

## LAW REVIEW<sup>1</sup> 22050

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### What Is the Medical Care Recovery Act?

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#### 9.0—Miscellaneous

**Q: I am a soldier on active duty in the United States Army, serving at a major Army base in the United States. While doing Internet research on my legal issue, I stumbled upon one of your “Law Review” articles about military-legal topics.**

**Earlier this year, on a Saturday afternoon, I was a pedestrian crossing a major street, in the crosswalk, with the “walk” light illuminated. A middle-aged civilian, let us call him “Joe Smith,” was talking on his cell phone and traveling well in excess of the posted speed limit. When his Blood Alcohol Content was checked, it showed up as twice the legal limit. Joe flew right through the red light and ran over me while travelling in excess of 50 miles per hour.**

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<sup>1</sup> I invite the reader’s attention to [www.roa.org/lawcenter](http://www.roa.org/lawcenter). You will find more than 2,000 “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouses’ Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. I am the author of more than 90% of the articles, but we are always looking for “other than Sam” articles by other lawyers.

<sup>2</sup> BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General’s Corps officer and retired in 2007. I am a life member of ROA. For 45 years, I have collaborated with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans’ Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 38 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. §§ 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at <mailto:swright@roa.org>.

**I suffered terrible injuries and permanent disabilities. My military career is over—I will be medically retired from the Army soon. With my serious, permanent disabilities, it will be difficult or impossible for me to work and support myself and my family through gainful employment.**

**I retained an excellent personal injury lawyer, and we have sued Joe Smith in state court. My lawyer informs me that liability is clear-cut and my damages are worth millions of dollars, but the maximum that I can reasonably expect to collect is \$100,000, the policy limit on Smith's automobile liability insurance policy. How is it possible for Smith to be so egregiously negligent and only have to pay me \$100,000?**

**A:** You can sue and get a judgment for millions of dollars, but a judgment is just a piece of paper, unless Smith has property or assets that can be levied upon to collect the judgment. If your lawyer has told you that you cannot reasonably expect to collect damages in excess of the policy limit, I am sure that she knows what she is talking about and has diligently searched for a way to collect.

It is likely that the district attorney will prosecute Smith, and he could spend many months in jail, but the maximum that you will be able to collect in your civil suit will likely be the policy limit on his insurance policy.

**Q: My lawyer told me that the Army is asserting a claim for the cost of the medical care that I received as a result of Smith's negligence, under a statute called the Medical Care Recovery Act (MCRA). What is the MCRA?**

**A:** The entire text of the MCRA is as follows:

**(a) Conditions; exceptions; persons liable; amount of recovery; subrogation; assignment.** In any case in which the United States is authorized or required by law to furnish or pay for hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) to a person who is injured or suffers a disease, after the effective date of this Act, under circumstances creating a tort liability upon some third person (other than or in addition to the United States and except employers of seamen treated under the provisions of section 322 of the Act of July 1, 1944 (58 Stat. 696), as amended (42 U.S.C. 249)) to pay damages therefor, the United States shall have a right to recover (independent of the rights of the injured or diseased person) from said third person, or that person's insurer, the reasonable value of the care and treatment so furnished, to be furnished, paid for, or to be paid for and shall, as to this right be subrogated to any right or claim that the injured or diseased person, his guardian, personal representative, estate, dependents, or survivors has against such third person to the extent of the reasonable value of the care and treatment so furnished, to be

furnished, paid for, or to be paid for. The head of the department or agency of the United States furnishing such care or treatment may also require the injured or diseased person, his guardian, personal representative, estate, dependents, or survivors, as appropriate, to assign his claim or cause of action against the third person to the extent of that right or claim.

**(b) Recovery of cost of pay for member of uniformed services unable to perform duties.** If a member of the uniformed services is injured, or contracts a disease, under circumstances creating a tort liability upon a third person (other than or in addition to the United States and except employers of seamen referred to in subsection (a)) for damages for such injury or disease and the member is unable to perform the member's regular military duties as a result of the injury or disease, the United States shall have a right (independent of the rights of the member) to recover from the third person or an insurer of the third person, or both, the amount equal to the total amount of the pay that accrues and is to accrue to the member for the period for which the member is unable to perform such duties as a result of the injury or disease and is not assigned to perform other military duties.

**(c) United States deemed third party beneficiary under alternative system of compensation.**

**(1)** If, pursuant to the laws of a State that are applicable in a case of a member of the uniformed services who is injured or contracts a disease as a result of tortious conduct of a third person, there is in effect for such a case (as a substitute or alternative for compensation for damages through tort liability) a system of compensation or reimbursement for expenses of hospital, medical, surgical, or dental care and treatment or for lost pay pursuant to a policy of insurance, contract, medical or hospital service agreement, or similar arrangement, the United States shall be deemed to be a third-party beneficiary of such a policy, contract, agreement, or arrangement.

**(2)** For the purposes of paragraph (1)—

**(A)** the expenses incurred or to be incurred by the United States for care and treatment for an injured or diseased member as described in subsection (a) shall be deemed to have been incurred by the member;

**(B)** the cost to the United States of the pay of the member as described in subsection (b) shall be deemed to have been pay lost by the member as a result of the injury or disease; and

**(C)** the United States shall be subrogated to any right or claim that the injured or diseased member or the member's guardian, personal representative, estate, dependents, or survivors have under a policy, contract, agreement, or arrangement

referred to in paragraph (1) to the extent of the reasonable value of the care and treatment and the total amount of the pay deemed lost under subparagraph (B).

**(d) Enforcement procedure; intervention; joinder of parties; State or Federal court proceedings.** The United States may, to enforce a right under subsections (a), (b), and (c)[.] (1) intervene or join in any action or proceeding brought by the injured or diseased person, his guardian, personal representative, estate, dependents, or survivors, against the third person who is liable for the injury or disease or the insurance carrier or other entity responsible for the payment or reimbursement of medical expenses or lost pay; or (2) if such action or proceeding is not commenced within six months after the first day in which care and treatment is furnished or paid for by the United States in connection with the injury or disease involved, institute and prosecute legal proceedings against the third person who is liable for the injury or disease or the insurance carrier or other entity responsible for the payment or reimbursement of medical expenses or lost pay, in a State or Federal court, either alone (in its own name or in the name of the injured person, his guardian, personal representative, estate, dependents, or survivors) or in conjunction with the injured or diseased person, his guardian, personal representative, estate, dependents, or survivors.

**(e) Veterans' exception.** The provisions of this section shall not apply with respect to hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished by the Department of Veterans Affairs to an eligible veteran for a service-connected disability under the provisions of chapter 17 of title 38, United States Code [38 USCS §§ 601 et seq.].

**(f) Crediting of amounts recovered.**

**(1)** Any amount recovered under this section for medical care and related services furnished by a military medical treatment facility or similar military activity shall be credited to the appropriation or appropriations supporting the operation of that facility or activity, as determined under regulations prescribed by the Secretary of Defense.

**(2)** Any amount recovered under this section for the cost to the United States of pay of an injured or diseased member of the uniformed services shall be credited to the appropriation that supports the operation of the command, activity, or other unit to which the member was assigned at the time of the injury or illness, as determined under regulations prescribed by the Secretary concerned.

**(g) Definitions.** For the purposes of this section:

**(1)** The term "uniformed services" has the meaning given such term in section 101 of title 10, United States Code.

**(2)** The term "tortious conduct" includes any tortious omission.

**(3)** The term “pay”, with respect to a member of the uniformed services, means basic pay, special pay, and incentive pay that the member is authorized to receive under title 37, United States Code, or any other law providing pay for service in the uniformed services.

**(4)** The term “Secretary concerned” means—

**(A)** the Secretary of Defense, with respect to the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard (when it is operating as a service in the Navy);

**(B)** the Secretary of Homeland Security, with respect to the Coast Guard when it is not operating as a service in the Navy;

**(C)** the Secretary of Health and Human Services, with respect to the commissioned corps of the Public Health Service; and

**(D)** the Secretary of Commerce, with respect to the commissioned corps of the National Oceanic and Atmospheric Administration.<sup>3</sup>

The Secretary of Defense can claim reimbursement from Smith for the value of the medical care that you received, such care having been necessitated by Smith’s negligence. The Secretary can also recover for the salary that you received from the Army during the time that you were unable to perform your military duties because of your injury and disability. The Secretary cannot collect that money from you, but collecting it from Smith, the tortfeasor, amounts to almost the same thing as collecting it from you. As a practical matter, you and the Secretary of Defense will not be able to collect more than \$100,000 from Smith. To the extent that the Secretary recovers any money from Smith and his insurance company under the MCRA, that money takes away from the already very meager recovery that you will receive for your terrible injuries.

I hope that your attorney will be able to persuade the Secretary of Defense to waive most or all of the MCRA claim.

**Please join or support ROA**

This article is one of 2,000-plus “Law Review” articles available at [www.roa.org/lawcenter](http://www.roa.org/lawcenter). The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is almost a century old—it was established on 10/1/1922 by a group of veterans of “The Great War,” as World War I was then known. One of those veterans was Captain Harry S.

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<sup>3</sup> 42 U.S.C. § 2651.

Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For almost a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation's defense needs.

Through these articles, and by other means, including amicus curiae ("friend of the court") briefs that we file in the Supreme Court and other courts, we educate service members, military spouses, attorneys, judges, employers, DOL investigators, ESGR volunteers, congressional and state legislative staffers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation's eight<sup>4</sup> uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20 or \$450 for a life membership. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve. If you are eligible for ROA membership, please join. You can join on-line at [www.roa.org](http://www.roa.org) or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

Reserve Organization of America  
1 Constitution Ave. NE  
Washington, DC 20002<sup>5</sup>

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<sup>4</sup> Congress recently established the United States Space Force as the 8<sup>th</sup> uniformed service.

<sup>5</sup> You can also contribute on-line at [www.roa.org](http://www.roa.org).