

LAW REVIEW 192
Physician Regaining Hospital Privileges After Service

By CAPT Samuel F. Wright, JAGC, USNR*

Q: I am an orthopedic surgeon and a lieutenant colonel in the Army Reserve. I recently returned from a year of voluntary active duty. Your Law Review 147, concerning my professional liability insurance, was most helpful. I notified the insurance company when I went on active duty, and my insurance premiums were suspended while I was on active duty. When I left active duty, I notified the insurance company again, and the company reinstated my coverage without objection.

But now I have another problem. I cannot practice surgery without hospital privileges. I applied to the hospital administrator to have my privileges reinstated, and he told me that I must wait for several months. I suggested that the Uniformed Services Employment and Reemployment Rights Act (USERRA) gives me the right to resume practicing medicine immediately, but he said that USERRA does not apply because I volunteered. (He also implied that he plans to take his time reinstating my privileges because he does not approve of the way that the president is conducting the global war on terrorism.) In Law Reviews 30 and 161, you wrote that USERRA applies equally to voluntary and involuntary service. What gives?

A: USERRA does apply to both voluntary and involuntary service. Unfortunately, USERRA does not apply to your situation at all, because the hospital is not your employer. As I explained in Law Reviews 32 (pertaining to students) and 99 (pertaining to partners), USERRA applies to the relationship between an employer and an employee—it does not apply to other kinds of relationships. I have brought your situation to the attention of ROA's legislative director. It may be that a new statute is needed.

I suggest that you retain a lawyer to advise you on this matter. You may have a contractual right to reinstatement of your hospital privileges, and there may be a state common law cause of action for "tortious interference with contract rights." While USERRA does not apply, your lawyer can certainly refer to USERRA with a "spirit of the law" argument. There may also be a non-legal solution to this problem. I'll bet that your local media outlets would be interested in this situation—patients in your community needing orthopedic surgery are being deprived of your services because the hospital administrator has a political objection to the president's policies. Good luck.

**Military title shown for purposes of identification only. The views expressed herein are the personal views of the author, and not necessarily the views of the Department of the Navy, the Department of Defense, or the U.S. government. The best way to reach Captain Wright is by e-mail, at samwright50@yahoo.com.*