

Sample RA Denial Appeal

XX Dec 21

From: (Insert Name), USN  
To: Chief of Naval Operations  
Via: Deputy Chief of Naval Operations (Manpower, Personnel, Training and Education) (N1)  
(Insert Command)

Subj: REQUEST FOR WAIVER OF POLICY IN SUPPORT OF RELIGIOUS PRACTICE

Ref: (a) DOD Instruction 1300.17  
(b) SECNAVINST 1730.8

Encl (1) REQUEST FOR RELIGIOUS ACCOMMODATION THROUGH WAIVER OF IMMUNIZATION REQUIREMENTS ICO (Insert Name)  
(2) CNO(N1) Religious Accommodation Denial ltr dtd (Insert Date)  
(3) BUMED ltr 6320 Ser XXX/XXXXX of XX Oct 21 (Insert Date)

Per references (a) and (b), the Department of the Navy (DON) recognizes that religion can be as integral to a person's identity as one's race or sex. And the DON promotes a culture of diversity, tolerance, and excellence by making every effort to accommodate religious practices absent a compelling operational reason to the contrary. Religious medical practices include traditional objections to receiving immunizations. It is DON policy to accommodate the traditional observances of the religious faith practiced by individual members when these doctrines or observances will not have an adverse impact on military readiness, individual or unit readiness, unit cohesion, health, safety, discipline, or mission accomplishment. Immunization requirements may be waived when requested by the member based on religious objection.

The Religious Freedom Restoration Act of 1993 (RFRA) states the Government may substantially burden an individual's exercise of religion only if it demonstrates that the application of the burden to the person is (1) in furtherance of a compelling governmental interest and (2) is the least restrictive means of furthering that interest. The burden rests with the government to demonstrate both factors in their entirety, not the individual requesting the exemption per DoDI 1300.17, September 1, 2020. All requests for accommodation of religious practices are to be assessed on a case-by-case basis. Per enclosure (1), my request for Religious Accommodation to forego the COVID-19 vaccine directed to Deputy Chief of Naval Operations (Manpower, Personnel, Training and Education)(N1) dated 22 October 2021 was denied based upon the following factors:

1. Predictable and detrimental effect on my readiness and the readiness of the Sailors who serve alongside me in both operational and non-operational environments, specifically disease prevention and non-battle injury; and
2. Due to close proximity in living and workspace of my shipmates, the COVID-19 vaccine is the least restrictive means available to preserve military readiness, mission accomplishment and the health and safety of military service members.

The denial of religious accommodation letter I received is identical to the denial letters received by (insert number) others sailors in the command. Each of us submitted distinct, personal accounts of our religious practices and the method by which receipt of the COVID-19 vaccine would violate those tenets. The form-like denial letter implies the blanket denial of religious accommodations regardless of factors articulated in our initial requests. Blanket denial of religious accommodations violates military service member religious liberties and the right to case-by-case consideration and review as specified in DoDI 1300.17.

The freedom of religion is a fundamental right of paramount importance, expressly protected by federal law. RFRA prohibits the federal government from substantially burdening any aspect of religious observance or practice, unless imposition of that burden on a particular religious adherent satisfies strict scrutiny. The federal government must demonstrate in my situation that the COVID-19 vaccine is the least restrictive means of achieving a compelling government interest. Only those interests of the highest order can outweigh legitimate claims to the free exercise of religion and must be applied to the particular adherent (case-by-case). Even if the federal government could show the necessary interest, it would also have to show that its chosen restriction on free exercise of religion is the least restrictive means of achieving that interest. Stating that I do not clearly articulate my objections through my personal statement is in direct opposition to my sincerely held religious beliefs. Under the required legal analysis, the government must show it cannot accommodate the religious adherent while achieving its interest through a viable alternative. *See enclosures, Executive Order 13798 of May 4, 2017, Federal Register/Vol. 82, No. 88/Tuesday, May 9, 2017/Presidential Documents and Department of Justice [OLP Docket No. 165] Federal Law Protections for Religious Liberty, Federal Register/Vo. 82, No. 206/Thursday, October 26, 2017/Notices.*

CNO(N1)'s denial letter of (insert date) failed to consider any viable alternative to achieve the mission and/or accommodate my religious freedoms and practices. After the first confirmed case of COVID-19 virus in the United States on 20 January 2020 to the 11 December 2020 emergency use authorization for a COVID-19 vaccine, I have completed the following military operations/requirements:

- 1.
- 2.
- 3.
- 4.
5. etc...

For almost a year, my command continued to execute mission requirements during the COVID-19 pandemic without a vaccine. The force health protection protocol alone is a less restrictive means of furthering the government's compelling interest without infringing upon my religious freedoms. Our command requires masks for unvaccinated sailors, optional masking for all other command members, social distancing and weekly testing of unvaccinated members. In addition, since the introduction of Emergency Use Authorization COVID-19 vaccines to the U.S. market, (insert number) sailors at my command have been fully vaccinated leaving only (insert number) sailors, including myself, unvaccinated. The additional factor of (insert number)% of command vaccination further reduces the risks of COVID-19 infection and spread throughout the command ensuring military readiness and health and safety requirements for units and individuals.

The COVID-19 virus currently has a mortality rate of approximately 1.6% in the United States which predominantly affects individual's age 65 years+ and individuals with comorbidities such as obesity, smoking, heart conditions, diabetes and kidney disease. The majority of my command, to include myself, does not fall within the scope of those individuals most likely to succumb to COVID-19 which further highlights the low risk to health and safety, non-battle injury and/or military readiness if I do not receive a COVID-19 vaccine. Within Navy Active Duty and Reserve, there have been over 49,546 confirmed cases of COVID, of which 49,118 have recovered, with 491 active cases, and 16 fatally succumbed. The current survival rate for Navy Active and Reserve 99.97%; or stated as a fatality rate, .0003%. Currently, COVID death rates for military members is far lower than death resulting from suicide, heart attacks and/or influenza.

In addition, on (insert date), I had a confirmed case of COVID-19 viral infection. I have a natural immunity to COVID-19 that supersedes the artificial immunity created by the COVID-19 vaccine. Studies support the conclusion that natural immunity derived from prior COVID-19 infection confers longer lasting and stronger protection against infection, symptomatic disease and hospitalization caused by the Delta variant of SARS-CoV-2 compared to the Pfizer two-dose vaccine induced immunity. In comparison, vaccines had over 13-fold increased risk of breakthrough infection with the Delta variant compared to those individuals previously infected. Proof of serological immunity is a traditionally-accepted contraindication for and administrative exemption to many infectious diseases. Proof of recovery from a prior COVID-19 infection is a less restrictive means of furtherance of a compelling government interest.

Unit cohesion and good order and discipline are unaffected by my vaccination status at the command. The medical status of individuals is a private matter that is not supposed to be disclosed to the command at large. All military members may wear a mask for personal protection even if fully vaccinated in light of personal health protection. It is well-established that even individuals who have been fully vaccinated against COVID-19 may still contract and spread the virus, therefore sailors may choose to wear a mask regardless of vaccination status. Individuals who chose to receive a COVID-19 vaccination did so to protect their individual health and have put their confidence in the efficacy and effectiveness of the vaccine to protect them from contracting the virus or reducing the effects of the virus, if contracted. The vaccination status of co-workers is not an issue within our command.

Many service members with other vaccine waivers (i.e. influenza) are still permitted to remain in military service and maintain worldwide deploy-ability. If the Navy chooses to deem me worldwide non-deployable, such a decision would be inconsistent with other vaccine waiver cases. Separating me from Naval service based upon the false allegation of disobeying a lawful order would negatively impact command readiness, result in the loss of the Navy's investment in my training and the expertise I possess. The loss of my contribution to the command would result in a great loss to my command's readiness and the Navy as a whole.

The BUMED form denial letter cites the outbreak on USS THEODORE ROOSEVELT as a basis for recommendation of denial of my request for religious accommodation. Clarification is required for the incident as follows: the outbreak on USS THEODORE ROOSEVELT occurred one week before the DOD COVID-19 Task Force was established and prior to the initiation of "15 days to slow the spread", POTUS' national emergency declaration, and SECDEF's elevation of the Health Protection Level. The USS THEODORE ROOSEVELT outbreak occurred almost two years ago and prior to the initiation of Force Health Protection guidelines. To utilize the USS THEODORE ROOSEVELT outbreak as justification for denial of my request for religious accommodation lacks relevancy and is not germane to the current COVID-19 environment. BUMED's form denial letter did not consider my specific work environment when conducting the operational risk assessment, as required. My current position as (insert employment information) does not require me to work or reside in close quarters with others, interact with foreign travel contacts or contractors, or engage in extensive travel outside of the state or country. When compared to other sailors' BUMED letters, the letters are identical aside from the correspondence serial number and the greeting. Because of the form letter utilized by BUMED and lack of information pertaining to my specific work environment, it is legitimate to assume BUMED did not conduct an individual review of my circumstances prior to recommending denial of my request for religious accommodation.

On (insert date), I received counseling that required me to "become fully vaccinated with a COVID-19 vaccine that has received full licensing from the Food and Drug Administration (FDA), in accordance with FDA approved labeling and guidance no later than (insert date). The order went on to say, "voluntary immunization with a COVID-19 vaccine under FDA Emergency Use Authorization or World Health Organization Emergency use listing...constitutes compliance with this order." This language is consistent with the SECDEF guidance issued 24 August 2021 and other subsequent guidance published by many other subordinate agencies. The next sentence states, "This is a lawful order." I agree that the order is lawful in that the military does have the authority to mandate FDA-approved vaccines for military personnel, and the order mandates me to get the FDA-approved version of the vaccine. However, the FDA-approved vaccine is not available (to my knowledge) anywhere in the United States. While this is a lawful order, it is an order that cannot be physically executed. Under current marketing of COVID-19 vaccines, I only have access to Pfizer-BioNTech COVID-19 vaccine, Moderna or Jansen (Johnson & Johnson) which are all currently under EUA. At this time, I do not elect to receive an EUA vaccine on a volunteer basis.

BioNTech Manufacturing GmbH (in partnership with Pfizer, Inc.) received FDA-licensure/approval on August 23, 2021. Pfizer, Inc. received EUA for its vaccine, Pfizer-BioNTech COVID-19 Vaccine, on December 11, 2020 and remains under EUA to date. There are multiple legally-binding FDA and Pfizer documents associated with these two products, and the language in these documents consistently confirms that Comirnaty is the only FDA-approved vaccine; Pfizer-BioNTech is still administered under an EUA and is NOT an FDA-approved vaccine. Both statements may be verified in multiple places on the FDA website to include the recent 9 December 2021 letter from the FDA to Pfizer, Inc. and the daily updated Pfizer-BioNTech/Comirnaty Patient Fact Sheet. Highlights from this document include (but are not limited to): - On five different occasions, including in paragraph 1, the document uses the word “unapproved” when referring to the Pfizer-BioNTech COVID-19 vaccine. This language is legally unambiguous in nature and verifies that the vaccine is not FDA-approved.

In addition, the FDA letter to Pfizer, Inc. contains several dozen references to the words “authorized,” “EUA,” or “emergency use,” all of which refer to authorization and administration under an EUA when referring to the Pfizer-BioNTech COVID-19 vaccine. There is not one reference to the word “approved,” “licensed” or “FDA-approval” when referring to the Pfizer-BioNTech COVID-19 Vaccine. Those references are only found when directly referring to Comirnaty for ages 16 and over. The letter requires certain items to be briefed to recipients of the Pfizer-BioNTech COVID-19 vaccine, specifically “As the vaccination provider, you must communicate to the recipient or their caregiver, information consistent with the ‘Vaccine Information Fact Sheet for Recipients and Caregivers’ (and provide a copy or direct the individual to the website [www.cvdvaccine.com](http://www.cvdvaccine.com) to obtain the Vaccine Information Fact Sheet) prior to the individual receiving each dose of the Pfizer-BioNTech COVID-19 Vaccine, including:

1. FDA has authorized the emergency use of the Pfizer-BioNTech COVID-19 Vaccine, which is not an FDA-approved vaccine.
2. The recipient or their caregiver has the option to accept or refuse Pfizer-BioNTech COVID-19 Vaccine.” This clearly verifies that the Pfizer-BioNTech vaccine is NOT FDA approved, and that recipients have the right to refuse Pfizer-BioNTech.

This document further verifies that Pfizer-BioNTech COVID-19 Vaccine is NOT FDA-approved and verifies that it is “legally distinct with certain differences” in comparison to the BioNTech Manufacturing GmbH vaccine “Comirnaty.” The document also states that Comirnaty is not available in the U.S. The Summary Basis for Regulatory Action dated, 8, November 2021, clearly states “In the U.S., there are no licensed vaccines or anti-viral drugs for the prevention of COVID-19.” The National Institute of Health (NIH) Daily Med website ([dailymed.nlm.nih.gov](http://dailymed.nlm.nih.gov)) lists the Marketing Start AND End Date for Comirnaty as August 23, 2021 implying the vaccine was only available on the date of licensure by the FDA. My personal attempts to secure the Comirnaty vaccine at my local Military Treatment Facility has been met with negative results.

On 14 September 2021, The Assistant SEDEF office published a memo with the subject “Mandatory Vaccination of Service Members using the Pfizer-BioNTech COVID19 and Comirnaty COVID-19 Vaccines.” This memo claims that Pfizer-BioNTech and Comirnaty are

“interchangeable,” and that healthcare providers should “use the doses distributed under the EUA to administer the vaccination series as if the doses were the licensed vaccine.” While they claim the vaccines have the same formulation and can be used interchangeably to vaccinate against COVID-19 (similar to how other EUA authorized vaccines can also be used to vaccinate against COVID-19), the legal fact remains Pfizer-BioNTech is still not FDA-approved, nor is it legally interchangeable with Comirnaty. The Assistant SECDEF does not have the authority to license a non-FDA-approved product. 10 U.S. Code § 1107a - Emergency use products clearly states that individuals must be informed of an option to accept or refuse administration of emergency use products and that this requirement “may be waived only by the President only if the President determines, in writing, that complying with such requirement is not in the interests of national security.” To date, the President has not issued such a written waiver. 10 U.S. Code § 1107a is also consistent with the original order I am accused of disobeying, which verifies that any use of EUA-authorized vaccine options to fulfil the intent of the order must be voluntary. Per 10 U.S. Code § 1107a, the original directive from SECDEF and order by SECNAV, and per the FDA Fact Sheet, I decline to voluntarily subject myself to any of the current EUA COVID-19 vaccines, including the Pfizer-BioNTech COVID-19 Vaccine.

In closing, the Founders envisioned a nation where religious people are free to practice their faith without fear of discrimination or retaliation by the Federal Government. For that reason, the Constitution enshrines and protects the fundamental right to religious liberty as Americans’ first freedom. Federal law protects this freedom without undue interference by the Federal Government. James Madison said the free exercise of religion is “in its nature an unalienable right because the duty owed to one’s creator is precedent both in order of time and in degree of obligation to the claims of Civil Society.” Except in the narrowest circumstances, no one should be forced to choose between living out his or her faith and complying with the law.

Based upon the above rebuttal to CNO(N1)’s denial letter and enclosures in support, I respectfully request review of my religious accommodation request and appeal.

(Insert Name)