-19 vaccination mandate. The vaccination mandate was a lawful order, so Petitioner’s refusal to comply once his religious accommodation request was finally denied constituted a violation of Article 92, UCMJ. Petitioner acknowledged that such refusal would constitute a violation of Article 92, UCMJ, and may result in punitive or administrative action, in enclosure (7). Per reference (e), administrative counseling is an appropriate disposition for such misconduct.

Although there was no error in the issuance and filing of this adverse information at the time, the Board found an injustice in its continuing presence in Petitioner’s naval record. Specifically, MARADMIN 109/23 directed the automatic removal of all such information from the records of currently serving members who requested religious accommodation to the COVID-19 vaccine mandate, and encouraged discharged Marines to petition the Board for the same relief. Petitioner did, in fact, request religious accommodation from the COVID-19 vaccine mandate in accordance with reference (b). As such, the Board found it to be inherently unfair that the records of similarly situated Marines are to be automatically cleared of such adverse information, while such information remains in Petitioner’s record solely based upon the timing of his discharge. Reference (f) directs the Board to consider uniformity and unfair disparities in punishments as a basis for relief due to an injustice. As such, the Board found the continuing

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presence of this adverse information in Petitioner's naval record to be an injustice warranting relief.

RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner's record be corrected by removing all adverse material and all references to his COVID-19 vaccination refusal, including but not necessarily limited to, the "Page 11" counseling statements of 29 September 2021, 20 July 2022, and 27 July 2022; Petitioner rebuttal to the latter two counseling statements, dated 3 August 2022; all documents pertaining to the initiation of the administrative separation process due to Petitioner's refusal of the COVID-19 vaccination, to include the notification memorandum of 24 July 2022, Petitioner's subsequent acknowledgment of that notification on 27 July 2022; and his exercise of his rights on 28 July 2022; and any documents associated with Petitioner's request for religious accommodation. In addition to Petitioner's naval record, all information systems and database entries are to be scrubbed for such information and removed in accordance with this decision.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above titled matter.
5. In accordance with Section 6(e)(2)(c) of SECNAVINST 5420.193, the foregoing action of the Board is submitted for your review and action.

12/27/2023

[REDACTED]



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ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

X Board Recommendation Approved (Grant Relief – I concur with the Board’s conclusion and therefore direct the relief recommended by the Board above.)

\_\_\_ Board Recommendation Disapproved (Deny Relief – I do not concur with the Board’s conclusion. Specifically, I find no injustice in the presence of the material in question in Petitioner’s naval record. These matters merely documents factual events, and are not likely to have any adverse impact upon Petitioner since he is no longer serving in the Marine Corps and his naval record is not accessible to the general public. In the event that Petitioner ever decides to reenlist in the Marine Corps, these matters would presumably be automatically removed from his record in accordance with MARADMIN 109/23.

[REDACTED]