

Number 46, June 2002: Coverage of the PHS Commissioned Corps

By CAPT Samuel F. Wright, JAGC, USNR*

Q: I read with interest VADM David Satcher's article, "Health Security for Our Nation," in the January/February 2002 issue of The Officer. The article explained that the Commissioned Corps of the U.S. Public Health Service (PHS) is one of our nation's seven uniformed services.

I served as a commissioned officer in the PHS for four years, and I'm proud of my service to our country. During my active-duty service I received two Isolated Hardship ribbons and was promoted from lieutenant (03) to lieutenant commander (04). I separated from active duty October 2001. While searching for a new job, I was shocked to learn that I was not eligible for some of the federal employment benefits that former members of the armed forces receive.

Although PHS commissioned officers are members of one of the seven uniformed services, they are not given the same rights as other veterans. I believe this should not be the case, and I hope that attention will be given to changing this.

[The question, quoted above, was submitted by Nellie S. Tucker, formerly LCDR, USPHS.]

A: Congress established the PHS in 1803. In every war that our nation has fought, except for the Revolutionary War, PHS officers have augmented the medical departments of the other services. Several PHS officers have made the ultimate sacrifice.

Title 10, United States Code, Section 101 (10 U.S.C. 101) defines many terms, including "armed forces" and "uniformed services." The armed forces are the Army, Navy, Air Force, Marine Corps, and Coast Guard. [10 U.S.C. 101(a)(4)] The uniformed services are the armed forces plus the commissioned corps of the National Oceanic and Atmospheric Administration (NOAA) and the commissioned corps of the PHS. [10 U.S.C. 101(a)(5)]

PHS and NOAA officers and former officers have some, but not all, of the rights of persons who are serving or have served in the armed forces. You must look at this issue program-by-program and entitlement-by-entitlement. If the particular statute at issue refers to the "uniformed services," PHS and NOAA officers are probably included. If the statute refers to the "armed forces," PHS and NOAA officers are almost certainly not included, under current law. Statutory amendments would be required to include them.

It gets even more complicated, because some statutes have their own definitions. For example, the Uniformed Services Employment and

Reemployment Rights Act (USERRA) accords re-employment rights to persons returning from "service in the uniformed services." USERRA has its own definition of "uniformed services." [38 U.S.C. 4303(16)] The USERRA definition includes the PHS but not NOAA. Thus, a person who left a civilian job to serve in the PHS, and who meets USERRA's other eligibility criteria (see "Law Reviews 4-7") has re-employment rights in his or her pre-service civilian job, just like a person returning from service in the U.S. Army. NOAA officers have no rights under USERRA. (NOAA was intentionally excluded from USERRA, but that is another story.)

PHS officers also have rights under the Soldiers' and Sailors' Civil Relief Act (SSCRA). Thus, a person whose entry into PHS active duty has "materially affected" his or her ability to meet financial obligations may be entitled to have interest rates (mortgage, credit cards, etc.) reduced to 6 percent. PHS officers also enjoy the SSCRA protections against default judgments, double taxation, etc.

On the other hand, the code section conferring certain advantages in federal civilian employment refers to "veterans of the Armed Forces" [38 U.S.C. 4214(a)(1)]. This ROA member is upset that she has been told that she is not eligible for those special "veterans-only" benefits in securing a civilian Department of the Army job. What she has been told is correct, under current law.

In the April 2002 *The Officer*, we devoted 11 pages (pages 8-18) to reprinting an edited version of ROA Executive Director Jayson L. Spiegel's 13 March 2002 testimony before the Military Personnel Subcommittee, House Armed Services Committee. We have also put Mr. Spiegel's entire testimony on our Web site (www.roa.org) in the Legislative Section. I invite the reader's attention to one paragraph of Mr. Spiegel's testimony: "It is of critical national interest to create and organize a uniformed cadre of Reserve medical professionals from the inactive Reserve of the PHS commissioned corps. Furthermore, ROA believes that it is paramount to provide the means and structure to train and access those Ready Reserve officers for mobilization and deployment, in order to most effectively and rapidly address the results of natural and man-made attacks on the nation's population, territory, infrastructure or health-care systems." [*The Officer*, April 2002, page 18.] As part of our effort to make PHS Reserve officers accessible, we (ROA) will push to give them the same legal rights as persons serving in the armed forces. ROA

Captain Wright was employed as an attorney for DoL for ten years. He was largely responsible for drafting USERRA, along with one other DoL attorney. He also helped to write the successful appellate briefs for the veterans in both the *Imel* and the *Akers* cases. Most recently, he was on active duty for 71 days (May-July 2001), including 40 days in Bahrain. Please see his July 2001 "Law Review" article.

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