



NEIL F. HARTIGAN

ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

April 4, 1984

FILE NO. 84-004

PUBLIC HEALTH:
Due Process Rights of Podiatrists
Who Apply for Hospital Medical
Staff Membership

Fred H. Uhlig, Acting Director
Illinois Department of Public Health
535 West Jefferson Street
Springfield, Illinois 62761

Dear Mr. Uhlig:

I have your predecessor's letter in which he asked what procedures must be afforded by a licensed hospital to a podiatrist seeking admission to its medical staff in order to satisfy the due process guarantee incorporated in Rule 3-1.1 of the Illinois Hospital Licensing Requirements. For the reasons hereinafter stated, it is my opinion that, pursuant to Rule

Fred H. Uhlig - 2.

3-1.1 of the Illinois Hospital Licensing Requirements, the pertinent rules, regulations and bylaws of a licensed hospital must afford each applicant for medical staff membership, including podiatrists: reasonable notice; the opportunity to appear and be heard, in person and by counsel, at each level of the application review process; the opportunity to present evidence and examine evidence tendered against him; and the opportunity to present, confront and cross-examine witnesses.

The Illinois Hospital Licensing Requirements [hereinafter "Requirements"] have been promulgated and adopted pursuant to section 10 of the Hospital Licensing Act (Ill. Rev. Stat. 1983, ch. 111 1/2, par. 151, as amended by Public Act 83-969, effective July 1, 1984), which authorizes the Director of the Department of Public Health, in consultation with the Hospital Licensing Board, to prescribe rules, regulations, standards and statements of policy necessary to implement the provisions of that Act (Ill. Rev. Stat. 1983, ch. 111 1/2, par 142 et seq.). Rule 2-1.1 of the Requirements provides:

"For each hospital there shall be a governing authority, hereinafter called the board, responsible for its organization, management, control and operation, including appointment of the medical staff." (Emphasis added.)

Rule 1-5.1(k) of the Requirements defines the term "medical staff" as follows:

"The term 'medical staff' means an organized body composed of individuals granted the privilege by the governing authority of the hospital to

practice in the hospital. Any of the following who are granted practice privileges by a hospital shall be placed on the hospital's Medical Staff: persons who are graduates of a college or school approved or recognized by the Illinois Department of Registration and Education, and who are currently licensed (sic) by the Department as a Doctor of Medicine, M.D.; Doctor of Osteopathy, D.O.; Doctor of Dental Surgery, D.D.S.; or Doctor of Podiatric Medicine, D.P.M."

Rule 3-1.1 of the Requirements provides in pertinent part:

"The medical staff shall be organized in accordance with written bylaws, rules and regulations, approved by the Governing Board. The bylaws, rules and regulations shall specifically provide but not be limited to the following provisions:

- (a) for written procedures for accepting and processing applications for medical staff membership which shall include verification of current license in Illinois and biennial review of renewed license.
- (b) for eligibility for staff membership, whether the practitioners are or are not currently members of the medical staff;
- (c) for a policy that specifies a procedure for processing applications for staff privileges and guarantees due process and fair hearing for each such applicant;

* * *

(Emphasis added.)

Under the definition of "medical staff" in Rule 1-5.1(k) of the Requirements, it is clear that podiatrists (Doctors of Podiatric Medicine, D.P.M.) are eligible to apply for membership on the medical staff of a licensed hospital, and if appointed, to become members of the staff. As will be discussed more fully below, however, neither the Illinois

Hospital Requirements, the Hospital Licensing Act nor legal precedent require the governing board of a licensed hospital to appoint podiatrists to its medical staff if, in its judgment, such appointment is not consistent with the hospital's choice of methods to provide competent health care to its patients. Even though the appointment of podiatrists to a hospital medical staff is a matter of discretion and judgment, Rule 3-1.1 of the Requirements mandates that any podiatrist who applies for staff membership be afforded procedural due process and a fair hearing on his application.

Where a statute employs words or terms having a well known legal significance, it is assumed, in the absence of any expression to the contrary, that such words are intended to have that significance. (People ex rel. Mayfield v. City of Springfield (1959), 16 Ill. 2d 609, 615.) The same rule of construction applies to administrative rules and regulations. (See Hetzer v. State Police Merit Board (1977), 49 Ill. App. 3d 1045, 1047.) Although the term "due process" does not admit of a precise definition (Barnett v. County of Cook (1944), 388 Ill. 251, 255; see Lassiter v. Department of Social Services of Durham County (1981), 452 U.S. 18, 24), it does connote a recognized legal principle founded in the fifth and fourteenth amendments to the United States Constitution (U.S. Const., amend. V, XIV), and enunciated in the numerous cases which have interpreted these amendments. Thus, it must be assumed that

the term "due process" used in Rule 3-1.1 of the Requirements was intended to be given its recognized legal significance.

"Due process" expresses a requirement of "fundamental fairness". (Lassiter v. Department of Social Services of Durham County (1981), 452 U.S. 18, 24.) Although fundamental fairness is a flexible concept, it has often been held that the basic requisites of due process, and hence, fundamental fairness, are meaningful notice and the opportunity to be heard in the protection and enforcement of rights in an orderly proceeding adapted to the nature of the situation. (Mullane v. Central Hanover Trust (1950), 339 U.S. 306, 314-15; Barnett v. County of Cook (1944), 388 Ill. 251, 255; Griffin v. County of Cook (1938), 369 Ill. 380, 386.) In determining what "due process" requires in given circumstances, relevant precedents should first be considered (Lassiter v. Department of Social Services of Durham County (1981), 426 U.S. 18, 24, 25), and, if possible, the elements of due process determined therefrom. In addition to the cases cited above, several cases which relate specifically to due process rights of applicants for hospital staff privileges provide guidance for determining the necessary elements of due process in such cases.

In Ladenheim v. Union County Hospital District (1979), 76 Ill. App. 3d 90, the governing board of the Union County Hospital disapproved plaintiff physician's application for reappointment to its medical staff. Plaintiff was granted a

Fred H. Uhlig - 6.

hearing, and subsequently appealed the rejection of his application in the manner provided by the bylaws of the hospital. He then sought judicial review by writ of certiorari, alleging, inter alia, that he had been denied due process of law in the administrative hearings and appellate review. The court held:

" * * *

In this case appellant received notice, a hearing before an impartial tribunal, representation by counsel, the opportunity to cross-examine witnesses and to present evidence, and the opportunity to inspect documentary evidence against him. Generally, this is considered sufficient to insure due process in administrative proceedings. * * *

* * *

(76 Ill. App. 3d 90, 96.) "

Similarly, in Poe v. Charlotte Memorial Hospital, Inc. (W.D.N.C. 1974), 374 F. Supp. 1302, the court set out the following elements of due process applicable to an administrative action to expel a doctor from staff privileges:

" * * *

* * * Due process normally requires that they [the governing board] give advance notice of the charges in sufficient detail to permit intelligent response, and allow the accused doctor full opportunity to appear and be heard, to question and cross-examine adverse witnesses and accusers, to challenge the accusations of wrong doing, and to present evidence in his own behalf.

A necessary element in due process is that the opportunity to defend must be given at a time when it can be effective. Unless the defense can speak at a time when there is a chance to be

Fred H. Uhlig - 7.

heard fairly, the opportunity to speak is a hollow one.

* * *

(Emphasis in original deleted.) (374 F. Supp. 1302, 1310-11.)

The most instructive case in determining the scope of due process guarantees in this situation, however, is Shaw v. Hospital Authority of Cobb County (5th Cir. 1980), 614 F.2d 946, reh'g denied, 620 F.2d 300 (1980), cert. denied, 449 U.S. 955 (1980), which concerned the refusal of the Hospital Authority to amend its bylaws so as to permit podiatrists in general, and the plaintiff in particular, to become members of the hospital's medical-dental staff. Pursuant to an earlier decision of the 5th Circuit Court of Appeals (Shaw v. Hospital Authority of Cobb County (5th Cir. 1975), 507 F.2d 625), the Hospital Authority was ordered to provide the plaintiff with a hearing on his application for staff privileges which provided the plaintiff with procedural due process. The second appeal followed the refusal of the Hospital Authority, after conducting hearings on the plaintiff's application, to amend its bylaws to permit podiatrists to become medical-dental staff members. The court of appeals adopted as its opinion that of the District Court of the Northern District of Georgia in the same cause, wherein it was stated:

"* * * On July 17, 1975 plaintiff appeared at a hearing of a special committee of the Medical-Dental Staff of Cobb General Hospital at

which the reasonableness of the subject by-laws was explored and the decision was made not to amend them. On October 15, 1975 the Hospital Authority, largely as a procedural step, accepted the recommendation of the Medical-Dental Staff and informed plaintiff of his right to a hearing before the Authority. On February 4, 1976, the Hospital Authority held a hearing and subsequently declined to amend its by-laws. In both instances, plaintiff was not only afforded notice and an opportunity to be heard, [citation] but also accepted the right to appear personally and through counsel to present, confront, and cross-examine witnesses, [citations] and to answer questions raised by members of the respective boards. Moreover, plaintiff's counsel specifically disclaimed any belief that members of the Authority might be biased. Finally, the Authority spent approximately three hours hearing plaintiff's claims and actively and aggressively questioned plaintiff during a significant portion of that time. Following the hearings, plaintiff was given a three page examination of the reasons for the denial of his application. Therefore, it appears that these proceedings were 'meaningful', [citation] and comported with the minimum requirements of procedural due process. * * *

* * *

(614 F.2d 946, 951.)

Although due process and fundamental fairness are flexible concepts in the abstract, I believe that these cases, when read together, delineate the elements of procedural due process to which applicants or reapplicants for hospital medical staff privileges are entitled. Because the term "due process" in Rule 3-1.1 of the Requirements is presumed to have the legal significance and meaning attributed to that term in similar circumstances, it is my opinion that Rule 3-1.1 requires that the rules, regulations and bylaws of a licensed

Fred H. Uhlig - 9.

hospital afford every applicant for medical staff privileges, including podiatrists, the following rights and opportunities: reasonable notice; the opportunity to appear and to be heard, in person and by counsel, at each level of the application process; the opportunity to present evidence and examine evidence presented; and the opportunity to present, confront and cross-examine witnesses.

As was noted above, the fact that Rule 3-1.1 of the Requirements guarantees every applicant for hospital staff privileges, including podiatrists, procedural due process does not concomitantly require the governing board of a licensed hospital to appoint any and all podiatrists who apply. The appointment of podiatrists to a hospital medical staff is not mandated by either the Illinois Hospital Licensing Act or the Illinois Hospital Licensing Requirements. To the contrary, Rule 3-1.2 of the Requirements indicates that the appointment of podiatrists and dentists to a hospital medical staff is discretionary.

Moreover, in Davidson v. Youngstown Hospital Association (App. Ct. Ohio 1969), 250 N.E.2d 892, 896, the court stated:

" * * *

It is generally agreed that the managing authorities of a hospital, whether public or private, under the power to adopt reasonable rules and regulations for the government and operation thereof, in the absence of any

statutory restriction, may prescribe the qualifications of physicians and surgeons for admission to practice therein, and may adopt and enforce reasonable regulations concerning the qualifications of practitioners to engage in particular kinds of practice or to perform particular kinds of operations, and also concerning the conditions under which operations or other services may be performed. [Citation.]

* * *

In Sosa v. Board of Managers of Val Verde Memorial Hospital
(5th Cir. 1971), 437 F.2d 173, 176-77, the court held:

* * *

* * * This court has recently indicated that staff appointments may be constitutionally refused if the refusal is based upon 'any reasonable basis, such as the professional and ethical qualifications of the physicians or the common good of the public and the Hospital,' [citation]. Admittedly, standards such as 'character qualifications and standing' are very general, but this court recognizes that in the area of personal fitness for medical staff privileges precise standards are difficult if not impossible to articulate. [Citation.] The subjectives of selection simply cannot be minutely codified. The governing board of a hospital must therefore be given great latitude in prescribing the necessary qualifications for potential applicants. [Citations.] So long as the hearing process gives notice of the particular charges of incompetency and ethical fallibilities, we need not exact a precis of the standard in codified form.

On the other hand, it is clear that in exercising its broad discretion the board must refuse staff applicants only for those matters which are reasonably related to the operation of the hospital. Arbitrariness and false standards are to be eschewed. Moreover, procedural due process must be afforded the applicant so that he may explain or show to be untrue those matters

Fred H. Uhlig - 11.

which might lead the board to reject his application. [Citations.]

* * *

Training is a relevant professional qualification which may be constitutionally applied in determining the class of persons who are eligible to practice medicine in a public hospital. (Shaw v. Hospital Authority of Cobb County (5th Cir. 1980), 614 F.2d 946, 952, reh'g denied, 620 F.2d 300 (1980), cert. denied, 449 U.S. 955 (1980).)

In Dolan v Galluzzo (1979), 77 Ill. 2d 279, the supreme court stated:

" * * *

[Illinois] has 'long recognized podiatrists as a separate and distinct profession of healers who are severely limited in their practice and whose educational requirements are substantially different than those of physicians,' and because 'the treatments utilized by the podiatric profession * * * are substantially different from those utilized by physicians and orthopedic surgeons' * * *. [Citation.]

* * *

(77 Ill. 2d 279, 281-82.)

Thus, the professional qualifications of podiatrists differ from medical doctors both in the nature of training and the method of treatment utilized. Moreover, podiatrists, unlike medical doctors, are limited to the diagnosis and treatment of one part of the human body, the foot, and may not administer general anesthetics or amputate a foot. (Ill. Rev. Stat. 1983,

Fred H. Uhlig - 12.

ch. 111, par. 4908.) Accordingly, Rule 3-2 of the Requirements provides in part:

"* * * Patients admitted by a podiatrist or a dentist shall be under the care of both the admitting medical staff member and a physician who is also a medical staff member. The doctor of podiatric medicine or the doctor of dental surgery shall be responsible for all care within the limits of the privileges granted to him; the physician shall be responsible for all aspects of general medical care." (Emphasis added.)

In Shaw v. Hospital Authority of Cobb County (5th Cir. 1980), 614 F.2d 946, reh'g denied, 620 F.2d 300 (1980), cert. denied, 449 U.S. 955 (1980), the plaintiff challenged the refusal of the Authority to admit him to the medical staff as violative of due process and equal protection. The due process challenge has been noted above. The court further held, after reviewing the differences in training and methods of treatment between podiatrists and medical doctors, that the refusal to admit podiatrists to the hospital medical staff did not violate the plaintiff's right to equal protection of the laws. Rather, the choice to provide necessary treatment by orthopedic surgeons instead of podiatrists was rationally based upon professional qualifications and was reasonably related to the operation of the hospital. (614 F.2d 946, 951-52.) Similarly, in Davidson v. Youngstown Hospital Association (App. Ct. Ohio 1969), 250 N.E.2d 892, 897-98, the court held that a decision not to admit podiatrists to a hospital medical staff, when

Fred H. Uhlig - 13.

based on professional qualifications, was not arbitrary, unreasonable, capricious or discriminatory. Thus, although podiatrists are entitled under Rule 3-1.1 of the Requirements to procedural due process on an application for appointment to a hospital medical staff, they are not entitled to be admitted.

Lastly, it should be noted that the procedural due process guarantee of Rule 3-1.1 applies both to public and private hospitals. While it may be generally true that an applicant for staff privileges in a private hospital is not constitutionally guaranteed the due process safeguards applicable to public hospitals (Settler v. Hopedale Medical Foundation (1980), 80 Ill. App. 3d 1074, 1076), the Hospital Licensing Act and Hospital Licensing Requirements apply to both public and private hospitals. (Ill. Rev. Stat. 1983, ch. 111 1/2, par. 144.) Because the requirement that applicants for hospital medical staff privileges receive due process and a fair hearing is independent of the general constitutional rights which might apply, there is no distinction between public and private hospitals under Rule 3-1.1.

Very truly yours,


A T T O R N E Y G E N E R A L