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Associations-Expulsion, Suspension, or Exclusion of Members-Physician's Right to Membership in County Medical Society

David K. Kroll
University of Michigan Law School

RECENT DECISIONS

ASSOCIATIONS—EXPULSION, SUSPENSION, OR EXCLUSION OF MEMBERS—PHYSICIAN'S RIGHT TO MEMBERSHIP IN COUNTY MEDICAL SOCIETY—Plaintiff had satisfied all state requirements for the practice of medicine on the basis of work at an osteopathic college and residency at an osteopathic hospital, and had received a state license to practice medicine and surgery. Subsequently, plaintiff attended an AMA accredited medical college which awarded him a degree based in part on his osteopathic training. The Middlesex County Medical Society[1] refused to admit plaintiff into active membership because he had not fulfilled the membership requirement of *four* years of study in a medical school approved by the AMA.[2] As a result, two private hospitals terminated plaintiff's staff membership and hospital privileges. In an action in lieu of mandamus,[3] *held,* for petitioner. Exclusion from the Medical Society was void, and the Society must admit plaintiff into active membership. The Medical Society is an involuntary organization whose application of a membership rule contrary to the requirements of the State Board of Medical Examiners is contrary to public policy and causes substantial injury to plaintiff. *Falcone v. Middlesex County Medical Soc'y,* 62 N.J. Super. 184, 162 A.2d 325 (1960).

The court treats this case as one concerning the rights of an individual to membership in a private organization.[4] The basic issue, however, is not membership, but whether the plaintiff has a right, without reference to membership in the Medical Society, to be eligible to use the hospital facilities in Middlesex County on the basis of his professional qualifications. In order to give judicial relief, the court must thus limit either the discretion of hospitals in the choice of their staff members or the discretion of the Medical Society, a private unincorporated association, to choose its members. It has generally been held that private hospitals[5] have

1 An unincorporated association, hereinafter referred to as the Medical Society.

2 See *The American Medical Association: Power, Purpose, and Politics in Organized Medicine,* 63 YALE L. J. 938 (1954).

3 The New Jersey Constitution was amended in 1947 to allow persons to bring actions in the Superior Court where relief would formerly have been granted only by prerogative writ. N. J. CONST. art VI, § 5; *cf.* Switz v. Middletown Township, 23 N.J. 580, 589, 130 A.2d 15, 20 (1957) (essential nature of mandamus not altered by the CONST. of 1947); see Annot., 137 A.L.R. 311 (1942).

4 See generally Chafee, *The Internal Affairs of Associations Not For Profit,* 43 HARV. L. REV. 993 (1930), for a discussion of private organizations. Although the society in the principal case is a private unincorporated organization, it is a member organization in the state medical society which is incorporated and which does exercise rights granted by the state to nominate candidates for appointment by the governor to the Board of Medical Examiners and to confer the degree of doctor of medicine. The court does not treat this connection as controlling, however, but bases relief on the coercive practices of the Medical Society.

5 Separate doctrines relate to the power of public hospitals to discriminate in choosing staff members. The general rule is that such choice cannot be arbitrary, unreasonable, or discriminatory. Findlay v. Board of Supervisors, 72 Ariz. 58, 230 P.2d 526 (1951); Hamilton County Hospital v. Andrews, 227 Ind. 217, 84 N.E.2d 469 (1949), *cert. denied,* 338 U.S. 831 (1949).

complete discretion in their choice of staff members, even if exercised arbitrarily.[6] To limit the hospital's discretion would require the court to find against the weight of authority and policy.[7] This court therefore chose to base its relief upon the ground that plaintiff had a right to membership in the Medical Society.

Private organizations may, subject to two limitations, exercise discretion in the choice of their members.[8] First, members who are expelled are guaranteed certain procedural and substantive safeguards in the expulsion proceedings.[9] Second, if the organization legally controls the right to practice a profession, the courts will order the organization to admit properly qualified applicants.[10] In treating this case as presenting a membership question, the court had difficulty in finding a right to membership according to existing law, and was forced to resort to deviations and extensions of existing doctrines. The court's departure entailed the extension of the doctrine of expulsion cases to cover exclusion situations,[11] and the origination of an "involuntary organization" concept.[12]

Some courts have held that a plaintiff *expelled* from membership had to show a particular property[13] or contract[14] right in the organization in order to obtain a reinstatement order. Other courts[15] and writers[16] have argued that relief should be based on the personal interests[17] of membership and the substantiality of damages due to expulsion. This court extends

6 See, *e.g.*, Levin v. Sinai Hospital, 186 Md. 174, 46 A.2d 298 (1946); see also Annot., 24 A.L.R.2d 850, 852 (1952), for a discussion of exclusion of physicians and surgeons by hospital authorities.

7 See Comment, 9 CLEV.-MAR. L. REV. 137 (1960).

8 The courts cannot compel the admission into such an association and if his application is refused, he is entirely without legal remedy, no matter how arbitrary or unjust may be his exclusion. Medical Soc. v. Walker, 245 Ala. 135, 138, 16 So. 2d 321, 324 (1944).

9 See Annot., 20 A.L.R.2d 531 (1951), for a discussion of suspension or expulsion from professional organizations and the remedies therefor; see also Chafee, *supra* note 4.

10 See Ewald v. Medical Soc'y, 144 App. Div. 82, 128 N.Y. Supp. 886 (1911); People *ex rel.* Bartlett v. Medical Soc'y, 32 N.Y. 187 (1865).

11 "Recognizing that the real interests in an exclusion or an expulsion are personal . . . the distinction which has arisen between expulsions and exclusions from voluntary organizations appears to be one of fiction, rather than of substance." Principal case at 196, 162 A.2d at 330. Since plaintiff was an associate member at the time he was denied permanent membership, there may be a question whether this is not actually an expulsion situation. The Court, however, treats the case as one involving exclusion.

12 "[The medical society] . . . may not escape these responsibilities by designating itself as a private, voluntary association. The court finds that the defendant society is an involuntary organization, clothed with such public responsibilities that its actions are subject to judicial scrutiny." Principal case at 199-200, 162 A.2d at 332.

13 Weyrens v. Scotts Bluff County Medical Soc'y, 133 Neb. 814, 277 N.W. 378 (1938); State *ex rel.* Hyde v. Jackson County Medical Soc'y, 295 Mo. 144, 243 S.W. 341 (1922) (severable interest required).

14 Smith v. Kern County Medical Ass'n, 19 Cal. 2d 263, 120 P.2d 874 (1942).

15 See Bernstein v. Alameda-Contra Costa Medical Ass'n, 139 Cal. App. 2d 241, 293 P.2d 862 (1956); Brown v. Harris County Medical Soc'y, 194 S.W. 1179 (Tex. Civ. App. 1917)

16 See Chafee, *supra* note 4; see also Notes, 41 MINN. L. REV. 212 (1957) and 5 UTAH L. REV. 270 (1956).

17 See Chafee, *supra* note 4, at 998.

the expulsion theory to cover exclusion cases by reasoning that since the damage is the same—the loss of privileges incident to membership—whether one is expelled or excluded from an organization, relief should be given in exclusion cases just as in expulsion cases. It would seem, however, that the personal interests considered necessary for judicial relief are not based entirely upon the substantiality of the damage as this court suggests, but are at least partially related to an interest the person has as a result of having been a part of the organization.[18] Damage alone does not give rise to a cause of action.[19]

The second departure from existing legal doctrine was the use of precedents[20] from exclusion cases, involving medical societies which controlled the right to practice medicine in the state. The court concluded that the nature of the organization was determinative;[21] if an organization controlled professional practice, then relief was given.[22] In each of the cases cited by the court to support this conclusion, however, the medical association concerned was incorporated[23] by the state legislature and empowered to determine qualifications for the practice of medicine within the state.[24] There is no apparent authority for the proposition that private unincorporated organizations, such as the Medical Society in this case, are under any obligation to admit persons to membership on a non-arbitrary or non-discriminatory basis. Despite this distinction, the court found that the Medical Society *in fact* controlled the practice of medicine in the county and was thus an "involuntary organization."[25] Upon closer examination, it appears that the "involuntary" designation was merely a reiteration of the court's substantial damage concept. If an organization controls the practice of medicine, deprivation of membership obviously results in substantial

[18] Chafee, *supra* note 4, at 1007.

[19] See Bondies v. Glenn, 119 S.W.2d 1095, 1098 (Tex. Civ. App. 1938).

[20] Hillery v. Pedic Soc'y, 189 App. Div. 766, 179 N.Y. Supp. 62 (1919); People *ex rel.* Bartlett v. Medical Soc'y, *supra* note 10; Rex v. Askew, 4 Burr. 2186, 98 Eng. Rep. 139 (1768); *cf.* Gregg v. Mass. Medical Soc'y, 111 Mass. 185, 15 Am. Rep. 24 (1872).

[21] "Contrary to their theoretical discussions, the courts have, in fact, looked to the nature of the particular organization involved and to the degree of harm arising out of the particular act of the organization." Principal case at 196, 162 A.2d at 330.

[22] *Cf.* James v. Marinship Corp., 25 Cal. 2d 721, 155 P.2d 329 (1944); Wilson v. Newspaper Deliverers' Union, 123 N.J. Eq. 347, 197 Atl. 720 (1938) (common-law labor decisions which hold that a labor union with a monopoly on labor in the locality cannot take advantage of both a closed-shop agreement and discriminatory or arbitrary admission practices).

[23] See cases cited in note 20 *supra*. The court in the principal case states that previous decisions take into account the distinction between voluntary and involuntary organizations in deciding whether to give relief. Apparently an organization is termed "involuntary" if it controls the practice of the profession.

[24] The medical associations in cases cited in note 20 *supra* were given powers equal to those of the Board of Medical Examiners in the principal case. They had the power to determine who could practice medicine within the state.

[25] "Although the A.M.A. and its constituent and component parts have been designated by many courts as voluntary organizations, other courts and legal writers have recognized the involuntary nature of these associations." Principal case at 198, 162 A.2d at 331.

damage. If the organization does not control the practice of medicine, exclusion from its membership could hardly be deemed to result in substantial damage. As a practical matter, therefore, an involuntary organization, as recognized by this court, could be defined as an organization whose existence causes those excluded to suffer substantial damage. The "involuntary organization" is thus a fictional concept.

The real problem remains whether legal relief can be given to one in plaintiff's position in order to allow him to be considered for hospital staff membership without reference to Medical Society membership. This court held that the coercive practices by the Medical Society gave plaintiff a right to membership in the society; and consequently, he may regain his hospital privileges. The more direct solution would be to prohibit the hospitals' rejection of otherwise qualified physicians solely because of lack of membership in a private organization.[26] Such a rule would impose no great restriction upon the hospital's discretion, and would still leave the hospital free to impose standards of high quality. Moreover, it would avoid establishing a precedent of compelling membership in private unincorporated organizations.

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26 See Hamilton County Hospital v. Andrews, *supra* note 5 (public hospital cannot be arbitrary or discriminatory in selecting its staff).