

Delaware Falls Short in Accommodating Deployed Service Members and Military Spouses

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1.8—Relationship between USERRA and other laws/policies

9.0--Miscellaneous

Joe Smith holds a professional license issued by the State of Delaware and is a member of the Army Reserve. Joe was called to active duty and deployed to Afghanistan for a year and has recently been released from active duty and has returned home to Delaware. While Joe was deployed, he was unable to complete the required continuing professional education (CPE) requirements or to renew his Delaware professional license.³ The expiration of Joe's professional license has immensely complicated Joe's return to gainful civilian employment, especially if he is self-employed.⁴

Delaware's Division of Professional Regulation recently issued an "Instruction Sheet" about Delaware's laws and regulations permitting a service member to apply for and obtain a "provisional" professional license. We are attaching a copy of this instruction sheet at the end of this article. The sheet provides that a service member may apply for a provisional license if he or she meets *all* of the following conditions:

You are a member of the active duty military, National Guard or military reserve who has been reassigned to a duty station in Delaware or who has been deployed by the President of the United States or the Governor of Delaware.

¹ We invite the reader's attention to www.servicemembers-lawcenter.org. You will find more than 1,300 "Law Review" articles about laws that are especially pertinent to those who serve our country in uniform, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997.

² Captain Wright was the Director of ROA's Service Members Law Center from June 2009 to May 2015.

³ While Joe was serving our country in Afghanistan, it was most important that he maintain his entire focus on his military duties, to keep himself and his colleagues safe. It would have been tragic if Joe had allowed himself to be distracted by the need to meet Delaware CPE requirements in order to facilitate his return to civilian employment.

⁴ If Joe is an employee, and if he meets the simple eligibility criteria under the Uniformed Services Employment and Reemployment Rights Act (USERRA), Joe's pre-service employer is required to reemploy him *even if doing so would violate Delaware law*. Under section 4302(b) of USERRA [38 U.S.C. 4302(b)], USERRA supersedes and overrides a state law that imposes additional prerequisites to the exercise of USERRA rights. Under Article VI, Clause 2 of the United States Constitution (commonly called the "Supremacy Clause"), a federal statute like USERRA trumps a conflicting state statute or even a state constitution. But USERRA does not help Joe if he is self-employed.

You hold a *current*⁵ license in good standing to practice your profession in at least one other jurisdiction (state, U.S. territory or District of Columbia) **and**⁶ there is no unresolved complaint, review procedure or disciplinary proceeding against any license you hold.

You are simultaneously filing or have already filed an application for a professional license and that application is still pending with the Division.

This provision would likely help Major Alice Adams, an Air Force physician who was recently transferred (Permanent Change of Station) from an Air Force Base (AFB) in another state to Dover AFB in Delaware. Alice does not need a Delaware medical license to practice medicine in Delaware as part of her military duties.⁷ If Alice wants to “moonlight” as a physician at a civilian hospital in Delaware, she will need a Delaware medical license, and this provision for a provisional license could be useful in such a situation.

This provision does not help Joe Smith, who was licensed by Delaware not another state and his Delaware professional license expired during his recent deployment. He does not have a *current* professional license in any state, and that is an absolute prerequisite to obtaining a Delaware provisional professional license.

The Delaware provision also does not help Mary Jones, the wife of Captain Robert Jones, USAF. Robert was recently transferred to Dover AFB, and Mary accompanied him in order to continue the marriage. Mary has a professional license issued by California, where she has lived with Robert for the last three years before his recent transfer to Delaware. Delaware has made no provision for a person like Mary to obtain a provisional professional license in this circumstance.

Delaware was at least thinking about service members when it recently provided for provisional professional licenses. It is most unfortunate that we (ROA) did not have the opportunity to offer input so that a more productive regulation might have been drafted and promulgated.

Especially after the recent staff cuts, the ROA headquarters staff has its hands full trying to monitor and affect what goes on in Congress and the Pentagon. We simply do not have the “band width” to monitor what is happening in 50 state capitals. There is a great need for ROA departments and chapters to fill this gap.

> [Download Delaware Military Provisional License Application](#) (pdf)

⁵ Emphasis in original.

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⁷ Under the Supremacy Clause of the United States Constitution, Delaware has no authority to regulate federal facilities and activities in Delaware.