Kentucky Law Journal

Volume 31 | Issue 2 Article 10

1943

Hospitals--Right to Exclude Physician from Use of Hospital

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Had the court sought to give the defendant the benefit of every reasonable doubt as is usually done in criminal cases, it could easily have remanded the case—but had it done so, the court would have been immediately confronted with a storm of public protest claiming that technicalities stood between the criminal and law enforcement.

ROY VANCE, JR.

HOSPITALS—RIGHT TO EXCLUDE PHYSICIAN FROM USE OF HOSPITAL

Defendant hospital was maintained largely by fees paid by patients and by numerous voluntary gifts, but it also received payments from the city and county governments for services rendered to indigent patients. Plaintiff, a qualified and competent medical practitioner and surgeon, had successfully practiced in this and other hospitals for many years. However, in defendant hospital he invaded the field of the specialist by performing certain operations usually performed by surgeons recognized as specialists. This practice, if continued, would have caused defendant hospital to be removed from the accredited hospital list. The superintendent of defendant hospital, with the approval of the board of trustees, informed plaintiff that in order for defendant hospital to continue on an accredited basis, it would be necessary for plaintiff to procure the indorsement of the American College of Surgeons as a specialist. Plaintiff treated this action as denying to him further use of the operating rooms of the hospital and brought suit to restrain defendants, hospital and medical staff, from interfering with his practice of surgery in the hospital. *Held,* that defendant hospital was a private institution and that its managing authorities might, in order to maintain its standing on the accredited list, exclude plaintiff from practicing in the operating rooms of the hospital. *Hughes* v. *Good Samaritan Hospital et al.,* 289 Ky. 123, 158 S. W (2d) 159 (1942).

Apparently assuming that as between public and private hospitals, a different rule is to be applied, the Kentucky Court of Appeals first discussed whether defendant was a public or a private hospital. It held that defendant was a private hospital rather than a public one for the reasons that it was founded by a private church group, was not supported by public funds but by fees paid by patients and by gifts and endowments, and was managed by a superintendent and a board of trustees who derived their authority from its articles of incorporation.[1] The Court further said that neither the fact that

[1] "Public corporations are the instrumentalities of the state, founded and owned by it in the public interest, supported by public funds, and governed by managers deriving their authority from the state." "Corporations organized by permission of the Legislature are private corporations." Van Campen v. Olean General Hospital, 210 App. Div. 204, 205 N. Y. Supp. 554, 555, 556 (1924),

defendant hospital was engaged in charitable work for the benefit of the public nor the fact that it received payments from governmental units for services rendered to indigent patients affected its character as a private institution.[2]

By virtue of its being a private institution, defendant hospital had various rights. Among these was the right to grant or withhold, in its sound discretion, the privilege of practicing in its operating rooms.[3] Therefore, it could exclude plaintiff from use of the hospital and its facilities, if such action were necessary to maintain the hospital's accredited standing.[4]

Although there is some authority to the contrary,[5] it is likely that a hospital, whether private or public, may for good reason exclude a physician or surgeon from practicing therein. In *Van Campen* v. *Olean General Hospital*,[6] the Supreme Court of New York discussed the matter as follows:

> "* * * The law does not require a corporation like defendant (a private hospital) to furnish its services and accommodations to every one who applies, whether patient or physician. * * * It may reject one who has some trivial ailment, and accept another whose needs are greater. This is not illegal discrimina-

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cited with approval in Hughes v. Good Samaritan Hospital et al., 289 Ky. 123, 126, 158 S. W (2d) 159, 161 (1942). See also 26 Am. Jur. 588, 589.

[2] Van Campen v Olean General Hospital, 210 App. Div. 204, 205 N. Y. Supp. 554, 556 (1924), cited with approval in Hughes v. Good Samaritan Hospital et al., 289 Ky. 123, 126, 127, 158 S. W (2d) 159, 161 (1942)

[3] Van Campen v Olean General Hospital, 210 App. Div. 204, 205 N. Y. Supp. 554, 558 (1924).

[4] Hughes v Good Samaritan Hospital et al., 289 Ky 123, 129, 158 S. W (2d) 159, 162 (1942). Accord: People ex rel. Replogle v. Burnham Hospital, 71 Ill. App. 246 (1897) (private hospital's exclusion of a physician for alleged unethical conduct in violation of a rule of the hospital's board of directors was upheld because done in rightful exercise of the hospital's power to make and enforce reasonable rules and regulations for the operation of the hospital), Van Campen v Olean General Hospital, 210 App. Div. 204, 205 N. Y. Supp. 554 (1924) (where a physician has disturbed harmony, orderly management, and discipline in the hospital, the hospital may exclude him in the exercise of its discretion to select its medical staff with regard to skill and adaptability to rules and regulations), State ex rel. Wolf v LaCrosse Lutheran Hospital Association, 181 Wis. 33, 193 N. W 994 (1923) (hospital's exclusion of a physician for violation of rules and regulations was upheld because done in the exercise of the power to control the affairs of the hospital and to make reasonable rules and regulations).

[5] Henderson v City of Knoxville et al., 157 Tenn. 477, 9 S. W (2d) 697 (1928) (the court declared that a physician could not be excluded from practice in a public hospital unless he had been guilty of unethical conduct as denounced by statute). See Annotation (1929) 60 A. L. R. 656 at 658. See also 26 Am. Jur. 592, 593, citing only the Henderson case in support of an assertion that the rule is different as between public and private hospitals.

[6] 210 App. Div 204, 205 N. Y. Supp. 554 (1924).

> tion, nor do we deem it such discrimination, if from a large number of physicians, it selects members of its visiting staff with regard, not only to their medical skill, but to the adaptability to the rules and discipline of the institution. * * * Even in public hospitals, the same rule in the selection of patients and physicians must apply,* * *"

In actions brought by osteopaths to restrain interference with their practice, the courts have applied this rule of selection in favor of both public and private hospitals.[7]

Therefore, the correct rule appears to be that both private and public hospitals may, in the exercise of a sound discretion and for sufficient reason, exclude a physician or surgeon from practicing in their operating rooms and from using their facilities.

MARCUS REDWINE, JR.

THE POWER OF THE GOVERNOR TO RESTORE RIGHTS OF STATE CITIZENSHIP TO ONE CONVICTED OF A FEDERAL OFFENSE

Defendant was convicted in a federal court for the violation of a federal statute, for which a felony punishment was provided. After having received a federal parole, he was issued a certificate by the Governor of Kentucky restoring to him the rights of citizenship. The Governor's certificate recited that the Governor granted to defendant "All Rights of Citizenship denied him in consequence of said conviction." The Secretary of State attested the certificate and delivered it to defendant. Thereafter defendant filed with the county clerk his nominating papers for sheriff of the county Plaintiffs, citizens and taxpayers of the county, brought suit to restrain printing of defendant's name on the ballot. Issue was joined as to the authority of the Governor to restore to defendant the privileges of citizenship so as to enable him to run for and hold office in this state. The lower court dismissed plaintiffs' petition and sustained the authority of the Governor to restore the rights and privileges of state citizenship to defendant. The Kentucky Court of Appeals affirmed the judgment of the lower court. *Arnett et al.* v. *Stumbo et al.*, 287 Ky. 433, 153 S. W (2d) 889 (1941)

The decision in this case depends upon the interpretation of section 150 of the Constitution of Kentucky, the pertinent part of which provides:

> " All persons shall be excluded from office who have been, or shall hereafter be, convicted of a felony, or such high mis-

[7] Haymon v. City of Galveston et al., 273 U. S. 414, 47 S. Ct. 363 (1927), Newton v. Board of Commissioners of Weld County, 86 Colo. 446, 282 P 1068 (1929), Richardson v. City of Miami, 144 Fla. 294, 198 So. 51 (1940), Harris v Thomas, — Tex. Civ App. —, 217 S. W 1068 (1920).