No, Sir: Can a Military Doctor Be Prosecuted for Refusing an Order from the President?

Lee Hiromoto*

ABSTRACT

President Trump's COVID-19 diagnosis in October 2020 raised the profile of the military doctor who serves as the White House physician. The situation of a uniformed servicemember providing medical care to the nation's Commander-in-Chief raises a novel question involving military hierarchy and medical ethics: is the doctor obligated under military law to follow the President's orders regarding medical care (e.g., to provide a medication like hydroxychloroquine)? An analysis of military law, including the Uniform Code of Military Justice and the Manual for Courts-Martial, reveals that it would be difficult to prosecute a military physician who conscientiously declines to follow the President's orders. Potential weak points in such a prosecution include the President's authority to issue direct orders to servicemembers, the legality of medical orders by the President/patient, and whether or not the President's direct involvement creates an intolerable appearance of unfairness.

Table of Contents

*J.D., Harvard Law School; M.D., University of Vermont Larner College of Medicine. Resident physician, Oregon Health & Science University (OHSU). Formerly judge advocate, U.S. Navy. All views expressed are those of the author and do not constitute legal advice.

I. INTRODUCTION

With President Trump's recent COVID-19 diagnosis, it has been asked if a military doctor—like the White House physician—can say "no" to presidential orders.[1] An example of such an order might be ordering a military physician to prescribe a dubious coronavirus treatment like hydroxychloroquine. Another hypothetical would have the President order a physician not to disclose information about their[2] COVID-19 diagnosis.

This Article begins with background information regarding presidential health care and the military justice system.[3] It then explores how that justice system might prosecute a uniformed physician's refusal of a presidential order.[4] Though all cases are unique and fact-specific, a close look at the law reveals the difficulties in prosecuting a physician for disobeying a presidential order under the Uniform Code of Military Justice.[5]

II. BACKGROUND

As explained below, White House medical care is administered by military physicians,[6] meaning that the President's physicians are subject to military rules.[7]

1. *See* Katie Bo Williams, *Can Dr. Conley—a Military Doctor—Say 'No' to the President?*, DEF. ONE (Oct. 6, 2020), https://bit.ly/3aVxhsc.
2. This Article uses gender-neutral pronouns ("they," "them," and "their") when not discussing a particular person.
3. *See infra* Part II.
4. *See infra* Parts III–IV.
5. *See infra* Part V.
6. *See infra* Section II.A.
7. *See infra* Section II.B.

A. Overview of Presidential Health Care

Military personnel have long provided care to the President. As early as 1823, a U.S. Navy surgeon was called to treat President Monroe for acute illness, and a military doctor was traveling with President McKinley when he was shot in 1901.[8] In addition to this long tradition, the financial difficulties associated with leaving an established practice to work in the White House make military personnel a practical pool from which to draw (the President chooses their doctors).[9]

At present, the White House Medical Unit has a staff of about thirty, and is available twenty-four hours per day to treat the President and their family, the Vice President, White House staff, and guests when necessary.[10] Recently, the Unit has also been conducting coronavirus screenings for journalists[11] as well as contact tracing for cases in the White House.[12]

B. Overview of the Military Justice System

Enacted by Congress, the Uniform Code of Military Justice ("UCMJ")[13] articulates the structure and rules governing the military criminal justice system. This system includes punitive articles defining criminal offenses under military law.[14] Further guidance on application of the UCMJ comes from the Manual for Courts-Martial ("MCM"),[15] prepared by military justice specialists and promulgated through Executive Orders, starting from 1984 to the present (a list of each order is found in the MCM).[16]

8. *See* André B. Sobocinski, *Ten Curious Facts About Navy Medicine's Presidential History*, NAVY MED. LIVE, https://bit.ly/38KJMUZ (last visited Dec. 30, 2020).

9. *See* Lawrence K. Altman, *The Rigors of Treating the Patient in Chief*, N.Y. TIMES (Nov. 15, 2010), https://nyti.ms/3aUrUJT.

10. *See What's Inside the White House Medical Unit?*, VOA NEWS (Oct. 6, 2020, 7:34 AM), https://bit.ly/34WeJnM.

11. *See id.* ("The White House unit also has been responsible for conducting COVID-19 tests on journalists in the White House press corps.").

12. *See* Mark Abdelmalek et al., *CDC Team Mobilized to Help Contact Trace at White House Left on Standby. Is It Too Late?*, ABC NEWS (Oct. 6, 2020, 6:17 PM), https://abcn.ws/2WW8lbR ("White House spokesman Judd Deere told ABC News on Tuesday the White House was conducting a 'robust contact tracing program' led by the White House Medical Unit." (quoting Interview with Judd Deere, White House Spokesman (Oct. 6, 2020))).

13. 10 U.S.C. §§ 801–946a (2018).

14. *See id.* §§ 877–934.

15. MANUAL FOR COURTS-MARTIAL, UNITED STATES (2019) [hereinafter MCM].

16. *See id.* app. 19.

Violations of the punitive articles can be punished at courts-martial, which include military judges and juries.[17] Courts-martial can sentence offenders to custody, issue a punitive discharge (e.g., a dishonorable discharge), and impose the death penalty for capital offenses.[18] Additionally, commanders may impose "non-judicial punishment" pursuant to Article 15 of the UCMJ[19] for violations of the punitive articles.[20] Non-judicial punishment is done without a trial and can include penalties such as restriction (e.g., confinement to barracks), fines, and reduction in rank for enlisted personnel.[21]

III. UCMJ ARTICLE 92 APPLIES TO ORDERS VIOLATIONS

Most relevant to the case of a doctor's orders refusal is UCMJ punitive Article 92, "Failure to obey order or regulation."[22] Article 92 is violated when a servicemember "(1) violates or fails to obey any lawful general order or regulation; (2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or (3) is derelict in the performance of his duties."[23]

The UCMJ thus provides three possible theories for proving violations of Article 92: (1) violation of a "general order," (2) violation of an "other lawful order," or (3) dereliction of duty.[24] Each of these will be addressed as potential sources of criminal liability for a military doctor who refuses the President's orders.[25] As discussed herein, the government would have a difficult time prosecuting under any of these theories.[26]

A. A President's Order to Their Doctor Is Not Enforceable as a "General Order" Under Article 92

The first of the three theories, violation of a *general* order, would not apply to a situation where the President gives a direct command to their military physician. General orders can be issued by civilian leaders (service secretaries and the President).[27] They are "generally applicable to

17. *See* 10 U.S.C. § 816.
18. *See id.* § 818(a) (providing that general courts-martial may "adjudge any punishment not forbidden by this chapter, including the penalty of death").
19. *Id.* § 815.
20. *See* MCM, *supra* note 15, pt. V, ¶ 1.e. (allowing punishment "for acts or omissions that are minor offenses under the punitive article").
21. *See* 10 U.S.C. § 815.
22. *Id.* § 892.
23. *Id*.
24. *Id.*
25. *See infra* Sections III.A.–III.C.
26. *See infra* Sections III.A.–III.C.
27. *See* MCM, *supra* note 15, pt. IV, ¶ 18.c.(1)(a).

an armed force" and must be "properly published."[28] While the President does have authority to issue a general order via publication,[29] a direct command (presumably verbal) would not fall under this theory. This is because the plain language of the Manual for Courts-Martial requires general applicability as well as publication.[30]

Even if a President were to attempt to publish a general order, say, to the entire White House Medical Unit, two other questions could limit the enforceability: the lawfulness of the order, and the doctor's "duty to obey it."[31] Both of these are required under all three theories of Article 92 orders violations[32] and are addressed below.[33]

B. A President's Order to Their Doctor Is Not Enforceable as an "Other Lawful Order" Because the President Is a Civilian

A second theory is the "other lawful order" provision of Article 92.[34] To prove violation of Article 92 under this theory, the elements are as follows: "(a) That a member of the armed forces issued a certain lawful order; (b) That the accused had knowledge of the order; (c) That the accused had a duty to obey the order; and (d) That the accused failed to obey the order."[35]

Here, the plain language of the elements requires that the order be given by "a member of the armed forces."[36] As an elected civilian leader, the President would not meet this requirement. While there does not appear to be binding federal precedent on point, a state court once rejected the theory that President Franklin D. Roosevelt was a member of the armed forces by virtue of his constitutional Commander-in-Chief status.[37]

In that case, Roosevelt's estate had applied for an estate tax refund that applied to members of the armed forces, under a theory that he was

28. *Id*.
29. *See id.*
30. *See id.*
31. *Id.* pt. IV, ¶ 18.b.(1)(a)–(b).
32. *See id.* (requiring "[t]hat there was in effect a certain lawful general order or regulation," and "[t]hat the accused had a duty to obey it"); *id.* pt. IV, ¶ 18.b.(2)(a), (c) (requiring "[t]hat a member of the armed forces issued a certain lawful order," and "[t]hat the accused had a duty to obey the order"); *id.* pt. IV, ¶ 18.c.(3)(a) (explaining that the duty in dereliction cases "may be imposed by . . . lawful order").
33. *See infra* Section III.C.
34. 10 U.S.C. § 892(2) (2018).
35. MCM, *supra* note 15, pt. IV, ¶ 18.b.(2).
36. *Id.* pt. IV, ¶ 18.b.(2)(a).
37. *See Roosevelt Is Held Civilian at Death*, N.Y. TIMES, July 26, 1950, at 27. While the case itself was not readily available at the time of this Article's writing, it was documented by the press. *See id.*

Commander-in-Chief when he died in office.[38] The state's probate judge (called a "Surrogate" in New York) noted that "[t]he President does not enlist in and he is not inducted or drafted into the armed forces."[39] In finding that the President was a civilian, the court also noted that the President's salary is not paid from armed forces expenditures, that the President is not subject to military discipline or court-martial, and that the Constitution intended for the Commander-in-Chief to be a civilian.[40]

Even assuming that the "other lawful order" provision applied in this case, the prosecution would still need to prove the order's lawfulness and that the doctor "had a duty to obey"[41] (which are also required under the "general order" provision).[42] As seen in the following Section, both of these would be doubtful.[43]

C. Though "Dereliction of Duty" Could Apply to a Presidential Order, It Would Be Difficult to Establish Duty to Obey and Lawfulness

The third and final potential theory of violation under Article 92 is "Dereliction in the performance of duties."[44] The elements of a dereliction charge are as follows: "(a) That the accused had certain duties; (b) That the accused knew or reasonably should have known of the duties; and (c) That the accused was . . . derelict in the performance of those duties."[45] The duties allegedly not fulfilled under a dereliction charge may come from a broad range of sources including "treaty, statute, regulation, *lawful order*, standard operating procedure, or custom of the Service."[46]

Thus, failure to follow a lawful order from the President might be theoretically enforced as dereliction of duty. The maximum penalty for such a violation would be two years confinement and a dishonorable discharge.[47] Although the prosecution could proceed under a dereliction

38. *See id.*

39. *Id*. (quoting Frederick S. Quinterro, Dutchess Cty. Surrogate (July 25, 1950)). The wording of the newspaper article suggested that the court's decision was written, but the article did not cite to an opinion or otherwise provide the case name, docket number, or reporter information. *See id.*

40. *See id*.

41. MCM, *supra* note 15, pt. IV, ¶ 18.b.(2)(a), (c).

42. *Id.* pt. IV, ¶ 18.b.(1)(a)–(b).

43. *See infra* Section III.C.

44. MCM, *supra* note 15, pt. IV, ¶ 18.b.(3).

45. *Id.*

46. *Id.* pt. IV, ¶ 18.c.(3)(a) (emphasis added).

47. *See id.* pt. IV, ¶ 18.d.(3). The two-year maximum penalty would only apply where dereliction caused "grievous bodily harm" or death. *Id.* pt. IV, ¶ 18.d.(3)(D) (emphasis omitted). Otherwise, the maximum confinement would be six months, akin to a misdemeanor in the civilian justice system. *See id.* pt. IV, ¶ 18.d.(3)(C).

theory, they would face difficulty regarding two issues: the duty of a doctor to obey a patient,[48] as well as the lawfulness of the order.[49]

1. A Military Doctor's Duty to Obey Their Patient Is Suspect, Particularly if the Order Conflicts with Professional Obligations

As noted above, all three subcategories of Article 92 violations require a violation of a duty imposed on the accused.[50] Here, the binding authority of the President to impose that duty on their military doctor is suspect. Such an order might require a doctor to furnish an unproven[51] (and potentially dangerous)[52] drug like hydroxychloroquine, or perhaps force the doctor to withhold information about their diagnosis.

In these cases, a refusing doctor could assert that they had no duty to obey an order from their patient. In the case, for example, of refusing an order to provide hydroxychloroquine to help prevent coronavirus,[53] a court-martial would ask whether a doctor has a duty to provide questionable treatment to a patient. The American Medical Association's *Code of Medical Ethics* provides that "[a] physician may decline to" provide a treatment when it "is known to be scientifically invalid."[54] Given the lack of evidence supporting the treatment (and potential harms),[55] a military physician could make a strong argument that they were under no duty to obey the patient and provide an invalid treatment.

---

48. *See infra* Section III.C.1.

49. *See infra* Section III.C.2.

50. *See supra* Sections III.A.–III.C.

51. *See Coronavirus: Hydroxychloroquine Ineffective Says Fauci*, BBC NEWS (July 29, 2020), https://bbc.in/390AJiC (quoting Dr. Anthony Fauci saying that "every single good study . . . has shown that hydroxychloroquine is not effective in the treatment of Covid-19" (quoting Interview with Anthony Fauci, Leading Member, White House Coronavirus Task Force (July 29, 2020))).

52. *See generally* Jennifer C. E. Lane et al., *Risk of Hydroxychloroquine Alone and in Combination with Azithromycin in the Treatment of Rheumatoid Arthritis: A Multinational, Retrospective Study*, 2 LANCET RHEUMATOLOGY e698 (2020) (discussing long-term excess cardiovascular mortality associated with hydroxychloroquine use).

53. *Cf.* Caroline Linton, *Trump Says He Is Taking Hydroxychloroquine*, CBS NEWS (May 19, 2020, 3:12 PM), https://cbsn.ws/2L0Zwet (reporting President Trump's use of hydroxychloroquine as a preventative measure against coronavirus).

54. AMA CODE OF MED. ETHICS Op. 1.1.2(a) (1847) (AM. MED. ASS'N, amended 2001).

55. *See* Amir Qaseem et al., *Should Clinicians Use Chloroquine or Hydroxychloroquine Alone or in Combination with Azithromycin for the Prophylaxis or Treatment of COVID-19? Living Practice Points from the American College of Physicians (Version 1)*, 173 ANNALS INTERNAL MED. 137, 137 (2020) ("Do not use chloroquine or hydroxychloroquine . . . as prophylaxis against COVID-19 due to known harms and no available evidence of benefits in the general population.").

Additionally, the lawfulness of a presidential order to a White House military doctor would be dubious if it conflicts with a doctor's professional obligations. This might be the case if the President were to order their doctor to hide a COVID-19 diagnosis in the White House and tell no one. Such decisions to withhold presidential medical information are well known to history (such as President Wilson's doctor labeling a debilitating 1919 stroke as "nervous exhaustion") and have even extended to White House staff.[56]

A military physician receiving an order to hide a positive coronavirus test, however, would find themself conflicted between the President's order and their professional mandate to report infectious diseases. For example, the District of Columbia requires that healthcare providers report positive COVID-19 tests, as well as the results of all point-of-care tests.[57] Regulation requires that doctors provide each patient's full name, date of birth, and gender when making these reports.[58]

The military appellate courts have recognized the unfairness in such no-win situations, explaining that "criminal prosecution for disobedience of an order cannot be based upon a subordinate's election to obey one of two conflicting orders when simultaneous compliance with both orders is impossible."[59] Thus, an order from the President that conflicts with their physician's professional obligations would be difficult to enforce under all three theories of UCMJ Article 92.

2. An Order Given Solely for Personal Benefit Would Not Be Lawful

Another potential order would be to not relay information about the President's psychiatric state, which might be influenced by medications like the corticosteroid dexamethasone.[60] The Manual for Courts-Martial

56. David Priess, *Presidents Have Often Deceived the Public About Their Illnesses*, WASH. POST (Oct. 2, 2020, 5:22 PM), https://wapo.st/39bFSpz (noting that "top Trump aide Hope Hicks had tested positive for the coronavirus, news that White House staff had sought to keep from getting out") (embedded links and linked citations omitted).

57. *See* Health Notice for District of Columbia Health Care Providers: Updated Priorities for COVID-19 Testing, Guidelines for Reporting, and Discontinuation of Home Isolation (Aug. 3, 2020), https://bit.ly/2L1Ke9h.

58. *See* D.C. Mun. Regs. tit. 22-B, § 202.9(b) (2016).

59. United States v. Crawford, No. ARMY 20120527, 2014 WL 7236620, at *2 (A. Ct. Crim. App. Sept. 30, 2014) (per curiam) (quoting United States v. Patton, 41 C.M.R. 572, 573 (A.C.M.R. 1969)) (second and third citations omitted) (setting aside conviction for charge based on violating conflicting orders).

60. *See* Meryl Kornfield, *Trump Was Treated with Dexamethasone. Here's What We Know About Its Risks and Side Effects.*, WASH. POST (Oct. 6, 2020, 9:23 AM), https://wapo.st/2KG1DnS (noting that dexamethasone, the drug President Trump received, "can . . . have concerning side effects, ranging from blood clots, blurred vision, and

provides that, for an order to be lawful, it cannot be "an order which has for its sole object the attainment of some private end."[61] Private motive would be a consideration if the President were to order their doctor to lie or not disclose information that might be relevant to the President's removal under the Twenty-Fifth Amendment.[62]

One can imagine a hypothetical case where a medication like dexamethasone (a corticosteroid sometimes given to coronavirus patients) causes psychiatric disturbance to a COVID-positive President. This could trigger the Cabinet and Vice President to invoke the Twenty-Fifth Amendment and remove the President from power. Were the President to then contest this action, Congress would be called upon to decide the matter.[63] This congressional process could involve subpoenas,[64] possibly to the President's doctor.

What if the President, reluctant to relinquish the Office, ordered their military physician to not respond to the congressional subpoena, but the physician showed up and testified anyway? As a brief aside, there is an exception to medical privacy when responding to judicial and administrative subpoenas, so the Health Insurance Portability and Accountability Act (HIPAA) would not necessarily protect the President's health information under these circumstances.[65]

---

headaches to 'psychic derangements,' such as insomnia, mood swings and 'frank psychotic manifestations,' according to the drug label").

61. MCM, *supra* note 15, pt. IV, ¶ 16.c.(2)(a)(iv) (describing the standard for lawful orders under UCMJ Article 90). Although this standard comes from UCMJ Article 90, "Willfully disobeying superior commissioned officer," 10 U.S.C. § 890 (2018), the Article 90 standard of lawfulness has been applied to an Article 92 dereliction charge, *see* United States v. Pugh, 77 M.J. 1, 3 (C.A.A.F. 2017) (applying Article 90 standard of lawfulness to Article 92 dereliction case based on lawful order violation).

62. *See* U.S. CONST. amend. XXV, § 4 (providing that the Vice President may assume the duties of the President "[w]henever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office").

63. *See id.* (providing that "Congress shall decide the issue" when the President contests removal by stating "no inability exists").

64. *See* YALE LAW SCH. RULE OF LAW CLINIC, THE TWENTY-FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION: A READER'S GUIDE 57 (2018), https://bit.ly/3hK2j84 (noting that Congress has the power to issue subpoenas, and quoting a former U.S. Senator stating that Congress would be "entitled" to evidence of the President's health (quoting *Presidential Inability and Vacancies in the Office of Vice President: Hearings Before the Subcomm. on Constitutional Amendments of the S. Comm. on the Judiciary*, 88th Cong. 35 (1964) (statement of Sen. Hruska))).

65. *See* 45 C.F.R. § 164.512(e)(1)(ii) (2020).

If the President in this hypothetical were unwell and motivated by a drive to stay in office, it would be difficult to imagine a military court finding the order lawful. Lawful "order[s] must relate to military duty,"[66] and it seems a stretch to argue that a naked grab at political power serves any military purpose. Instead, a military judge might find this order to be personal in nature, declining to enforce it.

IV. REGARDLESS OF MERIT, AT COURT-MARTIAL, PRESIDENTIAL INVOLVEMENT COULD BE DAMAGING TO THE PROSECUTION

Even assuming that a case of orders refusal did make it to court-martial, a military physician would likely raise the issue of unlawful command influence. Rooted in a statute (UCMJ Article 37)[67] that prevents senior officials from influencing the outcome of courts-martial, the doctrine of unlawful command influence has been interpreted judicially to protect servicemembers from "the mere appearance of unlawful command influence."[68] Because courts-martial are implemented by military members, who make up both the judge and jury, there exists a fear that reaching the wrong decision could incur the wrath of higher-ups.[69]

To guarantee fairness, military courts will scrupulously avoid a situation where it appears that there is a "right" answer demanded by the chain of command—to include the President. Where there is the appearance of such a conflict of interest, military courts can allow remedies for the accused. Professor Stephen Vladeck has provided the example of when then-President Obama spoke generally about the need for firm "consequences" for military perpetrators of sexual assault (without referencing specific cases).[70] In an actual prosecution for sexual assault, a military judge found the statements to be "unlawful command influence" (even though they were generic) and took punitive discharge (such as bad-conduct discharge) off the table as a remedy to the accused.[71]

66. MCM, *supra* note 15, pt. IV, ¶ 16.c.(2)(a)(iv) ("The order must relate to military duty . . . ."); *see also Pugh*, 77 M.J. at 3 (applying Article 90 standard of lawfulness to Article 92 dereliction case based on lawful order violation).

67. 10 U.S.C. § 837 (2018 & Supp. 2019).

68. Stephen I. Vladeck, Response, *Unlawful Command Influence and the President's Quasi-Personal Capacity*, 96 TEX. L. REV. ONLINE 35, 36 (2018) (quoting United States v. Ashby, 68 M.J. 108, 128 (C.A.A.F. 2009)).

69. *See id* (explaining that uniformed judges, attorneys, and jurors in courts-martial "could have both legal and professional reasons not to act against the wishes of those above them in the chain of command").

70. *Id.* at 37.

71. *Id.* (citing United States v. Johnson, slip op. at 13–14 (N-M. Trial Judiciary, Haw. Jud. Cir. June 12, 2013) (docket number omitted in original), https://bit.ly/2X7iUsS).

In the case of a military physician who refuses a presidential order, there would be similar grounds to argue unlawful command influence. The President sits at the apex of the military (and federal) hierarchy, and a court-martial involving a President's order would implicate the same power relationships as did President Obama's comments. Note that the accused doctor would not need to show actual prejudice.[72] They would only need to prove an *appearance* of bias.[73]

By that standard, defense counsel could ably highlight the perception that the uniformed judge and jury might feel pressure to rule against an officer who defied the Commander-in-Chief's personal order, especially if that particular President is still in office. Because the unfairness extends to the highest echelon of the chain of command, the accused doctor could even ask for dismissal of charges as a remedy.[74]

V. CAVEATS AND CONCLUSION

As always in lawyering, there are caveats. The first is that the President wields significant soft and hard power over an officer who disobeys the President's orders, independent of the ability to convict them at court-martial. In terms of career, for example, the President's goodwill is a potent carrot for compliance. This was seen when President Trump nominated his former military physician to a cabinet post and, when that fell through, for a promotion within the service.[75] Disobeying the President would presumably remove such opportunities to leverage the President's favor for career advancement.

Additionally, while concerns as to unlawful command influence and the legal sufficiency of UCMJ charges would likely hamper a prosecution,[76] the President is nonetheless empowered to convene a court-martial.[77] The simple threat of a court-martial might be enough to induce obedience from a rule-following officer. More basically, the imprimatur of the President's Office likely gives the President a good amount of moral

72. *See* John L. Kiel, Jr., *They Came in Like a Wrecking Ball: Recent Trends at CAAF in Dealing with Apparent UCI*, ARMY LAW., Jan. 2018, at 18, 24 ("[T]he Court doesn't' [sic] even have to look for actual prejudice to the accused.") (title citation omitted).

73. *See id.* ("If [courts] find that [unlawful command influence] placed an intolerable strain on the public's perception of . . . proceedings, they are going to fashion a remedy to cure it even if the accused has suffered no prejudice because of it.").

74. *See* United States v. Bergdahl, 80 M.J. 230, 245 (C.A.A.F. 2020) (Stucky, C.J., concurring in part and dissenting in part) (stating that "the only appropriate remedy is dismissal of the charges and specifications with prejudice" in a case where the President and a Senator committed unlawful command influence).

75. *See* Jeremy Diamond et al., *Trump Pushes for Dr. Ronny Jackson's Second Star amid Pentagon Probe*, CNN (Feb. 4, 2019, 6:05 PM), https://cnn.it/3rT7erE.

76. *See supra* Parts III–IV.

77. *See* 10 U.S.C. § 822(a)(1) (2018).

authority over any servicemember who respects the inherent authority of the Commander-in-Chief.

Another point is that the form of refusal matters. If a military physician were not genteel in refusing, the UCMJ also allows charges for "conduct unbecoming an officer"[78] and contempt toward elected officials.[79] So a doctor would do well to be civil in declining to obey a presidential order, regardless of legality.

With all that said, it seems unlikely that the government could successfully prosecute a military doctor who refuses to follow the President's orders. Substantial (one might even say reasonable) doubts surround the President's authority to issue a legally binding order on his physician. And even if such charges reached court-martial, the stature of the Commander-in-Chief would loom large to the point of creating an appearance of undue influence, hampering the prosecution pursuant to the doctrine of unlawful command influence. Thus, while the President's authority over the military is broad, it is not absolute, leaving room for a conscientious White House doctor to refuse orders.

78. *Id.* § 933 ("Any commissioned officer, cadet, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct."); *see also* Parker v. Levy, 417 U.S. 733, 757 (1974) (upholding the constitutionality of Article 133 against vagueness and overbreadth challenges).

79. *See* 10 U.S.C. § 888.