April 1956

ADMINISTRATIVE LAW-CONSTITUTIONAL LAW-RIGHT OF PUBLIC HOSPITAL TO DISCHARGE PHYSICIAN FROM STAFF AND DENY HIM USE OF FACILITIES

COMMENT

ADMINISTRATIVE LAW—CONSTITUTIONAL LAW—RIGHT OF PUBLIC HOSPITAL TO DISCHARGE PHYSICIAN FROM STAFF AND DENY HIM USE OF FACILITIES.—The Appellate Division, Fourth Department, has unanimously held that while the board of governors of a public (city) hospital can arbitrarily remove a duly qualified physician from its appointed medical staff, it cannot, without due process of law, deny the use of its facilities for the treatment of such physician's own patients.[1]

The City Hospital of Fulton, New York, is publicly owned, controlled, and financed. Section 189 of the City Charter conferred upon its Board of Governors, the respondents herein:

"Full power . . . to adopt . . . rules, regulations and by-laws for its own government and for the government, regulation and control of the hospital, its inmates, and employees. . . ."[2]

Pursuant to this authority, the board of governors adopted the following rules, inter alia:

"Sec. 1: Patients may be treated only by physicians and surgeons who have submitted proper credentials to the Board of Governors.
Sec. 2: Any physician or surgeon willfully violating any rule or regulation of the hospital may be denied the use of the hospital."

Physicians and surgeons so privileged to attend patients in the hospital organized themselves into an active medical staff and adopted the board's rules, regulations and by-laws. Appointment to the staff was to be made by the respondent board of governors for a term of one year.

In 1946, Dr. Alpert, a duly qualified physician and surgeon, was accepted for membership on the hospital's active medical staff and continued to use its facilities until February 1, 1955. On that date, a determination of the board of governors excluding Alpert from the use of hospital facilities and denying him reappointment to the active medical staff, became effective. No notice, hearing, or any findings of fact preceded such determination.

Alpert thereupon applied for an order pursuant to Article 78 of the Civil Practice Act,[3] annulling the determination of the board. He alleged that the determination was arbitrary, without foundation in fact, and deprived him of property without due process of law. He alleged further that the nearest other hospital was very distant; therefore, his patients would have to retain other physicians. Such exclusion would effectively destroy his practice in an area where he had built his reputation and practice over many years, representing a substantial income and investment.

Respondents' answer alleged that the determination was reached only after careful and mature consideration of a number of facts and circum-

[1] Matter of Alpert v. The Board of Governors of the City Hospital of Fulton, 286 App. Div. 542, 145 N. Y. S. 2d 534 (4th Dep't 1955).

[2] City Charter of Fulton c. 358, § 189 (1908).

[3] N. Y. CIV. PRAC. ACT § 1283 *et seq.*

stances which overwhelmingly justified the board's action. Such facts were not specified, although an annexed affadavit did aver that the hospital records contained considerable evidence of mismanagement of medical cases and willful violation of the by-laws of the medical staff. Though Special Term granted permission to file an amended answer alleging further facts, the board elected to rest on its original answer.

Following a trial, Special Term entered an order denying petitioner's application,[4] from which order petitioner appealed. The Appellate Division in effect reversed the order of Special Term by modifying it so as to permit Alpert the use of hospital facilities to treat his own patients, although leaving undisturbed the discharge of Alpert from the hospital staff.[5]

The Appellate Division was here concerned with two questions: (1) whether petitioner had a right to judicial review with respect to either or both of respondents' acts (the dismissal and the continued exclusion from the use of the hospital), and, if so, on what grounds; and (2) if petitioner had a right to such review, what was its scope?

The respondents denied petitioner's right to judicial review, contending that they, as a public administrative body, had an unlimited discretion in the management of the hospital, and therefore none of their administrative acts could be reviewed by the courts. This contention was based on the provisions of the City Charter which gave respondents "full power" to adopt rules, regulations and by-laws for the government of their body, and upon which power there was no express limitation.

The assertion is frequently made that an administrative body possesses unlimited discretion in its actions, and its acts are not reviewable by the courts. This is true, as a general proposition, where an act is purely administrative, concerned solely with the internal function of the agency.[6] However, where the administrative act is quasi-judicial, rather than purely administrative, the courts may review.[7] An administrative act is quasi-judicial when "it involves the ascertainment of certain past or present facts upon which a decision is to be made and rights and liabilities determined."[8] Such rights and liabilities may be created by statute, *e.g.*, the legislative grant of a fair hearing,[9] or by Constitution, *e.g.*, the protection of property rights and valuable privileges by due process.[10] In such cases, the administrative determination may be reviewed to see if it was repugnant to the

[4] Matter of Alpert v. Board of Governors of the City Hospital of Fulton, Unreported, Civil No. 7872 (Sup. Ct. Onondaga Co., May 3, 1955).

[5] See note 1, *supra.*

[6] People *ex rel.* Kennedy v. Brady, 166 N. Y. 44, 59 N. E. 701 (1901).

[7] Matter of Hamilton v. Monaghan, 285 App. Div. 692, 140 N. Y. S. 2d 17, 18 (1st Dep't 1955); Schwab v. McElligott, 282 N. Y. 182, 186, 26 N. E. 2d 10, 12 (1940).

[8] Matter of Hecht v. Monaghan, 307 N. Y. 461, 468, 121 N. E. 2d 421, 425 (1954).

[9] N. Y. CIVIL SERVICE L. § 22; N. Y. CITY ADM. CODE § 436-2.0(40). See, also, Rotkiewicz v. Department of Mental Health, 283 App. Div. 458, 128 N. Y. S. 2d 654 (4th Dep't 1954); Matter of Hecht v. Monaghan, 307 N. Y. 461, 121 N. E. 2d 421 (1954).

[10] Matter of Hecht v. Monaghan, 307 N. Y. 461, 121 N. E. 2d 421 (1954).

Constitution, or not within the scope of authority granted to the agency by the statute, or arbitrary and capricious.[11]

As to Alpert's arbitrary removal from the active medical staff, the court concluded that this official act was not reviewable. It is clear that the directors of a hospital organized as a private corporation may summarily dismiss a physician from the staff without notice or hearing,[12] and it has also been held that, when dealing with its own employees, the action of a public administrative body in suspending or discharging them is a merely administrative function, and no notice or hearing is necessary unless specifically required by statute.[13] In the present case, the City Charter gave respondents "full power" to adopt their own rules. There was no express limitation upon that power; the statute did not provide for a hearing.

Nor did Alpert have any constitutional right to enforce in this connection. It has been held that a license to drive a taxi, being of great value to the licensee, who may not carry on his business or occupation without it, may not be taken away except by due process of law.[14] However, the court in this case distinguished a licensee from an appointee or employee and indicated that, unless enjoined by statute, the administrative body could suspend or discharge its own employees without a hearing. Thus, the present court concluded that Alpert had "no right to represent the hospital and treat patients who have not engaged his services."[15]

In no sense, then, can the dismissal of petitioner be considered a quasi-judicial act; such act was purely administrative, and related to the internal functioning of the agency. This seems to be the majority American rule,[16] although a Wisconsin court has recently held that an indefinite suspension of a duly licensed physician from the active staff of a municipal hospital is unreasonable unless a provision is made for fair notice and an opportunity to be heard.[17]

Turning to the respondents' denial of the use of hospital facilities for the treatment of petitioner's own patients, the court reached an opposite conclusion. While it is true that there was no express statutory limitation upon the respondents' power to exclude the petitioner from all contact with the hospital, the court in *Matter of Hecht* v. *Monaghan*[18] indicated that such a limitation would be implied where the exercise of the statutory power adversely affects property rights. In the present case, petitioner had practiced in the city for seventeen years and enjoyed the use of hospital facilities for nine of them, and so had developed a large practice representing a substantial

[11] Interstate Commerce Comm'n v. Illinois Central Ry., 215 U. S. 452, 30 S. Ct. 155, 54 L. Ed. 280 (1910).

[12] Van Campen v. Olean General Hospital, 210 App. Div. 204, 205 N. Y. Supp. 554 (4th Dep't 1924), *aff'd without opinion*, 239 N. Y. 615, 147 N. E. 219 (1925).

[13] People *ex rel.* Kennedy v. Brady, 166 N. Y. 44, 59 N. E. 701 (1901).

[14] See note 10, *supra*.

[15] See note 1, *supra* at 546, 145 N. Y. S. 2d at 539.

[16] 54 A. L. R. 852 N (1951).

[17] Johnson v. City of Ripon, 359 Wis. 84, 47 N. W. 2d 1928 (1951).

[18] See note 10, *supra*.

income and investment. Due to the distance of the next nearest hospital, and the fact that patients would, in the event of hospitalization, have to engage other physicians, petitioner's exclusion from the hospital for the treatment of his own patients would effectively destroy a species of tenure that cannot be arbitrarily, capriciously, or unreasonably destroyed. Such tenure is a valuable privilege.

While in a certain sense, as the United States Supreme Court has held, there is no constitutional right to practice medicine in a public hospital,[19] yet valuable privileges, as well as rights, are entitled to constitutional protection. Thus, a state license which is of value to the individual holding it may not be taken away except by due process of law, whether it is a license to operate an auto,[20] to drive a hack or taxicab,[21] or to purchase, handle or distribute fluid milk.[22]

Thus, although there was no express statutory requirement that respondent give notice and a hearing before excluding petitioner from treating his own patients in the hospital, such a requirement is implied when property rights are effected.[23] And although there is no right to practice medicine in a municipal hospital,[24] the facts of this case create for petitioner a valuable privilege which the court held was also entitled to the constitutional protection of due process. Since, therefore, petitioner had the right to due process, the act of respondents in excluding him from the hospital was a quasi-judicial act, subject to judicial review.

Having established the doctor's right to a judicial review, the court proceeded to an examination of the board's determination. The first wrong which an administrative body can commit is to adopt unreasonable rules. Such rules must be reasonable and "consonant with the purposes of the institution for which they were made."[25] Here, the rule was that "any physician or surgeon willfully violating any rule or regulation of the hospital may be denied the use of the hospital." Such rule, the court held, was reasonable.

The second wrong which the administrative body can commit is to enforce the rules without regard to the requisites of due process of law. In this case, although the creating statute, the City Charter, did not impose the necessity of due process upon the hospital, "where the exercise of a statutory duty adversely affects property rights, the courts have *implied* the requirement of notice and hearing where the statute was silent."[26] Here, property rights were adversely affected, and thus the provision for due process would be implied. Because respondents refused to aver any facts in their answer as to the basis for their action, the court had to presume that their conduct was

[19] Hayman v. City of Galveston, 273 U. S. 414, 47 S. Ct. 363, 71 L. Ed. 714 (1927).
[20] Wignall v. Fletcher, 303 N. Y. 435, 103 N. E. 2d 728 (1952).
[21] See note 10, *supra*.
[22] Elite Dairy Products v. Ten Eyck, 271 N. Y. 488, 3 N. E. 2d 616 (1936).
[23] See note 10, *supra*.
[24] See note 19, *supra*.
[25] People *ex rel.* Croft v. Manhattan State Hospital, 5 App. Div. 249, 253, 39 N. Y. Supp. 158, 161 (1st Dep't 1896).
[26] See note 10, *supra* at 468, 121 N. E. 2d 421, 424.

arbitrary, unreasonable, and capricious, and disregarded the requirements of due process.[27] In addition, the court pointed to the public nature of the hospital involved, and from this further implied a limitation upon the discretion of the board of governors to restrict arbitrarily the use of the hospital by the public, whether physician or patient. Therefore, the court reversed Special Term's order denying petitioner's application for an order to annul the hospital board's determination, to the extent that it excluded petitioner from the hospital for the treatment of his own patients.

This case is illustrative of the legal administrative problems which the growth of public hospitals brings. The public nature of the hospital, suggests the court, implies a limitation upon administrative power, and a consequent necessity for the balance of interests. Also, the present case adds further weight to that growing body of law which has extended constitutional protection to valuable privileges which are not in themselves entitled to the protection accorded to vested rights.

[27] N. Y. CIV. PRAC. ACT § 1295.